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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

[Docket No. RHS–23–MFH–0019]

RIN 0575–AD29

Changes Related to Insurance Requirements in Multi-Family Housing (MFH) Direct Loan and Grant Programs

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

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), will implement changes related to insurance requirements under the Multi-Family Housing (MFH) Direct Loan and Grant programs. This final rule will align RD insurance coverage types, amounts, and deductibles with affordable housing industry standards to simplify the coverage amounts, deductible limits, and improve customer experience with updated and understandable insurance requirements.

DATES: This final rule is effective on May 20, 2026.

ADDRESSES: *Other information:* Additional information about RD and its programs is available on the internet at <https://www.rurdev.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Michael Resnik, Director, Multi-Family Housing Asset Management Division, Rural Housing Service, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–0782, Telephone: (202) 430–3114 (this is not a toll-free number), or email: Michael.Resnik@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Rural Housing Service (RHS) offers a variety of programs to build or improve housing and essential

community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single and multifamily housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, and housing for farm laborers. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, state and Federal government agencies, and local communities.

Title V of the Housing Act of 1949 (Act) authorized USDA to make housing loans to farmers to enable them to provide habitable dwellings for themselves or their tenants, lessees, sharecroppers, and laborers. USDA then expanded opportunities in rural areas, making housing loans and grants to rural residents through the Single-Family Housing (SFH) and Multi-Family Housing (MFH) Programs.

RHS operates the MFH direct loan and grant programs by providing direct loans or grants to affordable multi-family rental housing for low income, elderly, disabled individuals and families, or domestic farm workers in eligible rural areas. The programs are covered by the 7 CFR part 3560, Direct Multi-Family Housing Loans and Grants and are: (1) Section 515, Rural Rental Housing loans, which finances multi-family units in rural areas; (2) Section 514 and 516 Farm Labor Housing loans and grants, which finances farm labor housing; and (3) Section 521, Rental Assistance, which finances project-based tenant rent subsidy.

As required by the Agency under the 7 CFR part 3560, borrowers must purchase and maintain property insurance on all buildings included as security for an Agency loan, to avoid a non-monetary loan default. Regulations require borrowers to provide fidelity coverage, liability insurance and various other insurance coverage to protect against losses or damages.

II. Summary of Public Comments Received and Agency Responses

Stakeholder input is vital to the Agency to ensure that the current regulations will support the Agency's mission, while ensuring that new regulations and policies are reasonable and do not overly burden the Agency's lenders and its customers. The Rural Housing Service (RHS) published a proposed rule in the **Federal Register** on

October 25, 2023 (88 FR 73245) where a 60-day comment period was provided for the public to submit comments, which closed on December 26, 2023. Commenters included non-profit housing organizations, entities representing housing providers, and private citizens. The Agency received nine (9) comments from stakeholders and the general public. The Agency's responses to the comments which have been summarized and categorized are noted below:

Comments 1 & 2: Several commenters provided positive support for the proposed considerations of the rule changes.

Agency's response: The Agency acknowledges the commenters' support.

Comment 3: Four commenters expressed concerns with the proposed higher deductible limits adversely affecting smaller properties.

Agency's response: The Agency understands the concerns expressed by the commenters regarding insurance deductible limits. The deductible limits will be listed as not to exceed maximum limit; therefore, a property can choose a deductible limit that is less than the maximum limit specified in the proposed rule change.

Comment 4: Two commenters expressed concern regarding: (1) the difficulty of windstorm deductibles to match the all-peril property deductible limits; (2) the windstorm coverage premium cost being prohibitive in many areas of the country; and, (3) the inclusion of windstorm deductible limits in the same category as hazard coverage. The commenters requested alternative language that would allow owners to opt out of windstorm coverage when the cost is prohibitive. Commenters also flagged that with coverage such as windstorm, which varies widely based on geographical location, the coverage is often based on a percentage of the building and may conflict with the blanket requirements in the Final rule.

Agency's response: Due to the volume of windstorm events that occur on an annual basis nationwide, the Agency concludes that windstorm coverage is necessary to protect the Agency's security asset. The Agency acknowledges the recommendation that the windstorm deductible limit in the proposed rule limit may be cost prohibitive and could vary based on

geographical locations, and the deductible is often based on a percentage of the building value. Therefore, the current regulation at 7 CFR 3560.105(f)(9)(iii) which states that when windstorm coverage is excluded from the "All Risk" policy, the deductible must not exceed five percent of the total insured value, will remain unchanged.

Comment 5: One commenter requested that these policies apply to all Rural Housing Service (RHS) programs. They urge RHS to include both the direct and guaranteed loan programs in these updated requirements.

Agency's Response: The Agency appreciates the concern for insurance requirements throughout all RHS programs. This Final rule applies only to the RHS Multi-Family Housing Programs and the insurance requirements in 7 CFR 3560.

Comment 6: One commenter requested that the Agency consider business income loss insurance to be an optional type of insurance. The commenter provided benefits and shortcomings of business income loss insurance.

Agency's Response: The Agency appreciates the commenter's concern. The Final Rule will still require business loss insurance as the Agency believes that requiring business income insurance will provide financial relief to the owners who suffer income loss due to damage or destruction of their rental property.

Comment 7: One commenter expressed concerns about insurance companies declaring bankruptcy and other insurance companies deciding to discontinue offering insurance coverage in some states entirely as the result of a catastrophic event or multiple catastrophic events.

Agency's Response: The Agency acknowledges the concern of the overall lack of insurance companies who will provide coverage and the general difficulty in obtaining insurance in some states where catastrophic events have occurred. At the time of a catastrophic event, when a property has incurred a total loss, and tenants have been relocated under Agency relocation procedures, it may be in the Agency's best interest to apply the insurance proceeds to the Agency's debt rather than rebuilding and facing the difficulty of the property being uninsured. As a result, in addition to the revision in the proposed rule, this Final rule incorporates additional language into 7 CFR 3560.105(f)(7) for instances where the insurance proceeds will be applied to the Agency's loan.

Comment 8: Two commenters urged a larger Federal response to address the underlying issues causing the current vulnerability of the insurance industry.

Agency's Response: The Agency understands this concern and will continue to support a unified solution beyond the scope of this Final rule.

Comment 9: One commenter suggested the RHS implement a waiver of certain insurance deductible limits during times of increased rates by the Federal Reserve to allow owners relief until rates stabilize and fall.

Agency's Response: The Agency acknowledges the commenter's suggestion for this modification. The Agency finds that the implementation of such a waiver will adversely affect the interest of the Federal Government, which is contrary to the Administrator's exception authority noted in § 3560.8.

III. Discussion of the Final Rule

The Agency has determined that the current regulations set forth at 7 CFR part 3560 contain outdated insurance requirements. Stakeholders and affordable housing industry advocates have stressed the need for changes and updates to the RD multifamily housing insurance requirements. The current insurance coverage amounts, and deductible limits were established in 2004 when the interim Final rule was published on November 26, 2004, in the **Federal Register** (69 FR 69031). This rule is necessary to update the RD multifamily housing insurance coverage amounts and deductible limits from those established in 2004 to the current dollar value. The rule will modernize the RD multifamily housing insurance coverage requirements, amounts, and deductible limits to align with the affordable housing industry practices.

Insurance premiums, including those for hazard/property insurance required by the Agency, are increasing due to changes in the insurance industry, such as the increasing of insurance rates in part due to increased catastrophic or significant weather related events. Agency stakeholders are expected to benefit from the Final rule changes through lower insurance premiums and more flexibility in choices of coverage and deductibles. The current low-deductible limits result in higher premiums. By allowing higher deductible limits, the Final rule will provide flexibility to the owner to select a deductible that can lower the premium costs.

When a disaster occurred and the coverage was less than the industry standard of 80 percent of replacement cost value, the Agency has seen the loss of needed multifamily housing

properties. Due to insufficient coverage amounts, properties have not been able to be rebuilt and the communities in need of affordable housing have lost housing units. For example, an 85-unit property was a total loss as a result of a naturally declared disaster. Insurance proceeds per the current regulation requirement covered the remaining balance of the Agency loan but were insufficient to rebuild, resulting in the total loss of 85 affordable housing units from the community. This Final rule is intended to assist stakeholders by providing the financial capacity to build-back needed affordable housing units. Rural communities will benefit and be able to maintain affordable housing units.

The Agency believes that the changes made by this Final rule will provide a streamlined process and positive customer experience while creating a stronger, more resilient portfolio of properties, improved oversight of critical areas, and a reduction of portfolio financial risk by providing consistent coverage amounts and deductible limits.

IV. Summary of Final Rule Changes

Changes as Published in the Proposed Rule and as a Result of Public Comments

The following changes to 7 CFR 3560 as proposed in the published proposed rule, and updated based on public comments received by the Agency during the proposed rule public comment period are as follows:

7 CFR 3560, Subpart A

(1) In § 3560.4(b), the Agency is removing the reference to 7 CFR part 1806, subpart B—National Flood Insurance. The flood insurance requirement for the covered programs is required in § 3560.105.

7 CFR 3560, Subpart B

(2) In § 3560.62 paragraph(d), the Agency is updating the current format to be more reader friendly and adding changes that would require Worker's Compensation insurance and business income insurance. The Worker's Compensation insurance requirement would implement current Agency policy. The business income insurance requirement would provide protection and financial relief to borrowers who suffer income loss due to damage or destruction at their rental property.

7 CFR 3560, Subpart C

(3) The Agency will update the insurance coverages and deductible requirements for the MFH Direct Loan and Farm Labor Housing programs to

the current dollar values. The Agency's research for the updates include a review of data from other federal housing agencies such as Housing and Urban Development (HUD) and Freddie Mac, coupled with state agencies and private sector affordable housing data. This data is used by the Agency as an indicator of industry standards for the insurance requirements.

Adding Worker's Compensation insurance and Business Income insurance requirements is consistent with housing industry standards and is consistent with the change for 7 CFR part 3560.62(d), which will require Worker's Compensation insurance and Business Income insurance before loan funds are made available to the borrower in addition to the current insurance requirements.

The Final rule will update § 3560.105 as follows:

(i) Update language in paragraph (b)(1) to state that insurance is required, on or prior to loan or grant closing rather than prior to loan approval. Also, update language to clarify when insurance is required if there is interim financing or the Agency is providing multiple loan advances.

(ii) Update paragraph (b)(4) to state that the Agency must be named as loss co-payee or mortgagee, regardless of lien position, which provides consistency with Agency subordination agreement documents.

(iii) Update paragraph (c)(4) to state that insurance is required on or prior to loan or grant closing rather than prior to loan approval. This is consistent with the final change to § 3560.105(b)(1).

(iv) Include windstorm coverage in the general types of coverage as noted in hazard insurance in paragraph (f)(1)(i). And add a caveat to (f)(2)(i) that windstorm coverage is an other type of insurance the Agency may require when it is specifically excluded from the All-Risk policy. This is consistent with current hazard (or property) insurance industry standard.

(v) Update paragraph (f)(1)(iii) to include the amount of coverage requirement to provide consistency with current Agency policy.

(vi) Add paragraph (f)(1)(v) to include business income loss insurance in the list of minimum property insurance that borrowers must acquire. This change is consistent with the final change for 7 CFR part 3560.62(d).

(vii) Update paragraph (f)(3) from a depreciated replacement value or unpaid loan balance, to a "not less than a percentage of insurable replacement cost value," which is a percentage that is consistent with affordable housing

industry standards for the minimum property insurance coverage.

(viii) Remove paragraph (f)(3)(ii) because its intent is duplicative of paragraph (f)(3)(i). Paragraph (f)(3)(iii) will be redesignated to the new (ii) and revise the minimum flood insurance coverage to the lesser of, not less than a percentage of insurable replacement cost value, or maximum amount of insurance available under the National Flood Insurance Act, which is consistent with affordable housing industry standards.

(ix) Update the language in paragraph (f)(4) to consolidate the relevant content of this paragraph and remove the sub-bullet content that references depreciated replacement value which is no longer relevant.

(x) Update the language in paragraph (f)(7) by adding an additional option for insurance settlement claims to be placed in an other supervised account or applied to Agency debt.

(xi) Update the language in paragraph (f)(9)(i)(A) through (B) and adding a paragraph (C) to the hazard/property insurance deductible limits to a "not to exceed" amount that is based on the coverage amount, instead of the current deductible calculation formula. The current Agency limitations on the deductible limit contribute to rising premium costs for the project. This change will allow for larger deductible limits which in turn will make the project's insurance premiums more affordable.

(xii) Update the language in paragraph (f)(9)(iv) regarding the earthquake deductible limit to allow deductibles that do not exceed 20 percent of the coverage amount. This will increase the deductible limit and align the deductible with affordable housing industry standards.

(xiii) Add new paragraph (f)(11) to include policy requirements for cancellation, standard form of Non-Contribution Mortgage Clause, and loss payee.

(xiv) Revise language in paragraph (h)(2)(ii) by removing the fidelity coverage deductible chart and replacing it with a new deductible limit based on a "not to exceed amount." Also, revising the fidelity coverage amount to a specific percentage of proposed annual rental income with a minimum limit, instead of the Agency's current policy of a formula based calculation. This change will simplify the coverage calculation, align the coverage amount and deductible limit with affordable housing industry standard, create consistency among insurance deductibles, and in turn make it easier

for the borrower to be in compliance with insurance requirements.

(xv) Update to the definition of worker's compensation insurance based on industry standards will be added and becomes paragraph (i). The current paragraph (i) (Taxes) will become paragraph (j).

V. Regulatory Information

Statutory Authority

Title V the Housing Act of 1949 (42 U.S.C. 1480 et. seq.), as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title, as implemented under 7 CFR part 3560.

Executive Orders and Acts

Executive Order 12372, Intergovernmental Review of Federal Programs

These loans and grants are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. RHS conducts intergovernmental consultations for each loan and grants in accordance with 2 CFR part 415, subpart C.

Executive Order 12866, Regulatory Planning and Review

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

Executive Order 12988, Civil Justice Reform

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

Executive Order 13132, Federalism

The policies contained in this Final rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. This Final rule does not impose substantial

direct compliance costs on State and local Governments; therefore, consultation with States is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This Final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes. Consultation is also required for any regulation that preempts tribal law or that imposes substantial direct compliance costs on Indian tribal governments and that is not required by statute.

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

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this Final rule has been reviewed in accordance with 7 CFR part 1b (“National Environmental Policy Act”). The Agency has determined that i) this action meets the criteria established in 7 CFR 1b.4(c)(31) and ii) no extraordinary circumstances exist. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (“APA”) or any other statute. The Administrative

Procedures Act exempts from notice and comment requirements rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this rule.

Unfunded Mandates Reform Act (UMRA)

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

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

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0189. This final rule contains no new reporting and recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Civil Rights Impact Analysis

This final rule was reviewed in accordance with USDA Regulation 4300–004, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the final rule might have on program participants on the basis of age, race, religion, color, national origin, sex, disability, marital status, or familial status. Based on the results of the review and analysis of the proposed rule and all available data, issuance of this final rule is not likely to negatively impact any group identified by protected group status.

Severability

It is USDA’s intention that the provisions of this rule shall operate independently of each other. In the event that this rule or any portion of this rule is ultimately declared invalid or stayed as to a particular provision, it is USDA’s intent that the rule nonetheless be severable and remain valid with respect to those provisions not affected by a declaration of invalidity or stayed. USDA concludes it would separately adopt all of the provisions contained in this final rule.

Assistance Listing

The programs affected by this regulation are listed in the Assistance Listing Catalog (formerly Catalog of Federal Domestic Assistance) under numbers 10.405 and, 10.415.

Non-Discrimination Statement

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.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the State or local Agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Mail Stop 9410, Washington, DC 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

List of Subjects in 7 CFR Part 3560

Accounting, Administrative practice and procedure, Aged, Conflict of interest, Government property management, Grant programs—housing and community development, Insurance, Loan programs—agriculture, Loan programs—housing and community development, Low- and moderate-income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, RHS amends 7 CFR part 3560 as follows:

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

- 1. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart A—General Provisions and Definitions

- 2. Amend § 3560.4 by revising paragraph (b) to read as follows:

§ 3560.4 Compliance with other Federal requirements.

* * * * *

(b) *National flood insurance.* The National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973; and the National Flood Insurance Reform Act of 1994.

* * * * *

Subpart B—Direct Loan and Grant Origination

- 3. Amend § 3560.62 by revising paragraph (d) to read as follows:

§ 3560.62 Technical, legal, insurance, and other services.

* * * * *

(d) *Insurance.* Applicants must meet the property, liability, flood, Worker's Compensation, business income loss, and fidelity insurance requirements in § 3560.105.

(1) Applicants must have property and liability coverage at loan closing as well as flood insurance, if required by the Agency.

(2) Fidelity coverage must be in force as soon as there are assets within the organization, and it must be obtained before any loan funds or interim financing funds are made available to the borrower.

(3) If the property has permanent and/or part-time employees assigned directly to the project, Worker's Compensation, also known as employer's liability coverage, must be obtained before interim financing funds are made available to the borrower, or prior to loan or grant closing, whichever occurs first.

(4) Upon completion of construction or rehabilitation of the project, or any portion thereof that allows for occupancy, the Owner shall obtain business income loss insurance.

* * * * *

Subpart C—Borrower Management and Operations Responsibilities

- 4. Amend § 3560.105 by:

- a. Revising paragraphs (b)(1) and (4), (c)(4), and (f)(1)(i) and (iii);
- b. Adding paragraph (f)(1)(v);
- c. Revising paragraphs (f)(2)(i), (f)(3) introductory text, and (f)(3)(ii);
- d. Removing paragraph (f)(3)(iii);
- e. Revising paragraphs (f)(4) and (7) and (f)(9)(i) and (iv);
- f. Adding paragraph (f)(11);
- g. Revising paragraph (h)(2)(ii);
- h. Redesignating paragraph (i) as paragraph (j); and
- i. Adding a new paragraph (i).

The revisions and additions read as follows:

§ 3560.105 Insurance and taxes.

* * * * *

(b) * * *

(1) On or prior to the date of loan or grant closing, applicants must provide documentary evidence that insurance requirements have been met. The borrower must maintain insurance in accordance with the requirements of their loan or grant documents and this section until the loan is repaid or the terms of the grant expire. If interim financing is obtained or the Agency provides for multiple advances for construction or rehabilitation, evidence of builder's risk insurance is required prior to the start of construction or rehabilitation.

* * * * *

(4) The Agency must be named as loss co-payee or mortgagee as it appears on all property insurance policies.

(c) * * *

(4) If the best insurance policy a borrower can obtain at the time the borrower receives the loan or grant contains a loss deductible clause greater than that allowed by paragraph (f)(9) of this section, the insurance policy and an explanation of the reasons why more adequate insurance is not available must be submitted to the Agency for approval prior to the date of loan or grant closing.

* * * * *

(f) * * *

(1) * * *

(i) *Hazard insurance.* A policy which generally covers loss or damage by fire, smoke, lightning, windstorms, hail, explosion, riot, civil commotion, aircraft, and vehicles. These policies may also be known as "Property Insurance," "Fire and Extended Coverage," "Homeowners," "All Physical Loss," or "Broad Form" policies.

* * * * *

(iii) *Builder's risk insurance.* A policy that insures 100 percent of the estimated cost value of the project under construction or rehabilitation, or applicable State required coverage limits, if more stringent.

* * * * *

(v) *Business income loss.* Business income or rent loss coverage provides coverage for the loss of rental income incurred due to a property loss during a 12-month period.

(2) * * *

(i) Windstorm Coverage if specifically excluded from the All-Risk policy.

* * * * *

(3) For property insurance, the minimum coverage amount must equal the "Total Estimated Reproduction Cost of New Improvements," as reflected in the housing project's most recent appraisal. At a minimum, property insurance coverage must not be less than 80 percent of the insurable replacement cost value, unless such coverage is financially unfeasible for the housing project, as determined by the Agency.

* * * * *

(ii) When required by paragraph (f)(1) of this section, the coverage amount for flood insurance must not be less than 80 percent of the insurable replacement value, or the maximum amount of insurance available with respect to the project under the National Flood Insurance Act, whichever is less. The policy shall show the Owner as insured and shall show loss, if any, payable to the United States of America acting

through the Rural Housing Service or its successor agency.

(4) Except for flood insurance, property insurance is not required if the housing project is in a condition which the Agency determines makes insurance coverage not economical.

* * * * *

(7) When the Agency is in the first lien position and an insurance settlement represents a satisfactory adjustment of a loss, the insurance settlement will be deposited in the housing project's general operating account unless the settlement exceeds \$5,000. If the settlement exceeds \$5,000, the funds will be placed in the reserve account or other supervised account for the housing project.

(i) Insurance settlement funds which remain after all repairs, replacements, and other authorized disbursements have been made retain their status as housing project funds.

(ii) If the indebtedness secured by the insured property has been paid in full or the insurance settlement is in payment for loss of property on which the Agency has no claim; a loss draft which includes the Agency as co-payee may be endorsed by the Agency without recourse and delivered to the borrower.

(iii) The Agency will apply the insurance proceeds to the Agency debt when the following occurs:

(A) The Agency is in the first lien position;

(B) The multifamily housing property has been deemed a total loss by the insurance company, such as a catastrophic event beyond the Borrower's control;

(C) All units are vacant and non-habitable; and

(D) The tenants who occupied the property at the time of the catastrophic event have been relocated to other housing units under the Agency's disaster procedure process.

* * * * *

(9) * * *

(i) *Hazard/property insurance.* (A) For a project with less than or equal to \$1,000,000 of coverage, no deductible greater than \$10,000 per occurrence.

(B) For a project with more than \$1,000,000 but less than or equal to \$2,000,000 of coverage, no deductible greater than \$25,000 per occurrence.

(C) For a project with more than \$2,000,000 of coverage, no deductible greater than \$50,000 per occurrence.

* * * * *

(iv) *Earthquake coverage.* If the borrower obtains earthquake coverage, the Agency is to be named as a loss payee. The deductible should be no

more than 20 percent of the coverage amount.

* * * * *

(11) Each policy shall meet the following requirements:

(i) Policy may not be cancelled or modified without at least thirty (30) days prior written notice to the Agency (the clause shall not state that the insurer will "endeavor" to send such notice or that no liability attaches to the insurer for failure to send such notice).

(ii) Policy shall provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of Borrower which might, absent such agreement, result in a forfeiture of all or part of such insurance payment.

(iii) Such insurance policies shall name the Owner as the Insured and shall carry a standard form of Non-Contribution Mortgage Clause showing loss or damage, if any, payable to the Owner and the "United States of America acting through the Rural Housing Service or its successor agency," as its interest may appear.

* * * * *

(h) * * *

(2) * * *

(ii) Fidelity coverage amount and deductible as follows:

(A) *Coverage amount.* An amount at least equal to 25 percent of the operational cash sources per the project's proposed annual budget or \$50,000 whichever is greater, unless greater amounts are required by the Owner. Where the operational cash sources for a project are substantially below the minimum \$50,000 bonding requirement for operation, with Agency approval, the bond may be reduced to an amount sufficient to cover at least 25 percent of the operational cash sources.

(B) *Deductible.* No greater than \$15,000 per occurrence.

* * * * *

(i) *Workers' compensation insurance.* This insurance coverage, which may also be known as employer's liability coverage, provides benefits to employees who suffer work-related injuries or illnesses. Workers' compensation insurance is required for permanent and part-time staff assigned directly to the project.

* * * * *

George Kelly,

Administrator, Rural Housing Service.

[FR Doc. 2026-07618 Filed 4-17-26; 8:45 am]

BILLING CODE 3410-XV-P

DEPARTMENT OF ENERGY

10 CFR Parts 433 and 435

[EERE-2026-FEMP-0067]

RIN 1904-AG17

Repeal of Fossil Fuel Restrictions for New Federal Buildings and Major Renovations of Federal Buildings

AGENCY: Federal Energy Management Program, Department of Energy.

ACTION: Notification of stay.

SUMMARY: The Department of Energy (DOE) is reviewing its recent guidance related to the implementation of newly adopted provisions regarding Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings (CER). While DOE reviews the CER implementation guidance, DOE is staying the compliance date for the newly adopted provisions in the Code of Federal Regulations (CFR).

DATES: As of April 20, 2026, the compliance date for 10 CFR part 433, subpart B, and 10 CFR part 435, subpart B, published at 89 FR 35384 (May 1, 2024), and stayed at 90 FR 18911 (May 5, 2025), is further stayed until September 1, 2026.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index.

The docket web page can be found at <https://www.regulations.gov/docket/EERE-2026-FEMP-0067>. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Mears, U.S. Department of Energy, Office of Critical Minerals and Energy Innovation, Federal Energy Management Program, FEMP-1, 1000 Independence Avenue SW., Washington, DC, 20585-0121, Phone: 240-278-5857, Email: RescindFossilFuelRestrictions2026FEMP0067@ee.doe.gov.

SUPPLEMENTARY INFORMATION: On May 1, 2024, DOE issued regulations that require certain new Federal buildings and Federal buildings undergoing major renovations to be designed to reduce their fossil fuel-generated energy consumption and provides a process for Federal agencies to petition for a downward adjustment from these

requirements if applicable.¹ This rule amended the regulations governing energy efficiency in Federal buildings found in 10 CFR parts 433 and 435. Specifically, the final rule added subpart B that outlines the fossil fuel-generated energy consumption requirement, the methodology for determining a Federal building's fossil fuel-generated energy consumption, and the process for petitioning for a downward adjustment to 10 CFR parts 433 and 435. Also, the final rule added Appendix A to subpart B, which identifies the targets for specific building types and climate zones for Fiscal Year (FY) 2020–2024 and FY 2025–2029.

The final rule became effective on July 15, 2024, and applied the energy performance standards to certain newly constructed or majorly renovated Federal buildings for which design for construction begins on or after May 1, 2025. 89 FR 35384. On January 17, 2025, DOE posted guidance designed to assist Federal agencies to implement the final rule. Shortly after DOE published this implementation guidance document and the petition template, President Trump announced new energy policies, specifically those relating to energy security and reliability.²

In May 2025, DOE published a notice that delayed the implementation of the final rule for one year. 90 FR 18911 (May 5, 2025). DOE stated that it was reviewing its implementation guidance to ensure that they are consistent with the policies of the current Administration. Accordingly, while DOE reviewed the implementation guidance and associated documents, DOE stayed the provisions of the recent final rule to avoid the regulatory burden to Federal agencies to comply with the rule. Specifically, DOE stayed subpart B, including Appendix A, of 10 CFR part 433 and subpart B, including Appendix A, of 10 CFR part 435. Because DOE stayed these provisions, Federal agencies were not required to comply with the applicable energy performance standards during this time.

As DOE reviews the implementation guidance documents for consistency with the Administration's announced energy policies, the Department is also reviewing the recent final rule to ensure

consistency with stated energy policies and guidance relating to agency rulemaking.³ This review is ongoing. Accordingly, DOE stays the compliance date of the recent final rule that requires certain newly constructed or majorly renovated Federal buildings to meet energy performance standards. Specifically, DOE further stays the compliance date in subpart B of 10 CFR part 433 and subpart B of 10 CFR part 435 until September 1, 2026. Because the compliance date for these provisions is stayed, Federal agencies are not required to comply with these applicable energy performance standards during this time.

Signing Authority

This document of the Department of Energy was signed on April 15, 2026, by Mary Sotos, the Director of the Federal Energy Management Program, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 16, 2026.

Jennifer Hartzell,

*Alternate Federal Register Liaison Officer,
U.S. Department of Energy.*

[FR Doc. 2026–07628 Filed 4–17–26; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2025–1292; Special Conditions No. 25–882–SC]

Special Condition: Airworthy Inc., Airbus SAS, Model A330–300 Series Airplanes; Installation of a Crew Rest Module

AGENCY: Federal Aviation Administration (FAA), DOT.

³ E.g., Executive Order 14219 of February 19, 2025, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*, 90 FR 10583 (Feb. 26, 2025).

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Model A330–300 series airplane. This airplane, as modified by Airworthy Inc. (Airworthy), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is the installation of a crew rest compartment which will be located in what is currently the Class E main deck cargo compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: These special conditions are effective on April 20, 2026. Send comments on or before June 4, 2026.

ADDRESSES: Send comments identified by Docket No. FAA–2025–1292 using any of the following methods:

Federal e-Regulations Portal: Go to www.regulations.gov and follow the online instructions for sending your comments electronically.

Mail: Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

Hand Delivery or Courier: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the west building ground floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Artiom Kostiouk, Cabin Safety, AIR–624, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–4694; email: artiom.m.kostiouk@faa.gov.

¹ 89 FR 35384, *Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings*, Final Rule (May 1, 2024).

² See e.g., Executive Order 14154 of January 20, 2025, *Unleashing American Energy*, 90 FR 8353 (Jan. 29, 2025); Executive Order 14156 of January 20, 2025, *Declaring a National Energy Emergency*, 90 FR 8433 (Jan. 29, 2025); Executive Order 14262 of April 8, 2025, *Strengthening the Reliability and Security of the United States Electric Grid*, 90 FR 15521 (April 14, 2025).

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA finds, pursuant to title 14, Code of Federal Regulations (14 CFR) 11.38(b), that new comments are unlikely, and notice and comment prior to this publication are unnecessary.

Privacy

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 www.regulations.gov, including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and 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 these special conditions contain commercial or financial information that is customarily treated as private, that you treat as private, and that is relevant or responsive to these special conditions, 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 the indicated comments will not be placed in the public docket of these proposed special conditions. Send submissions containing CBI to the individual listed in the For Further Information contact section above. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these proposed special conditions.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these

special conditions based on the comments received.

Background

On January 9, 2024, Airworthy applied for a supplemental type certificate to install a crew rest module on Airbus A330–300 series airplanes. Throughout these special conditions, the FAA will refer to the crew rest module as a crew rest compartment. These Airbus A330–300 airplanes, as configured, are twin-engine, transport category airplanes configured as a freighter. These airplanes have a maximum take-off weight ranging from 405,650 lbs. to 533,518 lbs., depending on the model series.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Airworthy must show the Airbus Model A330–300 series airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. A46NM or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (e.g., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A330–300 series airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A330–300 series airplane must comply with fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus Model A330–300 series airplane, as modified by Airworthy, Inc., will incorporate the following novel or unusual design feature(s):

A crew rest compartment in the forward position of the Class E main deck cargo compartment.

Discussion

Airworthy intends to install crew rest compartments on Airbus Model A330–300 series airplanes that are configured as freighters. Section 25.819 applies to lower deck service compartments (including galleys) but is not directly applicable to crew rest compartments on the main deck. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. Special conditions are required for the certification of this crew rest compartment to supplement 14 CFR part 25.

The crew rest compartment will be located in what is currently the Class E main deck cargo compartment. It will be designed as a one-piece self-contained unit for installation in the forward portion of the cargo compartment. The crew rest compartment will be attached to the existing cargo restraint system and will interface with the aircraft electrical and environmental control systems. Occupancy for the crew rest compartment will be limited to a maximum of four (4) occupants.

The crew rest compartment will contain approved berths able to withstand the maximum flight loads when occupied for each occupant permitted in the crew rest compartment, and it will only be occupied in flight, *i.e.*, not during taxi, takeoff or landing. A smoke detection system, manual fire-fighting system, oxygen supply and occupant amenities will be provided in the crew rest compartment. The access door will provide entry to and from the crew rest compartment.

Section 25.857(e) at amendment level 25–93, requires that, when a Class E cargo compartment is installed on the airplane, the airplane must be used for carriage of cargo only. However, consistent with previous exemptions (reference Exemption No. 12805), the FAA found that a crew rest compartment installed in a Class E cargo compartment is acceptable, provided that the crew rest compartment is installed forward of a smoke barrier.

The FAA considers crew rest compartment smoke or fire detection and fire suppression systems complex when the structured methods of analysis are needed for a thorough and valid safety assessment.² This complexity includes airflow management features

² Refer to Advisory Circular (AC) 25.1309–1A, "System Design and Analysis," para. 6.d, dated June 21, 1988.

that prevent hazardous quantities of smoke or fire extinguishing agents from entering any other compartment occupied by the crew or passengers.

The FAA considers failure of the crew rest compartment fire protection systems (*i.e.*, smoke or fire detection and fire suppression systems), in conjunction with a crew rest compartment fire to be a catastrophic event. Based on the "Depth of Analysis Flowchart" shown in Figure 2 of AC 25.1309–1A, the depth of analysis should include both qualitative and quantitative assessments (refer to paragraphs 8d, 9, and 10 of AC 25.1309–1A). In addition, flammable fluids, explosives, or other dangerous cargo are prohibited from the crew rest compartment.

The requirements in this document are intended to enable crewmember(s) quick entry to the crew-rest compartment to locate a fire source and inherently place limits on the size of the crew rest area, as well as the amount of baggage that may be stored inside the crew rest compartment. Baggage in the crew rest compartment must be limited to the crews' personal luggage and must not be used for cargo storage or other baggage. The design of a system to include cargo storage or other baggage would require additional requirements to ensure safe operation. The addition of galley equipment or a kitchenette incorporating a heat source (*e.g.*, cook tops, microwaves, coffee pots, etc.), other than a conventional lavatory or kitchenette water heater, within the crew rest compartment, may require additional special conditions, and is prohibited until such conditions are approved. A water heater is acceptable without additional special conditions.

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

Applicability

As discussed above, these special conditions are applicable to the Airbus Model A330–300 series airplane. Should Airworthy apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A46NM to incorporate the same novel or unusual design feature, these special conditions would apply to the other model as well.

Conclusion

This action affects only a certain novel or unusual design feature on the Airbus Model A330–300 series airplane. It is not a rule of general applicability

and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A330–300 series airplanes, as modified by Airworthy Inc.

(a) The occupancy of the crew rest compartment is limited to the total number of installed sleeping berths and seats in each compartment. Each occupant permitted in the crew rest compartment must be provided with an approved seat or sleeping berth able to withstand the maximum flight loads when occupied. The maximum occupancy is four in the crew rest compartment, accounting for two sleeping berths and two seats.

(1) An appropriate placard must be displayed in a conspicuous location at each entrance to the crew rest compartment to indicate the following:

(i) The maximum number of occupants allowed.

(ii) That occupancy is restricted to crew members who are trained in evacuation procedures for the crew rest compartment.

(iii) That occupancy is prohibited during taxi, takeoff, and landing.

(iv) That smoking is prohibited in the crew rest compartment.

(v) That hazardous quantities of flammable fluids, explosives, or other dangerous cargo are prohibited from the crew rest compartment.

(vi) That stowage in the crew rest compartment must be limited to emergency equipment, airplane-supplied equipment (*e.g.*, bedding), and crew personal luggage; cargo and passenger baggage is not allowed.

(2) At least one ashtray must be located conspicuously on or near the entry way of any entrance to the crew rest compartment.

(3) If access to the remainder of the Class E cargo compartment is required from the crew rest compartment, doors must be designed to be easily opened from both within and outside of the crew rest compartment. If a locking mechanism is installed, it must be

capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the compartment at any time.

(4) For all doors installed in the evacuation routes, they must be designed such that they do not allow anyone to be trapped inside the crew rest compartment. If a locking mechanism is installed on an evacuation route door, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening the door from the inside of the crew rest compartment at any time.

(b) An emergency-evacuation route must be available for occupants of the crew rest compartment to rapidly evacuate forward to the flight deck/seating area. The crew rest compartment access must be able to be closed from the flight deck/seating area after evacuation. In addition—

(1) The route must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing on top of or against the escape route. The use of evacuation routes must not be dependent on any powered device. If there is low headroom at or near an evacuation route, provisions must be made to prevent, or to protect occupants of the crew rest compartment from, head injury.

(2) Emergency-evacuation procedures, including the emergency evacuation of an incapacitated occupant from the crew rest compartment, must be established. All of these procedures must be transmitted to the operators for incorporation into their training programs and appropriate operational manuals.

(3) The airplane flight manual, or other suitable means, must include a limitation requiring that crewmembers be trained in the use of evacuation routes.

(c) A means must be provided for the evacuation of an incapacitated person (representative of a 95th percentile male) from the crew rest compartment to the flight deck/seating area. The evacuation must be demonstrated for all evacuation routes.

(d) The following signs and placards must be provided in the crew rest compartment:

(1) At least one exit sign, located near each exit, meeting the requirements of § 25.812(b)(1)(i) at Amendment 25–58, except that a sign with reduced background area of no less than 5.3 square inches (excluding the letters) may be utilized, provided that it is

installed such that the material surrounding the exit sign is light in color (e.g., white, cream, light beige). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch-wide background border around the letters would also be acceptable;

(2) An appropriate placard located near each exit defining the location and the operating instructions for each evacuation route;

(3) Placards must be readable from a distance of 30 inches under emergency lighting conditions; and

(4) The exit handles and evacuation-path operating-instruction placards must be illuminated to at least 160 micro lamberts under emergency lighting conditions.

(e) In the event of failure of the airplane's main power system, or of the normal crew rest compartment lighting system, emergency illumination must automatically be provided for the crew rest compartment and must be met with the door open or closed. In addition—

(1) This emergency illumination must be independent of the main lighting system.

(2) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(3) The illumination level must be sufficient for the occupants of the crew rest compartment to evacuate to the flight deck/seating area by means of each evacuation route.

(4) The illumination level must be sufficient, with the privacy curtains in the closed position, for each occupant of the crew rest compartment to locate an oxygen mask.

(f) A means must be provided for two-way voice communication between crewmembers on the flight deck and occupants of the crew rest compartment.

(g) A means must be provided for manual activation of an aural emergency-alarm system, audible during normal and emergency conditions, to enable the flightcrew to alert occupants in the crew rest compartment of an emergency situation. Use of a public address or crew interphone system is acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must maintain power in-flight for at least ten minutes after the shutdown or failure of all engines and auxiliary power units (APUs), or the disconnection or failure of all power sources dependent on their

continued operation of the engines and APUs.

(h) A readily detectable means must be provided, for seated or standing occupants of the crew rest compartment that indicates when seat belts should be fastened. In the absence of seats, at least one means must be provided to accommodate anticipated turbulence (e.g., sufficient handholds). Seatbelt-type restraints must be provided for sleeping berths and must be compatible with occupant sleeping attitude during cruise conditions. A placard must be located on each sleeping berth and require that seatbelts be fastened when occupied. If compliance with any of the other requirements of these special conditions is based on a sleeping berth with an occupant's specific head location, a placard must identify the head position.

(i) In lieu of the requirements specified in § 25.1439(a) at Amendment 25–38, that pertain to isolated compartments, and to provide a level of safety equivalent to that which is provided to occupants of a small, isolated galley, the following equipment must be provided in the crew rest compartment:

(1) At least one approved hand-held fire extinguisher, appropriate for the kinds of fires likely to occur;

(2) Two portable protective breathing equipment (PBE) devices, approved to Technical Standard Order C116 or equivalent, suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater; and

(3) One flashlight.

Note: Additional PBEs and fire extinguishers in specific locations, beyond the minimum numbers prescribed in Special Condition (i), may be required as a result of any egress analysis completed to meet the requirements of Special Condition (b)(1).

(j) A smoke- or fire-detection system (or systems) must be provided that monitors each occupiable area within the crew rest compartment, including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(1) A visual indication to the flight deck within one minute after the start of a fire;

(2) An aural warning in the crew rest compartment; and

(3) A warning in the seating area of the crew rest compartment. This warning must be readily detected by an occupant of this area.

(k) The crew rest compartment must be designed such that fires within the compartment can be controlled without

a crewmember having to enter the compartment, or the design of the access provisions must allow crewmembers equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the firefighting equipment, and to gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source.

(l) A means must be provided to exclude hazardous quantities of smoke or extinguishing agent, originating in the crew rest compartment, from entering any other area that can be occupied. A means must also be provided to exclude hazardous quantities of smoke or extinguishing agent originating in the Class E cargo compartment from entering the crew rest compartment. This means must include the time periods during the evacuation of the crew rest compartment and, if applicable, when accessing the crew rest compartment to manually fight a fire. Smoke entering any other occupied compartment, when the access to the crew rest compartment is opened during an emergency evacuation, must dissipate within five minutes after the access to the crew rest compartment is closed. Hazardous quantities of smoke may not enter any other occupied compartment during subsequent access to manually fight a fire in the crew rest compartment (the amount of smoke entrained by a firefighter exiting the crew rest compartment through the access is not considered hazardous). During the 1-minute smoke detection time, penetration of a small quantity of smoke from the crew rest compartment, into an occupied area, is acceptable. Flight tests must be conducted to show compliance with this requirement. If a built-in fire-extinguishing system is used in lieu of manual firefighting, then the fire-extinguishing system must be designed so that no hazardous quantities of extinguishing agent will enter other occupied compartments. The system must have adequate capacity to suppress any fire occurring in the crew rest compartment, considering the fire threat, volume of the compartment, and the ventilation rate.

(m) In lieu of providing a supplemental oxygen system in accordance with § 25.1447(c)(1) at Amendment 25–151, a portable oxygen unit meeting the requirements of Special Condition (n) must be available for each seat and sleeping berth in the crew rest compartment. An aural and visual warning must be provided to warn the occupants of the crew rest

compartment to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously for a minimum of five minutes or until a reset push-button in the crew rest compartment is pressed for reset. Procedures for decompression events must be established for crew rest compartment occupants. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

(n) The portable oxygen unit must meet the performance requirements of either § 25.1443(a) or (b), or the equipment must be shown to protect the occupants from hypoxia at an activity level required to return to their seat following a rapid decompression to 25,000 feet cabin pressure altitude. In addition, the portable oxygen equipment must:

(1) meet § 25.1439(b)(1), (2), and (4) at Amendment 25–115;

(2) be designed to prevent any inward leakage to the inside of the mask;

(3) prevent any outward leakage causing significant increase in the oxygen content of the local atmosphere; and

(4) be sized adequately for continuous and uninterrupted use during a worst-case flight duration following decompression or must be of sufficient duration to allow the occupants to return to their seats where additional oxygen is readily accessible for the remainder of the decompression event.

(o) If the airplane contains a destination area, such as a crewmember changing area, a portable oxygen unit meeting the requirements in Special Condition (n) must be readily available for each occupant who may reasonably be expected to be in the destination area.

(1) An aural and visual warning must be provided to alert the occupants in the crew rest compartment to don oxygen masks in the event of decompression, fire in the Class E cargo compartment, or in cases in which a decompression and subsequent climb are required. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously for a minimum of five minutes or until a reset push button in the crew rest compartment is pressed for reset.

(2) Procedures for decompression events must be established for crew rest compartment occupants. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate

operational manuals. In addition, a decompression panel must be incorporated into the crew rest compartment construction.

(p) The following requirements apply to crew rest compartments that are divided into several sections by the installation of curtains or partitions:

(1) To accommodate sleeping occupants, an aural alert must be available, that can be heard in each section of the crew rest compartment. A visual indicator that occupants must don an oxygen mask is required in each section where seats or sleeping berths are installed. A minimum of one portable oxygen unit meeting the requirements in Special Condition (n) is required for each seat or sleeping berth.

(2) A placard is required, adjacent to each curtain that visually divides or separates, for privacy purposes, the crew rest compartment into small sections. The placard must require that the curtains remain open when the private sections they create are unoccupied.

(3) For each crew rest compartment section created by the installation of a curtain, the following requirements must be met with the curtain open or closed:

(i) Emergency illumination (Special Condition (e));

(ii) Emergency alarm system (Special Condition (g));

(iii) Fasten-seatbelt signal, or return-to-seat signal, as applicable (Special Condition (h)); and

(iv) A smoke- or fire-detection system (Special Condition (j)).

(4) Compartments visually divided, to the extent that evacuation could be affected, must have exit signs that direct occupants to the primary exit. The exit signs must be provided in each separate section of the crew rest compartment and must meet the requirements of § 25.812(b)(1)(i) at Amendment 25–58. An exit sign with a reduced background area, as described in Special Condition (d)(1), may be used to meet this requirement.

(5) For sections within a crew rest compartment that are created by the installation of a partition with a door separating the sections, the following requirements must be met with the door open or closed:

(i) It must be shown that any door between the sections has been designed to prevent anyone from being trapped inside the compartment. Removal of an incapacitated occupant from within this area must be considered. A secondary evacuation route from a small room, such as a changing area or lavatory designed for only one occupant for short duration, is not required. However,

removal of an incapacitated occupant from within this area must be considered.

(ii) Each section must contain exit signs that meet the requirements of § 25.812(b)(1)(i) at Amendment 25–58, directing occupants to the primary exit. An exit sign with a reduced background area, as described in Special Condition (d)(1), may be used to meet this requirement.

(iii) Special Conditions (e) (emergency illumination), (g) (emergency alarm system), (h) (fasten-seatbelt signal, or return-to-seat signal, as applicable), and (j) (smoke- or fire-detection system) must be met with the door open or closed.

(iv) Special Conditions (f) (two-way voice communication) and (i) (emergency firefighting and protective equipment) must be met independently for each separate section, except for lavatories or other small areas that are not intended to be occupied for extended duration.

(q) Where a waste-disposal receptacle is installed, it must be equipped with a built-in fire extinguisher designed to discharge automatically upon occurrence of a fire in the receptacle.

(r) Materials, including finishes or decorative surfaces applied to the materials, must comply with the flammability requirements of § 25.853 at Amendment 25–116 or later. Seat cushions and mattresses must comply with the flammability requirements of § 25.853(c) at Amendment 25–116 or later, and the test requirements of part 25, appendix F, part II, or other equivalent methods.

(s) When a crew rest compartment is installed or enclosed as a removable module in part of a cargo compartment, or is located directly adjacent to a cargo compartment without an intervening cargo compartment wall, the following applies:

(1) Any wall of the module (container) forming part of the boundary of the reduced cargo compartment, subject to direct flame impingement from a fire in the cargo compartment and including any interface item between the module (container) and the airplane structure or systems, must meet the applicable requirements of § 25.855 at Amendment 25–60.

(2) Means must be provided so that the fire-protection level of the cargo compartment meets the applicable requirements of § 25.855 at Amendment 25–60, § 25.857 at Amendment 25–60, and § 25.858 at Amendment 25–54 when the module (container) is not installed.

(3) Use of an emergency-evacuation route must not require occupants of the

crew rest compartment to enter the cargo compartment as a means by which to return to the flight deck/seating area.

(4) The aural warning in Special Condition (g) must sound in the crew rest compartment in the event of a fire in the cargo compartment.

(t) All enclosed stowage compartments within the crew rest compartment that are not limited to stowage of emergency equipment or airplane-supplied equipment (e.g., bedding) must meet the design criteria provided in the table below. As indicated in the table, these special conditions do not address enclosed stowage compartments greater than 200 ft³ in interior volume. The in-flight accessibility of very large, enclosed stowage compartments, and the subsequent impact on crewmembers' ability to effectively reach any part of the compartment with the contents of a hand-held fire extinguisher, requires additional fire-protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

TABLE 1 TO PARAGRAPH (4)(f)—STOWAGE COMPARTMENT INTERIOR VOLUMES

Fire protection features	Less than 25 ft ³	25 ft ³ to 57 ft ³	57 ft ³ to 200 ft ³
Materials of Construction ¹	Yes	Yes	Yes.
Detectors ²	No	Yes	Yes.
Liner ³	No	No	Yes.
Locating Device ⁴	No	Yes	Yes.

¹ *Material*: The material used in constructing each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components (i.e., 14 CFR part 25 Appendix F, Parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft³ in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

² *Detectors*: Enclosed stowage compartments equal to or exceeding 25 ft³ in interior volume must be provided with a smoke- or fire-detection system to ensure that a fire can be detected within one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication in the flight deck within one minute after the start of a fire;

(b) An aural warning in the crew rest compartment; and

(c) A warning in the seating area in the crew rest compartment.

³ *Liner*: If it can be shown that the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment, then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft³ in interior volume but less than 57 ft³ in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft³ in interior volume but less than or equal to 200 ft³, a liner must be provided that meets the requirements of § 25.855 at Amendment 25–60 for a Class B cargo compartment.

⁴ *Fire-Locating Device*: Crew rest compartments that contain enclosed stowage compartments exceeding 25 ft³ interior volume and which are located away from one central location, such as the entry to the crew rest compartment or a common area within the crew rest compartment, would require additional fire-protection features or related devices to assist a firefighter in determining the location of a fire.

Issued in in Fort Worth, Texas, on April 15, 2026.

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

[FR Doc. 2026–07637 Filed 4–17–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2026–2212; Airspace Docket No. 26–AGL–1]

RIN 2120–AA66

Amendment of Class D Airspace; Appleton, WI

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

SUMMARY: This action amends the Class D airspace at Appleton, WI. This action accommodates revised instrument procedures and brings the airspace into compliance with FAA orders and supports instrument flight rule (IFR) procedures and operations.

DATES: Effective 0901 UTC, July 9, 2026. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the notice of proposed rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from www.federalregister.gov.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101

Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class D airspace at the affected airport to support IFR operations.

History

The FAA published an NPRM for Docket No. FAA–2026–2212 in the **Federal Register** (91 FR 9208; February 25, 2026) proposing to amend the Class D airspace at Appleton, WI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the

FAA. Two (2) comments were received supporting the action, and FAA acknowledges the support.

Incorporation by Reference

Class D airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These amendments will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Rule

This action amends 14 CFR part 71 by modifying the Class D airspace at Appleton, WI, to accommodate revised instrument procedures.

For the Appleton International Airport, Appleton, WI, Class D airspace, the action increases the radius from 4.2 to 4.4 miles.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Order 2100.6B, “Policies and Procedures for Rulemakings” (March 10, 2025); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1G, “FAA National Environmental Policy Act Implementing Procedures,” Paragraph B–2.5(a). This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that

warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11K, Airspace Designations and Reporting Points, dated August 4, 2025, and effective September 15, 2025, is amended as follows:

5000 Class D Airspace.
* * * * *

AGL WI D Appleton, WI [Amended]

Appleton International Airport, WI
(Lat. 44°15'29" N, long. 088°31'09" W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.4-mile radius of Appleton International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

Issued in Fort Worth, Texas, on April 16, 2026.

Courtney E. Johns,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2026–07644 Filed 4–17–26; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1223

[Docket No. CPSC–2013–0025]

Safety Standard for Infant and Cradle Swings

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In May 2024, the U.S. Consumer Product Safety Commission (CPSC or Commission) published an update to the consumer product safety standard for infant and cradle swings under the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference ASTM F2088–24, *Standard Consumer Safety Specification for Infant and Cradle Swings*, the voluntary standard for infant and cradle swings that was in effect at the time. ASTM has now issued a revised standard, ASTM F2088–25. Consistent with the CPSIA, this direct final rule updates the mandatory standard to incorporate by reference ASTM’s 2025 version of the voluntary standard.

DATES: The rule is effective on July 25, 2026, unless CPSC receives a significant adverse comment by May 20, 2026. If CPSC receives such a comment, it will publish a document in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of July 25, 2026.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2013–0025, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by email, except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit through this website: confidential business information, trade secret information, or other sensitive or

protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC–2013–0025, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT:

Joseph Williams, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7585; email: jfwilliams@cpsc.gov; or Carlos Torres, Project Manager, Division of Mechanical and Combustion Engineering, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2504; email: ctorres@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

Section 104(b)(1) of the CPSIA requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products and adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). The mandatory standard must be “substantially the same as” the voluntary standard, or “more stringent than” the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. *Id.*

Section 104(b)(4)(B) of the CPSIA specifies the process for updating the Commission’s rules when a voluntary standards organization revises a standard that the Commission incorporated by reference under section 104(b)(1). First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject or accept the revised standard. The Commission may reject the revised standard by notifying the voluntary standards organization, within 90 days of receiving notice of the revision, that it has determined that the revised standard does not improve the safety of the consumer product and that it is retaining the existing standard. If the Commission does not take this action to reject the revised standard, then the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act

(CPSA; 15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision or on a later date specified by the Commission in the **Federal Register**. 15 U.S.C. 2056a(b)(4)(B).

B. Safety Standard for Infant and Cradle Swings

Under section 104(b)(1) of the CPSIA, the Commission published a mandatory standard for infant swings, codified in 16 CFR part 1223, “Safety Standard for Infant Swings.” The rule incorporated by reference the then-current voluntary standard, ASTM F2088–12a, *Standard Consumer Safety Specification for Infant Swings*, with modifications to make the standard more stringent. 77 FR 66703 (Nov. 7, 2012). After the Commission adopted the mandatory standard in 2012, ASTM subsequently revised the voluntary standard seven times. In accordance with the procedures set out in section 104(b)(4)(B) of the CPSIA, five of these revised standards became the new mandatory standard for infant and cradle swings.¹ In this regard, the Commission published direct final rules to update 16 CFR part 1223, incorporating by reference ASTM F2088–13, ASTM F2088–20, ASTM F2088–21, ASTM F2088–22, and ASTM F2088–24, respectively, without modification. 78 FR 37706 (June 24, 2013), 86 FR 4961 (Jan. 19, 2021), 86 FR 59609 (Oct. 28, 2021), 87 FR 57390 (Sep. 20, 2022), 89 FR 46797 (May 30, 2024).

ASTM F2088–24, *Standard Consumer Safety Specification for Infant and Cradle Swings*, is the current mandatory standard incorporated by reference in 16 CFR part 1223. In 2024, when the Commission updated 16 CFR part 1223 to incorporate by reference ASTM F2088–24, the Commission included “cradle swings” in the title of the mandatory standard (“Safety Standard for Infant and Cradle Swings”) to align with the voluntary standard.² 89 FR 46797. ASTM F2088–24 applies to infant swings, which it describes as “a swing that enables an infant in a seated position to swing or glide and is intended for use with infants from birth

until infant attempts to climb out of the swing (approximately 9 months),” and cradle swings, which it describes as “a swing which is intended for use by an infant lying flat to swing or glide and is intended for use with infants from birth until infant begins to push up on hands and knees (approximately 5 months).” The mandatory standard includes performance requirements and test methods, as well as requirements for warning labels and instructions, to address hazards to infants associated with infant and cradle swings.

In November 2025, ASTM approved another revision to the voluntary standard for infant and cradle swings, ASTM F2088–25. On January 26, 2026, ASTM notified CPSC of the revision. On January 29, 2026, the Commission published in the **Federal Register** a notice of availability of the revised voluntary standard and sought comments on the effect of the revisions. 91 FR 3845. CPSC received two comments on the notice of availability.

One of the comments was anonymous, and the other was a joint comment from the Consumer Federation of America, Consumer Reports, and Safe Infant Sleep. Both the anonymous and joint comment stated support for the revisions in ASTM F2088–25. The joint comment further urged the Commission to consider whether it would be feasible to conduct safety testing while the product is in motion, not just in a static position. The commenters explained that infant and cradle swings are intended for continuous motion and may result in unintended infant repositioning during periods of use, and as such, “testing the product in static configurations alone does not adequately capture real-world safety performance under actual use conditions.” The Commission appreciates the Consumer Federation of America, Consumer Reports, and Safe Infant Sleep for sharing this comment, and staff will review and address the comment with the ASTM subcommittee.

Based on staff’s review of ASTM F2088–25, as discussed below, and the public comments received, the Commission will allow the revised voluntary standard to become the mandatory standard for infant and cradle swings. Accordingly, by operation of law under section 104(b)(4)(B) of the CPSIA, ASTM F2088–25 will become the mandatory consumer product safety standard for infant and cradle swings on July 25, 2026. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates part 1223 to incorporate by reference the revised voluntary standard, ASTM F2088–25.

¹ ASTM approved two revisions in 2015 and 2019 (ASTM F2088–15 and ASTM F2088–19). However, ASTM did not notify CPSC of these revisions under CPSIA section 104(b)(4)(B). Consequently, these revised voluntary standards did not become the mandatory standards by operation of law, and the Commission did not update the mandatory standard to incorporate by reference these revised ASTM standards.

² In 2020, ASTM changed the title of the voluntary standard from “Standard Consumer Safety Specification for Infant Swings” to “Standard Consumer Safety Specification for Infant and Cradle Swings.”

II. Revisions to ASTM F2088

On November 15, 2025, ASTM approved a revised version of the standard, ASTM F2088–25. ASTM F2088–25 contains performance requirements and test methods, as well as requirements for warning labels and instructions, to address hazards to infants associated with infant and cradle swings. ASTM F2088–25 includes several additions and revisions to ASTM F2088–24, including clarifications regarding scope and terminology, a new testing requirement, new and revised marking and labeling requirements, as well as editorial revisions that do not alter substantive requirements in the standard or impact safety. As discussed below, the Commission considers the revisions in ASTM F2088–25 to be an improvement to the safety of infant and cradle swings.

A. Scope

ASTM F2088–25 clarifies in section 1.3 that the voluntary standard does not cover products “in the rest (non-rocking) position” that are intended to provide sleeping accommodations for the occupant. ASTM F2088–25 further adds that these products are addressed in Consumer Safety Specification F2194 for bassinets and cradles. ASTM F2088–24 stated only that the voluntary standard “does not cover products that are intended to provide sleeping accommodations for the occupant[.]” and did not specify that products “in the rest (non-rocking) position” would be out of scope of the voluntary standard.

Particularly, when cradle swings are in the rest (non-rocking) position, they behave similarly to a bassinet or a cradle. This is because a cradle swing, among other things, is designed so that the infant is lying completely or nearly flat on its back. This horizontal positioning for infants is conducive for sleep. In fact, in section 5.11, the voluntary standard already acknowledges that cradle swings in the rest (non-rocking) position behave similarly to a bassinet or cradle, and that they are already in the scope of the voluntary standard for bassinets and cradles (ASTM F2194). Section 5.11 of

ASTM F2088 states, “[c]radle swings or combination swings in a cradle swing use, mode, or position while in the rest (non-rocking) position shall comply with the requirements of Consumer Safety Specification F2194.” These clarifying changes in section 1.3, therefore, make clear from the beginning that swings in the rest (non-rocking) position are out of the scope of the voluntary standard for infant and cradle swings, and that they must follow the voluntary standard for bassinets and cradles. As a result, these changes improve safety by ensuring that swings functioning as a bassinet or cradle are evaluated under the correct standard for safe sleep for infants (*i.e.*, the requirements under ASTM F2194).

B. Terminology

ASTM F2088–25 defines “cradle swing” as “a swing which is intended for use by an infant lying flat, with an incline less than or equal to 10° from horizontal while in the rest (non-rocking) position, to swing or glide and is intended for use with infants from birth until infant begins to push up on hands and knees (approximately 5 months).” ASTM F2088–24 did not include the following language in the definition for cradle swing: “with an incline less than or equal to 10° from horizontal while in the rest (non-rocking) position.”

ASTM F2088–25 adds this language to clarify what “flat” means in this context to minimize any ambiguity in the interpretation of the term so to better distinguish cradle swings from infant swings. This change improves safety, because by more clearly distinguishing cradle swings from infant swings, it ensures that products will adhere to the correct performance and testing requirements.

C. Test Methods

ASTM F2088–25 adds a new test in section 7.17 (Suffocation Hazard Visibility Test) to evaluate the conspicuousness of the new front warning label requirement (discussed in greater detail in the next section). The test consists of placing the infant swing on the floor; placing and securing a newborn dummy in the product with

the restraint system engaged according to the manufacturer’s instructions; and then standing in front of the product to verify the required warning statements are visible (sections 7.17.1–7.17.3). Products that include any accessory(ies) that could potentially obscure the warnings also must comply with the visibility requirements in this section both with such accessory(ies) in place (in all configurations and combinations) and with the accessory(ies) removed (section 7.17.3.1). It is acceptable if any part of the required warnings is obscured by a toy bar or its attached toys but is visible with a shift of the observer’s head position (section 7.17.4). Section 7.17 includes a note that the “placement of the warnings is only applicable to the English language portions of the warning label.”

This new test certifies that the front warning label can be seen and noticed by a caregiver while standing in front of the swing. It also verifies that the label is not blocked by the occupant or by other accessories that may be included with the swing. As such, this new test improves the safety of infant swings because it ensures that the front warning label is visible to a caregiver. This will make it more likely that the caregiver will see and read the important warning statements for the product to avoid the suffocation hazards associated with infant swings, as further discussed below.

D. Marking and Labeling

1. Suffocation Hazards for Infant Swings

ASTM F2088–25 makes several additions and revisions to warning labels concerning suffocation hazards associated with babies falling asleep in infant swings. In particular, ASTM F2088–25 adds new on-product warning statements for infant swings under section 8.6.1.2. One of these new warning statements states, “Babies have suffocated when swings are used as a sleep product.” Another states, “Never use blankets or swaddles when using this product.” In addition to the warning statements above, ASTM F2088–25 also requires a new, separate warning label with the following warning statement under section 8.6.1.4:

“SUFFOCATION HAZARD This product is NOT SAFE FOR SLEEP.

NEVER use blankets or swaddles when using this product.”

This new, separate warning label, which repeats in part the warning statements under section 8.6.1.2, must

be on the front surface of the swing to comply with the Suffocation Hazard

Visibility Test in section 7.17 discussed above.

Moreover, ASTM F2088–25 revises and moves one of the required on-product warning statements for infant swings to the “SUFFOCATION HAZARDS” category under section 8.6.1.2. ASTM F2088–24 required that infant swings have the following warning statement under “FALL and STANGULATION HAZARDS”: “Stay near and watch baby during use. This product is not safe for sleep or unsupervised use. If baby falls asleep, remove baby as soon as possible and place baby on a firm, flat sleep surface such as a crib or bassinet.” ASTM F2088–25 revises this statement by deleting “as soon as possible” from the statement and moves this statement from the “FALL and STANGULATION HAZARDS” category to the “SUFFOCATION HAZARDS” category on the warning label.

While ASTM F2088–24 provided a warning that infant swings are not safe for sleep, it incorrectly labeled such warning as a fall or strangulation hazard, did not otherwise clearly identify why infant swings are not safe for sleep (*i.e.*, suffocation hazard), and did not address the suffocation hazard associated with the use of blankets and swaddles with infant swings. When a baby falls asleep in an infant swing, their head and chin point downwards because of the seated, inclined position of the baby. The positioning of their head and chin in this way can block the baby’s airways and lead to suffocation. The use of swaddles and blankets with a baby in an infant swing can likewise obstruct a baby’s airways, leading to suffocation.

The new warning statements added to ASTM F2088–25 and the movement of the prior warning statement regarding sleep in ASTM F2088–24 make clear that there is a suffocation hazard associated with using an infant swing for sleep and with the use of swaddles and blankets in an infant swing. As a result, the caregiver will be better informed of the dangers associated with sleep and the use of blankets/swaddles, which will increase the likelihood of caregivers following these warnings. In addition, the new requirement of the separate label and placement of that label in the front of the product will make that warning statement more noticeable to the caregiver. Consequently, these changes will more likely alert caregivers of the potential suffocation hazard and to the importance of both not allowing infants to sleep in the swing and not using blankets or swaddles when placing them in the swing. Moreover, deleting the phrase “as soon as possible” in the warning statement regarding sleep in

ASTM F2088–24 directs the caregiver to remove the baby from the infant swing as soon as the baby falls asleep. Therefore, this change will more likely minimize the time a baby remains asleep in an infant swing. Based on the foregoing, these changes improve the safety of infant swings.

2. Fall and Strangulation Hazards for Infant Swings

ASTM F2088–25 revises one of the existing warning statements in ASTM F2088–24 by changing the formatting of two words. ASTM F2088–24 included the warning statement “**ALWAYS** use restraints. Adjust to fit snugly.” ASTM F2088–25 revises this statement by adding the following bold font and capitalization: “**ALWAYS USE RESTRAINTS**. Adjust to fit snugly.”

ASTM F2088 requires infant swings to have a restraint system to secure an occupant while in the swing (section 6.5). The use of a restraint system prevents infants from falling out of the swing. The additional use of bold and capital lettering in ASTM F2088–25 makes the warning statement about always using restraints more noticeable and conspicuous. Thus, this change improves the safety of infant swings because caregivers are more likely to notice and follow this warning statement to prevent infant falls.

E. Other Revisions

ASTM F2088–25 also includes various minor revisions that are editorial in nature and do not alter any substantive requirements in the standard. These changes include eliminating hyphens in section 2.1 for consistency with the rest of that section; standardizing the spelling of “adapters” so that it is consistent throughout the standard (section 6.1.4); replacing the word “to” with “with” (section 6.7); reformatting text of warning statements (sections 8.4.2.3, 8.6.1.1, 8.6.1.2, 8.6.1.3, 8.6.2, and 8.6.4); renumbering within section 8.6.1 to better organize and reflect the changes in that section; editing Figure 18 (example of warnings for infant swings) to correspond to the changes made to section 8.6.1; adding Figure 20 (example of new sleep warning label for infant swings) to correspond to the addition of section 8.6.1.4; adding appropriate reference to that new figure (Figure 20) in section 8.5.7; adding the word “also” to the text in section 8.6.1.3 to acknowledge the changes made in section 8.6.1; and repositioning the figures throughout the standard so they appear closer to their first reference in the text. Because these revisions do not change any substantive

requirements, they do not impact the safety of infant and cradle swings.

III. Incorporation by Reference

Section 1223.2 of the direct final rule incorporates by reference ASTM F2088–25. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble of the final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section II of this preamble summarizes ASTM F2088–25, which the Commission incorporates by reference into 16 CFR part 1223. The standard is reasonably available to interested parties in several ways. Until the direct final rule takes effect, a read-only copy of ASTM F2088–25 is available for viewing on ASTM’s website at: <https://www.astm.org/cpsc.htm>. Once the rule takes effect, a read-only copy of the standard will be available for viewing on the ASTM website at: www.astm.org/READINGLIBRARY/. Additionally, interested parties can purchase a copy of ASTM F2088–25 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; telephone: (610) 832–9585; www.astm.org. Finally, interested parties can schedule an appointment to inspect a copy of the standard at CPSC’s Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479; email: cpsc-os@cpsc.gov.

IV. Certification

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, including importers, of products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the products comply with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or, for children’s products, on tests of a sufficient number of samples by a CPSC-accepted third party conformity assessment body accredited to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA are “consumer product safety

standards.” Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because infant and cradle swings are children’s products, a CPSC-accepted third party conformity assessment body must test samples of the products. Products subject to part 1223 must also comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,³ the phthalates prohibitions in section 108 of the CPSIA⁴ and 16 CFR part 1307, the tracking label requirements in section 14(a)(5) of the CPSA,⁵ and the consumer registration form requirements in 16 CFR part 1130. ASTM F2088–25 makes no changes that would impact any of these existing requirements.

V. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSA (15 U.S.C. 2063(a)(3)(B)(vi)), the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies (third party labs) for testing infant and cradle swings. 78 FR 15836 (Mar. 12, 2013). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing infant and cradle swings to 16 CFR part 1223. The NORs for all mandatory standards for durable infant or toddler products are listed in the Commission’s rule, “Requirements Pertaining to Third Party Conformity Assessment Bodies,” codified in 16 CFR part 1112. The NOR for accreditation of third party labs for testing infant and cradle swings is codified at 16 CFR 1112.15(b)(8).

ASTM F2088–25 includes a new testing requirement (Suffocation Hazard Visibility Test). This new test requires only an infant dummy and the swing product. This equipment is already required for the testing requirements found in ASTM F2088–24. As a result, the new testing requirement in ASTM F2088–25 does not require any new testing equipment or systems. Accordingly, the revisions in ASTM F2088–25 do not significantly change the way that third party conformity assessment bodies test these products for compliance with the safety standard for infant and cradle swings. Testing laboratories that have demonstrated competence for testing in accordance with ASTM F2088–24 will have the competence to test in accordance with the revised standard ASTM F2088–25.

Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2088–24 to be capable of testing to ASTM F2088–25 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories’ accreditations to reflect the revised standard in the normal course of renewing their accreditations.

VI. Direct Final Rule Process

On January 29, 2026, the Commission published in the **Federal Register** a notice of availability regarding the 2025 revision to ASTM F2088 and requested comment on whether the revision improves the safety of infant and cradle swings covered by the standard. 91 FR 3845. CPSC received two comments. The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency “for good cause finds” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b)(B). The Commission concludes that when it updates a reference to an ASTM standard that the Commission previously incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary.

The purpose of this direct final rule is to update the reference in the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the terms of the CPSIA, ASTM F2088–25 would take effect as the new CPSC standard for infant and cradle swings in the absence of any action by the Commission. Thus, public comments would not lead to substantive changes to the standard or to the effect of the revised standard as a consumer product safety rule under section 104(b) of the CPSIA. Under these circumstances, notice and comment are unnecessary.

In Recommendation 2024–6, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are unlikely to elicit any significant adverse comments. *See* 89 FR 106406 (Dec. 30, 2024). ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B). *Id.* at 106409. ACUS also

explains that notice and comment may be “unnecessary” when the agency lacks discretion regarding the substance of the rule. *Id.* at 106408. As noted, this rule updates a reference in the CFR to reflect a change that occurs by operation of law. Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective on July 25, 2026. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, “including challenges to the rule’s underlying premise or approach,” or where the commenter explains why the rule would be ineffective or unacceptable without change. *Id.* at 106409. As noted, this rule updates a reference in the CFR to reflect a change that occurs by statute.

If the Commission receives a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section VI of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. CPSC also notes the limited nature of this document, which merely updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

VIII. Paperwork Reduction Act

The current mandatory standard includes requirements for marking, labeling, and instructional literature that constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501–3521). While the revised mandatory standard adds

³ 15 U.S.C. 1278a.

⁴ 15 U.S.C. 2057c.

⁵ 15 U.S.C. 2063(a)(5).

marking and labeling requirements for infant and cradle swings, the new requirements would not materially add to the burden hours because the products already require marking and labeling. The Commission took the steps required by the PRA for information collections when it promulgated 16 CFR part 1223, and the marking, labeling, and instructional literature for infant and cradle swings are currently approved under OMB Control Number 3041–0159. Because the information collection burden is essentially unchanged, the revision does not affect the information collection requirements or approval related to the standard. The agency will consider whether OMB Control number 3041–0159 should be revised for infant and cradle swings in the next scheduled update.

IX. Environmental Considerations

The Commission's regulations provide for a categorical exclusion from any requirement to prepare an environmental assessment or an environmental impact statement where they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

X. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the Federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA deems rules issued under that provision "consumer product safety standards." Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

XI. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard 180 days after notification to the Commission, unless the Commission

determines that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the revised standard for infant and cradle swings. Therefore, ASTM F2088–25 automatically will take effect as the new mandatory standard for infant and cradle swings on July 25, 2026, 180 days after the Commission received notice of the revision. As a direct final rule, unless the Commission receives a significant adverse comment within 30 days of this document, the rule will become effective on July 25, 2026, and will apply to products manufactured after the rule's effective date.

XII. Congressional Review Act and Executive Order 12866

Pursuant to the Congressional Review Act (CRA) and Executive Order (E.O.) 12866, the Office of Management and Budget's Office of Information and Regulatory Affairs has determined that this rule does not qualify as a "major rule," as defined in 5 U.S.C. 804(2), and is not a significant regulatory action, as defined under section 2(f) of E.O. 12866. To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1223

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

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

PART 1223—SAFETY STANDARD FOR INFANT AND CRADLE SWINGS

- 1. The authority citation for part 1223 continues to read as follows:

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

- 2. Revise § 1223.2 to read as follows:

§ 1223.2 Requirements for infant and cradle swings.

Each infant and cradle swing (including combination swings) must comply with all applicable provisions of ASTM F2088–25, Standard Consumer Safety Specification for Infant and Cradle Swings, approved on November 15, 2025. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference material is available for inspection at the U.S. Consumer Product Safety Commission

(CPSC) and at the National Archives and Records Administration (NARA). Contact CPSC at: the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone: (301) 504–7479, email: cpsc-os@cpsc.gov. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. A read-only copy of the standard is available for viewing on the ASTM website at www.astm.org/READINGLIBRARY/. You may also obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; telephone: (610) 832–9585; website: www.astm.org.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2026–07638 Filed 4–17–26; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Order Providing Exemptive Relief To Facilitate Cross-Margining of Customer Positions Cleared at Chicago Mercantile Exchange, Inc. and Fixed Income Clearing Corporation

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is issuing an order pursuant to the Commodity Exchange Act ("CEA") that provides exemptive relief from the CEA and Commission regulations related to segregation and protection of futures customer funds. The order permits joint clearing members of the Chicago Mercantile Exchange, Inc. ("CME") and the Fixed Income Clearing Corporation ("FICC") that are dually registered as broker-dealers with the Securities and Exchange Commission ("SEC") and futures commission merchants ("FCMs") with the Commission ("BD-FCMs") to hold futures customer funds in a commingled customer account at FICC.

DATES: Applicable as of April 15, 2026.

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I. Introduction

A. The Petition

CME and FICC (“Petitioners”) petitioned the Commission to grant an exemptive order pursuant to section 4(c) of the CEA to provide relief necessary for Petitioners to extend an existing proprietary cross-margining arrangement to certain customers, as described below.¹ On December 17, 2025, the Commission published in the **Federal Register** a notice and request for public comment regarding the proposed Commission order.² In response to its

request for public comment, the Commission received five comment letters by the deadline of January 16, 2026.³ Those comments are addressed below. After consideration of the comments and for the reasons set forth in this release, the Commission is issuing an order granting Petitioners the relief sought, subject to certain conditions discussed below (“Order”).

B. Background

On January 16, 2024, the SEC promulgated a rule that, when effective, will mandate the central clearing of most U.S. Treasury cash and repurchase transactions (“Treasury Clearing Requirement”).⁴ The Treasury Clearing Requirement is designed to reduce risk and increase operational efficiency by requiring clearing of specified U.S. Treasury security transactions through a central counterparty. Centralized clearing reduces the risk of default by imposing a central counterparty between buyers and sellers. A central counterparty can lower the potential for a single market participant’s failure to destabilize other market participants or the financial system more broadly by substituting its own creditworthiness and liquidity for the creditworthiness and liquidity of the initial counterparties.⁵

Currently, only one central counterparty, FICC, is providing centralized clearing services for cash market transactions in U.S. Treasury securities, and for repurchase and reverse purchase transactions involving U.S. Treasury securities.⁶ FICC is

(Dec. 17, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-12-17/pdf/2025-23150.pdf>.

³ Comment letters were submitted on January 16, 2026 by the Alternative Investment Management Association (AIMA), Better Markets, the Futures Industry Association (FIA), the International Swaps and Derivatives Association (ISDA), and the Securities Industry and Financial Markets Association (SIFMA) and the Asset Management Group of SIFMA (SIFMA/SIFMA AMG). All comments referred to herein are available on the Commission’s website, at <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7639>.

⁴ Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities, 89 FR 2714 (Jan. 16, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-01-16/pdf/2023-27860.pdf>.

⁵ *Id.*

⁶ ICE Clear Credit, LLC and CME Securities Clearing Inc. are also registered to clear U.S. Treasury securities. See ICE Clear Credit LLC; Order Granting an Application for Registration as a Clearing Agency Under Section 17A of the Securities Exchange Act of 1934, 91 FR 5528 (Feb. 6, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-02-06/pdf/2026-02333.pdf>; CME Securities Clearing, Inc.; Order Granting an Application for Registration as a Clearing Agency Under Section 17A of the Securities Exchange Act of 1934, 90 FR 55926 (Dec. 4, 2025), <https://www.govinfo.gov/>

registered as a clearing agency with the SEC under the Securities Exchange Act of 1934 (“Exchange Act”) ⁷ and is subject to regulation under section 17A of the Exchange Act, SEC Rule 17ad–22 (as a “covered clearing agency”),⁸ and other SEC rules. FICC is designated by the Financial Stability Oversight Council (“FSOC”) as a systemically important financial market utility (“SIFMU”).⁹

Increasing clearing efficiency will decrease the cost to market participants of the Treasury Clearing Requirement. One way to increase clearing efficiency is through cross-margining arrangements that allow for cross-margining of U.S. Treasury security positions with positions in related products with correlated price risks held at another clearing organization. Cross-margining arrangements allow joint members or affiliated members of two clearing organizations to have their initial margin requirements reduced by accounting for risk offsets between positions held at each of the clearing organizations.¹⁰

Petitioners have a cross-margining arrangement for proprietary (non-customer) positions that was originally approved by the Commission in 2004 and last amended in 2024 (hereinafter “the proprietary cross-margining agreement”).¹¹ CME clears a variety of U.S. Treasury futures contracts and other interest rate futures contracts that have price risks that are correlated with U.S. Treasury security products cleared at FICC. CME is registered as a DCO with the Commission and is subject to regulation under the CEA ¹² and Commission regulations. As a DCO, CME clears transactions in futures contracts and options on futures contracts listed for trading on the CME Group exchanges (and transactions in other types of derivatives including

[content/pkg/FR-2025-12-04/pdf/2025-21908.pdf](https://www.govinfo.gov/content/pkg/FR-2025-12-04/pdf/2025-21908.pdf).

However, neither are actively clearing U.S. Treasury securities as of the date of this order.

⁷ 15 U.S.C. 78a *et seq.*

⁸ 17 CFR 240.17ad–22.

⁹ 12 U.S.C. 5463.

¹⁰ Efficiencies gained through the ability to net off-setting risks within cross-margining arrangements may be affected by existing rules and regulations for other, related resource requirements. As one example, staff is aware that market participants have raised potential concerns related to cross product netting benefits under applicable capital rules.

¹¹ See The Amended and Restated Cross-Margining Agreement between FICC and CME dated January 22, 2024 (the “FICC–CME XM Agreement”) available at: https://www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc_cme_crossmargin_agreement.pdf.

¹² 7 U.S.C. 1 *et seq.*

¹ The petition is available at https://www.cftc.gov/sites/default/files/filings/documents/2025/CME_FICC_XM_4c_Request_Final_5.14.2025.pdf.

² Proposal To Provide Exemptive Relief To Facilitate Cross-Margining of Customer Positions Cleared at Chicago Mercantile Exchange, Inc. and Fixed Income Clearing Corporation, 90 FR 58525

interest rate swaps).¹³ CME is also designated by the FSOC as a SIFMU.

The proprietary cross-margining arrangement between the Petitioners is offered to their joint clearing members and pairs of affiliated clearing members for proprietary (non-customer) positions. The proprietary cross-margining arrangement permits a participating joint clearing member or pair of affiliated clearing members to have initial margin requirements at FICC and CME reduced in response to risk offsets across positions in futures on U.S. Treasury securities and other interest rate futures cleared at CME and eligible Treasury market transactions cleared at FICC. The Commission and the SEC have approved the original proprietary cross-margining arrangement and the amendments thereto.¹⁴ Under the proprietary cross-margining arrangement, eligible positions of a participating clearing member are identified and treated as a combined portfolio for margin calculation purposes. Both FICC and CME use their own margin models to calculate initial margin requirements for the combined portfolio, then use the more conservative result to determine the margin savings percentage to be applied to the portfolio. Each of FICC and CME then requires the participating clearing member to post initial margin in an amount calculated using its independent margin model reduced by that margin savings percentage.¹⁵

¹³ The scope of products eligible for customer cross-margining agreement includes eligible futures and securities positions. Options on futures and swaps, as defined in 7 U.S.C. 1a(47) and 17 CFR 1.3, were not analyzed as part of the Commission's review of this request for exemptive relief to expand the proprietary cross-margining agreement to include customer clearing.

¹⁴ See, most recently, CFTC, Request for Approval of Amended and Restated Cross-margining Agreement and Service Level Agreement between CME and FICC, (Sept. 1, 2023) available at <https://www.cftc.gov/IndustryOversight/IndustryFilings/ClearingOrganizationRules/51167>; SEC, Self-Regulatory Organizations, Fixed Income Clearing Corporation, Order Approving Proposed Rule Change to Amend and Re-state the Cross-Margining Agreement Between FICC and CME, 90 FR 31043 (Jul. 11, 2025). The Commission approved the rule pursuant to the Commission determination procedure set forth in Commission Regulation 40.5(d)(1).

¹⁵ An example is available on CME's website. See CME–FICC Cross Margining for Customers, Clearing Member Firms: Customer Onboarding and Workflow Guide, <https://www.cmegroup.com/markets/interest-rates/files/cme-ficc-cross-margining-for-indirect-users.pdf> at 8 (2026). In this example, without cross-margining, the total initial margin requirement for a portfolio with positions at CME and FICC is \$343.24 million, consisting of the sum of \$174 million of initial margin required by CME for positions cleared at CME and \$169.24 million of initial margin required by FICC for positions cleared at FICC. For cross-margining, CME and FICC both independently calculate the initial margin using their respective models, but include

This proprietary cross-margining arrangement is only available for the proprietary positions of clearing members, and not for the positions of customers who clear through an intermediary. Excluding customer positions may increase the costs of central clearing for customers clearing both Treasury securities transactions and certain Treasury and interest rate futures, by setting margin requirements that do not account for the risk offsets of their combined portfolio and are thus higher than those of clearing members who have access to cross-margining.

Industry experts have called for expanded access to cross-margining. The CFTC's Global Markets Advisory Committee ("GMAC") recommended that the Commission allow CME and FICC to make the benefits of cross-margining available to a broad range of customers, including customers subject to the new Treasury Clearing Requirement. The GMAC's recommendation covered specific topics such as structure, customer protection, and implementation.¹⁶ The Group of Thirty Working Group on Treasury Market Liquidity also highlighted the need for expansion of cross-margining to the customer level. In their report related to Treasury market resilience, they suggested a review be conducted to "examine impediments to the use of the cross-margining service that FICC and [CME] have had in place since 2004" and further opined that "[w]ider use of cross-margining would reduce the risk that increases in initial margin requirements on the futures leg of cash-futures basis trades result in forced sales of Treasury securities" ¹⁷

Accordingly, CME and FICC seek to expand their proprietary cross-margining program to make it available to certain customers. Specifically, the

in their initial margin calculations the positions in the portfolio cleared at the other clearing organization. In the example, the FICC model is more conservative, resulting in an 80% margin reduction with cross-margining as compared to the CME model's margin reduction calculation of 81.1%. As a result, CME and FICC both apply an 80% margin reduction to their respective initial margin requirements for the portfolio. The total initial margin requirement with cross-margining is reduced to \$68.648 million.

¹⁶ See CFTC Global Markets Advisory Committee Advances Key Recommendations, CFTC Release No. 8860–24 (Feb. 8, 2024). The "GMAC Recommendation" is available at https://www.cftc.gov/media/9591/gmac_FICC_CME110623/download.

¹⁷ See Group of Thirty Working Group on Treasury Market Liquidity, U.S. Treasury Markets: Steps Toward Increased Resilience (July 2021), available at: <https://group30.org/publications/detail/4950> (citing Younger, Joshua. 2021 "Cross-Margining and Financial Stability." Program on Financial Stability, Yale School of Management, Yale University, New Haven, June 22).

cross-margining program would be available to customers of joint clearing members of FICC and CME that are BD–FCMs. The cross-margined positions and associated margin would be carried in a futures customer account on the books and records of an eligible BD–FCM and generally subject to the regulations and protections of the CEA and Commission regulations, including CEA section 4d and the Commission's regulations for segregation and protection of futures customer funds.

This cross-margining expansion to customers, however, would conflict with applicable legal requirements. Section 4d of the CEA requires that futures customer funds be segregated and prohibits the commingling of futures customer funds and futures customer positions with any other positions and funds. However, section 4d further provides that, "in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order," futures customer funds may be commingled with other customer funds.¹⁸ The expansion of the proprietary cross-margining arrangement to include clearing for customers would require that BD–FCMs hold securities positions and associated funds in their futures customer accounts.

In addition, section 4d requires that futures customer funds be held with a bank or trust company, and section 5b(c)(2)(F) of the CEA requires, in part, that a DCO hold member and participant funds in a manner by which to minimize the risk of loss or of delay in the access by the DCO to the assets and funds. Commission Regulations 1.20 and 1.49(d) implement these statutory requirements in part by limiting the depositories that may hold futures customer funds to a bank or trust company, an FCM, or a DCO. While FICC is an SEC covered clearing agency, it is not a DCO and therefore not a permitted depository for futures customer funds without Commission exemptive relief.

Petitioners consequently petitioned the Commission to grant an exemptive order pursuant to section 4(c) of the CEA to provide relief necessary for them to make their cross-margining arrangement available to certain customers. Specifically, Petitioners sought exemptive relief to:

- Permit BD–FCMs¹⁹ to deposit at FICC, and permit FICC to hold,

¹⁸ 7 U.S.C. 6d.

¹⁹ Section 4(c) of the CEA provides that the Commission may provide an exemption "on its own initiative or on application of any person," so parties receiving exemptive relief are not limited to

customer funds and margin associated with futures positions, notwithstanding that FICC is not a permitted depository under section 4d of the CEA and Commission Regulations 1.20 and 1.49(d), and to permit CME to treat FICC as a permissible location to hold customer funds and margin even though FICC is not a permitted depository under section 4d of the CEA and Commission Regulations 1.20 and 1.49(d); and

- Permit BD-FCMs to hold in the futures account, as defined in Commission Regulation 1.3, of the BD-FCM, securities positions and associated funds together with the futures customer positions and funds held by the BD-FCM.

II. Section 4(c) of the CEA

Section 4(c)(1) of the CEA empowers the Commission to “promote responsible economic or financial innovation and fair competition” by exempting any transaction or class of transactions (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), from any of the provisions of the CEA, subject to exceptions not relevant here.²⁰ In enacting section 4(c), Congress noted that its goal “is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.”²¹ The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative.

Section 4(c)(2) of the CEA provides that the Commission may grant exemptions to section 4(a) under section 4(c)(1) only when it determines that the requirements for which an exemption is being provided should not be applied to the agreements, contracts, or transactions at issue; that the exemption is consistent with the public interest and the purposes of the CEA; that the agreements, contracts, or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or

self-regulatory responsibilities under the CEA.²²

The Commission believes that issuing the Order, which grants the exemption sought by Petitioners, is in the public interest and would promote responsible economic and financial innovation and fair competition.²³ Comment letters from AIMA, FIA, ISDA, and SIFMA/SIFMA AMG agreed with this conclusion and expressly supported the issuance of an order permitting CME and FICC to expand their cross-margining program to customers.²⁴ AIMA, ISDA, and SIFMA/SIFMA AMG stated that the customer cross-margining arrangement will support financial stability, resiliency and/or efficiency.²⁵ SIFMA/SIFMA AMG stated the arrangement will achieve “broader capital efficiency while maintaining the customer and market resiliency protections of centralized clearing.”²⁶ ISDA stated the arrangement will “tailor margin requirements with actual portfolio risk.”²⁷

In addition, FIA, ISDA, and SIFMA/SIFMA AMG agree that the cross-margining arrangement will support the implementation of mandatory Treasury clearing by reducing margin costs and increasing liquidity in the Treasury market.²⁸ SIFMA/SIFMA AMG stated that cross-margining lowers clearing costs, counterbalancing “potential clearing cost increases Treasury market participants may experience with mandatory clearing of certain U.S. Treasury transactions taking effect later this year and in 2027.”²⁹ SIFMA/SIFMA AMG also stated the arrangement “generally will enhance liquidity in the Treasury markets.”³⁰ FIA noted the arrangement “helps to eliminate duplicative margin requirements without diminishing overall risk management standards.”³¹ ISDA argued that reducing duplicative margin will “make clearing more efficient and offset some of the additional financial resource

requirements that the industry will face. . . .”³²

The Commission believes the Order meets the standards in section 4(c)(1) for an exemption. The discussion below describes why the Commission has reached this conclusion.

III. Segregation of Customer Funds

The protection of customers—and the safeguarding of money, securities, or other property deposited by customers—is a fundamental component of the regulatory and oversight framework of the futures and swaps markets. Section 4d(a)(2) of the CEA requires an FCM to segregate from its own assets all money, securities, and other property deposited by futures or cleared swaps customers to margin, secure, or guarantee their futures, options on futures, or cleared swaps positions. Section 4d(a)(2) further requires an FCM to treat customer funds as belonging to the customer and prohibits an FCM from using the funds deposited by a customer to margin or extend credit to any person other than the customer that deposited the funds. Similarly, section 4d(b) of the CEA prohibits a DCO and any depository that has received such funds from holding, disposing of, or using such funds as belonging to the depositing FCM or any person other than the customers of such FCM. Customer segregation is an essential protection to ensure funds are held exclusively as the property of customers, even during an FCM insolvency.

CEA section 4d(a)(2) prohibits commingling futures customer positions executed on a contract market, and futures customer funds supporting such positions, with any property not required to be so segregated. Commingling of futures customer funds with other funds may take place only in accordance with such terms as the Commission may provide by rule, regulation, or order.³³ Further, Commission Regulation 1.20 requires FCMs and DCOs to separately account for all futures customer funds and segregate such funds as belonging to futures customers, and it requires FCMs and DCOs to deposit futures customer funds in a manner that identifies them as futures customer funds.

A. Commingling

The customer cross-margining arrangement permitted by the Order allows a BD-FCM to commingle cross-margined securities positions and associated margin with cross-margined

those who directly petition the Commission. 7 U.S.C. 6(c).

²⁰ 7 U.S.C. 6(c)(1).

²¹ House Conf. Report No. 102–978, 1992 U.S.C.A.N. 3179, 3213.

²² 7 U.S.C. 6(c)(2).

²³ While not concluding section 4(c)(2) applies to the Order, the Commission also believes that the Order would meet the standards in section 4(c)(2) of the CEA.

²⁴ AIMA Comment Letter at 3; FIA Comment Letter at 2; ISDA Comment Letter at 1; SIFMA/SIFMA AMG Comment Letter at 1.

²⁵ ISDA Comment Letter at 2; SIFMA/SIFMA AMG Comment Letter at 2; AIMA Comment Letter at 2.

²⁶ SIFMA/SIFMA AMG Comment Letter at 2.

²⁷ ISDA Comment Letter at 1–2.

²⁸ FIA Comment Letter at 2; ISDA Comment Letter at 2; SIFMA/SIFMA AMG Comment Letter at 2.

²⁹ SIFMA/SIFMA AMG Comment Letter at 2.

³⁰ *Id.*

³¹ FIA Comment Letter at 2.

³² ISDA Comment Letter at 2.

³³ 7 U.S.C. 6d(a)(2).

futures positions and associated margin. Permitting this commingling allows for the provision of risk offsets for customer positions in eligible futures and eligible securities cleared at CME and FICC through BD-FCMs.

CME and FICC detailed in their petition the structure of the arrangement they plan to implement under the Order and the way it is designed to protect customer funds. As explained in more detail below, the Order sets forth conditions in reliance on this structure.

At a high level, a customer wishing to cross-margin its futures positions cleared at CME with its securities positions cleared at FICC will elect to have its FICC-cleared U.S. Treasury securities positions and associated funds held in a commingled futures account at the BD-FCM, to facilitate margining all of the positions as a portfolio. The BD-FCM will post funds to support cross-margined futures positions with CME and funds to support cross-margined securities positions with FICC. FICC will record cross-margined securities positions and associated funds ("XM Securities Customer Property") in accounts on FICC's books and records, the margin being recorded on FICC's books and records in margin accounts in the name of the BD-FCM for the benefit of its cross-margining customers ("FICC XM Customer Margin Accounts"). FICC will hold the margin in either a Federal Reserve Bank of New York ("FRBNY") account (the "FICC FRBNY Segregated Account") or at a commercial bank that is insured by the Federal Deposit Insurance Corporation (a "FICC Segregated Bank Account").

More specifically, the Order permits, subject to relevant terms and conditions, the following structure:

1. The BD-FCM will be required to carry all of a cross-margining customer's positions and associated margin, including XM Securities Customer Property held at FICC, in a futures account as defined in Commission Regulation 1.3, subject to CEA section 4d(a) and related Commission regulations as modified by the Order. This will apply to both required collateral and any excess collateral.

2. The cross-margining customer will be required to: (a) agree to have its XM Securities Customer Property carried in a futures account; and (b) enter into a subordination agreement pursuant to which it will agree that its claim for the return of XM Securities Customer Property will not receive customer treatment under the Exchange Act or the Securities Investor Protection Act of

1970 ("SIPA")³⁴ and that such property will not be treated as "customer property" as defined in section 741, subchapter III (stock broker liquidation) of chapter 7 of the U.S. Bankruptcy Code in a liquidation of the BD-FCM.

3. FICC will record a cross-margining customer's cross-margined securities positions in an account on its books and records for recording a BD-FCM's cross-margining customers' transactions ("FICC XM Customer Position Account").

4. FICC will credit margin it collects from a BD-FCM for the BD-FCM's cross-margining customers to an account on its books and records in the name of the BD-FCM for the benefit of its customers ("FICC XM Customer Margin Account"). FICC will hold all funds credited to the FICC XM Customer Margin Accounts either in: (a) the FICC FRBNY Segregated Account;³⁵ or (b) a FICC Segregated Bank Account, each of which will be opened in the name of FICC and clearly labeled, and for accounts at a commercial bank, acknowledged as held for the benefit of cross-margining customers.

³⁴ 15 U.S.C. 78aaa–78lll.

³⁵ The CFTC has recognized important benefits to a clearing organization of using Federal Reserve bank accounts. See 81 FR 53467, 53468 (noting the lower credit and liquidity risks with a deposit at a Federal Reserve Bank than a deposit at a commercial bank). As a SIFMU, FICC is permitted to have an account at a Federal Reserve Bank, subject to requirements of the Federal Reserve, particularly 12 CFR 234.5. FICC has an existing FRBNY bank account currently used to maintain securities customer collateral that is not associated with cross-margining ("Segregated Customer Margin").

FICC represents it is unable to obtain another separate Federal Reserve account to hold cross-margining customer collateral. In order to hold cross-margining customer collateral in an account at a Federal Reserve Bank, FICC will need to, if permitted to do so, co-locate Segregated Customer Margin and cross-margining customer collateral in the same FRBNY bank account to deposit both types of collateral in a Federal Reserve Bank. As discussed further below in section III.C, because FICC is not a registered DCO, and thus a FICC bankruptcy would not be governed by subchapter IV of chapter 7 of the Bankruptcy Code, 11 U.S.C. 761 *et. seq.*, the implications of such co-location of customer collateral are different than if FICC were a registered DCO.

In connection with the customer cross-margining framework under the Order, FICC will amend its rules to provide that the FICC FRBNY Segregated Account may hold cash cross-margining customer margin in addition to (SEC regulated) segregated customer margin (but no other assets) and (if FICC is permitted by the Federal Reserve to hold cash cross-margining customer collateral in the FRBNY Segregated Account) the FRBNY account notice will be amended to specify that the cash in the FICC FRBNY Segregated Account is also held pursuant to the Order and the corresponding related SEC order. Otherwise, FICC will hold such cash cross-margining customer collateral in a Segregated Bank Account that will only hold cross-margining customer collateral and will be at a commercial bank.

5. FICC's accounts referred to in A.4 above will be separate accounts from the accounts holding (a) FICC's own assets, (b) margin for the BD-FCM's proprietary positions, and (c) except as discussed in footnote 35 above, margin for positions of the BD-FCM's customers that do not participate in cross-margining. Although FICC itself is not a registered DCO and is not a permitted depository under Commission Regulation 1.49(d), as discussed in more detail below, FICC will hold cross-margining customer margin ("XM Customer Margin") consistently with all requirements under Commission Regulations 1.20 and 1.49 as applicable to DCOs³⁶ as well as with the requirements of Commission Regulations 39.15(b)(1) and (c) and 39.36(g).

6. FICC will have amended its rules³⁷ so that: (a) all assets credited to the FICC XM Customer Margin Accounts will be treated as "financial assets"³⁸ credited to a "securities account;" (b) FICC will be a "securities intermediary" for that margin account and each BD-FCM, acting on behalf of its customers, will be an "entitlement holder" and have a "security entitlement" with respect to

³⁶ Funds held in the FICC FRBNY Segregated Account will be held subject to the exception for Segregated Customer Margin discussed in footnote 35 above.

³⁷ Pursuant to section 19(b) of the Securities Exchange Act, 15 U.S.C. 78s(b), a self-regulatory organization such as FICC must submit any proposed change in its rules to the SEC for approval. The Order requires FICC to, consistent with section 19(b), amend its rulebook as necessary to implement the undertakings set forth in the petition. Thus, the relief set forth in the Order can only become effective when FICC proposes, and the SEC approves, such amendments to the FICC rulebook. FICC proposed such rule changes in December 2025. The SEC has approved these rules. See Notice of Filing of Partial Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment Nos. 1 and 2, to Amend and Restate the Second Amended and Restated Cross-Margining Agreement between FICC and CME and Amend Related GSD Rules; Exchange Act Release No. 34–105249 (April 15, 2026) [File No. SR–FICC–2025–025] ("FICC Approval Order"). See also Notice of Filing of Partial Amendment No. 2 and Notice of No Objection to Advance Notice, as Modified by Partial Amendment Nos. 1 and 2, to Amend and Restate the Second Amended and Restated Cross-Margining Agreement between FICC and CME and Amend Related GSD Rules; Exchange Act Release No. 105197 (Apr. 10, 2026); 91 FR 19221 (Apr. 14, 2026) [File No. SR–FICC–2025–801]. The SEC approved a related exemptive order to facilitate this customer cross-margining agreement on April 15, 2026. See Order Under Section 36 of the Securities Exchange Act of 1934 (the "Exchange Act") Granting Conditional Exemptive Relief from Section 15(c)(3) of and Rule 15c3–3 under the Exchange Act for Cross-Margining of Cleared U.S. Treasury Securities and Related Futures ("SEC Exemptive Order"). The notices for the FICC Approval Order and the SEC Exemptive Order are published elsewhere in this issue of the **Federal Register**.

³⁸ All quoted terms in this paragraph refer to such terms as defined in Article 8 of the New York Uniform Commercial Code ("NYUCC").

assets it deposits in such margin account; (c) the FICC XM Customer Margin Accounts and the account(s) holding Treasury Securities Segregated Margin discussed in footnote 35 above will be the only types of securities accounts, as that term is defined in section 8–501(a) of the NYUCC, that FICC maintains, and FICC will not establish any additional such securities accounts without obtaining the permission of both the CFTC and the SEC.

7. CME will continue to hold margin posted to CME as required by CEA section 4d and Commission Regulations 1.20, 1.49, 39.15(b)(1) and (c), and 39.36(g) in the same manner as it treats all other futures customer margin.

*B. Protection for the Margin of Cross-Margining Participants in the Event of a BD–FCM Bankruptcy*³⁹

The cross-margining framework under the Order will protect cross-margined customer funds in the event of the bankruptcy of a participating BD–FCM. Participating customers' funds will be protected by ensuring that claims for cross-margined positions and related collateral are treated as customer claims under subchapter IV of chapter 7 of the Bankruptcy Code and Part 190 of the Commission's regulations ("Part 190") regarding bankruptcy. For the reasons discussed below, the Commission concludes that the cross-margining customers would thus have the same priority right to receive distribution on their allowed claims against the customer property as other customers of the insolvent BD–FCM in the futures account class.

Futures customers of each participating BD–FCM are protected as a group by ensuring, consistent with the Order, that commingled customer funds, including those held by FICC, are treated as "customer property" held by the BD–FCM in its capacity as an FCM, thus supporting the goal that all claims for customer property are paid in full.

1. FICC-Held Customer Property as Futures Customer Property Under Part 190

Three points support the treatment of FICC-held customer property as futures customer property under Part 190. First, Part 190 includes within the scope of customer property any property held by or for the account of the debtor, from or for the account of a customer, including property received, acquired, or held to margin, guarantee, secure, purchase or sell a commodity contract.⁴⁰ As discussed above, and required by the Order, FICC will credit margin it collects in connection with a cross-margining customer's positions to a FICC XM Customer Margin Account in the name of the BD–FCM for the benefit of its cross-margining customers, which are futures customers. Similarly, FICC will record a cross-margining customer's positions in a FICC XM Customer Position Account, which will be an account of the BD–FCM that is established for the purpose of recording the transactions of cross-margining customers. The BD–FCM will also record on its books and records the XM Securities Customer Property as being held in the BD–FCM's futures customer account, and such property will be intended to serve as collateral for futures positions.

Moreover, pursuant to section 7 of the FICC–CME XM Agreement ("Agreement"), if the BD–FCM defaults, and its cross-margined customer positions at both CME and FICC are liquidated, under circumstances where CME is "worse-off" (as such term is defined in the Agreement) than FICC, some or all of the margin at FICC will be payable to CME. Thus, the collateral in a FICC XM Customer Margin Account in fact is held by or for the account of the BD–FCM, from or for the account of the BD–FCM's cross-margining customers as property received, acquired, or held to margin, guarantee, secure, purchase or sell the commodity contracts in the BD–FCM's cross-margining customer accounts at CME.⁴¹

For these reasons, the Commission concludes that, because of this structure, the XM Securities Customer Property would be appropriately viewed as customer property pursuant to Commission Regulation 190.09(a)(1)(i)(A).

Second, pursuant to paragraph (2)(ii) of Commission Regulation 190.01's definition of "account class," the securities positions and associated collateral held in a BD–FCM's futures account pursuant to this Commission-approved customer cross-margining program will be treated as being held in the futures account class.⁴² Moreover, the XM Securities Customer Property would also constitute "customer property" under Part 190 to the extent it consists of securities held in a portfolio margining account carried as a futures account.⁴³

Third, XM Securities Customer Property held at FICC will also qualify as "customer property" under Part 190 by virtue of being cash, securities, or other property that would be segregated for customers on the filing date.⁴⁴ As described above, FICC will credit margin posted for cross-margining customers' positions to a FICC XM Customer Margin Account on its books and records. This account will exclusively hold margin for cross-margining customers, and (as noted above) will also serve as collateral for associated futures positions at CME. All XM Customer Margin will also be segregated in terms of its custody. Lastly, the BD–FCM will be required, consistent with Commission Regulation 1.20, to separately account for all cross-margining customers' margin and positions. As a result of this consistent segregation, the Commission concludes that XM Securities Customer Property will be appropriately segregated for customers on the filing date and therefore "customer property" under Part 190.

2. Customer Claims for the FICC-Held Customer Positions and Margin at FICC as Allowable Claims Under Part 190

In the event of an FCM bankruptcy, property is allocated to the FCM's

³⁹ As a technical matter, an insolvency of a broker-dealer (including a BD–FCM) that has customers that are neither insiders nor a broker-dealer or bank that is not trading on behalf of customers that are themselves neither a broker-dealer or a bank, would proceed under the Securities Investors Protection Act, 15 U.S.C. 78aaa et. seq. ("SIPA"). See id. sections 5(a)(3), 9(a), 15 U.S.C. 78eee(a)(3), 78fff–3(a). However, a trustee under SIPA is subject to the same duties as a trustee under chapter 7 of the Bankruptcy Code, including (in the case of a BD–FCM), subchapter IV of chapter 7, the commodity broker liquidation provisions. SIPA section 7(b), 15 U.S.C. 78fff–1(b). Accordingly, such a proceeding is referred to herein as a "BD–FCM bankruptcy."

⁴⁰ 17 CFR 190.09(a)(1)(i)(A).

⁴¹ Also, as required by the Order, a BD–FCM will be required to pledge its interest in the XM Securities Customer Property to CME to secure the obligations of the BD–FCM with respect to the customer's futures positions cleared by CME. The BD–FCM will likewise require each cross-margining customer to pledge XM Securities Customer Property to the BD–FCM to collateralize the cross-margining customer's obligations arising under its CME-cleared customer positions. Accordingly, this provides further basis for the XM Securities Customer Property to constitute customer property on account of being "property received, acquired, or held to margin, guarantee, secure, purchase or sell a commodity contract."

⁴² 17 CFR 190.01 ("The principle in paragraph (2)(i) of this definition will be applied to securities positions and associated collateral held in a commodity account class pursuant to a cross margining program approved by the Commission (and thus treated as part of that commodity account class)").

⁴³ 17 CFR 190.09(a)(1)(i)(G) ("Customer property includes . . . All cash, securities, or other property . . . received, acquired, or held by or for the account of the debtor, from or for the account of a customer . . . which is: . . . (G) Securities held in a portfolio margining account carried as a futures account . . .").

⁴⁴ 17 CFR 190.09(a)(1)(ii)(A).

customers based on account and customer class as well as on net equity claims.⁴⁵ For the reasons discussed below, the Commission concludes that a cross-margining customer's claims for XM Securities Customer Property would be allowable claims under Part 190 against customer property in the futures account class because they would be within the scope of the "net equity" definition of the Bankruptcy Code, and also because they would be incorporated into "Step 1" of the "net equity" calculation set out in Commission Regulation 190.08(b).

A customer's "net equity" is defined in the Bankruptcy Code to include the balance remaining in the customer's accounts immediately after (i) the transfer, liquidation, or identification for delivery of the customer's positions and (ii) offset of the customer's obligations.⁴⁶ Under the cross-margining framework permitted by the Order, the BD-FCM will be required to credit XM Securities Customer Property to a futures customer account within the meaning of Commission Regulation 1.3. Accordingly, the Commission concludes that, independent of Part 190 of the Commission's regulations, such amounts would give rise to cross-margining customer net equity claims under section 761(17) of the Bankruptcy Code, since such amounts would constitute part of the balance remaining in the customers' accounts.

In addition, the definition of "net equity" in section 761(17) of the Bankruptcy Code states that it is subject to such rules and regulations as the Commission promulgates under the CEA. Moreover, section 20(a)(5) of the CEA⁴⁷ provides that, notwithstanding the Bankruptcy Code, the Commission may provide by rule or regulation, with respect to a commodity broker that is a debtor under chapter 7 of the Bankruptcy Code, how the net equity of a customer is to be determined.

Commission Regulation 190.08 prescribes a five-step process for calculating a customer's net equity based on the customer property, including any commodity contracts, held by the debtor for or on behalf of the customer less any indebtedness of the customer to the debtor. Step 1 of that process, set out in Commission Regulation 190.08(b)(1), requires consideration of the sum of: (A) the ledger balance; (B) the open trade balance; and (C) the realizable market value, determined as of the close of the market on the last preceding market

day, of any securities or other property held by or for the debtor from or for such account, plus accrued interest, if any.

The "ledger balance" is calculated by: (A) adding, among other things, (1) cash deposited to purchase, margin, guarantee, secure, or settle a commodity contract, (2) cash proceeds of liquidations of any securities or other property held by or for the debtor from or for the futures account plus accrued interest, and (3) gains realized on trades; and (B) subtracting, among other things, losses realized on trades.⁴⁸ The "open trade balance" is calculated by subtracting the unrealized loss in value of the open commodity contracts held by or for the customer's futures account from the unrealized gain in value of the open commodity contracts held by or for such account.⁴⁹

For purposes of these calculations, securities positions and associated collateral held in a futures account pursuant to a Commission-approved cross-margining program are treated as customer property held in a futures account class.⁵⁰ Accordingly, under Part 190, cross-margining customers' claims with respect to cash margin held at FICC would form part of the ledger balance because they are for cash deposited to margin and secure commodity contracts,⁵¹ while the securities margin and in-the-money securities positions would be property held by the insolvent BD-FCM for the cross-margining customers' futures account. "Securities positions" (*i.e.*, open repo positions) and associated payment amounts constitute "securities or other property" under Regulation 190.08(b)(1)(i)(C). To the extent open securities transactions had been liquidated or otherwise resulted in realized gains, those amounts would form part of the ledger balance. Therefore, under both section 761 of the Bankruptcy Code and Part 190, cross-margining customers will have allowable net equity claims for XM Securities Customer Property, and the Commission concludes that they will receive adequate protection in bankruptcy.

FIA commented that the Commission needs to clarify how the net equity calculation under Part 190 applies to customer collateral. In particular, FIA requested further clarification or examples of the net equity calculation with respect to a customer's claim for repurchase agreement positions. FIA

questioned how unrealized gains/losses in the value of open securities transactions like repurchase agreements would be calculated. Specifically, FIA asked whether unrealized gains in the value of securities positions would be included in open trade balances under Commission Regulation 190.08(b)(1)(i)(B) or as "realizable market value . . . of any securities or other property" under Regulation 190.08(b)(1)(C) and whether unrealized losses in value of securities positions would be included in open trade balances under Commission Regulation 190.08(b)(1)(i)(B) or, even though a loss would constitute a negative value, as "realizable market value . . . of any securities or other property" under Commission Regulation 190.08(b)(1)(C).⁵²

As discussed in the footnote, these unrealized gains or losses in the value of securities positions are not part of the ledger balance.⁵³

Commission Regulation 190.08(b)(1)(iii) provides that "[f]or purposes of this paragraph (b)(1), the open trade balance of a customer's account shall be computed by subtracting the unrealized loss in value of the open *commodity contracts* for such account from the unrealized gain in value of the open *commodity contracts* held by or for such account" (emphasis supplied). Thus, gains or losses in the value of *securities* positions would not be part of the calculation of the "open trade balance."

Rather, as noted above, unrealized gains (or losses) in the value of securities positions (*i.e.*, open repo positions) would appear to fit more comfortably under Commission Regulation 190.08(b)(1)(i)(C): realizable market value of any securities or other property. The "realizable market value" of these securities positions can be established upon liquidation. Such value may also be based in part on associated payment amounts that can be determined but have not yet been settled. If not liquidated, those securities positions "may be valued by the trustee using such professional assistance as the trustee deems necessary in its sole discretion under

⁵² FIA Comment Letter at 5 (Jan. 16, 2026).

⁵³ This is because unrealized gains or losses are not included within the calculation formula in Regulation 190.08(b)(1)(ii) which defines the ledger balance. They are neither cash deposited to purchase, margin, guarantee, secure or settle a commodity contract; cash proceeds of liquidations of any securities or other property (such proceeds would be part of *realized* gains or losses); gains or losses realized on trades (same); the face amount of a letter of credit; disbursements to or on behalf of customers; or costs attributable to the payment of commissions, etc.

⁴⁵ 17 CFR 190.09.

⁴⁶ 11 U.S.C. 761(17).

⁴⁷ 7 U.S.C. 24(a)(5).

⁴⁸ 17 CFR 190.08(b)(1)(ii).

⁴⁹ 17 CFR 190.08(b)(1)(iii).

⁵⁰ 17 CFR 190.01 (paragraph (2)(ii) of the definition of "account class").

⁵¹ 17 CFR 190.08(b)(1)(ii)(A)(1).

the circumstances” pursuant to Commission Regulation 190.08(d)(5).

3. FICC Will Make Customer Positions Portable

Commission Regulation 190.07(a) provides, *inter alia*, that a DCO may not have rules that interfere with the acceptance by its clearing members of transfers of commodity contracts, and the property margining or securing such contracts, from an FCM that is a debtor, if such transfers have been approved by the Commission, subject to certain provisos. FICC will amend its current rules to expressly allow the porting of cleared positions and associated margin at FICC in the event a clearing member becomes insolvent.⁵⁴ Pursuant to section (e)(viii) of the Order, FICC will be required to amend its rules to provide that, as required under Commission Regulation 190.07(a), FICC will not interfere with transfers of XM Securities Customer Property that are approved by the Commission pursuant to Part 190 (subject to FICC’s right to liquidate positions and manage risk).

4. Default Management Complexity

Better Markets commented that cross-margining could make clearing member default management more complex by increasing systemic interconnections and reducing the room for error due to collateral reduction.⁵⁵ SIFMA/SIFMA AMG suggested that the Commission act to ensure that FICC and CME’s default management and customer protection procedures are adequate before approving the exemption.⁵⁶

With respect to default management, the FICC–CME XM Agreement, section 7, sets forth a detailed procedure governing default management protocols. Commission Regulation 39.16(b) requires CME to “maintain a current written default management plan that . . . include[s] any necessary coordination with . . . other entities . . .” as well as testing of that plan “on at least an annual basis.” This requirement includes default management under a cross-margining program.⁵⁷

As discussed above, the Commission crafted the Order to include conditions designed to include customer protection arrangements that are well supported legally. Further, the Order conditions the exemptive relief on CME, FICC, and the participating BD–FCMs complying with those conditions.

Given the default management requirements under CFTC and SEC regulations of CME and FICC, respectively, and with the inclusion of the conditions specified in the Order, the Commission concludes that the cross-margining program is well designed to meet the goals of the CEA for default management and customer protection. The Commission does not view the complexity of the cross-margining program to be such that permitting its expansion to customers would undermine compliance with the standards of the CEA and the Commission’s regulations.

C. Protection for the Collateral Posted by Cross-Margining Customers in the Event of a FICC Bankruptcy or a Proceeding Under Title II of the Dodd-Frank Act

FCM customer funds that are held at a registered DCO, such as CME, will be protected in the unlikely event of the bankruptcy of that DCO under subchapter IV of chapter 7 of the Bankruptcy Code, pertaining to commodity brokers.⁵⁸ The term “commodity broker” includes both FCMs and DCOs.⁵⁹ Subchapter IV of chapter 7 of the Bankruptcy Code, and Part 190, which implements those statutory provisions, provide a reticulated and comprehensive set of protections for customer funds in the context of futures accounts, cleared swaps accounts, and foreign futures accounts, each of which falls under an account class. However, FICC is not a DCO, and so customer funds held at FICC will not be protected under subchapter IV in the event of FICC’s bankruptcy. Nor are funds held at FICC protected under the Securities Investor Protection Act⁶⁰ or subchapter III of chapter 7 of the Bankruptcy Code,⁶¹ both of which apply only to broker-dealers, and not to securities clearing agencies.

For the reasons discussed below, the Commission is of the view that cross-margining customers’ margin held at FICC would nonetheless be protected and not be available to creditors in the unlikely event of a FICC bankruptcy, except for margining or settling eligible customer positions, and would not form part of FICC’s estate.

This protection will be implemented using NYUCC⁶² Article 8, as applied to FICC’s rulebook as it will be amended. Specifically, the Order requires FICC to

take steps that the Commission believes ensure that participating BD–FCMs, on behalf of their customers, would be “entitlement holders” within the meaning of Article 8, with respect to all components of the cross-margining margin. Moreover, the only other entitlement holders would be BD–FCM members of FICC with respect to (non-cross-margined) segregated customer margin deposited by a BD–FCM (on behalf of securities customers). As explained further below, entitlement holders with respect to a particular type (e.g., issue) of financial asset have priority claims with respect to all interests in that financial asset held by FICC.

As an SEC-registered clearing agency, FICC is a “clearing corporation,” and thus falls within the definition of a “securities intermediary” in the NYUCC.⁶³

Under the NYUCC, a “securities account” means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset. Section (e)(v) of the Order requires that FICC shall, consistent with section 19(b) of the Securities Exchange Act,⁶⁴ amend FICC’s rules to provide that any assets credited to a FICC XM Customer Margin Account will be used exclusively to settle and margin the customer positions and for no other purpose.⁶⁵ Further, section (e)(iv) requires FICC to amend FICC’s rules⁶⁶ to provide that all assets credited to a FICC XM Customer Margin Account would be treated as “financial assets”⁶⁷ credited to a “securities account.”⁶⁸

⁶³ See NYUCC 8–102(a)(5)(i) (definition of “clearing corporation”), 8–102(14)(i) (definition of “securities intermediary”).

⁶⁴ 15 U.S.C. 78s(b).

⁶⁵ See footnote 37.

⁶⁶ FICC has also proposed this rule amendment. See *id.*

⁶⁷ FICC Rule 4, section 1a, currently provides in relevant part that “[a]ll assets credited to each Segregated Customer Margin Custody Account shall be treated as ‘financial assets’ within the meaning of Article 8 of the NYUCC.” The Commission concludes that this would include both securities and cash—while securities are included within the term “financial assets” by statute, NYUCC 8–102(9)(a)(i), that term also includes any property that is held by a securities intermediary for another person in a securities account “if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.”

⁶⁸ The Commission concludes that treatment of the FICC XM Customer Margin Account as a “securities account” under the NYUCC does not depend on, nor affect, the treatment of such account

⁵⁴ See footnote 37.

⁵⁵ Better Markets Comment Letter at 2.

⁵⁶ SIFMA/SIFMA AMG Comment Letter at 3.

⁵⁷ Analogous obligations apply to FICC under SEC regulations. See, e.g., 17 CFR 240.17ad–22(e)(13) (testing and review of default procedures).

⁵⁸ 11 U.S.C. 761 *et. seq.*

⁵⁹ See 11 U.S.C. 101(6), 761(2).

⁶⁰ 15 U.S.C. 78aaa *et. seq.*

⁶¹ 11 U.S.C. 741 *et. seq.*

⁶² See generally NY CLS UCC, Art. 8. FICC is located in New York.

Under the NYUCC, with exceptions not relevant here, a person acquires a security entitlement if a securities intermediary either (1) indicates by book entry that a financial asset has been credited to the person's securities account, or (2) receives a financial asset from the person and accepts it for credit to the person's securities account.⁶⁹ A person who is either identified in the records of a securities intermediary as having a security entitlement against the securities intermediary, or acquires a securities entitlement by virtue of section 8–501(b)(2), is an entitlement holder. The Commission is of the view that, in each case, both prongs would apply and the BD–FCM, acting on behalf of its customers, would be the entitlement holder and would have a security entitlement with respect to the assets credited to the FICC XM Customer Margin Account.

Among the entitlement holder's rights is the right to have financial assets held by the securities intermediary returned and not be subject to the claims of general creditors. Per NYUCC section 8–503(a), to the extent necessary for a securities intermediary to satisfy all security entitlements *with respect to a particular financial asset*, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 8–511. The relevant exception under NYUCC section 8–511(c) for “a creditor of the clearing corporation who has a security interest in that financial asset” would not be inconsistent with this approach, as FICC will be required by section (e)(vi) of the Order to amend its rules to provide that FICC shall not grant a security interest in either XM Customer Margin (except with respect to CME's security interest discussed below) or FICC Treasury securities customer margin. Thus, the Commission is of the view that, under the NYUCC, the assets credited to the FICC XM Customer Margin Account would not form part of

as a futures account for purposes of the customer cross-margining framework. *See* NYUCC 8–101, legislative intent (“Except as otherwise expressly provided in this act, the provisions of this act are not intended to change or to control the definitions of the terms ‘security’ and ‘commodity’ contained in any other laws[.]”); 8–501, comment 1 (“A securities account is a consensual arrangement in which the intermediary undertakes to treat the customer as entitled to exercise the rights that comprise the financial asset” and “[t]he effect of concluding that an arrangement is a securities account is that the rules of [the NYUCC] apply.”).

⁶⁹ *See* NYUCC 8–501(b)(1) and (2).

FICC's estate but would instead be reserved for BD–FCMs for the benefit of their futures customers, subject to CME's security interest as discussed in more detail below.⁷⁰

Because FICC would not use XM Customer Margin or Treasury Securities Segregated Margin other than for purposes of securing or settling cross-margining customer cross-margined positions or the positions of customers that posted segregated customer margin, respectively, it is less likely there would ever be a shortfall in the particular financial assets (here, individual issues of Treasury securities or cash) needed to satisfy the security entitlements related to either type of margin.⁷¹ Moreover, FICC has represented that the FICC XM Customer Margin Accounts and the account(s) holding FICC Treasury Securities Segregated Margin will be the only types of securities accounts that FICC maintains. As a result, the only entitlement holders that FICC would have would be Netting Members.⁷²

⁷⁰ *See* NYUCC 8–102. The Bankruptcy Code points to otherwise applicable non-bankruptcy law (such as the NYUCC) to determine whether the debtor has an interest in an asset such that the asset forms part of the debtor's estate. *See, e.g., Butner v. U.S.*, 440 U.S. 48, 54–55 (1979). Collier on Bankruptcy section 541.03. Under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), the FDIC as receiver of a covered financial company is bound to respect security entitlements in a number of relevant ways. *See, e.g.,* 12 U.S.C. 5390 (a)(1)(D) (FDIC resolution subject to legally enforceable securities entitlements), (b)(5) (“This section shall not affect secured claims or security entitlements in respect of assets or property held by the covered financial company, except to the extent that the security is insufficient to satisfy the claim, and then only with regard to the difference between the claim and the amount realized from the security”), (c)(12)(B) (security entitlements not avoidable).

As a result, the Commission is of the view that NYUCC 8–503 would ensure that margin posted to FICC by BD–FCMs to secure cross-margining customer positions would not form part of FICC's estate in a bankruptcy, and the rights of the BD–FCM on behalf of its cross-margining customers with respect to such margin would not be disturbed in a resolution under Title II of the Dodd-Frank Act. Petitioners note that Article 8 of the NYUCC is also the basis on which the Depository Trust Company, banks that hold securities for customers, and numerous other custodians depend to ensure that securities and other assets they hold for their clients will not form part of their respective estates.

⁷¹ The rights of entitlement holders under Article 8 work differently than the rights of customers of an FCM or DCO under subchapter IV. In the latter case, the customers have a pro rata interest in customer property considered on an omnibus basis. By contrast, an entitlement holder's property interest under NYUCC 8–503 is an interest with respect to a specific issue of securities or financial assets. NYUCC 8–503 comment 1. The Commission is of the view that, in light of the overall structure of the program, this distinction does not entail a materially increased degree of risk to futures customers.

⁷² “Netting Member” is used herein as defined in FICC's Government Securities Division Rulebook. A Netting Member is a FICC member that is a member of FICC's Comparison System and Netting System.

acting on behalf of customers who posted: (1) XM Customer Margin in relation to the FICC XM Customer Margin Accounts or (2) Treasury Securities Segregated Margin in relation to the account(s) holding Treasury Securities Segregated Margin.⁷³ This is enforced by Section (i)(1) of the Order, which provides that FICC shall not establish any additional securities accounts without obtaining the consent of the Commission and the SEC. The Commission observes that, under NYUCC section 8–501, only a person with a securities account at a securities intermediary can have a security entitlement with respect to that intermediary.

Because the rights of entitlement holders are tied to particular issues of securities (e.g., CUSIPs) or financial assets (here, pursuant to FICC rules, including cash) rather than particular accounts, if there were a shortfall with respect to a particular security or cash in either the FICC XM Customer Margin Accounts or the account(s) holding Treasury Securities Segregated Margin, the rights of customers who posted XM Customer Margin or Treasury Securities Segregated Margin would apply to any of those particular securities (or cash) held by FICC.⁷⁴ This would include the specific securities (or cash) which might otherwise be traceable to FICC members that are not entitlement holders. This further reduces the likelihood of any deficit.

If, despite the foregoing, any such deficit were to arise with respect to a particular financial asset, NYUCC section 8–503(b) provides for all entitlement holders of a securities intermediary with respect to that particular financial asset to share such deficit on a pro rata basis.

D. Protection for Customers Not Participating in Cross-Margining

The Commission concludes that the cross-margining arrangement permitted by the Order does not present unacceptable risk to customers not participating in cross-margining. The Commission believes that a variety of protections, described by Petitioners and detailed below, will mitigate the risk of a shortfall of available assets for distribution resulting from customers' participation in cross-margining.

⁷³ Petition at 14.

⁷⁴ *See* NYUCC 8–503(b) (“An entitlement holder's property interest with respect to a particular financial asset under subsection (a) is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.”).

The first protection is Petitioners' cross-margining margin calculation methodology. Under the cross-margining arrangement permitted by the Order, eligible positions of a participating customer will be identified and considered as a combined portfolio. Each of CME and FICC will use its own margin model to determine the amount of margin savings percentage resulting from combining the portfolio and then will jointly apply the more conservative result. Thus, under the framework, both CME and FICC will use, as part of calculating the margin requirement, the same methodology developed by CME under the supervision of the Commission for non-cross-margined positions, unless the margin methodology developed by FICC under the supervision of the SEC provides a more conservative result. Given this, the margin the BD-FCM will collect after cross-margining will at no time be less than what will be required by CME's margin methodology. Thus, the risk that the BD-FCM will hold inadequate margin for cross-margining positions is no different in kind, and no greater, than the risk that the BD-FCM will hold inadequate margin for other types of positions.

Better Markets, FIA, and SIFMA/SIFMA AMG addressed in their comments the importance of adequate cross-margining margin requirements.⁷⁵ SIFMA/SIFMA AMG and FIA urged the Commission to ensure that margin requirements are sufficiently conservative.⁷⁶ SIFMA/SIFMA AMG proposed that the Commission stress test the margin calculations before approval of the proposal.⁷⁷ FIA believes it is "critical that both FICC and CME have in place plans to avoid market shocks from urgent changes to margin levels" and that "FICC, CME and the regulators . . . actively review the appropriateness of margin levels and maximum offsets to ensure that margin is at all times sufficient."⁷⁸ Better Markets commented that the Commission should consider that the risks may not be well-managed in cross-margining.⁷⁹ Better Markets stated that assumptions about correlations can break down in stress and would have CME apply conservative assumptions around correlation breaks.⁸⁰

While the Commission agrees with commenters about the importance of sufficiently conservative margin requirements, the Commission believes the margin requirements under the cross-margining program will be commensurate with the risks of each portfolio as required by Commission Regulation 39.13(g)(2)(i). The Commission has found that CME has maintained sufficient margin coverage for the proprietary cross-margining program that was originally implemented in 2004. As part of its ongoing supervision of CME, the Commission will conduct stress testing of the cross-margining program to determine that the risk exposures and margin offsets (the cross-margining levels) remain appropriate for the accounts participating in the cross-margining program. Further, the CME-FICC cross-margining program contains features aimed at maintaining conservative margin requirements, including each entity independently applying its own margin model to calculate potential margin requirements and then using the more conservative result. In addition to this, the program applies an 80 percent cap on margin benefits obtained through cross-margining, further ensuring conservativeness. As CME will be applying the same margin methodology used in the proprietary cross-margining program to the customer cross-margining program, the Commission expects the margin collected for customer cross-margining participants will continue to be commensurate with the risks of each portfolio.

Further, the Commission will continue to use its existing authority under the CEA, in particular Core Principle D, and its regulations (in particular, § 39.13(g)) to ensure that margin levels remain commensurate with the risks of each portfolio. The Commission's oversight of CME, including its existing cross-margining programs, includes conducting yearly examinations and quarterly supervisory meetings to ensure, amongst other things, that CME maintains adequate margin levels.

Second, the Commission concludes that futures customers of each participating BD-FCM would be protected from a loss during a BD-FCM bankruptcy because, as discussed above, all customer funds, including cross-margining customer funds held by FICC, would be treated as "customer property" for purposes of applying subchapter IV of chapter 7 of the Bankruptcy Code and Part 190. This ensures that during a BD-FCM bankruptcy, all commingled customer

funds in the futures account would receive similar protections, and non-participating customers would not experience a shortfall of the commingled customer funds caused by different treatment of cross-margining futures customer funds in bankruptcy.

Third, as described above, the Commission believes the risk that in the event of FICC's bankruptcy there would be any shortfall in the funds needed to satisfy the entitlements of cross-margining customers is low, given the protections provided under NYUCC Article 8 and the rule changes that FICC has undertaken to make—in particular, the fact that only the segregated accounts (for cross-margining customers and securities customers) would be entitlement holders. In addition, in order to allow the Commission to confirm that FICC would be at all times holding sufficient funds in its segregated accounts to satisfy all security entitlements, FICC will provide the Commission and the SEC each business day with reporting on the cash and, by CUSIP, securities (a) owed to BD-FCMs on behalf of their cross-margining customers or securities customers and (b) maintained in such accounts. This constitutes an additional protection that will minimize the risk that FICC could pose to customers not participating in cross-margining.

Fourth, CME will have a security interest in the FICC customer property, and CME and FICC cross-guaranty to pay the other amounts owed by a defaulted clearing member in accordance with an agreed calculation methodology. In the event that CME faces a deficit based on amounts owed to CME by a defaulted BD-FCM with respect to its cross-margining customers' positions cleared at CME, FICC would guarantee those obligations up to the value of the relevant customers' FICC customer property. Petitioners designed these features to allow CME to look to the FICC customer property to satisfy deficits owing to CME by the cross-margining customers, reducing the risk of a shortfall that could adversely impact non-participating customers.

Finally, the Commission concludes that the availability of customer-level cross-margining under the customer cross-margining framework should not adversely affect the portability of non-participating futures customers. Part 190 permits a bankruptcy or SIPA trustee of a failed BD-FCM to transfer the margin and positions of a non-participant customer even if it cannot similarly

⁷⁵ Better Markets Comment Letter at 2; SIFMA/SIFMA AMG Comment Letter at 3; FIA Comment Letter at 4.

⁷⁶ SIFMA/SIFMA AMG Comment Letter at 3; FIA Comment Letter at 4.

⁷⁷ SIFMA/SIFMA AMG Comment Letter at 3.

⁷⁸ FIA Comment Letter at 4.

⁷⁹ Better Markets Comment Letter at 2.

⁸⁰ *Id.*

transfer a cross-margining customer's positions and margin.⁸¹

The Commission accepts that, given the protections described above, CME and FICC should not be required to subordinate the claims of cross-margining customers relative to other futures customers pursuant to the special distribution framework in framework 1 of appendix B to Part 190.⁸² That framework would effectively subordinate the claims of cross-margining customers relative to other customers.⁸³ In light of the foregoing, the Commission concludes that the risks posed to the BD-FCM futures customer account from the cross-margining program are not materially greater in degree or kind than the risks posed by other futures positions and portfolio margining programs. Accordingly, under the Order, the special distribution framework will not be applied to the cross-margining framework thereunder, and BD-FCMs will be permitted to hold cross-margining customers' assets commingled with non-cross-margining futures customers' assets.

IV. Customer Protection—Permitted Depository

The CEA and Commission regulations also protect futures customer funds by requiring that the funds be held only at a permitted depository. Pursuant to Commission Regulation 1.20(b), FCMs are only permitted to hold futures customer funds with a bank or trust company, a DCO, or another FCM. Similarly, under Commission Regulation 1.20(g), DCOs are only permitted to hold futures customer funds with a bank or trust company, which may include a Federal Reserve Bank with respect to deposits by DCOs that have been designated as SIFMUs by the FSOC. Moreover, pursuant to Commission Regulation 1.49(d), a depository in the United States holding customer funds required to be

segregated pursuant to the CEA and Commission regulations must: (A) be a bank or trust company, a DCO, or an FCM; and (B) provide appropriate written acknowledgment as required under Commission Regulations 1.20 and 1.26. Because FICC is not a bank, trust company, DCO, or FCM, it is not a permitted depository under Commission Regulations 1.20 and 1.49.

As discussed above, the customer cross-margining framework under the Order will require BD-FCMs to post to FICC, and FICC to hold, XM Customer Margin. The Commission agrees with Petitioners that it is consistent with the public interest to permit FICC to hold XM Customer Margin subject to the terms and conditions of the Order. As a designated SIFMU and an SEC covered clearing agency,⁸⁴ FICC is subject to requirements and safeguards, including in relation to capital requirements and risk management, pursuant to SEC regulations, that are broadly similar to those that apply under Commission regulations to a systemically important DCO.⁸⁵ Furthermore, the Commission agrees with Petitioners that FICC would hold XM Customer Margin in a manner that is consistent with how DCOs are required to hold futures customer funds under CEA section 4d(b).⁸⁶ Further, as required by section (e)(vii) of the Order, FICC would deposit cross-margining customer funds in accounts at the FRBNY, or at a FDIC-insured commercial bank, with names that clearly identify the accounts as holding futures customer funds. Moreover, the Commission concludes that the design and safeguards of the customer cross-margining framework under the Order, as described above,⁸⁷ will leverage both Part 190 and commercial law, in particular the NYUCC, effectively to ensure that XM Customer Margin held at FICC is available either to CME to satisfy shortfalls in its futures customer account and/or returned to customers regardless of the solvency of FICC. Thus, the Commission concludes that FICC as a depository offers similar safeguards and financial security as a DCO registered with the Commission, which is a permitted depository under Commission Regulations 1.20 and 1.49. Accordingly, the Commission believes that allowing BD-FCMs to deposit customer funds with FICC, and FICC to

hold such funds in the manner described herein, is consistent with the objectives of the CEA and Commission regulations promulgated thereunder.

V. Additional Comments

The Commission received additional comments about cross-margining programs generally that pertain to DCO operational resilience; DCO publicly available information; termination of a cross-margining agreement; the impact of current bank capital rules; and the timing of the Commission's action.

A. Operational Resilience

SIFMA/SIFMA AMG commented that the Commission should ensure CME and FICC have sufficient operational resilience, suggesting that "the margin calculation mechanisms and any optimization platforms offered by the clearing houses be appropriately resilient and tested for operational resilience."⁸⁸ SIFMA/SIFMA AMG recommended that CME and FICC have "developed and fully transparent fallback procedures for any operational issues. . . ." ⁸⁹ The Commission believes the requirements of the CEA, in particular Core Principles B—Financial Resources, D—Risk Management, and I—System Safeguards, and the Commission's implementing regulations (in particular, Commission Regulations 39.11, 39.13, and 39.18) that are applicable to CME, and the SEC operational resilience requirements that are applicable to FICC as a covered clearing agency are sufficient to address operational resilience of these clearinghouses.⁹⁰ Further, the Commission notes that CME and FICC have operated the proprietary cross-margining program for over 20 years. As SIFMA/SIFMA AMG did not identify any unique operational risks caused by extending the proprietary cross-margining arrangement to customers warranting additional operational resilience measures, the Commission did not amend the Order based on this comment.

⁸¹ See Commission Regulation 190.07(d)(2) ("if all eligible commodity contract accounts held by a debtor cannot be transferred under this section, a partial transfer may nonetheless be made.").

⁸² This is consistent with the approach set forth in the GMAC Recommendation, III.2, at p. 3.

⁸³ Under that framework, if the percentage shortfall for cross-margining customers, considered alone, would be greater than that for non-cross-margining customers, considered alone, then the cross-margining customers would be treated separately from non-cross-margining customers, thus protecting the non-cross-margining customers. If, instead, the percentage shortfall for non-cross-margining customers is equal to or greater than the percentage shortfall for cross-margining customers, then the cross-margining customers and the non-cross-margining customers will be paid *pro rata* over the same pool, to the disadvantage of the cross-margining customers.

⁸⁴ See Section 3(a)(23)(A) of the Exchange Act, 15 U.S.C. 78c(a)(23)(A); SEC Rule 17Ab2–1.

⁸⁵ Compare, e.g., 17 CFR 39.33(a)(1) and 240.17ad–22(e)(4)(ii); 17 CFR 39.11(e), 39.33(c), and 240.17ad–22(e)(7)(i) and (ii).

⁸⁶ See section III.A., *supra*, Commingling.

⁸⁷ See section III.B., *supra*, Protection for the Margin of Cross-Margining Participants in the Event of a BD-FCM Bankruptcy.

⁸⁸ SIFMA/SIFMA AMG Comment Letter at 3.

⁸⁹ *Id.*

⁹⁰ See 17 CFR 240.17ad–22(e)(17) (requiring each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage operational risks by: identifying plausible sources of internal and external operational risk, mitigating their impact through the use of appropriate systems, policies, procedures, and controls; ensuring that systems have a high degree of security, resilience, operational reliability, and adequate scalable capacity; and establishing and maintaining business continuity plan that addresses events posing significant risk of disrupting operations.)

B. Public Information

AIMA proposed that CME-FICC cross-margining methodology should be supported by publicly available documentation that includes “(i) the risk factors and correlation assumptions underlying cross-product offsets; (ii) the stress scenarios and lookback windows used in determining margin requirements; (iii) the processes for model calibration, backtesting and performance monitoring; and (iv) the governance framework for changes to margin models or offset parameters.”⁹¹

The Commission did not propose a public information condition specific to the expansion of the proprietary cross-margining program to include customer clearing. Commission Regulation 39.21(a) requires a DCO to “provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the” DCO, and § 39.21(c)(3) requires, in relevant part, the DCO to post on its website “[i]nformation concerning its margin-setting methodology. . . .” CME already provides information about the SPAN margin methodology that will be applied to cross-margined accounts on its website. Similarly, SEC regulations⁹² require a covered clearing agency to “[p]rovide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency, and FICC provides a tool that allows users to estimate potential cross-margin reductions. Accordingly, the Commission declines to impose a new public information requirement for the cross-margining program’s margin methodology merely because the program will be expanded to include customer clearing. CME and FICC propose to use the same margin methodology as the proprietary cross-margining program that has been in operation for over twenty years, and the Commission proposes no changes that would necessitate different public information than that provided for the proprietary program.

C. Termination of Cross-Margining Participation

AIMA cautioned that without additional Commission required protections, a customer’s cross-margining capabilities could be unilaterally suspended or terminated, potentially subjecting a customer to an intraday initial margin surge, which

could force a customer to unwind certain trades and/or stress collateral during volatility.⁹³ AIMA requested that the Commission require CME, FICC and BD-FCMs to provide customers with clear, objective, and transparent criteria that govern when cross-margining access may be suspended or terminated; require criteria that prohibit discriminatory or commercially motivated suspensions or terminations that are unrelated to bona fide risk concerns; and require prior written notice before a customer’s cross-margining capabilities are suspended or terminated.⁹⁴

The CEA and Commission regulations place responsibility for risk management on DCOs and FCMs,⁹⁵ and any attempt to restrict their ability to terminate cross-margining participants could compromise their ability to properly manage the risk. The Commission believes that CME, FICC, and BD-FCMs, will be best positioned to assess current mark risk conditions and should therefore retain the discretion to manage risk as necessary, including by potentially suspending or terminating cross-margining participants from cross-margining programs in a timely fashion and without the delay imposed by issuing advance notice. Therefore, the Commission declines to impose additional conditions in the order regarding suspending or terminating cross-margining participation.

D. Cross-Margining and Bank Capital Rules

FIA commented that cross-margining’s treatment in banking capital rules reduces the usefulness of cross-margining.⁹⁶ FIA encouraged the Commission to engage with U.S. prudential regulators to revise the capital rules for banking organizations to permit “a banking organization, including a subsidiary BD-FCM, to recognize [the cross-margining] risk-

offset when calculating exposures to a customer for regulatory capital purposes.”⁹⁷ ISDA also commented that adjustments to bank capital regulation to recognize corresponding cross-product netting will contribute to increased market efficiency.⁹⁸ As the comments are outside of the scope of the proposal and the Commission’s statutory authority, the Commission declines to adopt changes to the Order to address them. However, the Commission will continue to engage with the prudential regulators where possible as they consider amendments to the existing bank capital framework.

E. Timing

Finally, ISDA urged the Commission to finalize the proposal expeditiously, so it may issue the Order in advance of the implementation of the Treasury Clearing Requirement.⁹⁹ The Commission acknowledges the extent of industry’s preparations underway to comply with the Treasury Clearing Requirement by the December 31, 2026 implementation date for eligible cash market Treasury transactions and the June 30, 2027 implementation date for eligible repo market transactions¹⁰⁰ and is therefore issuing the Order as effective immediately so that CME, FICC, BD-FCMs, and their customers may implement the expanded customer cross-margining arrangement as soon as operationally feasible.

VI. CEA Section 4(c) Determination To Grant Partial and Conditional Exemption From Section 4d of the CEA and Commission Regulations 1.20 and 1.49

The Commission observes that the Order is consistent with the public interest and the purposes of the CEA.¹⁰¹ In light of the foregoing, the Commission exempts CME, FICC, and BD-FCM members of CME and FICC from section 4d of the CEA and Commission Regulations 1.20 and 1.49, subject to the conditions detailed above, to the extent necessary to permit the customer cross-margining framework described herein. The Commission will

⁹⁷ *Id.*

⁹⁸ ISDA Comment Letter at 2.

⁹⁹ ISDA Comment Letter at 2.

¹⁰⁰ SEC Press Release, SEC Extends Compliance Dates and Provides Temporary Exemption for Rule Related to Clearing of U.S. Treasury Securities (Feb. 25, 2025), <https://www.sec.gov/newsroom/press-releases/2025-43-sec-extends-compliance-dates-provides-temporary-exemption-rule-related-clearing-us-treasury>.

¹⁰¹ These include, as relevant here, “to ensure the financial integrity of all transactions subject to [the CEA] and the avoidance of systemic risk” and “to promote responsible innovation.” See CEA section 3(b), 7 U.S.C. 5(b).

⁹¹ AIMA Comment Letter at 2.

⁹² Specifically, 17 CFR 240.17ad-22(e)(23)(ii).

⁹³ AIMA Comment Letter at 2.

⁹⁴ *Id.*

⁹⁵ See, e.g., Core Principle D(iii) (7 U.S.C. 7a-1(c)(2)(D)(iii)), Commission Regulation 39.13 (including, e.g., § 39.13(g)(8)(ii) (a DCO “shall require its clearing members to collect customer initial margin at a level that is . . . commensurate with the risk presented by each customer account. . . . the [DCO] shall also have reasonable discretion in determining whether and by how much customer initial margin requirements shall, at a minimum, exceed clearing initial margin requirements for categories of customers determined by the clearing member to have heightened risk profiles.”)); Commission Regulation 1.73(a)(4) (Each FCM that is a clearing member of a DCO shall “conduct stress tests under extreme but plausible conditions of all positions . . . in each customer account that could pose material risk to the [FCM] at least once per week.”).

⁹⁶ FIA Comment Letter at 3.

allow the commingling of futures customer funds and futures customer positions with cross-margined securities assets held at BD-FCMs, for the purpose of customer cross-margining between positions held at CME and FICC. Further, the Commission permits CME and the BD-FCM members to deposit with FICC, and FICC to receive and hold, such futures customer funds even though FICC is not a permitted depository under Commission regulations.

The Commission has in the past permitted FCMs to commingle customer futures or swap positions with cleared positions in other products for the purposes of achieving risk offsets and portfolio margining, subject to specific terms and conditions designed to protect both participating and non-participating customers.¹⁰² As discussed above, the Commission concludes that CME and FICC will hold the commingled customer funds in a manner consistent with the customer protections intended by the CEA and Commission regulations. Customer assets will be segregated from other assets, and other customer protections in Commission regulations, such as the written acknowledgement from a depository regarding its obligations with regard to customer funds, will apply.

The Commission concludes the Order contains the terms necessary to ensure adequate protection for futures customer funds. The Order provides for the safe treatment of cross-margining customer funds through terms requiring FICC and CME to carry cross-margining customer assets separately and treat them as belonging to the customers of the BD-FCM.¹⁰³ The Order also contains terms supporting the bankruptcy treatment for cross-margining customer funds described above, including a term requiring BD-FCMs to enter into agreements with participating customers acknowledging their assets' bankruptcy treatment; terms on FICC holding customer margin segregated in a "securities account" at appropriate depositories and agreeing to treat such margin as "financial assets," as such terms are defined under NYUCC Article 8; and a term requiring FICC to permit the porting of customer property.¹⁰⁴ The Order further requires Petitioners to have the rules and agreements necessary

to ensure customer cross-margining functions as described above, by having rules on customer and position eligibility and on the granting of security interests in cross-margining customer property.¹⁰⁵ The Order also contains terms to ensure adequate margin is collected under the customer cross-margining program and to ensure adequate regulatory oversight.¹⁰⁶

The Commission believes that the cross-margining framework under the Order will make it likely that customer funds will appropriately be protected during a BD-FCM bankruptcy. As described above, the customer funds held by FICC would constitute "customer property" held by the BD-FCM in its capacity as an FCM for the purposes of distribution in bankruptcy and would be available to customers. This is designed to ensure that cross-margining customers will have the same priority right to receive distribution on their allowed claims against the customer property as other customers of the insolvent BD-FCM in the futures account class. In addition, FICC and CME will provide for the porting of the commingled cross-margined positions in the event of a clearing member default.

As described in section III.B above, the risks to cross-margining customers posed by a FICC bankruptcy will be addressed. FICC will, consistent with the Order, take steps to ensure any assets credited to a FICC XM Customer Margin Account will be available for distribution to customers in a FICC bankruptcy or a proceeding under Title II of the Dodd-Frank Act. For the reasons discussed in section III.C above, under applicable law, customer property will not be used to satisfy the claims of FICC's creditors, except for margining or settling customer positions, and will not form part of FICC's estate. Accordingly, the Commission believes cross-margining customer funds will be adequately protected in a FICC bankruptcy or Title II proceeding.

For the reasons discussed in section III.D above, the Commission also concludes customers who do not participate in cross-margining are unlikely to be impacted by the cross-margining arrangement. As described above, the more conservative cross-margining margin methodology of either CME or FICC will be applied. Also, customer funds are likely to be effectively protected in the unlikely event of a FICC bankruptcy, making it unlikely non-participating customers

would experience losses in that case. Further, portability for non-participating customers is not adversely affected by other customers participating in cross-margining. The Commission does not believe the risks posed to the BD-FCM futures customer account from the cross-margining program under the Order are materially greater in degree or kind than the risks posed by other futures positions and portfolio margining programs. Thus, the Commission does not impose via its Order the special distribution framework in framework 1 of appendix B to Part 190.

The Commission also concludes, for the reasons discussed in section IV above, that customers will not be harmed by allowing FICC to act as a depository for customer funds. As discussed above, FICC will offer similar safeguards and financial security as a DCO registered with the Commission, because it is a designated SIFMU and an SEC covered clearing agency. BD-FCMs depositing customer funds with FICC, and FICC holding such funds, is consistent with safety and security purposes of the Commission regulations requiring that only certain depositories hold customer funds.

The Commission concludes the participants will be appropriate persons. The definition of "appropriate person" under section 4(c)(3) of the CEA includes specified categories of persons as well as "other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or *the applicability of appropriate regulatory protections*" (emphasis added).

Each of FICC, CME, and the eligible BD-FCMs is an appropriate person under prong (F), (I), or (J) of the definition.

The Commission determines cross-margining customers should be treated as appropriate persons for purposes of section 4(c)(3) of the CEA in light of the existing and appropriate regulatory protections for eligible customers under the CEA and Commission regulations as well as the safeguards under the customer cross-margining framework. Specifically, the Commission accepts Petitioners' assertion that each eligible customer will be a person that is permitted to transact through a BD-FCM. In other words, such customers are already persons that Congress and regulators have determined to be appropriate to engage in such transactions. Allowing eligible customers to opt into cross-margining under the customer cross-margining framework will not unduly expose such customers to additional risk.

¹⁰² See, e.g., Order, Treatment of Funds Held in Connection with Clearing by ICE Clear Credit of Credit Default Swaps (Jan. 14, 2013); Order, Treatment of Funds Held in Connection with Clearing by ICE Clear Europe Limited of Contracts Traded on ICE Futures Europe, ICE Futures US, and ICE Endex (Mar. 26, 2015).

¹⁰³ Order, sections (b), (d) and (e)(v).

¹⁰⁴ Order, sections (c), (e)(iv), (e)(vii) and (e)(viii).

¹⁰⁵ Order, sections (e)(i)–(iii) and (e)(vi).

¹⁰⁶ Order, sections (f)–(k).

Additionally, the customer cross-margining framework under the Order and the Order itself include the customer protection and risk management safeguards discussed above to ensure that the requested relief will not cause any material adverse effect on the Commission's or CME's ability to fulfill its regulatory or self-regulatory duties.

Finally, the Commission concludes that, in light of the risk mitigants and customer protections discussed above, customer cross-margining under the Order will support the stability of the broader financial system. Cross-margining will, on balance, lower the cost of central clearing for Treasury securities transactions and certain Treasury and interest rate futures, by decreasing customers' initial margin requirements to reflect the risk of a combined portfolio. Lowering clearing costs will support the implementation, and lower the financial burden, of the Treasury Clearing Requirement, which itself supports financial stability by increasing central clearing. In light of the foregoing, the Commission believes the Order will promote responsible economic and financial innovation and fair competition, and is consistent with the public interest, as that term is used in section 4(c) of the CEA.

VII. Findings and Conclusions

After careful review and consideration of the comments, and for the reasons cited herein and set forth in the Proposal, the Commission has determined that the requirements of Section 4(c) of the CEA have been met with respect to granting Petitioners the relief sought, subject to certain conditions of the Order. The Commission is therefore issuing an order granting the exemption essentially as proposed. However, the Commission is making minor technical corrections to the language of the order.¹⁰⁷ The Commission believes the exemption would promote responsible economic and financial innovation and fair competition, and is consistent with the "public interest," as that term is used in Section 4(c) of the CEA.

VIII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")¹⁰⁸ requires that agencies

consider whether the exemption will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. The Commission finds that the exemption will not have a significant economic impact on a substantial number of small entities.

The Order will directly impact three categories of entities: CME (a DCO), FICC (a clearing agency registered with the SEC) and BD-FCM members of both CME and FICC that are dually registered with the CFTC and SEC. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its actions on small entities in accordance with the RFA.¹⁰⁹ The Commission has previously determined that DCOs, are not small entities for purposes of the RFA.¹¹⁰ Further, the Commission has previously determined that registered FCMs are not small entities for the purpose of the RFA,¹¹¹ and BD-FCMs are, by definition, FCMs.

With respect to FICC, the SEC has established threshold definitions in its regulations governing when clearing agencies registered with the SEC qualify as small entities. Specifically, the SEC's regulations provide that, when used with reference to a clearing agency, the terms "small business" or "small organization" shall include a clearing agency that: (i) compared, cleared, and settled less than \$500 million in securities transactions during the preceding fiscal year; (ii) had less than \$200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter); and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.¹¹² The Commission notes that FICC processed \$11.8 trillion on a single day, June 30, 2025,¹¹³ and, as of September 30, 2025, held in excess of \$77 billion in post-haircut clearing fund contributions from its participants.¹¹⁴

The Commission also believes the exemption will not have a substantial impact on a substantial number of small entity customers. Participation in cross-

margin is voluntary. Further, the exemptive order granted by the Commission will lower costs for customers with positions at both CME and FICC, reducing the cost of clearing to reflect that of the total portfolio. As discussed above, the Commission expects that under the cross-margining framework, participating cross-margining customers' funds will still receive the level of protection mandated by the CEA and Commission regulations. Finally, as discussed above, non-participating customers will not be meaningfully impacted by the other customers participating in cross-margining. The Commission did not receive any comments on whether there is a significant impact on a substantial number of small entities.

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

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")¹¹⁵ imposes certain requirements on federal agencies, including the Commission, in connection with conducting or sponsoring any "collection of information," as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and budget ("OMB").¹¹⁶ The PRA is intended, in part, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government. The PRA applies to all information, "regardless of form or format," whenever the government is "obtaining, causing to be obtained [or] soliciting" information, and requires "disclosure to third parties or the public, of facts or opinions," when the information collection calls for "answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons." The PRA would not apply in this case given that the exemption will not impose any new recordkeeping or information collection

¹⁰⁹ See 47 FR 18618, 18618–18621 (Apr. 30, 1982).

¹¹⁰ See 66 FR 45604, 45609 (Aug. 29, 2001).

¹¹¹ See 47 FR 18618, 18619 (Apr. 30, 1982).

¹¹² 17 CFR 240.0–10(d).

¹¹³ See <https://www.dtcc.com/news/2025/july/02/ficc-successfully-processes>.

¹¹⁴ See <https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/CPMI-IOSCO-Public-Quantitative-Disclosures---Q3-2025.pdf> at 8.

¹⁰⁷ In particular, (A) corrected the definition of Segregated Customer Margin to refer to FICC rules, which have been found by the SEC to be consistent with the conditions in 17 CFR 240.15c–3a, Note H (see 89 FR 94801), and (B) corrected a number of references to Segregated Customer Margin to use the correct term.

¹⁰⁸ 5 U.S.C. 601 *et seq.*

¹¹⁵ 44 U.S.C. 3501 *et seq.*

¹¹⁶ See 44 U.S.C. 3507(a)(3); 5 CFR 1320.5(a)(3).

requirements, or other collections of information, on ten or more persons that require approval of the OMB. Accordingly, the CFTC has not prepared a PRA submission to OMB with respect to this order.

C. Cost and Benefit Considerations

The Commission recognizes that the Order may impose costs. The Commission has endeavored to assess the expected costs and benefits of the Order in quantitative terms, where possible. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the applicable amendments in qualitative terms. The Commission received two comments on its cost benefit considerations or analysis.

1. Baseline

The Commission identifies and considers the benefits and costs of the Order relative to a baseline standard of those generated by the current statutory and regulatory framework applicable to futures contracts, *i.e.*, the status quo. This framework includes the provisions in section 4d of the CEA and current Commission Regulations 1.20 and 1.49(d). The specific elements of the baseline that will be impacted by the amendments are discussed in more detail below.

2. Costs

The exemption conditionally exempts CME and FICC from limited aspects of sections 4d of the CEA and from the permitted depository requirements in Commission Regulations 1.20 and 1.49. While complying with the Commission's Order would entail compliance costs for CME, FICC, and eligible BD-FCMs, the Order does not mandate participation in cross-margining and the assumption of these costs. To the extent CME, eligible BD-FCMs, and futures customers elect to participate in cross-margining, they are electing to assume any associated costs. Moreover, the conditions to the Order are consistent with the Petitioners' design of the cross-margining program and are necessary to achieve the risk mitigants and customer protections that are the basis of that program.

The cross-margining program permitted under the Order is an instance of a portfolio margining system. Portfolio margining is widely used throughout the futures industry, both within individual DCOs and in cross-margining programs between clearing organizations (such as the existing proprietary cross-margining program between the Petitioners).

Portfolio margining establishes margin levels by assessing the market risk of a "portfolio" of positions in securities or commodities. Under a portfolio margining system, the amount of required margin is determined by analyzing the risk of each component position in a customer account (*e.g.*, a class of option with the same expiration date) and by recognizing any risk offsets in an overall portfolio of positions (*e.g.*, across options and futures on the same underlying instrument). So that margin that is commensurate with the relevant risks is deposited to cover extraordinary market events, one or more additional adjustments may be applied in calculating a customer's required margin.¹¹⁷

The calculation of the risk offsets that are recognized in a portfolio margining system is based on a combination of statistical analysis of the correlation between the components of the portfolio and judgment, and is subject to rigorous risk management, including through back-testing and stress testing.

Nonetheless, inherent in any portfolio margining system is the possibility that, during a particular stressed market movement, the losses experienced on the combined position will exceed the margin requirement remaining after including those risk offsets, leading to a margin deficiency that is greater than would have been the case had the risk offset not been recognized.

If such an event were to occur within the context of the cross-margining program that is the subject of the Order, and the margin deficiency within the futures or securities customer accounts of a participating BD-FCM were to exceed the capital and other resources available to that BD-FCM, leading to bankruptcy, then customers might suffer losses in the bankruptcy of that BD-FCM that would be larger than if that cross-margining program were not enabled. This possibility is a cost of granting the Order.

However, the Commission believes that the likelihood of such losses is low if the risks are well managed as required in the customer cross-margining framework. Given the highly regulated and resilient natures of CME as a DCO and FICC as a securities clearing agency, the experience the two clearing organizations have in implementing portfolio margining and in particular cross-margining programs, the risk management requirements described in section III.D, and the protections included in the customer cross-margining framework, the Commission

estimates that the circumstances that may give rise to such costs would be very remote. The costs associated with these risks are difficult to quantify because they depend on unknown and unlikely future events to materialize, but the Commission acknowledges some residual risk remains that could impose costs on Petitioners, clearing members, and customers.

The Commission received comments from AIMA and SIFMA/SIFMA AMG pertaining to cost in support of the exemptive order.¹¹⁸ As discussed below, AIMA agreed with the Commission that "expanding cross-margining arrangements to customers, pursuant to the Proposed Order, can increase clearing efficiency, reduce the costs of clearing, bolster the broader financial system and more."¹¹⁹ SIFMA/SIFMA AMG also agreed that "cross-margining reduces clearing costs. These cost reductions will help support and counterbalance potential clearing cost increases Treasury market participants may experience with mandatory clearing of certain U.S. Treasury transactions taking effect later this year and in 2027."¹²⁰

3. Benefits

The exemption would benefit market participants by reducing the costs of clearing Treasury securities transactions in a manner that aligns the margin required for a portfolio of risk-related positions, involving positions cleared at CME and positions cleared at FICC, with the risk of the portfolio considered as a whole. ISDA agreed with the Commission "that the proposed exemption is instrumental in facilitating the efficient implementation of the SEC's treasury clearing rules" and the "resulting reduction in duplicative margin will make clearing more efficient and offset some of the additional financial resource requirements that the industry will face upon implementation of the [SEC's] U.S. Treasury clearing mandate."¹²¹ Eligible customers participating in cross-margining will benefit from the reduced margin costs for their overall portfolio.¹²² BD-FCMs will also benefit from more efficient clearing, as they, and in turn FICC and CME, will reduce their risk exposure to the cross-margining customer.

The exemption will also benefit the broader financial system. By making

¹¹⁸ AIMA Comment Letter at 2; SIFMA/SIFMA AMG Comment Letter at 2.

¹¹⁹ AIMA Comment Letter at 2.

¹²⁰ SIFMA/SIFMA AMG Comment Letter at 2.

¹²¹ ISDA Comment Letter at 2.

¹²² For a discussion of the mechanics of reduced margin costs, see note 15 above and accompanying text.

¹¹⁷ Customer Margin Rules Relating to Security Futures, 67 FR 53146, 53148 (Aug. 14, 2002).

Treasury security clearing less costly, the exemption is expected to incentivize clearing of Treasury security transactions. As discussed above, centralized clearing reduces the risk of default by imposing a central counterparty between buyers and sellers, and can lower the potential for a single market participant's failure to destabilize other market participants or the financial system more broadly. The Commission considers central clearing through a highly regulated clearing organization to be highly supportive of financial stability. Thus, the customer cross-margining framework benefits the public interest because it will support the stability of the broader financial system.

D. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA.¹²³ Section 15(a) requires the Commission to consider the costs and benefits of its action in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

1. Protection of Market Participants and the Public

The Commission believes the exemption will benefit the public and market participants while not adversely affecting protections. The exemption will serve the public by encouraging the clearing of Treasury securities transactions, thus increasing financial stability, which serves the public's interest generally. Market participants' individual financial interests are also served by making clearing less expensive and more efficient.

Although less margin will be collected through the cross-margin program, the Commission does not believe that the exemption will

adversely impact the security of market participants' assets. As discussed above, the conditions in the Order that will permit the customer cross-margining framework also implement safeguards to protect futures customer funds. The cross-margined funds will be segregated from any proprietary funds and will still receive the protections found in the CEA and Commission regulations. The futures customer funds will be subject to the CEA's protections in a potential bankruptcy of a participating BD-FCM (or CME) and will be protected under NYUCC Article 8 in a potential bankruptcy of FICC. In addition, the Commission believes the risks to non-participating customers, such as clearing in an account class in which other participants have margin set through portfolio margining incorporating Treasury securities, are similar to the risks posed by customers clearing in a class where others hold futures positions and have their positions portfolio margined. Finally, FICC, as a depository regulated as a covered clearing agency and a SIFMU by the SEC, is comparable as a matter of safety to other permitted depositories, so no material additional risk is anticipated for market participants by the Commission permitting FICC as a depository.

SIFMA/SIFMA AMG and ISDA agreed that the expansion of the cross-margining agreement would support customer protection.¹²⁴ SIFMA/SIFMA AMG supported the exemptive order "as an appropriately tailored approach to achieving broader capital efficiency while maintaining the customer and market resiliency protections of centralized clearing."¹²⁵ Similarly, ISDA commented that the "proposed treatment of customer funds pursuant to well-established statutory and regulatory frameworks is designed to deliver these efficiencies without jeopardizing customer protections or legal certainty."¹²⁶

2. Efficiency, Competitiveness, and Financial Integrity

The Commission believes that the exemption will benefit the efficiency, competitiveness, and financial integrity of the derivatives markets. The exemption will make clearing more efficient by permitting cross-margining of Treasury futures with Treasury securities resulting in the reduction of duplicative margin and offsetting some of the additional financial resource

requirements that the industry will face upon implementation of the SEC's U.S. Treasury clearing mandate. Cross-margining enables CME and FICC to lower margin requirements, however, this more accurately reflects the risk of the aggregate portfolio instead of the aggregate risk of the separate futures and securities positions, increasing the competitiveness of their offering.

The exemption also benefits financial integrity. The exemption will support the implementation of the Treasury Clearing Requirement, an SEC mandate enacted, in part, to increase the financial integrity of the Treasury securities market through expanded use of central clearing. A more stable Treasury securities market also benefits the financial integrity of the financial system (including the derivatives markets) more broadly. ISDA agreed that "[b]y enhancing the stability of the Treasury market, these measures also contribute to the overall robustness and reliability of both the derivatives markets and the wider financial system."¹²⁷

SIFMA/SIFMA AMG also noted the benefit of enhanced efficiency for customers that will be eligible to participate in the cross-margining agreement with the exemptive relief.¹²⁸ "As noted in the CFTC's Global Markets Advisory Committee's [] February 2024 recommendation entitled FICC-CME Customer Position Cross-Margining Structure Recommendation, there is a history of regulated central clearing counterparties successfully leveraging limited cross-margining to optimize capital efficiency without undermining the market resiliency afforded by centralized clearing and associated margin requirements. For example, since 2004, CME and FICC have had a cross-margining agreement that applies only to the proprietary futures and securities positions of CME-FICC joint clearing members, enabling them to more efficiently manage the risk associated with their proprietary positions in U.S. Treasuries and Treasury futures as a single portfolio. The Proposal would extend this cross-margining program to customer accounts of eligible BD-FCMs (many of which are sophisticated institutional customers), allowing participating customers to benefit from the same level of capital efficiencies as BD-FCMs."¹²⁹

¹²⁴ SIFMA/SIFMA AMG Comment Letter at 2; ISDA Comment Letter at 2.

¹²⁵ SIFMA/SIFMA AMG Comment Letter at 2.

¹²⁶ ISDA Comment Letter at 2.

¹²⁷ *Id.*

¹²⁸ SIFMA/SIFMA AMG Comment Letter at 2.

¹²⁹ *Id.*

¹²³ 7 U.S.C. 19(a).

3. Price Discovery

The Commission does not anticipate the exemption to have an impact on price discovery.

4. Sound Risk Management Practices

Although less margin is collected under the cross-margining program, the Commission believes that the exemptive order, in light of the conditions included, reflects sound risk management practices. Encouraging central clearing supports sound risk management. As stated above, centralized clearing through a highly regulated clearing agency decreases the risk of default and risk of market destabilization. Additionally, cross-margining reflects sound risk management because margin costs will be properly calibrated to the risks for futures customers' overall portfolios.

The Commission further notes that, notwithstanding the exemption and as discussed above, cross-margining futures customers will receive protections comparable to what they would have received absent the exemption. Risks to customer funds will be managed and minimized according to the standards set forth in the CEA.

5. Other Public Interest Considerations

The Commission believes the relevant public interest considerations are already discussed in the foregoing.

IX. Order of Exemption

After considering the above factors, the Commission issues the following:

Order

The Commission, pursuant to its authority under section 4(c) of the CEA, 7 U.S.C. 6(c), and subject to the conditions below, hereby grants (A) a limited exemption to Commission Regulations 1.20 and 1.49 to permit dually-registered BD-FCMs that are clearing members at both CME and FICC to deposit at FICC, and to permit FICC to hold, customer funds and margin associated with customer cross-margining, and to permit CME to treat FICC as a permissible location to hold the foregoing; and (B) a limited exemption to section 4d(a)(2) of the CEA and Commission regulations thereunder to permit eligible BD-FCMs to hold, in a futures account, eligible securities positions and associated money, securities, and property of eligible customers, together with the futures positions and futures customer funds held by the eligible BD-FCM.

The relief granted above is subject to FICC, CME, and the relevant Eligible BD-FCMs complying with the

requirements set forth below as applicable to each:

(a) Definitions.

- i. "Customer" has the meaning set forth in Commission Regulation 1.3.
- ii. "Eligible BD-FCM" means an entity that is (1) a Netting Member (as such term is defined in FICC Rule 1 of the FICC Government Securities Division Rulebook); (2) a clearing member of CME; (3) registered with the Commission as a futures commission merchant; and (4) registered with the Securities and Exchange Commission as a broker-dealer.
- iii. "Eligible Customer Positions" means Eligible Futures Positions and Eligible Securities Positions.
- iv. "Eligible Futures Positions" means Customer positions in the CME products listed as "CME Eligible Products" in Exhibit A to the Amended and Restated Cross-Margining Agreement between FICC and CME dated January 22, 2024, as that exhibit may be amended from time to time.
- v. "Eligible Securities Positions" means Customer positions in U.S. Treasury Notes and Bonds held in a cross-margining account at FICC.
- vi. "FRBNY" means the Federal Reserve Bank of New York.
- vii. "NYUCC" means the New York Uniform Commercial Code.
- viii. "Segregated Customer Margin" means margin deposited by a Netting Member of FICC and held by FICC in a manner consistent with FICC rules that the Securities and Exchange Commission has determined to meet the conditions of Note H of 17 CFR 240.15c3-3a in a notice that has been published (and not subsequently withdrawn) pursuant to paragraph (b)(3) of such Note H.
- ix. "XM Securities Customer Property" means Eligible Securities Positions and associated margin held in a cross-margining account at FICC.
- x. "XM Customer Margin" means customer property deposited to margin, secure, or guarantee Eligible Customer Positions.
- (b) *BD-FCM Treatment of Customer Positions and Margin.* All assets received by an BD-FCM to margin, guarantee, or secure Eligible Customer Positions, or accruing as a result of such trades or contracts, and held subject to the terms of the Order shall be carried by the BD-FCM in a futures account for or on behalf of the cross-margining customers and shall be deemed to have been received by the Eligible BD-FCM and be accounted for and treated and dealt with as belonging to the cross-margining customers of the eligible BD-FCM consistent with section 4d(a)(2) of

the Commodity Exchange Act and the Commission's regulations thereunder.

(c) *BD-FCM Cross-Margining Customer Agreements.*

Each Eligible BD-FCM shall enter into a participation agreement with each cross-margining customer prior to the cross-margining customer's participation in cross-margining under the customer cross-margining framework, pursuant to which the cross-margining customer shall specifically agree and acknowledge that:

- i. Its XM Securities Customer Property will not receive customer treatment under the Securities Exchange Act of 1934 or SIPA or be treated as "customer property" as defined in 11 U.S.C. 741 in a liquidation of the Eligible BD-FCM;
- ii. Its Eligible Securities Positions and associated margin held in a cross-margining account at FICC (*i.e.*, XM Securities Customer Property) will be subject to any applicable protections under subchapter IV of chapter 7 of Title 11 of the United States Code and rules and regulations thereunder; and
- iii. Claims to "customer property" as defined in SIPA or 11 U.S.C. 741 against the Eligible BD-FCM with respect to its Eligible Securities Positions and associated FICC-held margin will be subordinated to the claims of all other customers, as the term "customer" is defined in 11 U.S.C. 741 or SIPA.

(d) *FICC Operations.* FICC shall operate the cross-margining program in accordance with the following:

- i. FICC will record all of a BD-FCM's customers' Eligible Securities Positions in an account on its books and records for recording the BD-FCM's cross-margining customers' transactions.
- ii. FICC will credit margin it collects to collateralize a BD-FCM's customers' Eligible Securities Positions to an account as specified in section (e) below.

(e) *FICC and CME Rules.* FICC shall, consistent with section 19(b) of the Securities Exchange Act, 15 U.S.C. 78s(b), and CME shall, consistent with section 5c(c) of the Commodity Exchange Act, 7 U.S.C. 7a-2(c) and Part 40 of the Commission's Regulations, 17 CFR part 40, amend their rulebooks (and shall comply with the relevant portions of such rulebooks), and the two organizations shall amend their proprietary cross-margining agreement, as may be necessary to effect the customer cross-margining framework as described in CME and FICC's petition and the terms of this Order. This specifically includes addressing the following:

- i. Cross-margining is available to Eligible Customer Positions only if both

the eligible customer and its Eligible BD–FCM agree to participate;

ii. Positions of an eligible customer shall be eligible for cross-margining if and only if such positions are otherwise eligible positions under the proprietary cross-margining arrangement;

iii. Each BD–FCM shall grant to CME a security interest in the value of each cross-margining customer's Eligible Securities Positions and associated margin held in a cross-margining account at FICC;

iv. FICC shall credit margin received in connection with Eligible Securities Positions to a “securities account” and agree in its rules to treat such margin as “financial assets,” as such terms are defined under NYUCC Article 8;

v. FICC rules will provide that any collateral received from a BD–FCM as XM Securities Customer Property and credited to a FICC cross-margining customer margin account will be used exclusively to settle and margin the Eligible Securities Positions of the BD–FCM and for no other purpose;

vi. FICC rules will provide that FICC shall not grant a security interest in either XM Securities Customer Property (subject in this case to the proviso that the BD–FCM can grant CME and FICC a lien to implement the cross-margining program) or Segregated Customer Margin;

vii. FICC rules will provide that it shall hold all XM Customer Margin in an account of FICC at either a bank that is insured by the Federal Deposit Insurance Corporation or at the FRBNY. Such account shall be:

1. Segregated from any other account of FICC and shall be used exclusively to hold XM Customer Margin, except that the account at the FRBNY may also hold Segregated Customer Margin.

2. In the case of a bank other than the FRBNY, subject to a written notice by the bank, provided to and retained by FICC, that the assets in the account are being held by the bank pursuant to the order of the Commission under section 4(c) of the Commodity Exchange Act and are being kept separate from and not commingled with any other accounts maintained by FICC or any other person at the bank.

3. In the case of FRBNY, subject to a written notice provided to and retained by FICC that the assets in the account are being held by the bank pursuant to SEC Rule 15c3–3 and the order of the Commission under section 4(c) of the Commodity Exchange Act and are being kept separate from and not commingled with any other accounts maintained by FICC or any other person at the bank.

4. Each such account shall also be subject to a written contract between

FICC and the bank or FRBNY which provides that the assets in the account are subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or FRBNY or any person claiming through the bank or FRBNY.

viii. FICC rules will provide that, consistent with the requirement applied to registered derivatives clearing organizations under Commission Regulation 190.07(a), FICC would not interfere with the acceptance by a BD–FCM of transfers of XM Securities Customer Property from a BD–FCM that is either required to transfer accounts pursuant to 17 CFR 1.17(a)(4) or from a BD–FCM that is a debtor as defined in 17 CFR 190.01 (in the latter case if the transfer has been approved by the Commission pursuant to Commission Regulation 190.07(a)(3)), in either case subject to FICC's contractual right to liquidate or transfer positions and ability adequately to manage risk.

(f) *Margin Requirements.* Each of FICC and CME shall calculate initial margin requirements for Eligible Customer Positions on a gross (*i.e.*, customer-by-customer) basis using a Commission reviewed methodology (in the case of CME) or a methodology reviewed by the Securities and Exchange Commission (in the case of FICC), and hold such initial margin collected from the Eligible BD–FCMs in a manner generally consistent with Commission Regulation 1.20(g), notwithstanding that FICC is not a permitted depository under Commission Regulations 1.20 and 1.49, provided that, with respect to FICC, the requirements with respect to acknowledgement letters set out in Commission Regulation 1.20(g)(4) shall be replaced with those set forth in paragraph (e)(vii) above.

(g) *BD–FCM Margin Collection.* Each Eligible BD–FCM shall collect from each of its cross-margining customers, at a minimum, the aggregate amount of initial margin required by each of FICC and CME in respect of the cross-margining customer's Eligible Customer Positions.

(h) *FICC's Regulatory Status.* FICC shall maintain its status as a covered clearing agency registered with the Securities and Exchange Commission.

(i) *FICC Article 8 Securities Accounts.*

1. FICC shall not establish any additional “securities accounts” (beyond those for Segregated Customer Margin and XM Customer Margin) for purposes of the NYUCC without obtaining the consent of the Commission and the Securities and Exchange Commission.

2. The Commission delegates its authority under paragraph i(1) of this

Order to the Director of the Division of Clearing and Risk in consultation with the General Counsel.

(j) *FICC Reporting of Financial Assets Held and Owed.* FICC shall, on every business day, report to the staff of the Division of Clearing and Risk and to the Securities and Exchange Commission, the amount of cash and, by CUSIP, securities that are:

1. Held in its accounts for Segregated Customer Margin or XM Customer Margin at (i) FRBNY and (ii) any bank insured by the Federal Deposit Insurance Corporation in which such margin is deposited or custodied; and

2. Owed to BD–FCMs on behalf of their cross-margining customers or securities customers.

(k) *General Compliance.* CME and each Eligible BD–FCM must continue to comply with all other applicable requirements under the CEA and Commission regulations.

This Order is based upon the analysis set forth above and the information contained in the petition. Any material change in law or circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the exemption contained herein is appropriate and/or consistent with the public interest and purposes of the CEA. Further, the Commission reserves the right, in its discretion, to revisit any of the terms and conditions of the relief provided herein, including but not limited to, making a determination that certain entities described herein should be subject to the Commission's full jurisdiction, and to condition, suspend, terminate, or otherwise modify or restrict the exemption granted in this Order, as appropriate, upon its own motion.

Issued in Washington, DC, on April 16, 2026, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Order Providing Exemptive Relief To Facilitate Cross-Margining of Customer Positions Cleared at Chicago Mercantile Exchange, Inc. and Fixed Income Clearing Corporation—Commission Voting Summary

On this matter, Chairman Selig voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2026–07643 Filed 4–17–26; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 578, 582, and 583

[Docket No. FR–6583–F–01]

Removal of Regulations for the Shelter Plus Care and the Supportive Housing Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule removes HUD's Shelter Plus Care program and Supportive Housing Program regulations from title 24 of the Code of Federal Regulations. HUD is removing these regulations and references to these regulations because the Shelter Plus Care and Supportive Housing Programs were consolidated into and replaced by the Continuum of Care (CoC) Program following the enactment of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act).

DATES: *Effective Date:* May 20, 2026.

FOR FURTHER INFORMATION CONTACT: Wesley Armstrong, Department of Housing and Urban Development, 2415 Eisenhower Ave., Alexandria, VA 22314; telephone number 202–402–2107 (this is not a toll-free number); email Wesley.R.Armstrong@hud.gov. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. Background

The McKinney-Vento Homeless Assistance Act (McKinney-Vento) contains emergency relief programs, preventive measures, and long-term solutions to address homelessness (Pub. L. 100–77, 101 Stat. 482, codified at 42 U.S.C. 11301 *et seq.*). McKinney-Vento authorized the Shelter Plus Care Program and Supportive Housing Program.¹ HUD promulgated numerous regulations governing the Shelter Plus Care Program and Supportive Housing Program. In 2009, the HEARTH Act (Division B, Pub. L. 111–22, 123 Stat.

1632), reformed McKinney-Vento and consolidated two homeless assistance programs administered by HUD, specifically the Shelter Plus Care Program and Supportive Housing Program, into the Continuum of Care (CoC) Program. HUD published an interim rule on July 31, 2012, implementing the CoC program regulations and the CoC regulatory framework at 24 CFR part 578 (77 FR 45422). HUD published the CoC interim rule, incorporating public comments in the **Federal Register**, on June 14, 2016 (81 FR 38581).

II. This Final Rule

This rule removes the Shelter Plus Care program and the Supportive Housing Program regulations located at 24 CFR parts 582 and 583, respectively, because they have been replaced by the CoC program following the enactment of the HEARTH Act and subsequent CoC regulations. For the Shelter Plus Care program, this rule removes 24 CFR part 582 because the program has been consolidated into the CoC Program, and specific Shelter Plus Care funds are no longer available and all renewals have been renewed through the CoC program. For the Supportive Housing Program, this rule removes 24 CFR part 583 because the program has been consolidated into the CoC Program, and specific Supportive Housing Program funds are no longer available, and all renewals have been renewed through the CoC program. HUD is making a conforming amendment to 24 CFR 578.33(d)(1) to remove cross-references to parts 582 and 583.

III. Justification for Final Rulemaking

In accordance with regulations at 24 CFR part 10, it is the practice of the Department to offer interested parties an opportunity to comment on proposed regulations. 24 CFR part 10 provides narrow exceptions to the notice and comment requirements if the Department finds good cause to omit notice and public participation. The good cause requirement under 24 CFR 10.1 may be satisfied when notice and public comment are impracticable, unnecessary, or contrary to the public interest. To publish a rule prior to receiving and responding to public comments, the agency must find that at least one good cause exceptions is applicable.

HUD has determined that good cause exists to promulgate this final rule without prior notice and comment. Specifically, the Department has concluded that it is impractical and unnecessary to solicit and respond to public comments on the deletion of

regulations that were consolidated in part 578 as a result of statutory changes. Accordingly, HUD has concluded there is good cause to publish this rule prior to receiving and responding to public comments.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Executive Order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule eliminates language that is no longer in use. Accordingly, this rule has been determined not to be a “significant regulatory action” as defined in section 3(f) of Executive Order 12866.

Regulatory Costs—Executive Order 14192

Executive Order 14192, entitled “Unleashing Prosperity Through Deregulation,” was issued on January 31, 2025. Section 3(c) of Executive Order 14192 requires that any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations. OMB has determined that this final rule does not impose any regulatory costs as HUD already consolidated the regulations in 24 CFR part 578 and this action is a repeal of a regulation for purposes of Executive Order 14192.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD

¹ McKinney-Vento authorized the Shelter Plus Care program under title IV, subtitle F (42 U.S.C. 11403 *et seq.*) and authorized the Supportive Housing Program under title IV (42 U.S.C. 11381 *et seq.*).

has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local, or Tribal governments or the private sector within the meaning of the UMRA.

List of Subjects

24 CFR Part 578

Community development, Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 582

Civil rights, Community facilities, Grant programs—housing and community development, Grant

programs—social programs, Homeless, Individuals with disabilities, Mental health programs, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 583

Civil rights, Community facilities, Employment, Grant programs—housing and community development, Grant programs—social programs, Homeless, Indians, Individuals with disabilities, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, for the reasons discussed in the preamble, HUD amends 24 CFR chapter V as follows:

PART 578—CONTINUUM OF CARE PROGRAM

■ 1. The authority citation for part 578 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 11381 *et seq.*, 42 U.S.C. 3535(d).

■ 2. Revise § 578.33(d)(1) to read as follows:

§ 578.33 Renewals.

* * * * *

(d) * * *

(1) Awards made under title IV of the Act, as in effect before August 30, 2012 are eligible for renewal in the Continuum of Care program even if the awardees would not be eligible for a new grant under the program, so long as they continue to serve the same population and the same number of persons or units in the same type of housing as identified in their most recently amended grant agreement signed before August 30, 2012. Grants will be renewed if HUD receives a certification from the Continuum that there is a demonstrated need for the project, and HUD finds that the project complied with program requirements applicable before August 30, 2012.

* * * * *

PART 582—[REMOVED]

■ 3. Under the authority of 42 U.S.C. 3535(d), remove part 582, consisting of §§ 582.1 through 582.410.

PART 583—[REMOVED]

■ 4. Under the authority of 42 U.S.C. 3535(d), remove part 583, consisting of §§ 583.1 through 583.410.

Ronald Kurtz,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2026–07633 Filed 4–17–26; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 10045]

RIN 1545–BS12

Enrolled Agent Special Enrollment Examination User Fee Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Interim final rule.

SUMMARY: This document contains interim final regulations relating to the imposition of user fees for the special enrollment examination for enrolled agents (EA SEE). These regulations reduce the user fee for each part of the EA SEE from \$99 per part to \$66 per part. The Independent Offices Appropriation Act of 1952 authorizes the charging of user fees. The text of these interim final regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in this issue in the Proposed Rules section of this edition of the **Federal Register**.

DATES:

Effective date: These regulations are effective on April 20, 2026.

Applicability date: For date of applicability, *see* § 300.4(d) of these interim final regulations.

FOR FURTHER INFORMATION CONTACT:

Concerning the interim final regulations, Sean Dix at (202) 317–6845; concerning cost methodology, CFO Cost and User Fees at (202) 317–6400 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Authority

This document contains interim final amendments to 26 CFR part 300 regarding user fees for the EA SEE.

The Independent Offices Appropriation Act of 1952 (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish user fees for services provided by the agency. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are set forth in the Office of Management and Budget Circular A–25, 58 FR 38142 (July 15, 1993) (OMB Circular A–25).

Under OMB Circular A–25, Federal agencies that provide services that confer benefits on identifiable recipients are to establish user fees that recover the full cost of providing the service. An agency that seeks to impose a user fee

for government-provided services must calculate the full cost of providing those services. In general, a user fee should be set at an amount that allows the agency to recover the direct and indirect costs of providing the service, unless the Office of Management and Budget (OMB) grants an exception. OMB Circular A–25 provides that agencies are to review user fees biennially and update them as necessary.

Background

A. Enrolled Agents and the Special Enrollment Examinations

Section 330 of Title 31 of the United States Code authorizes the Secretary of the Treasury or the Secretary's delegate (Secretary) to regulate the practice of representatives before the Department of the Treasury (Treasury Department) and to require that an individual seeking to practice demonstrate the necessary qualifications, competency, and good character and reputation. The rules governing practice before the IRS are published in 31 CFR, Subtitle A, part 10, and reprinted as Treasury Department Circular No. 230 (Circular 230).

Section 10.4(a) of Circular 230 authorizes the IRS to grant status as enrolled agents to individuals who demonstrate special competence in tax matters by passing a written examination, the EA SEE, and who have not engaged in any conduct that would justify suspension or disbarment under Circular 230.

The EA SEE is comprised of three parts, and an applicant generally must pass all three parts within three years to be granted enrolled agent status through written examination. The EA SEE testing period generally begins on May 1 each year and ends the last day of the following February. The EA SEE is not offered during March and April when it is updated to reflect recent changes in the relevant law. More information on the EA SEE, including content, scoring, and how to register, can be found on the IRS website at <https://www.irs.gov/tax-professionals/enrolled-agents>. Since 2006, the IRS has engaged the services of a third-party contractor to develop and administer the EA SEE. The IRS Return Preparer Office (RPO) oversees the development and administration of the EA SEE. As of January 31, 2026, there were 75,304 enrolled agents.

B. The EA SEE User Fee

Section 10.4(a) of Circular 230 provides that the IRS will grant enrolled agent status to an applicant who, among other things, demonstrates special competence in tax matters by written

examination. The EA SEE is the written examination by which applicants can demonstrate special competence in tax matters, and an applicant must pass all three parts of the EA SEE to be granted enrolled agent status through written examination. The IRS confers a benefit on individuals who take the EA SEE beyond those that accrue to the general public by providing them with an opportunity to demonstrate special competence in tax matters by passing a written examination and thereby satisfy one of the requirements for becoming an enrolled agent under section 10.4(a) of Circular 230. Because the EA SEE is a service that provides a special benefit to test takers, the IRS charges a user fee to take the examination.

Final regulations (TD 9962) published in the **Federal Register** (87 FR 11295–02) on March 1, 2022, established the current \$99 user fee (per part) of the EA SEE. At that time the Treasury Department and the IRS determined that a \$99 user fee per part would recover the full direct and indirect costs the government would incur to oversee the EA SEE. The 2023 biennial review determined the full cost of the EA SEE was \$121 per part. The IRS requested and obtained a waiver from OMB to postpone this increase to the EA SEE user fee until the 2025 biennial review. As a result, the user fee is currently still \$99 per part. The contractor who administers the EA SEE also charges individuals taking the EA SEE an additional fee for its services. For the May 2025 to February 2026 testing period, the contractor's fee was \$168 for each part of the EA SEE. This contract expired at the end of the February 2026 testing period and a new contract was obtained, subject to public procurement procedures. For the May 2026 to February 2027 testing period, the contractor's fee is \$251 for each part of the EA SEE.

As required by OMB Circular A–25, in 2025 the IRS conducted a biennial review of the EA SEE user fee and calculated its costs for overseeing the examination. As a result of the review, the IRS determined that its full cost for overseeing the EA SEE is now \$66 per part. Therefore, these regulations decrease the amount of the user fee for taking the EA SEE from \$99 per part to \$66 per part. This amount is in addition to the amount payable directly to the third-party contractor for each part. The IRS does not intend to subsidize any of the cost of making the EA SEE available to examinees and is not applying for an exception to the full-cost requirement in OMB Circular A–25.

The decrease in the user fee is primarily attributable to a change in

timekeeping methodology, which resulted in a smaller estimated expense for administering the EA SEE program. Additionally, there has been an increase in the number of exam takers, further distributing the fixed costs related to administering the exam. The proposed user fee accounts for the time and personnel necessary to oversee the development and administration of the EA SEE and to ensure that the contractor complies with the terms of its contract. The IRS's oversight costs include costs associated with: (1) review and approval of materials used by the contractor in developing the EA SEE; (2) review of surveys of existing enrolled agents, which help to determine the topics to be covered in the EA SEE; (3) composition of potential EA SEE questions in coordination with the contractor's external tax law experts; and (4) analysis of the answers and raw scores of a testing population to determine a passing score.

In addition, IRS personnel ensure the contractor's compliance with its contract by reviewing the work of the contractor using an annual Work Breakdown Structure—a project management tool—and reviewing and verifying that the contractor is in compliance with a Quality Assurance Plan measuring customer satisfaction and accuracy. The IRS incurs additional costs associated with enforcing compliance with the Treasury contractor personnel security and training policies, Federal Information Security Modernization Act (FISMA), Section 508 of the Rehabilitation Act of 1973 and other laws, regulations and policies in the scope of the EA SEE contract; monitoring the contractor's help desk; and the resolution of test-related issues such as cheating incidents, appeals regarding test scores, refund requests, and customer service complaints that are not resolved by the contractor.

The government is authorized to charge an EA SEE user fee under the IOAA because, in exchange for the fee, it provides a service by developing and administering the EA SEE, which allows individuals to become enrolled agents and gain the ability to practice before the IRS under Circular 230. OMB Circular A–25 states that user fees should be collected in advance of or simultaneously with the provision of a service. The EA SEE user fee is collected when potential enrolled agents apply to take the examination during the examination season, which begins annually in May.

Explanation of Provisions

The IRS follows generally accepted accounting principles (GAAP) in calculating the full cost of overseeing the EA SEE. The Federal Accounting Standards Advisory Board (FASAB) is the body that establishes GAAP that apply for Federal reporting entities, such as the IRS. FASAB publishes the FASAB Handbook of Accounting Standards and Other Pronouncements, as Amended (Current Handbook), which is available at https://files.fasab.gov/pdffiles/2025_FASAB_Handbook.pdf. The Current Handbook includes the *Statement of Federal Financial Accounting Standards (SFFAS) No. 4: Managerial Cost Accounting Standards and Concepts*. SFFAS No. 4 establishes internal costing standards under GAAP to accurately measure and manage the full cost of Federal programs, and the methodology below is in accordance with SFFAS No. 4.

1. Cost Estimation of Direct Labor

The IRS uses various cost-measurement techniques to estimate the cost attributable to the program. These techniques include using various timekeeping systems to measure the time required to accomplish activities, or using information provided by subject-matter experts on the time devoted to a program. To determine the labor and benefits cost attributable to

oversight of the EA SEE, the IRS estimated the number of full-time employees required to conduct activities related to the costs of overseeing the EA SEE. The number of full-time employees is based on both current employment numbers and future hiring estimates. Other direct costs associated with overseeing the EA SEE include travel, training, and supplies. When the indirect cost of a service or activity is not specifically identified from the cost accounting system, an overhead rate is added to the identifiable direct cost to arrive at full cost.

2. Overhead

Overhead is an indirect cost of operating an organization that is not specifically identifiable with an activity. Overhead includes costs of resources that are jointly or commonly consumed by one or more organizational unit's activities but are not specifically identifiable to a single activity. These costs can include:

- General management and administration
 - Rent, security, utilities and maintenance
 - Procurement and contracting
 - Financial management and accounting
 - Information technology
 - Research, analytical and statistical
- To calculate the overhead allocable to a service, the IRS applies an overhead

rate to the identified direct labor and benefits and other direct costs. The overhead rate is the ratio of the IRS's indirect labor, benefits, and non-labor costs of business divisions that do not interact with taxpayers to the labor and benefits costs of business divisions that interact with taxpayers. The IRS calculates an overhead rate annually. For the FY 2025 user fee review, an overhead rate of 62.92 percent was used.

3. Calculation of EA SEE User FEE

The IRS used projections for FYs 2026 through 2028 to determine the direct and indirect costs associated with overseeing the EA SEE that are includible in the EA SEE user fee calculation. Direct costs are incurred by the RPO and include staffing and contract-related costs for activities, processes, and procedures related to overseeing the EA SEE.

The labor and benefits for the work performed related to overseeing the EA SEE is projected to be \$3,505,101 in total over FYs 2026 through 2028. In addition to labor and benefits and overhead expenses, the IRS projects incurring travel, training, and supplies costs of \$16,182.82 in each of FYs 2026 through 2028. The total labor and benefits, travel, training, and supplies, and overhead expenses projected are shown below:

Expense	FY 2026	FY 2027	FY 2028	Total
Labor and benefits	\$1,136,817.91	\$1,168,080.40	\$1,200,202.61	\$3,505,101
Travel, training, and supplies	16,182.82	16,182.82	16,182.82	48,548
Overhead (62.92 percent)	715,286.00	734,956.00	755,167.00	2,205,409

The total cost for FYs 2026 through 2028 are therefore projected to be \$5,759,058. The number of examination parts provided during FYs 2022, 2023, and 2024 were 27,313; 29,797; 29,584, respectively. The total number of examination parts provided during the three years was 86,694. The IRS used this historical three-year volume to estimate the number of examination parts it expects to provide in FYs 2026, 2027, and 2028. Dividing this total cost by the projected examinations for FYs 2026 through 2028 results in a cost per examination of \$66 as shown below:

Total Costs \$5,759,058
Number of Applications ÷ 86,694
Cost per Application \$66.43

Taking into account the full amount of these costs, the amount of the EA SEE user fee per part is \$66.

As noted in section B, the contractor who administers the EA SEE also charges individuals taking the EA SEE

an additional fee for its services. For the May 2026 to February 2027, May 2027 to February 2028, May 2028 to February 2029 testing periods, the contractor's fee is \$251 for each part of the EA SEE. For the May 2029 to February 2030 testing period, the contractor's fee is \$211 for each part of the EA SEE. The fee charged by the contractor is fixed by the current contract terms and therefore cannot be reduced or renegotiated at this time. The contract was subject to public procurement procedures, and there were no tenders that were more competitive. The contract will expire on February 28, 2030. The fee charged by the contractor may change when the contract expires. Any future contract will be subject to the public procurement procedures.

Special Analyses

I. Regulatory Planning and Review

These interim final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and OMB regarding review of tax regulations.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these interim final regulations will not have a significant economic impact on a substantial number of small entities. The EA SEE user fee primarily affects individuals who take the EA SEE. Only individuals, not businesses, can be enrolled agents. Thus, the economic impact of these regulations on any small entity would be a result of an individual enrolled

agent owning a small entity or a small entity employing an enrolled agent who must take the EA SEE. The Treasury Department and the IRS estimate that an average of 28,898 EA SEE examination parts will be taken by individuals annually. Therefore, a substantial number of small entities is not likely to be affected. Additionally, the economic impact on those entities is not significant. These regulations will establish a \$66 fee per examination part (plus \$251 payable directly to the third-party contractor), and will not have a significant economic impact on a small entity. Accordingly, the rule is not expected to have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These interim final regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. Good Cause

The annual EA SEE testing period for May 2026-February 2027 will begin shortly. It would be unnecessary and contrary to the public interest for the IRS to continue to charge the current, higher user fee pending public comment after the IRS has determined pursuant to the biennial review conducted under OMB Circular A-25 that the EA SEE user fee should be reduced going forward. To enable the reduced fee

amount to be in effect for the upcoming EA SEE test period beginning in May 2026, the Treasury Department and the IRS find that there is good cause to dispense with (1) notice and public comment pursuant to 5 U.S.C. 553(b) and (c) and (2) a delayed effective date pursuant to 5 U.S.C. 553(d). The Treasury Department and the IRS will consider public comments submitted in response to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register** and will promulgate a final rule after considering those comments.

VI. Submission to Small Business Administration

Pursuant to section 7805(f) of the Code, this Treasury decision has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Drafting Information

The principal author of these regulations is Sean Dix, Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 300

Estate taxes, Excise taxes, Fees, Gift taxes, Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR part 300 as follows:

PART 300—USER FEES

Paragraph 1. The authority citation for part 300 continues to read in part as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.4 is amended by revising paragraphs (b) and (d) to read as follows:

§ 300.4 Enrolled agent special enrollment examination fee.

(b) *Fee.* The fee for taking the enrolled agent special enrollment examination is \$66 per part, which is the cost to the government for overseeing the

development and administration of the examination and is in addition to the fees charged by the administrator of the examination.

* * * * *

(d) *Applicability date.* This section applies to registrations for the enrolled agent special enrollment examination that occur on or after April 20, 2026.

Frank J. Bisignano,
Chief Executive Officer.

Approved: March 30, 2026.

Kenneth J. Kies,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2026-07681 Filed 4-17-26; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Part 35

[Docket No. CRT150; AG Order No. 6742-2026]

RIN 1190-AA82

Extension of Compliance Dates for Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Interim final rule; request for comments.

SUMMARY: By this Interim Final Rule (“IFR”), the Department of Justice (“Department”) is revising the regulations implementing title II of the Americans with Disabilities Act (“ADA”) to extend the compliance dates for the requirements for web content and mobile application (“app”) accessibility that were adopted on April 24, 2024. The compliance date for State and local government entities with a total population of 50,000 or more is extended from April 24, 2026, to April 26, 2027. The compliance date for public entities with a total population of less than 50,000, or any special district government, is extended from April 26, 2027, to April 26, 2028.

DATES:

Effective date: This IFR is effective April 20, 2026.

Comments: Written comments must be submitted on or before June 22, 2026. Commenters should be aware that the electronic Federal Docket Management System (“FDMS”) will accept comments submitted prior to midnight Eastern Time on the last day of the comment period. Late comments are highly

disfavored. The Department is not required to consider late comments.

ADDRESSES: You may submit comments, identified by RIN 1190-AA82 (or Docket No. CRT150), by either of the following methods:

- *Federal eRulemaking Website:* <https://www.regulations.gov>. Follow the website's instructions for submitting comments.

- *Overnight, Courier, or Hand Delivery:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. NE, 10th Floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT:

Badar Tareen, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307-0663. This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514-0301 (voice) or 1-833-610-1264 (TTY). You may obtain copies of this IFR in an alternative format by calling the ADA Information Line at (800) 514-0301 (voice) or 1-833-610-1264 (TTY). A link to this IFR is also available on <https://www.ada.gov>.

Electronic Submission of Comments and Posting of Public Comments

Interested persons are invited to participate in this rulemaking by submitting written comments on all aspects of this rule via one of the methods and by the deadline stated above. When submitting comments, please include "RIN 1190-AA82" in the subject field. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing this rule will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at <https://www.regulations.gov>. Such information includes personally identifiable information ("PII") (such as your name and address). Interested persons are not required to submit their PII in order to comment on this rule. However, any PII that is submitted is subject to being posted to the publicly accessible <https://www.regulations.gov> site without redaction.

Confidential business information clearly identified in the first paragraph of the comment as such will not be placed in the public docket file.

The Department may withhold from public viewing information provided in comments that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>. To inspect the agency's public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency contact information.

SUPPLEMENTARY INFORMATION:

I. Background and Legal Authority

The ADA protects the rights of individuals with disabilities in everyday activities, including employment, access to State and local government services, access to businesses and nonprofits that are open to the public, and other important areas of American life. This IFR addresses title II of the ADA, which applies to State and local government entities.¹ Part A of title II protects qualified individuals with disabilities from disability-based discrimination in the services, programs, and activities of State and local government entities.² Section 204(a) of the ADA directs the Attorney General to issue regulations implementing part A of title II.³ The Department is the only Federal agency with authority to issue regulations under part A of title II regarding the accessibility of State and local government entities' web content and mobile apps.

On April 24, 2024, the Department published a final rule revising its title II regulations, titled "Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities."⁴ The rule set forth technical requirements for the web content and mobile apps that State and local government entities "provide or make available, directly or through contractual, licensing, or other arrangements."⁵ In particular, the rule adopted the Web Content Accessibility Guidelines ("WCAG") version 2.1 Level AA (hereinafter referred to as "WCAG 2.1"), published in June 2018,⁶ as the

technical standard for web content and mobile app accessibility under title II.⁷ The rule included provisions describing how WCAG 2.1 applies to State and local governments' web content and mobile apps, as well as provisions identifying circumstances in which certain web content and content in mobile apps may not need to meet the technical standard.⁸ The rule's effective date was June 24, 2024,⁹ but State and local government entities were not required to begin complying with the rule immediately. Rather, the rule provided that public entities with a total population of 50,000 or more must begin complying with the rule starting on April 24, 2026,¹⁰ and that public entities with a total population of less than 50,000 or any public entity that is a special district government must begin complying with the rule starting on April 26, 2027.¹¹ The rule added definitions of "total population" and "special district government" to 28 CFR 35.104, and the Department provided additional information about calculating total population and identifying special district governments in Appendix D to 28 CFR part 35 and in resources published on the Department's website.¹²

The 2024 final rule was the culmination of various rulemaking efforts by the Department related to web and mobile app accessibility under title II. Throughout these efforts, the Department considered a wide variety of issues related to developing a final rule, including the appropriate compliance dates for adopting web and mobile app accessibility requirements.

In 2010, the Department published an advance notice of proposed rulemaking ("ANPRM"), titled "Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations," which addressed web accessibility under both title II and title III of the ADA.¹³ In the

<https://www.w3.org/TR/2018/REC-WCAG21-20180605/> [<https://perma.cc/UB8A-GG2F>].

⁷ 89 FR 31321.

⁸ 89 FR 31337-38 (codified at 28 CFR 35.200-35.205).

⁹ 89 FR 31320.

¹⁰ 89 FR 31337.

¹¹ 28 CFR 35.200(b)(2).

¹² See, e.g., U.S. Dep't of Just., *State and Local Governments: First Steps Toward Complying with the Americans with Disabilities Act Title II Web and Mobile Application Accessibility Rule*, ADA.gov (Jan. 8, 2025), <https://www.ada.gov/resources/web-rule-first-steps/> [<https://perma.cc/SX52-53TA>].

¹³ 75 FR 43460 (July 26, 2010). This IFR only pertains to the Department's regulations implementing title II; the Department's regulations implementing title III, found at 28 CFR part 36, are not addressed in this rulemaking.

¹ The Department uses the phrases "State and local government entities" and "public entities" interchangeably throughout this rule to refer to "public entity[ies]" as defined by the ADA, 42 U.S.C. 12131(1), that are covered under part A of title II of the ADA.

² 42 U.S.C. 12132.

³ See 42 U.S.C. 12134.

⁴ 89 FR 31320 (Apr. 24, 2024).

⁵ 89 FR 31321.

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ANPRM, the Department suggested potential compliance dates ranging from six months to two years after the publication of a final rule, depending on the type of web content.¹⁴ The Department also requested public comment about when any web accessibility requirements adopted by the Department should become effective, including whether the Department should adopt a different compliance date for small public entities.¹⁵ The Department received approximately 400 public comments in response to the ANPRM.

In 2015, the Department announced that it would pursue separate rulemakings addressing web accessibility under titles II and III.¹⁶ And in 2016, the Department published a supplemental advance notice of proposed rulemaking (“SANPRM”) solely focused on title II, titled “Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities.”¹⁷ In the SANPRM, the Department stated that comments submitted in response to the 2010 ANPRM about the suggested compliance dates were “extremely varied,” with recommendations ranging from requiring compliance upon publication of a final rule to allowing a five-year window for compliance, and there was no public consensus.¹⁸ Based on its review of the comments, the Department suggested new potential compliance dates.¹⁹ The potential compliance dates included in the SANPRM ranged from two to three years after the publication of a final rule, depending on the type of web content and the type and size of the public entity.²⁰ The Department again requested public comment about when any web accessibility requirements adopted by the Department should become effective. The Department received approximately 200 public comments in response to the SANPRM. Commenters suggested a range of compliance dates, from immediate implementation to 10 years.²¹

In 2017, the Department withdrew several rulemaking actions, including the 2010 ANPRM and 2016 SANPRM, stating that it was evaluating whether promulgating specific web accessibility standards through regulations was “necessary and appropriate” to ensure compliance with the ADA.²² The Department subsequently reopened the title II rulemaking process in 2023 when it published a notice of proposed rulemaking (“NPRM”), titled “Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities.”²³ The compliance dates proposed in the NPRM were the same as the dates that would ultimately be included in the final rule. Namely, public entities with a total population of 50,000 or more would have two years to begin complying with a final rule after it was published;²⁴ public entities with a total population of less than 50,000 or any public entity that is a special district government would have three years to begin complying.²⁵ Other alternative compliance time frames the Department considered included: a one-year time frame for all covered entities; a one-year time frame for public entities with a population of 50,000 or more and a three-year time frame for small public entities; and a three-year time frame for public entities with a population of 50,000 or more and a four-year time frame for small public entities.²⁶ In the NPRM, the Department emphasized that the public had previously provided “varied feedback” about the appropriate compliance dates for a final rule.²⁷ For example, the Department stated that individuals with disabilities and disability advocacy organizations preferred shorter time frames, often arguing that web accessibility has long been required under title II.²⁸ The

from Douglas Loo, ADA Coordinator, Xpansion at 2 (Sep. 21, 2016), <https://www.regulations.gov/comment/DOJ-CRT-2016-0009-0205> [<https://perma.cc/4U2J-S9LZ>] (immediate), with Letter for Disability Rights Section, Civil Rights Division, from Rick Nixon, Office of Management and Finance, City of Portland att. at 1 (Oct. 7, 2016), <https://www.regulations.gov/comment/DOJ-CRT-2016-0009-0218> [<https://perma.cc/Y2DJ-LL8L>] (10 years).

²² *Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions*, 82 FR 60932, 60932 (Dec. 26, 2017).

²³ 88 FR 51948 (Aug. 4, 2023) (“2023 NPRM”).

²⁴ 88 FR 51964.

²⁵ 88 FR 51965.

²⁶ 88 FR 52012.

²⁷ 88 FR 51964.

²⁸ 88 FR 51964.

Department stated that some covered entities, in contrast, had requested more time to come into compliance with a final rule, citing resource considerations including budget and staffing limitations.²⁹ The Department decided on the compliance dates proposed in the NPRM after considering the arguments raised by commenters and observing that “over a decade has passed since the Department started receiving such feedback and there is more available technology to make web content and mobile apps accessible.”³⁰ The Department stated that it believed the proposed compliance dates would appropriately “balance[] the resource challenges reported by public entities with the interests of individuals with disabilities in accessing the multitude of services, programs, and activities” offered by public entities through the web and mobile apps.³¹ The Department explained that it proposed to apply the same technical standard to all covered entities, but small public entities and special district governments would be given an extra year to begin complying with a final rule to account for those entities’ limited resources and unique circumstances.³² The Department requested feedback from members of the public about the NPRM, including about the proposed compliance dates, and it received approximately 345 comments in response.

In 2024, the Department published the final rule that is the subject of this IFR.³³ As discussed, the 2024 final rule included the same compliance dates that were proposed in the 2023 NPRM. The Department also considered, but did not adopt, the alternative time frames that it considered for the 2023 NPRM.³⁴ The Department stated that comments submitted in response to the 2023 NPRM expressed a “wide range of views” about the rule’s compliance dates, and commenters suggested time frames ranging from six months to six years.³⁵ After reviewing the comments,

²⁹ 88 FR 51964.

³⁰ 88 FR 51964.

³¹ 88 FR 51964.

³² 88 FR 51965.

³³ 89 FR at 31320.

³⁴ See U.S. Dep’t of Just., *Executive Order 12866, Regulatory Planning and Review; Executive Order 14094, Modernizing Regulatory Review; Executive Order 13563, Improved Regulation and Regulatory Review* at 172 (2024), <https://www.ada.gov/assets/pdfs/web-fria.pdf> [<https://perma.cc/9WKS-RU3L>] (hereinafter “2024 Cost-Benefit Analysis”) (Table 75).

³⁵ 89 FR 31351.

¹⁴ 75 FR at 43466.

¹⁵ 75 FR 43466–67.

¹⁶ See U.S. Dep’t of Just., *Statement of Regulatory Priorities* (2015), https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201510/Statement_1100.html [<https://perma.cc/YF2L-FTSK>].

¹⁷ 81 FR 28658 (May 9, 2016).

¹⁸ 81 FR 28664.

¹⁹ 81 FR 28665.

²⁰ 81 FR 28664–68.

²¹ Compare Letter from Rebecca Bond, Chief, Disability Rights Section, Civil Rights Division,

the Department concluded that the compliance dates proposed in the 2023 NPRM struck the appropriate balance because the Department believed shortening the time frames would likely result in increased costs and practical difficulties for public entities, especially small entities, whereas setting longer time frames would cause individuals with disabilities to be excluded from the services, programs, and activities that public entities offer through the web and mobile apps.³⁶ The Department stated that it did not identify any overriding reasons to change the time frames in the final rule, given the competing interests at stake.³⁷ The Department also reemphasized that the compliance dates are based, in part, on the Department's observation that "there is now more available technology to make web content and mobile apps accessible" than when the Department first published the ANPRM in 2010.³⁸

II. Need for This Interim Rule

In the months leading up to the April 24, 2026, compliance date for public entities with a total population of 50,000 or more, the Department identified new information about the 2024 final rule's compliance time frames. Circumstances beyond the Department's control, of which the Department was made aware through correspondence to the Department and to the Office of Management and Budget ("OMB") as well as through the Department's own observations of covered entities' compliance capabilities, prompted the Department to extend the compliance deadlines through this IFR, which is being issued with an opportunity for post-publication comment.

The Department was made aware of challenges related to the compliance dates in correspondence to the OMB, which was shared with the Department. On April 11, 2025, OMB had solicited ideas for deregulation from across the country.³⁹ In response, a group of higher education advocacy associations asked the Department to delay the 2024 final rule's compliance dates or provide additional information about the rule.⁴⁰ The associations stated that their

institutions, which are covered under the rule, are preparing for the compliance dates and that such preparation requires significant resources and staff time.⁴¹ Additionally, the associations noted these covered entities are still working through compliance challenges.⁴² The Small Business Administration's Office of Advocacy ("Advocacy") also submitted a response to OMB that addressed the 2024 final rule.⁴³ Advocacy stated that it had spoken with numerous small-entity stakeholders about OMB's factfinding request,⁴⁴ and it believes the Department underestimated the costs and burden of the 2024 final rule for small public entities.⁴⁵ Advocacy stated that small governments have limited resources and a lack of staff with technical expertise necessary for compliance, and it recommended the Department create an exemption from the rule for certain small entities or extend the compliance dates.⁴⁶ Following its comment to OMB, Advocacy added the 2024 final rule to a list of regulations it prioritized for rescission, withdrawal, or modification.⁴⁷ Based on its discussions with public entities from throughout the United States about the 2023 NPRM, Advocacy stated at that time that it believed the Department underestimated the costs and burdens for small public entities to come into compliance with the rule.⁴⁸ One of Advocacy's recommendations in response to the 2023 NPRM was to provide a four- or five-year compliance date for covered entities with populations of less than 50,000 people, as a lack of staff and other costs would prevent these entities from coming into

compliance with the final rule within three years.⁴⁹

Other correspondence to the Department echoed those compliance challenges. A Congressman discussed the complexity of remediating STEM (science, technology, engineering, and mathematics) content. The Congressman emphasized that current technology, including generative AI (artificial intelligence), cannot reliably automate the remediation of STEM materials at scale, and human oversight is required to ensure accessibility. He stated that a rushed implementation of the 2024 final rule could lead to errors and hinder the dissemination of STEM research.

Elementary and secondary education advocacy associations also asked the Department to provide additional information about the 2024 final rule and either delay the compliance dates or rethink the level of compliance required of school districts. The associations emphasized that many school districts have limited financial and staff resources available for compliance with the 2024 final rule. One association surveyed 60 of its members, and it found, for example, that many school districts would likely need to hire staff to assist with compliance with the 2024 final rule, many school districts would struggle to cover the costs of compliance, and school districts are concerned about potential litigation related to the rule. Another association expressed concern that the compliance dates in the 2024 final rule risk overwhelming school districts, which could cause schools to attempt rapid, procedural box-checking to begin complying with the rule rather than engaging in thoughtful and sustainable implementation efforts that would maximize the goals and benefits of the rule.

Some entities, however, believe the compliance dates in the 2024 final rule are appropriate. A group of accessibility organizations sent a letter to OMB stating that they believe the 2024 final rule should not be delayed, rescinded, or altered.⁵⁰ These groups stated that in their experience, even the most complex and innovative learning technologies can be made accessible, especially when

⁴¹ *Id.*

⁴² *Id.*

⁴³ Letter for Russell T. Vought, Director, OMB, from Chip Bishop, Deputy Chief Counsel, U.S. Small Business Administration Office of Advocacy (May 12, 2025), <https://www.regulations.gov/comment/OMB-2025-0003-8285> [<https://perma.cc/F984-X9L3>].

⁴⁴ *Id.* at 6.

⁴⁵ *Id.* at 10.

⁴⁶ *Id.* at 10–11.

⁴⁷ Advocacy, *Small Business' Most Wanted Reform*, <https://advocacy.sba.gov/regulatory-reform/small-businesses-most-wanted-reform/> [<https://perma.cc/Z4FH-NZAH>] (last visited Mar. 26, 2026).

⁴⁸ Letter for Rebecca Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Dep't of Just., from Major L. Clark, III, Deputy Chief Counsel, Office of Advocacy, U.S. Small Business Administration and Janis C. Reyes, Assistant Chief Counsel, Office of Advocacy, U.S. Small Business Administration at 13 (Oct. 17, 2023), <https://advocacy.sba.gov/wp-content/uploads/2024/04/Comment-Letter-Nondiscrimination-on-the-Basis-of-Disability.pdf> [<https://perma.cc/N5CK-V3KG>].

⁴⁹ *Id.* at 9.

⁵⁰ Letter for Russell T. Vought, Director, OMB, from Stephen G. Smith, Chief Executive Officer, Association on Higher Education and Disability at 1 (July 26, 2025), https://www.nacacnet.org/wp-content/uploads/AHEAD_Letter-to-OMB_Protecting-Title-II-Web-Access-Rule_2025.07.pdf [<https://perma.cc/PJ6A-XDBE>].

³⁶ 89 FR 31351.

³⁷ 89 FR 31351.

³⁸ 89 FR 31353.

³⁹ *Request for Information: Deregulation*, 90 FR 15481 (Apr. 11, 2025).

⁴⁰ Letter for Russell T. Vought, Director, OMB, from Chip Bishop, Deputy Chief Counsel, American Council on Education at 2 (May 12, 2025), <https://www.regulations.gov/comment/OMB-2025-0003-8019> [<https://perma.cc/2WCF-TP4V>].

accessibility is proactively addressed at the outset, and many colleges and universities have taken meaningful steps towards complying with the 2024 final rule.⁵¹ They stated that delaying or rescinding the 2024 final rule would penalize institutions that have worked towards compliance with both the rule and their longstanding obligations under the ADA, and that students with disabilities would be denied the opportunity to fully and equally participate in public higher education.⁵² A disability advocacy organization similarly sent a letter to OMB stating that any action to delay or rescind the 2024 final rule would severely harm individuals with disabilities.⁵³ The organization contended that the rule reflected a compromise between the needs of people with disabilities and the resources of covered entities. The organization asserted that there is no basis for reconsidering the rule at this time, because, the organization argued, it went through 14 years of consideration, public input, and adjustment, and the Department accurately estimated the costs and burdens of the rule.⁵⁴ In correspondence to the Department, the organization stated that even if there are apps that are difficult to make accessible, public entities are not required to take any action that would result in a fundamental alteration to their services, programs, or activities or undue financial and administrative burdens.

The Department finds the compliance concerns raised in the foregoing correspondence to be compelling and upon its own review determines that it overestimated the capabilities (whether staffing or technology) of covered entities to comply with the rule in the time frames provided. Therefore, we agree with those suggestions to delay the effective dates of the 2024 final rule. The Department believes this IFR will lead to greater predictability and certainty as covered entities work towards accessibility of their websites notwithstanding the untenable, dynamic technical standards linked to the 2024 rule. This will lead to greater accessibility for individuals with disabilities.

The Department is not persuaded that the effective dates of the 2024 final rule should not be altered. First, even if the

most complex applications of the rule can be made accessible, that does not address whether they can be made accessible in the specific time frames set by the 2024 rule without other negative impacts on State and local government entities outside of their control, particularly given the present difficulty these entities face in discerning what is required. Second, delaying the 2024 final rule does not penalize institutions that have already complied. Rather, the primary effect of the delay is to provide relief to entities that have been unable to comply to date. No matter the deadline, the rule's substantive requirements bind covered entities. Even those entities that already comply with the rule may continue to face uncertainty about whether their efforts are sufficient given the concerns noted above. Third, to the extent that the rule reflects a compromise between the needs of people with disabilities and the resources of covered entities, as we explained, the compromise underestimated the burden on covered entities. Fourth, the length of time spent considering the issues covered by the 2024 final rule is irrelevant to whether covered entities can comply with the deadlines and does not bear on the assessment of the new information that suggests covered entities will struggle to comply with the deadlines due to circumstances outside of their control.

Covered entities could suffer significant consequences if the 2024 final rule's compliance dates are not extended. If the 2024 final rule's compliance dates take effect before the covered entities have had sufficient time to make their web content and mobile apps comply with the terms of the rule, those entities would face significant litigation risks. Congress created a private right of action in title II.⁵⁵ Exercising this right, private litigants could recover injunctive relief and attorneys' fees from public entities for noncompliance with the 2024 final rule.⁵⁶

The risk of litigation is more significant for reasons not specifically addressed in the 2024 final rule. First, the links in the 2024 final rule create an untenable situation which could lead to liability without fair notice. The 2024 rule links to <https://www.w3.org/TR/2018/REC-WCAG21-20180605/> which is

incorporated into the rule.⁵⁷ That website links to dynamically changeable websites for compliance standards for WCAG 2.1.⁵⁸ These dynamic compliance assessment standards do not provide notice of what the regulation requires of public entities because the standards may change at any time without notice. This lack of notice for what constitutes compliance with the rule is the antithesis of the Administrative Procedure Act's notice-and-comment requirement (subject to statutory exception, none of which these dynamic standards meet). Second, international actors may attempt to access websites and file litigation to enforce the 2024 final rule.⁵⁹ Such litigation may be funded by international actors to intentionally disrupt government operations in the United States.⁶⁰ Third, covered entities have been generating substantial amounts of content that would be covered by the 2024 final rule using

⁵⁷ See, e.g., 89 FR at 31321 & n.10, 31337.

⁵⁸ For example, WCAG 2.1 lists the required "Success Criterion" for accessibility. Each of these required criteria, in turn, list hyperlink headlines titled "Understanding [Success Criterion]" and "How to Meet [Success Criterion]." Many of these hyperlinks take the user to a page titled "How to Meet WCAG (Quick Reference)." See, e.g., <https://www.w3.org/WAI/WCAG22/quickref/?versions=2.1#contrast-minimum>. However, when a user selects "Show techniques and failures" for a criterion on this web page and then selects "Understanding Techniques," that link often takes the user to a web page discussing the WCAG 2.2 standards, which is a newer standard not incorporated by the 2024 rule. See, e.g., <https://www.w3.org/WAI/WCAG22/Understanding/understanding-techniques>.

⁵⁹ Courts typically look to whether a plaintiff has some connection with the public entity when assessing the plaintiff's standing to bring website access litigation under Title II, but that requirement may be satisfied by a non-resident. See, e.g., *Open Access for All, Inc. v. Town of Juno Beach, Florida*, No. 9:19-cv-80518, 2019 WL 3425090, at *4 (S.D. Fla. July 30, 2019) (holding that a nonresident had standing to sue a city over its purportedly inaccessible website under Title II based on plans to move to the city in the future).

⁶⁰ See, e.g., *Foreign Abuse of U.S. Courts: Hearing Before the Subcomm. on Cts., Intell. Prop., A.I., and the Internet of the H. Comm. on the Judiciary*, 119th Cong. 19 (2025) (statement of Julian G. Ku, Maurice A. Deane Distinguished Professor, Hofstra Univ.) (discussing international "lawfare," which involves "the manipulation of legal processes to undermine, discredit, or impose substantial procedural and financial obligations upon adversaries through judicial mechanisms and related legal instruments"); Lindsay Lewis & Phil Goldberg, *We All Should Care Who Funds the Fight for Justice*, Hill (Dec. 17, 2025), <https://thehill.com/opinion/judiciary/5651240-foreign-influence-litigation-funding/> [<https://perma.cc/Z3PG-US6P>] (discussing international funding for litigation in the United States).

⁵¹ *Id.* at 2.

⁵² *Id.* at 1.

⁵³ Letter for Russell T. Vought, Director, OMB, from Mark A. Riccobono, President, National Federation of the Blind (June 9, 2025), <https://nfb.org/programs-services/advocacy/policy-statements/letter-office-management-and-budget-response-letter> [<https://perma.cc/9NVL-FHL6>].

⁵⁴ *Id.*

⁵⁵ *E.g., Barnes v. Gorman*, 536 U.S. 181, 185 (2002) (stating that title II is "enforceable through private causes of action").

⁵⁶ 42 U.S.C. 12205 (a court may grant the prevailing party in a Title II suit "a reasonable attorney's fee, including litigation expenses[] and costs"); *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 160 (2017) (individuals may seek injunctive relief for violations of Title II).

generative AI⁶¹ that is potentially inaccessible.⁶²

To be sure, the fundamental-alteration or undue-burden defenses are potentially available during litigation. Even so, the existence of defenses against claims should not guide the Department's decisions in setting the rule's compliance deadlines. The rule's deadlines never hinged on the availability of defenses in eventual litigation, and there is no good reason to change course. If the Department took the contrary view, we would require entities to engage in litigation because of compliance burdens that we know depend on technological developments, and resources, that are not entirely within their control. Letting those covered entities face lawsuits for failure to comply with such unreasonable compliance deadlines would conflict with one of the foundational precepts of law, that no one is bound to do what is impossible.⁶³ Although those entities

could prevail on a defense, that does not mitigate the litigation risks described here.

Whether the fundamental alteration or undue burden defenses apply depends on the specific facts and circumstances; the heads of covered entities or their designees must assess the defenses after considering all resources available for use in the funding and operation of a service, program, or activity, and develop a written statement of the reasons for their conclusion that either of the defenses apply.⁶⁴ By extending the 2024 final rule's compliance dates, covered entities can avoid spending time and resources assessing the application of these defenses and developing written analysis, and they can instead specifically focus on compliance efforts. This will ultimately lead to greater accessibility for individuals with disabilities because more time and resources will be devoted directly to compliance with the substantive requirements of the 2024 final rule.

In the 2024 final rule, the Department attempted to strike the appropriate balance between preserving public entities' limited resources and ensuring accessibility for individuals with disabilities. But the advancement and availability of technology did not meet the Department's expectations when it had struck that balance. Advanced technology, such as generative AI, does not yet reliably automate the remediation of inaccessible content at scale, and staff resources and availability continue to pose significant challenges. Nor did covered entities' resources meet the Department's expectations. The less public entities can rely on technology to make their web content and mobile apps accessible, the more they will need to rely on manual work instead. This interplay is highlighted by the recent concerns raised about the 2024 final rule's compliance dates.

Because of circumstances outside of the Department's and covered entities' control, both in covered entities' resources and the availability of technology, the Department believes those deadlines are infeasible and unfair to covered entities. Upon these new observations, the Department again strikes a balance between covered entities' burdens and ensuring accessibility for individuals with disabilities and believes an extension is appropriate. Accordingly, the Department is extending both compliance dates by one year, consistent with the longer time frames

the Department considered as regulatory alternatives for the 2023 NPRM and 2024 final rule. The Department invites public comment on the updated compliance dates included in this IFR. This extension will ensure that public entities have sufficient time to engage in appropriate processes to make their web content and mobile apps accessible as required by the rule.⁶⁵

Extending the 2024 final rule's compliance dates has additional benefits. It will ensure that covered entities better understand the rule's substance to achieve compliance to the benefit of persons with disabilities. While the 2024 final rule incorporated by reference the static 2018 version of WCAG 2.1,⁶⁶ there are numerous resources linked throughout the technical standard, including links to web pages that provide supplementary explanatory information to help users understand and meet the requirements of the technical standard, that are dynamic and can be changed outside of the Department's rulemaking processes.⁶⁷ These supplementary materials alter the requirements of WCAG 2.1. Also, their presentation and

⁶¹ See, e.g., Nat'l Ass'n of Cnts., *2024 National Association of Counties (NACo) Generative AI Membership Survey Report* at 8 (2024), <https://naco.sharefile.com/share/view/s0cf368e9b14d4267a297a2e98290873a> [<https://perma.cc/D67X-2LP5>] ("Data shows that GenAI is used within county operations and services at minimum monthly by 60% of respondents."); Sanam Hooshidary, Chelsea Canada & William Clark, Nat'l Conf. of State Legislatures, *Artificial Intelligence in Government: The Federal and State Legislative Landscape* at 8 (2024), <https://documents.ncsl.org/wwwncsl/Technology/Government-State-Fed-Landscape-v02.pdf> [<https://perma.cc/7T4A-BKYW>] ("State agencies are using tools that have a range of capabilities [including] . . . content generation."); Nate Sanford, *Washington City Officials Are Using ChatGPT for Government Work*, Cascade PBS (Aug. 26, 2025), <https://www.cascadepbs.org/news/2025/08/wa-city-officials-are-using-chatgpt-to-write-government-documents/> [<https://perma.cc/ZCT9-2JT6>] (profiling use of AI by local governments in Washington state and noting that "public servants have used generative AI to write emails to constituents, mayoral letters, policy documents and more"). Among other uses, local government entities are notably using AI to generate content in the educational context. See, e.g., Drew Bent & Kunal Handa, *Anthropic Education Report: How Educators Use Claude*, Anthropic (Aug. 27, 2025), <https://www.anthropic.com/news/anthropic-education-report-how-educators-use-claude> [<https://perma.cc/4UBS-NJ7G>] ("The most prominent use of AI [among educators] . . . was for curriculum development.").

⁶² See, e.g., N.Y.C. Bar, *The Impact of the Use of AI on People with Disabilities* at 6–7 (2025), <https://www.nycbar.org/reports/the-impact-of-the-use-of-ai-on-people-with-disabilities/> [<https://perma.cc/W87A-K26K>] (noting that generative AI may produce inaccessible outputs if it relies on inaccessible inputs); Ne. Univ., *AI and Accessibility*, <https://tealab.sites.northeastern.edu/generative-ai-and-accessibility/> [<https://perma.cc/M9B4-2TPN>] (last visited Mar. 26, 2026) ("State-of-the-art image generation models do not output alternative (alt) text with their images, rendering them largely inaccessible to screen reader users").

⁶³ See *Chew Heong v. United States*, 112 U.S. 536, 554 (1884); 12 Co. Rep. 89 (1738 ed.); see also Publius Juventius Celsus, Digest 50.17.185 (Justinian, 533 A.D.) ("*Impossibilium nulla obligatio est.*") (meaning there is no obligation to do the impossible).

⁶⁴ 28 CFR 35.204.

⁶⁵ The Department recognizes that some entities requested additional technical assistance about the rule, but decided to extend the compliance deadline instead, given the considerable technical assistance resources the Department has already provided. See, e.g., U.S. Dep't of Just., *Webinar: Americans with Disabilities Act Title II Web & Mobile Application Accessibility Rule*, ADA.gov (Jan. 16, 2025), <https://www.ada.gov/title-ii-web-rule/> [<https://perma.cc/HW39-7ECF>]; U.S. Dep't of Just., *State and Local Governments: First Steps Toward Complying with the Americans with Disabilities Act Title II Web and Mobile Application Accessibility Rule*, ADA.gov (Jan. 8, 2025), <https://www.ada.gov/resources/web-rule-first-steps/> [<https://perma.cc/SX52-53TA>]; U.S. Dep't of Just., *Accessibility of Web Content and Mobile Apps Provided by State and Local Government Entities: A Small Entity Compliance Guide*, ADA.gov (May 22, 2024), <https://www.ada.gov/resources/small-entity-compliance-guide/> [<https://perma.cc/66KW-3Y6M>]; U.S. Dep't of Just., *Fact Sheet: New Rule on the Accessibility of Web Content and Mobile Apps Provided by State and Local Governments*, ADA.gov (Apr. 8, 2024), <https://www.ada.gov/resources/2024-03-08-web-rule/> [<https://perma.cc/6EKQ-HPKB>].

⁶⁶ 89 FR at 31321, 31346.

⁶⁷ See, e.g., W3C, *Web Content Accessibility Guidelines (WCAG) 2.1, Success Criterion 1.1.1. Non-Text Content* (June 5, 2018), <https://www.w3.org/TR/2018/REC-WCAG21-20180605/#non-text-content> (The Success Criterion 1.1.1 section includes two general-information links—"Understanding Non-text Content," which directs to W3C, *Understanding SC 1.1.1: Non-text Content (Level A)* (Sept. 16, 2025), <https://www.w3.org/WAI/WCAG21/Understanding/non-text-content.html> [<https://perma.cc/9LFK-EZ94>], and "How to Meet Non-text Content," which directs to W3C, *How to Meet WCAG (Quick Reference): 1.1.1 Non-text Content—Level A* (Sept. 22, 2025), <https://www.w3.org/WAI/WCAG22/quickref/?versions=2.1#non-text-content> [<https://perma.cc/A89Y-BATR>])—both of which lead to web pages that were last updated in 2025, after the 2024 final rule was published.).

maintenance outside the rule create uncertainty and confusion for public entities as they plan for compliance. Additionally, the 2024 final rule links to a web page for WCAG 2.1 with a dialogue box that states: “This version is outdated! For the latest version, please look at <https://www.w3.org/TR/WCAG21/>.”⁶⁸ While the rule indicates the 2018 version of WCAG 2.1, and not a newer version, is incorporated by reference,⁶⁹ the banner could lead some public entities to question which materials govern compliance.

Extending the compliance dates would also help resolve some confusion over proposed exceptions in the 2023 NPRM for certain course content used by public educational institutions.⁷⁰ The Department reconsidered those exceptions in light of public comments responding to the NPRM and removed them in the 2024 final rule.⁷¹ But the removal of those exceptions in the 2024 final rule could lead to confusion, given this change, and require additional time for covered entities to understand their compliance obligations. By extending the compliance dates, this IFR will afford public entities time to assess the substance of the 2024 final rule. By extending the compliance dates and providing opportunity to comment, this IFR also will afford those public entities an opportunity to comment on the rule though they did not anticipate its application to them given the exceptions contained in the 2023 NPRM.

The Department recognizes that individuals with disabilities and disability advocacy organizations also expect the rule to come into effect on the compliance dates listed in the 2024 final rule. The Department considered and weighed the reliance interests of these individuals and organizations when developing this IFR. The Department recognizes, for example, that the one-year extension will mean that an individual with a disability may need to request accessible versions of certain electronic documents from a public entity and wait for those requests to be fulfilled.

The Department considered such interests in setting the one-year date extensions included in this IFR. The Department believes this IFR might benefit persons with disabilities and disability advocacy organizations because, as we already explained, it

replaces the potential for wasted time and money in litigation with the opportunity for covered entities’ to achieve actual compliance with the rule. Technology still needs time to advance and covered entities need time to muster resources. Moreover, the extra time will allow covered entities to focus more on compliance efforts rather than diverting time and attention towards the undue burden and fundamental alteration defenses, even prior to any litigation. As a result, extending the compliance deadlines could allow for efficient preparation for full compliance with the 2024 final rule’s substance. Accordingly, the Department believes that extending the compliance dates through this IFR will provide more certainty and predictability and lead to greater accessibility for individuals with disabilities.

While this IFR is limited to extending the 2024 final rule’s compliance dates, the Department plans to engage in future rulemaking processes related to the substantive requirements of the 2024 final rule. During the extension period, the Department will consider issuing an NPRM providing members of the public with an opportunity to comment on the substance of the 2024 final rule and any changes proposed by the Department. If the Department does not issue such an NPRM and if circumstances suggesting further delays of this deadline do not exist, the Department fully anticipates implementing the regulation at the new deadline. Regardless of the compliance dates, covered entities have an ongoing obligation to ensure that their services, programs, and activities offered using web content and mobile apps are accessible to individuals with disabilities in accordance with their existing obligations under title II of the ADA.

III. Regulatory Amendments

This IFR extends by one year the compliance dates included in §§ 35.200(b)(1) and (2) of the Department’s regulations implementing title II. As discussed in Sections I and II of this preamble, these regulatory amendments are needed to make sure that State and local government entities have sufficient time to achieve compliance with the requirements of the 2024 final rule in light of their reported resource constraints, staffing limitations, and slow technological advancement as the rule’s compliance dates imminently approach. Absent these amendments, public entities would face burdens from rushed compliance efforts in advance of the compliance dates and significant litigation risk after the dates pass. The

amendments do not alter any other provisions of the 2024 final rule.

Section 35.200(b) establishes the compliance dates by which State and local government entities must make sure that the web content and mobile applications they provide or make available, directly or through contractual, licensing, or other arrangements, comply with the requirements of the 2024 final rule. Before this IFR, paragraph (b)(1) required public entities with a total population of 50,000 or more to begin complying with the rule on April 24, 2026.⁷² Paragraph (b)(2) required public entities with a total population of less than 50,000, as well as special district governments, to begin complying with the rule on April 26, 2027.⁷³

This IFR amends paragraph (b)(1) by extending the compliance date for public entities with a total population of 50,000 or more by one year, from April 24, 2026, to April 26, 2027. It also amends paragraph (b)(2) by extending the compliance date for public entities with a total population of less than 50,000 and for special district governments by one year, from April 26, 2027, to April 26, 2028.

IV. Severability

The Department’s position is that each of the amendments in this IFR serve a vital, related, but distinct purpose. The Department also confirms that each of the amendments is intended to operate independently of each other and that the potential invalidity of one amendment should not affect the other amendments. The Department would adopt any of the amendments independent of, and regardless of, the invalidity of a separate amendment.

As discussed, this rulemaking will amend the 2024 final rule’s compliance dates so that large public entities would have until April 26, 2027, to comply with the rule and small entities would have until April 26, 2028, to comply with the same. Each of these extensions are severable.

V. Regulatory Process Matters

A. Administrative Procedure Act

The Department issues this IFR without prior public notice and comment pursuant to 5 U.S.C. 553(b)(B), and without a delayed effective date pursuant to 5 U.S.C. 553(d)(1).

Under 5 U.S.C. 553(b)(B), notice and public procedures are not required when an agency, for good cause, finds that such procedures are “impracticable, unnecessary, or contrary to the public

⁶⁸ W3C, *Web Content Accessibility Guidelines (WCAG) 2.1* (June 5, 2018), <https://www.w3.org/TR/2018/REC-WCAG21-20180605/> [<https://perma.cc/UB8A-GG2F>].

⁶⁹ See 89 FR at 31347 n.47.

⁷⁰ 88 FR at 52019.

⁷¹ See 89 FR at 31371–74.

⁷² 89 FR at 31337.

⁷³ 89 FR 31337.

interest,” and the agency incorporates the finding and a brief statement of the reasons therefore in the rulemaking. This IFR is limited to extending the compliance dates. As noted elsewhere in this notice, the Department included the longer time frame it is adopting today as a regulatory alternative in the 2023 NPRM and evaluated the cost of that approach in the Regulatory Impact Analysis associated with that rulemaking. Given the recency of that rulemaking and the materially identical public comment considerations, the Department believes that a new round of notice and comment is unnecessary.

In addition, the compliance dates in the 2024 final rule are quickly approaching, including the immediate first compliance date of April 24, 2026. As discussed in Sections I and II of this preamble, circumstances outside of the Department’s and covered entities’ control make these regulatory amendments needed to ensure State and local government entities have sufficient time to achieve compliance with the requirements of the 2024 final rule. This is in light of the Department’s belief that it overestimated the advancement and availability of technology to make web content and mobile apps accessible when it set the original compliance dates, and in light of the reported resource constraints and staffing limitations facing public entities as those dates imminently approach. Absent these amendments, public entities would be subject to significant litigation risk after the compliance dates passed. Because of the private right of action, the Department does not have the option to take no enforcement action or offer a statement of policy regarding its intent to not enforce the rule pending improvements to the circumstances for covered entities’ compliance. Moreover, because the Department does not have time to go through notice-and-comment rulemaking before the effective dates of the 2024 final rule, the only way for the Department to delay the consequences of this rule is to forgo prepublication notice and comment. Notwithstanding the presence of good cause to promulgate this compliance extension without notice and comment, the Department has decided, as a voluntary matter, to promulgate this action as an IFR with a post-promulgation 60-day public comment period.

In addition, the nature of this IFR is to delay restrictions, rather than impose new ones, which alleviates the central concern of the Administrative Procedure Act to create “safeguards . . . against arbitrary official encroachment

on private rights.”⁷⁴ When an agency does not burden regulated parties “it generally does not exercise its coercive power over” those parties “and thus does not infringe upon areas that courts often are called upon to protect.”⁷⁵

For these reasons, the Department finds that following pre-publication notice-and-comment procedures for this rulemaking would be impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

In addition, this IFR is effective immediately without a delayed effective date pursuant to 5 U.S.C. 553(d)(1). Under 5 U.S.C. 553(d)(1), there is no requirement for a delayed effective date for substantive rules that “grant[] or recognize[] an exemption or relieve[] a restriction.” This IFR relieves a restriction, in the form of existing dates for compliance with regulatory requirements.

B. Executive Orders 12866 and 13563 (Regulatory Review)

The Department has determined that this IFR is an economically “[s]ignificant regulatory action” under section 3(f)(1) of Executive Order (“E.O.”) 12866.⁷⁶ Accordingly, this rule has been submitted to OMB for review.

This IFR has been drafted and reviewed in accordance with section 1(b) of E.O. 12866⁷⁷ and with section 1(b) of E.O. 13563,⁷⁸ which supplements and reaffirms the principles of E.O. 12866. These orders direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits.⁷⁹ Both orders also recognize that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify.⁸⁰

As explained in Sections I and II of this preamble, the Department identified recent communications submitted to the Federal Government indicating that the Department overestimated the advancement and availability of technology to make web

content and mobile apps accessible when setting the compliance dates in the 2024 final rule. There are also reported resource constraints and staffing limitations for public entities as they work towards compliance with the rule. This IFR adjusts the 2024 final rule’s compliance dates in light of these recent communications to make sure public entities have sufficient time to begin complying with the rule.

Data limitations make the costs and benefits of this IFR difficult to quantify. However, the Department assessed the costs and benefits of these one-year longer compliance dates in the Final Regulatory Impact Analysis (“FRIA”) that accompanied the 2024 final rule.⁸¹ With the longer dates, the rule was expected to generate 10-year average annualized net benefits of \$1.3 billion using a 7 percent discount rate.⁸² The cost-benefit analysis in the FRIA for the longer dates differs from the FRIA’s cost-benefit analysis for the original compliance dates this IFR replaces. However, the Department believes the FRIA’s analysis of the longer compliance dates better approximates the costs and benefits of the 2024 final rule’s requirements. Because the Department overestimated the advancement and availability of technology to make web content and mobile apps accessible, and because public entities face reported resource constraints and staffing limitations as they work towards compliance, some content will not be made accessible until after the original compliance dates. As a result, the benefits of making the content accessible will not be realized until after those dates. This IFR does not impose new substantive requirements and it does not expand the scope of existing obligations. Instead, by extending the compliance deadlines established in the 2024 final rule, the Department expects this IFR to better align with the current status of compliance. The IFR also mitigates public entities’ litigation exposure associated with impending compliance deadlines, and it avoids burdens to covered entities from rushed compliance efforts. Despite the difficulties of estimating the cost, the Department estimates the savings to small entities as set forth in the below Cost Estimate.

Based on the foregoing, the Department believes that this IFR is

⁷⁴ *United States v. Morton Salt Co.*, 338 U.S. 632, 644 (1950); see also Douglas H. Ginsburg, Steven Menashi, *Our Illiberal Administrative Law*, 10 NYU J.L. & Liberty 475, 521 (2016) (“The APA was intended to give the public a way to get relief from administrative excess.”).

⁷⁵ *Heckler v. Chaney*, 470 U.S. 821, 832 (1985) (emphasis omitted).

⁷⁶ 58 FR 51735, 51738 (Sept. 30, 1993).

⁷⁷ 58 FR at 51735–36.

⁷⁸ 76 FR 3821, 3821 (Jan. 18, 2011).

⁷⁹ 58 FR at 51735; 76 FR at 3821.

⁸⁰ 58 FR at 51735; 76 FR at 3821.

⁸¹ 2024 Cost-Benefit Analysis, *supra* note 33, at 172–78.

⁸² The 2024 rule was expected to generate the 10-year average annualized benefits of \$4,509.5 million, while incurring the 10-year average annualized costs of \$3,249 million using a 7 percent discount rate. *Id.* at 175–78 (Tables 76 & 78).

consistent with the principles of E.O. 12866 and E.O. 13563, including the requirement that, to the extent permitted by law, the Department adopt a regulation only upon a reasoned determination that its benefits justify its costs and select a regulatory approach that maximizes net benefits.⁸³

C. Cost Savings Estimate

The IFR delays the compliance date by one year, generating an estimated \$2.775 billion in present-value cost savings over a 10-year horizon (7% discount rate), or \$395 million annualized. This reflects the time value of money: Pushing the large first-year implementation cost into the future reduces its present value, while the final year of recurring costs falls outside the 10-year window entirely. Small entities capture approximately \$1.47 billion (53%) of these savings in present value,

or \$210 million annualized. This share reflects a corrected estimate of small entity costs drawn from the FRIA,⁸⁴ which places total small entity compliance costs at \$13.1 billion (53% of the \$24.7 billion total 10-year cost estimate).⁸⁵

Assumptions:

- First-year implementation cost: \$16,949 million⁸⁶
- Annual recurring cost (each subsequent year): \$1,990 million⁸⁷
- Small entity share of total costs: 53%
- Discount rate: 7% (consistent with OMB Circular A-4)
- Analytic horizon: 10 years from the effective date

Mechanism: Under the status quo, regulated entities incur the \$16,949 million implementation cost in Year 1, followed by \$1,990 million per year in Years 2–10. Under this IFR, those same costs are shifted forward by one year:

Implementation occurs in Year 2, recurring costs in Years 3–10. Two things follow:

1. A discounting effect on the large upfront cost. The \$16,949 million implementation cost, discounted at 7%, falls from \$15,840 million (Year 1) to \$14,804 million (Year 2)—a savings of approximately \$1,036 million in present value.

2. A truncation of the final recurring year. Because we hold the analytic window fixed at 10 years, this IFR includes only 8 years of recurring costs (Years 3–10) versus 9 under the status quo (Years 2–10). The 10th-year recurring cost of \$1,990 million, which would have a present value of roughly \$1,012 million, drops out. However, this is partially offset by the fact that the recurring costs in Years 3–10 are identical under both scenarios.

TABLE 1—10-YEAR UNDISCOUNTED AND DISCOUNTED (AT 7%) COST SAVINGS FROM A ONE-YEAR IMPLEMENTATION DELAY
[In millions of dollars]

Year	Status quo		IFR		Cost savings	Undiscounted
	Undiscounted	Discounted	Undiscounted	Discounted		
1	\$16,949	\$15,840	\$0	\$0	–\$16,949	–\$15,840
2	1,990	1,738	16,949	14,804	14,959	13,066
3	1,990	1,625	1,990	1,625	0	0
4	1,990	1,518	1,990	1,518	0	0
5	1,990	1,419	1,990	1,419	0	0
6	1,990	1,326	1,990	1,326	0	0
7	1,990	1,239	1,990	1,239	0	0
8	1,990	1,158	1,990	1,158	0	0
9	1,990	1,083	1,990	1,083	0	0
10	1,990	1,012	1,990	1,012	0	0
Totals	34,862	27,959	32,872	25,185	–1,990	–2,775

The undiscounted difference (\$1,990 million) simply equals the one year of recurring costs that falls outside the 10-year window. The discounted difference

(\$2,775 million) is larger because the IFR defers the heavy upfront cost by one year.⁸⁸

The table below disaggregates total cost savings into all entities and small entities:

TABLE 2—PRESENT-VALUE AND ANNUALIZED COST SAVINGS FROM A ONE-YEAR IMPLEMENTATION DELAY, DISAGGREGATED BY ENTITY SIZE
[7% discount rate; millions of dollars]

Metric	All entities	Small entities	Small entity share %
Original 10-year total costs	\$24,688 million	\$13,095 million	53.0
10-year PV savings (7% discount)	2,775 million	1,472 million	53.0
Annualized savings (7% discount)	395 million	210 million	53.0

Small entities (typically governments with populations below 50,000) account for more than half of all cost savings.

This reflects the compliance cost structure: While per-entity costs may be lower for small governments, the

aggregate relief is substantial because small entities are numerous and the delay avoids a synchronized, resource-

⁸³ See 58 FR at 51735; 76 FR at 3821.

⁸⁴ See 89 FR at 31334 (Table 14).

⁸⁵ See 89 FR at 31332 (Table 6).

⁸⁶ See 89 FR at 31331 (Table 3).

⁸⁷ See 89 FR at 31331 (Table 4).

⁸⁸ When a 3% discount rate is applied instead of the 7% discount rate, the present value (PV) of 10-year cost saving is \$2,355 million and the annualized cost saving is \$276 million.

intensive compliance push in the near term.

The Department was unable to quantify the impact on benefits of this one-year delay and accordingly was unable to calculate the impact on net benefits.

C. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

E.O. 14192 requires an agency, unless prohibited by law, to identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation.⁸⁹ In furtherance of this requirement, section 3(c) of the order requires that “any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.”⁹⁰

Deregulatory actions include final actions that reduce compliance costs below zero, which may include repealing, revising, or streamlining existing regulations.⁹¹ This IFR revises the 2024 final rule by extending the rule’s compliance dates by one year. As explained in the preamble, extending the compliance dates is expected to avoid burdens to covered entities from rushed compliance efforts. It is also expected to reduce litigation exposure associated with the 2024 final rule’s impending compliance deadlines, including potential liability for attorneys’ fees and injunctive relief. Accordingly, the Department believes that this IFR constitutes a deregulatory action for purposes of E.O. 14192.

D. Executive Order 14294 (Fighting Overcriminalization in Federal Regulations)

E.O. 14294 requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to “explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to” each element of those offenses.⁹² This rule does not impose a criminal regulatory penalty and is thus exempt from E.O. 14294’s requirements.

E. Executive Order 13132 (Federalism)

E.O. 13132 requires Executive Branch agencies to consider whether a rule will have federalism implications—that is, whether the rule will have substantial direct effects on State or local governments, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.⁹³

Title II of the ADA applies to the services, programs, and activities of State and local government entities and, therefore, implicates federalism considerations. State and local government entities have been subject to title II for decades. Accordingly, the application of title II and the Department’s implementing regulations is not novel for State or local governments.

This IFR does not alter the substantive requirements adopted in the 2024 final rule, including the scope of coverage or the interaction between Federal requirements and State or local law. Instead, this rule solely extends the 2024 final rule’s compliance dates. As a result, this IFR does not impose new obligations on State or local governments, affect States’ policymaking discretion, or change the distribution of power and responsibilities among the various levels of government.

Because this IFR merely adjusts the timing of compliance with existing requirements and is expected to reduce litigation exposure for State and local governments and avoid burdens to covered entities from rushed compliance efforts, the Department has determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement under E.O. 13132.

F. Executive Order 12988 (Civil Justice Reform)

This IFR meets the applicable standards set forth in sections 3(a) and (b)(2) of E.O. 12988 to specify provisions in clear language.⁹⁴ Pursuant to section 3(b)(1)(I) of the order,⁹⁵ nothing in this proposed or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the program that is the subject of this IFR is intended to create any legal or procedural rights enforceable against the United States.

G. Regulatory Flexibility Act

This IFR does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (“RFA”)⁹⁶ because, for the reasons described above in Section V.A of this preamble, the Department for good cause finds that following notice and public procedures for this rulemaking would be impracticable, unnecessary, or contrary to the public interest and therefore issues this IFR without notice and public procedures under 5 U.S.C. 553(b)(B).⁹⁷ The Department seeks feedback on the impact of the 2024 final rule and the IFR, including the number of governmental entities affected by these rules, and on the costs and benefits of both initiatives. The Department also seeks feedback on whether the agency should publish additional rulemaking to consider additional regulatory alternatives that could make the 2024 final rule less costly for small governments.

H. Plain Language Instructions

The Department makes every effort to promote clarity and transparency in its rulemaking. In any rule, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal interpretation. The Department operates a toll-free ADA Information Line at (800) 514-0301 (voice) or 1-833-610-1264 (TTY) that the public is welcome to call to get assistance understanding anything in this proposed rule. If any commenter has suggestions for how the regulations could be written more clearly, please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency contact information.

I. Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this rule meets the criteria for a “major rule” set forth by Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act).⁹⁸ This rule will result in an annual effect on the economy of \$100 million or more; but not a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of companies based in the United States to compete with foreign-based

⁸⁹ 90 FR 9065, 9065 (Jan. 31, 2025).

⁹⁰ 90 FR 9065.

⁹¹ Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions from Jeffrey B. Clark Sr., Acting Administrator, Office of Information and Regulatory Affairs, OMB M-25-20, *Re: Guidance Implementing Section 3 of Executive Order 14192, Titled “Unleashing Prosperity Through Deregulation”* at 4-6 (Mar. 26, 2025).

⁹² 90 FR 20363, 20363 (May 9, 2025).

⁹³ 64 FR 43255, 43255 (Aug. 4, 1999).

⁹⁴ See 61 FR 4729, 4731-32 (Feb. 5, 1996).

⁹⁵ 61 FR 4731.

⁹⁶ 5 U.S.C. 603.604.

⁹⁷ See *Or. Trollers Ass’n v. Gutierrez*, 452 F.3d 1104, 1123-24 (9th Cir. 2006) (noting that the RFA does not apply when an agency validly invokes an exception to the public notice-and-comment requirements of 5 U.S.C. 553).

⁹⁸ 5 U.S.C. 804(2).

companies in domestic and export markets. The rule merely extends the compliance dates in the 2024 final rule by one year. Doing so does not impose any new obligations on any public entities.

For the reasons discussed above in the Administrative Procedure Act section, the Department issues this IFR without notice and comment or a delayed effective date pursuant to 5 U.S.C. 553(b)(B) and (d)(1). Accordingly, pursuant to 5 U.S.C. 808(2), the requirement for a 60-day delayed effective date does not apply to this rule.

J. Paperwork Reduction Act

This rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.⁹⁹

K. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 excludes from coverage under that Act any proposed or final Federal regulation that “establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.”¹⁰⁰ Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

List of Subjects for 28 CFR Part 35

Administrative practice and procedure, Civil rights, Communications, Incorporation by reference, Individuals with disabilities, State and local requirements.

By the authority vested in me as Attorney General by law, including 5 U.S.C. 301; 28 U.S.C. 509, 510; sections 201 and 204 of the Americans with Disabilities Act, Public Law 101–335, as amended; and section 505 of the ADA Amendments Act of 2008, Public Law 110–325, 28 CFR part 35 is amended as follows:

PART 35—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12134, 12131, and 12205a.

Subpart H—Web and Mobile Accessibility

§ 35.200 [Amended]

■ 2. Section 35.200 is amended by:

- a. In paragraph (b)(1), removing the text “April 24, 2026” and adding in its place the text “April 26, 2027”; and
- b. In paragraph (b)(2), removing the text “April 26, 2027” and adding in its place the text “April 26, 2028”.

Dated: April 16, 2026.

Todd Blanche,

Acting Attorney General.

[FR Doc. 2026–07663 Filed 4–17–26; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2026–0474]

RIN 1625–AA00

Safety Zone; Cheboygan River, Black River, Cheboygan, MI

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Cheboygan River from the Cheboygan Lock and Dam Complex to the Cheboygan River’s outlet from Mullett Lake and the Black River from its confluence with the Cheboygan River to Alverno Dam. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with flood waters. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Northern Great Lakes, or their designated representative.

DATES: This rule is effective without actual notice from April 20, 2026, through April 24, 2026. For the purposes of enforcement, actual notice will be used from April 15, 2026, until April 20, 2026.

ADDRESSES: To view available documents go to <https://www.regulations.gov> and search for USCG–2026–0474.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact LT Rebecca Simpson, Sector Northern Great Lakes Waterways Management Division, U.S. Coast Guard; telephone 906–635–3237, or email ssmprevention@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background and Authority

The Coast Guard received notification of dangerous flood waters on the Cheboygan River from the Cheboygan Lock and Dam Complex to the Cheboygan River’s outlet from Mullett Lake and the Black River from its confluence with the Cheboygan River to Alverno Dam. The Captain of the Port (COTP) Northern Great Lakes has determined that potential hazards associated with flood waters are a safety concern for any vessels south of the Cheboygan Lock and Dam Complex to the Cheboygan River’s outlet from Mullett Lake and the Black River from its confluence with the Cheboygan River to Alverno Dam.

Because of these potential hazards, the Coast Guard is issuing this rule without prior notice and comment. As is authorized by 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 it is impracticable. The Coast Guard was notified of the dangers to vessels on April 14, 2026, and we must establish this safety zone by April 15, 2026, to protect personnel, vessels, and the marine environment. Therefore, we do not have enough time to solicit and respond to comments.

For the same reasons, the Coast Guard finds that under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Discussion of the Rule

This rule establishes a safety zone from April 15, 2026 through April 24, 2026. The safety zone will cover all navigable waters in the Cheboygan River from the Cheboygan Lock and Dam Complex to the Cheboygan River’s outlet from Mullett Lake and the Black River from its confluence with the Cheboygan River to Alverno Dam. Vessels and persons will not be allowed to enter the zone during this time, unless authorized by the Captain of the Port.

IV. Regulatory Analyses

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

⁹⁹ 44 U.S.C. 3501 *et seq.*

¹⁰⁰ 2 U.S.C. 1503(2).

A. Impact on Small Entities

The regulatory flexibility analysis provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to rules that are not subject to notice and comment. Because the Coast Guard has, for good cause, waived the notice and comment requirement that would otherwise apply to this rulemaking, the Regulatory Flexibility Act's flexibility analysis provisions do not apply here.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), if this rule will affect your small business, organization, or governmental jurisdiction and you have questions, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards by calling 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.

B. 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).

C. Federalism and Indian Tribal Governments

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in that Order.

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.

D. Unfunded Mandates Reform Act

As required by The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Coast Guard certifies that this rule will not result in an annual expenditure of \$100,000,000 or more (adjusted for inflation) by a State, local, or tribal government, in the aggregate, or by the private sector.

E. 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 *et seq.*), 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 is a safety zone. 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. A Record of Environmental Consideration supporting this determination will be available in the docket.

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; DHS Delegation No. 00170.1, Revision No. 01.4.

- 2. Add § 165.T09–0474 to read as follows:

§ 165.T09 0474 Safety Zone; Cheboygan River, Black River, Cheboygan, MI.

(a) *Location.* The following area is a safety zone: All waters of the Cheboygan River from the Cheboygan Lock and Dam Complex (45°38′09.8″ N, 084°28′47.3″ W) to the Cheboygan River's outlet from Mullett Lake (45°34′34.1″ N, 084°29′18.0″ W), as well as all waters of the Black River from its confluence with the Cheboygan River (45°36′15.3″ N, 084°27′52.3″ W) to Alverno Dam (45°33′06.6″ N, 084°23′42.5″ W). These coordinates are based on the North American Datum 83 (NAD 83).

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer

designated by or assisting the Captain of the Port Sector Northern Great Lakes (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF–FM channel 16 or by telephone at (906) 635–3237. 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 period.* This section will be enforced from April 15, 2026, to April 24, 2026.

J.R. Bendle,

Captain, U.S. Coast Guard, Captain of the Port Sector Northern Great Lakes.

[FR Doc. 2026–07621 Filed 4–17–26; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 63

[WC Docket Nos. 25–208, 25–209; FCC 26–19; FR ID 340903]

Reducing Barriers to Network Improvements and Service Changes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopted a Report and Order that reduces regulatory barriers and costs that hinder the transition from outdated legacy networks and services to next-generation, Internet Protocol (IP)-based infrastructure. The actions taken in the Report and Order combine common sense reforms with core consumer protections that bring the regulatory environment in line with today's communications marketplace while retaining and adopting safeguards to protect public safety and ensure 911 continuity. The Report and Order also concludes that if state or local requirements conflict with the service discontinuance framework adopted in the Report and Order, such requirements negate valid federal regulatory objectives and are subject to preemption.

DATES: This rule is effective May 20, 2026, except for instructions 2 (§ 51.329), 3 (§ 51.333), 6 (§ 63.60), 7

(§ 63.62), 8 (§ 63.63), 10 (§ 63.71), and 12 (§ 63.602), which are delayed indefinitely. 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, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1477, or michele.berlove@fcc.gov. For additional information concerning the Paperwork Reduction Act proposed information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket Nos. 25–208, 25–209; FCC 26–19, adopted on March 26, 2026, and released on March 27, 2026. The full text of this document is available for public inspection at the following internet address: <https://docs.fcc.gov/public/attachments/FCC-26-19A1.pdf>.

Synopsis

I. Discussion

A. Eliminate Network Change Disclosure Filing Requirements

1. We adopt our proposal in the *Network and Services Modernization Notice* (90 FR 41490 (8/28/2025)) to encourage rapid deployment of high-speed, more resilient infrastructure by eliminating all filing requirements in the Commission's network change disclosure rules and the Commission's process of issuing public notices for short-term network changes and copper retirements and the associated objection process for interconnected service providers. (We note that, while not required by the existing rules, the Bureau typically released Public Notices of long-term network changes as well. However, the objection process set forth in § 51.333 did not apply to such network change notices.) These actions effectively codify the relief granted by the Bureau in the *Network Change Disclosure Waiver Order* (NCD Waiver Order). Incumbent local exchange carriers (LECs) will continue to be required to post public notice of planned network changes through industry fora, industry publications, or on the carrier's publicly accessible internet site without the obligation to file duplicative information with the Commission. To ensure clear notice specifically to interconnecting carriers, incumbent LECs must continue to (1) provide direct notice of copper

retirements and short-term network changes to directly interconnected telephone exchange service providers, 911 service providers (defined as an entity that provides 911, E911, or NG911 capabilities such as call routing, automatic location information (ALI), automatic number identification (ANI), or the functional equivalent of those capabilities, directly to a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority as defined in § 9.3; and/or operates one or more central offices that directly serve a PSAP), and directly interconnecting local exchange service providers that support essential functions within 911 networks, including delivering 911 traffic to selective routers for transmission to public safety answering points (PSAPs), and (2) provide public notice and communicate directly with interconnected telephone exchange service providers about network changes resulting from force majeure events and other events outside of the incumbent LEC's control. (As previously noted by the Commission, our network change disclosure rules do not negate any specific notice obligations contained in privately negotiated contracts.) We note that the action we take today does not absolve incumbent LECs of their obligation under Section 214(a) to obtain Commission authorization for a copper retirement or other network change as defined in § 51.325(a) of our rules that also results in a service discontinuance and, indeed, works hand-in-hand with our actions taken below to ensure continued 911 connectivity when a carrier seeks to discontinue a service supporting interconnection trunks or the exchange of traffic, including but not limited to 911 trunks and 911 traffic. (We note that INCOMPAS has asked that "copper retirement must not be permitted in areas where competitive providers rely on legacy loops to reach end-user customers and where no viable wholesale replacement exists." And CWA has asserted that the actions we take today "fail[] to account for the significant workforce implications associated with accelerated copper retirement." However, as the Commission has previously noted, section 251(c)(5) established a notice-based network change disclosure process, and the Commission thus has no authority to prohibit copper retirements. And impacts of our actions on the workforce are similarly outside the scope of the purpose of Section 251(c)(5)'s public notice requirement, which pertains to impacts on

interoperability of the communications networks.)

2. Excessive regulatory burdens prevent carriers from investing in and deploying next-generation networks that are needed to support modern communication services. Various commenters have noted that eliminating all filing requirements while maintaining the public notice requirements will streamline the transition from legacy networks while still ensuring interconnecting entities receive adequate notice. We agree with NTCA that this approach "strike[s] the appropriate balance between reducing regulatory burden and ensuring stakeholders remain informed of network changes."

3. We find that adopting the change in filing and notice requirements proposed in the *Network and Services Modernization Notice* will not have any impact on the notices end users receive of planned network changes. Neither Section 251(c)(5) nor our implementing rules impose end-user notice obligations. Rather, carriers provide such notices to end users as a matter of practice. In the *NCD Waiver Order*, the Bureau noted that it received no comments in opposition to the more than 400 network change disclosure filings it processed and for which it released public notices over the preceding two years. And since issuing that *Order*, the Bureau has received no request or objection indicating that the lack of a filing or agency-issued Public Notice has resulted in disruption to the transmission or routing of services over an incumbent LEC's facilities. In response to our requests for comment in the *Network and Services Modernization Notice* on whether any public benefit exists from requiring incumbent LECs to file network change disclosures with the Commission and whether publishing notices of network changes on carriers' websites provides reasonable public notice of network changes, commenters suggest the lack of objections submitted in response to Commission network change Public Notices indicates that filing network change disclosures has become a purely administrative task that does not provide any value. Interconnected telephone exchange service providers may still raise concerns regarding short-term network changes and copper retirements through less formal Commission processes.

4. We conclude that eliminating all filing requirements and publication of Commission-issued public notices will reduce delays and encourage development and deployment of modernized networks. Reducing

regulatory costs and obligations encourages investment in modern networks and advanced communications services in all areas, especially those that are expensive to serve due to low population density or challenging topography. Carriers will not need to divert funds and resources to complying with burdensome regulations, allowing them to devote these resources elsewhere. (While the Commission cannot direct how incumbent LECs spend money gained from the reduction in regulatory costs and obligations, reducing costs associated with deployment of networks generally makes all service areas attractive for investment.)

5. We are not persuaded by the Alarm Industry Communications Committee's assertion that having network change notices only posted on incumbent LECs' publicly accessible websites "significantly reduces public visibility of critical infrastructure changes." The purpose of Section 251(c)(5)'s public notice requirement was to promote competition. When the Commission adopted its regulations implementing Section 251(c)(5), it noted the limited resources available to smaller carriers that might not participate in industry fora and publications. It thus included the filing requirement to ensure that "all carriers, competing service providers, and potential competitors . . . have equal opportunities to provide and to receive change information on a national scale." And when the Commission expressly added copper retirements to its network change disclosure scheme, it required that incumbent LECs provide direct notice of such network changes to interconnecting telephone exchange service providers, ensured that those interconnecting carriers received at least 90-days advance notice of the planned copper retirement, afforded those providers the opportunity to object, and noted that objections would be deemed denied "[u]nless the copper retirement scenario suggests that competitors will be denied access to the loop facilities required under our rules" absent Commission action on the objection within the 90-day advance notice period. Thus, the purpose of the filing requirement was never about "public visibility of critical infrastructure changes." However, we require that the method of notice the incumbent LEC uses be publicly accessible—i.e., not behind a paywall.

6. We do not take the alternative approach of forbearing from all public notice requirements imposed by Section 251(c)(5) and our implementing rules because we find that forbearance is not

justified at this time. Section 10 of the Act requires the Commission to forbear from applying any requirement of the Act or of its regulations to a telecommunications carrier or telecommunications service if the Commission determines that (1) enforcement of the requirement "is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory," (2) enforcement of that requirement "is not necessary for the protection of consumers," and (3) "forbearance from applying such provision or regulation is consistent with the public interest." All three conditions must be met to support forbearance relief. (We disagree with Wired Broadband et al.'s assertion that Section 251(c)(5)'s public notice requirement "is part of Americans' procedural due process rights" under the Fifth Amendment. This requirement is not subject to the Fifth Amendment's due process clause as the public notice required under that statutory provision is issued by a private company, not a government entity.) Thus, while we decline to forbear from these public notice requirements at this time, we note that future forbearance from these requirements would not violate the Constitution as the public notice is issued by a private company not a government entity.

7. Based on the record in this proceeding, we conclude that the conditions for granting forbearance relief from all network change disclosure requirements do not exist at this time and that any framework or guidance regarding interconnection with incumbent LEC networks during and after the transition to internet protocol (IP) is more appropriately addressed in the context of the proposed forbearance from the incumbent LEC-specific interconnection and related obligations in the October 2025 *IP Interconnection Notice* (90 FR 54266 (11/26/2025)). The rule we adopt today eliminating network change disclosure filing requirements achieves the appropriate balance between providing reasonable public notice of planned network changes and relieving incumbent LECs of unnecessary regulatory burdens.

8. *Ensuring practices are just and reasonable* (Section 10(a)(1)). We conclude that enforcement of the public notice requirements imposed by Section 251(c)(5) and our implementing rules is necessary to ensure incumbent LECs' practices are just and reasonable.

Forbearance from all requirements in Section 251(c)(5) and our implementing rules would allow incumbent LECs to make network changes or copper retirements without public notice, which might affect interoperability with interconnecting providers and may result in unintended service disruptions. Public notice of network changes generally and copper retirement notices specifically ensures that incumbent LECs' practices are "just and reasonable and are not unjustly or unreasonably discriminatory" by requiring that interconnecting carriers receive timely notice regarding changes that may inhibit their ability to provide services to their end-user customers.

9. *Ensuring protection of consumers* (Section 10(a)(2)). We find that enforcement of the public notice requirements imposed by Section 251(c)(5) and our implementing rules is necessary for the protection of consumers. The requirement that incumbent LECs provide reasonable public notice of network changes is meant to alert interconnecting carriers to changes that might affect their interoperability with the incumbent LEC's network. Lack of such notice and the opportunity to ensure interoperability might cause unintentional disruption of services, ultimately harming consumers.

10. *Consistent with the public interest* (Section 10(a)(3)). We conclude that forbearance from the public notice requirements imposed by Section 251(c)(5) and our implementing rules would not be consistent with the public interest. As shown overwhelmingly in the record, lack of notice at this time could significantly impact the provision of 911 services. While the transition to Next-Generation 911 (NG911) is progressing alongside broader IP modernization, the NG911 transition faces unique challenges and may not be complete for some time. As we noted in the *Network and Services Modernization Notice*, "network transitions subject to Section 251(c)(5) may occur in areas where 911 authorities and originating service providers (OSPs) have not yet transitioned to . . . [NG911] and will therefore continue for some time to rely on legacy selective routers and other TDM (time-division multiplexing)-based infrastructure for delivery of 911 calls to public safety answering points (PSAPs)" during this period of overlap. Until the NG911 transition is complete, it is imperative that carriers coordinate with state and local 911. Authorities and 911 service providers, as defined above, and directly interconnecting local exchange service providers that support essential

functions within 911 networks so that they are aware of network changes that could impact their ability to provide these critical services.

B. Section 214 Discontinuance

11. We next revise our rules implementing Section 214(a) of the Act to bring them in line with the realities of today's communications marketplace. First, we adopt our proposal to simplify our rules applicable to technology transitions discontinuances by establishing one consolidated rule applicable to all technology transitions discontinuance applications. (Our technology transitions discontinuance rules apply only to discontinuance of a retail wireline voice service—i.e., loop-side services. It does not apply to trunk-side services provided to another carrier, such as interconnection trunks.) Second, we adopt our proposal to grant blanket authorization for carriers to grandfather any legacy voice service, data telecommunications services operating at speeds below 25/3 Mbps, and interconnected VoIP service provisioned over copper facilities. Third, we establish requirements for applications to discontinue a service supporting interconnection trunks or the exchange of traffic, to ensure continued support for 911 service and also to ensure access for interconnecting providers on non-TDM services. Fourth, we forbear from Section 214(a) requirements in certain circumstances for resold service. Fifth, we adopt our proposal to apply a 31-day automatic grant period to all discontinuance applications regardless of the applicant's status as dominant or non-dominant. Sixth, we clarify the required contents of discontinuance applications. Seventh, we adopt our proposal to revise our rules applicable to emergency discontinuances to address specific situations where a carrier may wish to permanently discontinue a service after the Commission has granted emergency discontinuance authority. Finally, we clear from the books outdated and irrelevant discontinuance rules. We do not act at this time on our proposal to forbear from the requirement that carriers provide notice of planned discontinuances to State Governors and the Secretary of Defense, as required by Section 214(b).

1. Creating One Consolidated Technology Transitions Discontinuance Rule

12. As part of the Commission's ongoing efforts to reduce regulatory burdens and thus allow providers to invest more resources toward modernizing their networks and

developing and deploying newer, more advanced services, we adopt our proposal in the *Network and Services Modernization Notice* to revise the rules applicable to technology transitions discontinuances by replacing the Adequate Replacement Test and the Alternative Options Test with a single consolidated technology transitions discontinuance rule. (The provisions of Section 63.71(f)(2) pertain to last-mile, end-user legacy voice service.) In conjunction with this revision, we also eliminate § 63.602 and amend § 63.71 of our rules to set forth content requirements applicable to all discontinuance applications, including certain information set forth in § 63.505. With respect to technology transitions discontinuance applications, we continue to require that applications contain a statement identifying the application as involving a technology transition. This consolidated rule stipulates that an application to discontinue a currently offered retail voice service as part of a technology transition is eligible for streamlined processing if the applicant certifies that one or more of the following replacement services is available in every location throughout the affected service area: (1) a facilities-based interconnected VoIP service; (2) a facilities-based mobile wireless service; (3) a voice service offered pursuant to an obligation from one of the Commission's modernized high-cost support programs; (4) a voice service that has been available from the applicant throughout the affected service area for the previous six months and for which the carrier has at least a certain number of existing subscribers and which supports access to 911; or (5) a widely available alternative voice service that supports access to 911. (In adopting the Adequate Replacement Test, the Commission stated that “in order to meet [the network coverage] prong and thus be eligible for streamlined processing, a replacement service must be available to all affected customers covering the entire geographic scope of the service area subject to the application and actually function as intended for affected customers, or else it cannot be certified as a replacement service for those customers,” thus “promot[ing] the core value established by the Act, including that of ensuring universal access.” Commenter concerns regarding “reliance on facilities not yet built and technologies not yet deployed,” are obviated by the requirement that the replacement service must be available in all locations throughout the affected service area in order to be eligible for

streamlined processing. A facilities-based service is any service that is offered using (1) physical facilities that the provider owns and that terminate at the end-user premises; (2) facilities that the provider has obtained the right to use from other entities, such as dark fiber or satellite transponder capacity as part of its own network, or has obtained; (3) unbundled network element (UNE) loops, special access lines, or other leased facilities that the entity uses to complete terminations to the end-user premises; (4) wireless spectrum for which the provider holds a license or that the provider manages or has obtained the right to use via a spectrum leasing arrangement or comparable arrangement pursuant to 47 CFR 1.9001–1.9080; or (5) unlicensed spectrum.) Upon due consideration of the record in this proceeding and the ample support for this approach reflected therein, we find that this rule will accelerate the application process while simultaneously protecting legacy service customers by ensuring that they have replacement service options available to them when their legacy service is discontinued. This in turn will ensure that consumers receive the benefits of technology transitions with “all reasonable efficiency.”

14. We find that replacing both the Adequate Replacement Test and the Alternative Options Test with the single consolidated rule we adopt today, along with the application content requirements discussed below, will more effectively accelerate and streamline the technology transitions discontinuance process while still providing adequate protection to consumers. We find that, rather than minimizing uncertainty and confusion, the Adequate Replacement Test actually caused widespread confusion that may have prevented carriers from pursuing technology transition discontinuances under the test, as evidenced by the fact that the Commission did not receive its first technology transitions discontinuance application pursuant to the Adequate Replacement Test until nearly eight years after the rule was adopted and six years after its effective date. (The filing of that application was itself delayed by several months while AT&T conducted the performance testing delineated in the Technical Appendix to the *2016 Technology Transitions Order* (81 FR 62632 (09/12/2016)). This extended timeline is contrary to a streamlined process.) We further find that the Alternative Options Test has failed to align with competitive marketplace options and has hampered investment and innovation in modern

services by effectively discouraging applicants from filing to discontinue legacy voice services under that test. Indeed, in the nearly seven years since the Alternative Options Test was adopted, the Bureau has found that presumptive streamlined treatment under the test was utilized only eight times. We agree with the International Center for Law & Economics that making it costly and time-consuming for carriers to exit obsolete and inefficient copper-based services slows the flow of capital toward the deployment of next-generation networks, where it is needed. Creating one straightforward, consolidated rule that applies to all technology transitions discontinuance applications will more effectively accelerate and streamline the technology transitions discontinuance process while still providing adequate protection to consumers than revising the Adequate Replacement Test and the Alternative Options Test.

15. A discontinuance application can rely on the availability of multiple replacement services, particularly when the application encompasses multiple wire centers covering large geographic areas. We decline to adopt Public Knowledge's proposal to require applicants to identify the replacement service they are relying on for each subscriber address. Requiring such a level of granularity would impose an unreasonable burden on carriers and is not always necessary to confirm the availability of the replacement service(s) across the geographic area subject to discontinuance. However, we do find merit in requiring applicants to provide a greater level of detail than simply providing a high-level aggregate list of which replacement services it relies on for any given large geographic area covered by the application. In order to minimize the burden on carriers while still providing Bureau staff with sufficient information to evaluate the availability of the replacement services and thus the impact on the public convenience and necessity, we afford carriers flexibility in how they break down the available replacement services in the various affected service areas. We thus require carriers to identify the available replacement services using the smallest practicable geographic unit depending on the geographic areas implicated by the specific application at issue, which could consist of, among other things, census blocks, census block groups, or ZIP codes. If the information regarding the geographic availability of the replacement service(s) is insufficient or incomplete, the Bureau

may require additional information as necessary for its review.

a. Specific Categories of Adequate Replacement Services

16. As delineated above, the consolidated rule we adopt today sets forth five categories of replacement services that an application to discontinue a currently offered retail voice service as part of a technology transition can rely on to be eligible for streamlined processing. We now address each of these categories in turn.

17. The Commission has previously declined to adopt presumptions or exclusions regarding specific types of replacement services, stating that the "public interest analysis demands that applicants provide objective evidence showing a replacement service will provide quality service and access to needed applications and functionalities." Given the rapid developments in the communications marketplace since the Commission adopted the Adequate Replacement and Alternative Options Tests, we find the Commission's concerns in 2016 and 2018 have been obviated. While some commenters contend that replacing the Adequate Replacement Test and the Alternative Options Test with the consolidated rule we adopt today will harm consumers and leave them with substandard alternative connections, we find that these concerns, too, are unfounded.

18. Since 2018, communications technology has improved, and the marketplace for voice services, including interconnected VoIP and mobile voice, has vastly expanded and spurred the creation of new and innovative communications technologies that benefit consumers and whose usage has far surpassed that of legacy voice service. Indeed, interconnected VoIP lines have jumped from 58% of all retail fixed voice service connections in 2018 to over 79% by December of 2024. The number of legacy switched access connections has dropped precipitously since 2018 while the number of fixed broadband connections that support over-the-top interconnected VoIP service rose to 91 residential fixed broadband connections per 100 households with speeds of at least 25 Mbps/3 Mbps by the end of 2024. These rapid changes in the marketplace demonstrate that consumers now have access to a wide array of voice services provisioned over a variety of technologies. And this disparity between legacy voice service and interconnected VoIP connections will only increase as fiber deployments around the country continue. (The latest

report issued by the Fiber Broadband Association indicates that the number of homes with access to fiber increased by 11% in 2025, despite rising costs associated with rising labor costs, tariffs on imported materials, and inflation. According to this report, more than 60% of American homes are now passed by fiber. And the majority of eligible locations in 2025 in the BEAD program will use fiber.)

19. We conclude that, rather than allowing legacy voice services to be discontinued and replaced with inferior options, specifying explicit categories of adequate replacement services will implement a baseline of quality and availability for replacement services in the event of a discontinuance, thus ensuring that no consumer receives replacement services that fall beneath a certain level of service. (As the Commission noted in the 2016 *Technology Transitions Order*, "[t]he Bureau will normally authorize the discontinuance 'unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience or necessity is otherwise adversely affected.'") Moreover, we find that specifying categories of adequate replacement services will provide greater certainty for carriers regarding the kinds of replacement services that could result in the Commission removing a technology transitions discontinuance application from streamlined processing. We also find that the federal government's interest in having a coherent national policy on these matters outweighs state governments' interests in the types of service that may qualify as adequate replacements for purposes of streamlined discontinuance applications. As observed by the Telecommunications Industry Association, clear guidance on what qualifies as a replacement service will allow providers to know what attributes a potential successor service must possess as they work to improve their community's services. The categories of adequate replacement services we adopt today will furnish providers with sufficient criteria to provide certainty in planning transitions, and ensure that consumers in geographically rural, insular communities, including Tribal communities, the disability community, and other vulnerable communities have access to advanced service options.

20. We conclude that the approach we adopt today will not impede access to critical applications such as home security alarms and medical monitoring devices given the wide array of IP-based devices and over-the-top services that

perform similar functions available on the market today. Our streamlined processing rules still require carriers to notify customers of their applications to discontinue service, which must be done no later than the date they file their applications, and provide information regarding replacement service options. Thus, even in instances where a carrier may seek to avail itself of streamlined processing of its discontinuance application, any customers or other interested stakeholders with concerns—including about the technical and interoperability information for a specific replacement service—have the opportunity to file comments or objections to that application with the Commission. Should the Bureau have any concerns about whether a particular request to discontinue service could adversely affect the public interest, it will remove the application from streamlined processing for closer review, thus mitigating the risk that a replacement service of inferior quality or availability will be imposed upon consumers in the event of a discontinuance. (In light of the opportunities to identify instances where a proposed discontinuance may result in a loss of service to a customer without an adequate replacement, we decline to adopt additional remediation requirements after the approval of the discontinuance.) Meanwhile, the streamlined process will more efficiently deliver access to modernized services that better support functions like home security and telehealth, as compared to the legacy networks in place today. And the providers of these devices and services have been on notice for almost a decade that the list of “key applications” contained in the *2016 Technology Transitions Order* as part of the Adequate Replacement Test was temporary. Indeed, under the rules adopted in 2016, the requirement that “replacement services [] be compatible with these devices” sunset in 2025.

21. We decline to impose on technology transitions discontinuance authorizations a condition that “the replacement service support G.711 codec handshake with RFC 2833 disabled on calls to telephone numbers serving life safety alarm monitoring receivers, end-to-end through all carrier handoffs,” as recommended by AICC. Introducing a new compatibility requirement for legacy devices, ten years after the *2016 Technology Transitions Order* established a sunset date for compatibility for alarms using low-speed modem devices, would introduce unnecessary delay from the transition to modern, reliable services.

Such a requirement is also impracticable if the discontinuing carrier relies on the availability of one or more replacement services offered by third parties. In such instances, the discontinuing carrier has no control over the configuration of the network over which the replacement service is provisioned. However, we encourage carriers to ensure their IP networks are appropriately configured so as to prevent alarm signaling failures.

22. *Facilities-based interconnected VoIP service.* We find that facilities-based interconnected VoIP service is an adequate replacement for purposes of determining eligibility for streamlined processing. (There is also evidence that facilities-based interconnected VoIP service compares favorably in price on average to legacy voice services. Interconnected VoIP providers must meet applicable E911 service requirements as a condition of providing service to consumers and must support NG911 service upon the request of a 911 Authority.) As the Commission recently found, interconnected VoIP service benefits consumers by providing access to networks that can support advanced protocols and technologies, such as STIR/SHAKEN, which helps protect consumers from illegally spoofed robocalls, and NG911, which will help save lives by ensuring faster call delivery to 911 call centers through improved reliability and resiliency, enhanced information about the caller’s location and the nature of the emergency, and the ability to receive additional multimedia, including video.

23. The only specific opposition in the record does not dispute the quality of facilities-based interconnected VoIP service but instead raises competition concerns. NASUCA et al. broadly oppose all of the specific categories of replacement services proposed in the *Network and Services Modernization Notice* but do not raise arguments specific to facilities-based interconnected VoIP services. Other commenters object to our finding that VoIP need not be offered on a stand-alone basis to be considered an adequate replacement. We address those arguments below. We find AARP’s claim that there is not sufficient competition in the interconnected VoIP market to be overstated in light of the current state of competition and our continuing ability to remove applications from streamlined processing should the need arise. We agree that in the context of wireline voice services, the availability of service from another provider may provide competitive benefits for consumers. As

of December 2023, at least 95% of the U.S. population had 4G LTE coverage from at least three service providers. And to the extent that the affected customers will have access to a facilities-based interconnected VoIP service, they will have the option to purchase broadband access, giving them access to a multitude of communications applications, including over-the-top VoIP service. Moreover, the Commission’s standards for streamlined and non-streamlined processing of discontinuance applications continue to apply. If the Bureau has concerns regarding whether it is in the public interest to grant a particular request to discontinue service—including relevant considerations of competition in a given service area—it can remove that application from streamlined processing and engage in a further review. Other than AARP, no commenters weighed in specifically on the appropriateness of facilities-based interconnected VoIP service as an adequate replacement for purposes of eligibility for streamlined processing.

24. *Facilities-based mobile wireless service.* We find facilities-based mobile wireless service operating at speeds of at least 5/1 Mbps, as reflected on the National Broadband Map, to be an adequate replacement for purposes of eligibility for streamlined processing. (The 5/1 Mbps broadband speed is a proxy for services with sufficient quality to be adequate replacement services.) Mobile telephony (mobile voice) service is a real-time, two-way voice service that is interconnected with the public switched network using an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless handoff of subscriber calls. As of December 2024, there were approximately 390.9 million mobile voice subscriptions in the United States; and according to preliminary data from the Centers for Disease Control and Prevention, as of December 2023, approximately 76% of adults were living in and relying on a wireless-only household, with adults in lower age-groups more likely to live in wireless-only households. As the market has thus spoken on the adequacy of mobile wireless service, we disagree with Public Knowledge’s argument that a facilities-based mobile wireless service is not a suitable replacement for a wireline voice service in the context of a Section 214(a) discontinuance review. (In addition to these objections, multiple parties filed comments asserting concerns about the potential negative health impact of increased electromagnetic radiation as a result of

the retirement of legacy copper networks and the increased use of wireless alternatives. Commission-regulated equipment is subject to our rules limiting human exposure to radio frequency (RF) emissions from such equipment, as applicable. The Commission's rules limiting human exposure to RF emissions are outside the scope of this proceeding. As of December 31, 2024, we note that 4G LTE is available at 99% of locations and 5G-NR at speeds of at least 7/1 Mbps is available at 96% of locations nationwide.) As the Commission recently noted, "consumers continue to rely more heavily on mobile wireless services," and that these services have thus "become an essential part of everyday life." (As of December 31, 2024, we note that 4G LTE is available at 99% of locations and 5G-NR at speeds of at least 7/1 Mbps is available at 96% of locations nationwide. Multiple parties filed comments asserting concerns about the potential negative health impact of increased electromagnetic radiation as a result of the retirement of legacy copper networks and the increased use of wireless alternatives. Commission-regulated equipment is subject to our rules limiting human exposure to radio frequency (RF) emissions from such equipment, as applicable. The Commission's rules limiting human exposure to RF emissions are outside the scope of this proceeding.)

25. We decline to adopt additional verification requirements for the availability of mobile wireless service beyond the data reflected in the National Broadband Map, as suggested by some commenters. While NTCA contends that despite broadband mapping improvement over time, it "remains unreliable on a granular level in many rural areas" and thus that the Commission should proceed with caution, we find that there are already sufficient safeguards in place to account for discrepancies, including in rural areas, without the need to adopt more stringent, mobile-specific verification requirements at this time. As compared to the initial months following the launch of the National Broadband Map, the data reflected in the map has become much less susceptible to correction through the challenge process, resulting in a more stable dataset to inform the agency's work. Based on internal staff analysis, the total number of challenges to the National Broadband Map in 2025 as of June 30 equaled one-half of one percent of the total number of challenges filed in the same period in 2022. And

approximately nine percent of the challenges filed in that period in 2025 were conceded or upheld, whereas almost 81 percent of the challenges filed during the equivalent time period in 2022 were conceded or upheld. Nevertheless, if consumers or stakeholders have concerns regarding a provider's reported mobile coverage data as reflected on the National Broadband Map, they may file a mapping challenge and initiate a review of the reported coverage data in the specified location. To file a challenge to the availability data in the National Broadband Map, go to <https://broadbandmap.fcc.gov/home>, type the relevant location into the search bar, select the 'Mobile Broadband' tab, and click on the 'Mobile Challenge' link.) Indeed, affected customers faced with a planned technology transitions discontinuance relying on the availability of a facilities-based mobile wireless service, as well as other interested stakeholders such as public interest groups and state public utility commissions, may also file objections and seek to have the Bureau remove the application from streamlined processing for further review of the availability of mobile wireless service in the affected service area. Given the existence of these guardrails, we find it unnecessary and redundant to implement additional mobile-specific verification requirements as part of this current rulemaking. Such a requirement would negate the primary purpose of this rulemaking—to make technology transitions more efficient and encourage the deployment of advanced, next-generation networks—while providing no material benefit that is not already available to consumers via the two review mechanisms enumerated above.

26. *Voice service funded by Commission modernized high-cost mechanisms.* We find facilities-based voice services provided via funding from one of the Commission's modernized high-cost support mechanisms to be an adequate replacement for the purposes of eligibility for streamlined processing. We exclude from the purview of this rule any legacy high-cost support mechanisms that do not contain the same deployment reporting obligations as the modernized mechanisms. The Commission began modernizing its universal service high-cost support mechanisms in 2011 with the *USF/ICC Transformation Order* (76 FR 76623 (12/08/2011)), which established the Connect America Fund (CAF). In that *Order*, the Commission required support recipients to offer broadband service in

addition to the supported "voice telephony" service. (The Commission requires recipients of CAF Phase II support "to offer broadband service with latency suitable for real-time applications, including Voice over internet Protocol [VoIP], and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas.") In the years since, the Commission has established additional mechanisms to support voice- and broadband-capable networks. Recipients of these mechanisms must offer voice telephony at rates that are reasonably comparable to urban rates and must report compliance with their deployment obligations showing where they have built out the required facilities and offer voice and broadband service. They also must provide access to emergency services via 911 and provide E911 capabilities wherever local governments have implemented those systems. No commenters disputed the appropriateness of voice service provided via funding from one of the Commission's modernized high-cost support mechanisms as an adequate replacement for purposes of eligibility for streamlined processing, and we find it reasonable to accept such service as an adequate replacement.

27. *Carrier's already available alternative voice service.* We find that, where a carrier has already made available its own alternative voice service throughout the affected service area, the service is an adequate replacement for the service being discontinued in that area for purposes of eligibility for streamlined processing if that service has been available for at least the immediately preceding 60 days and the carrier certifies that based on the results of its own internal network testing routinely undertaken to measure performance in rolling out a new product or service, the service offers substantially similar levels of network performance and availability—for example, that it is provisioned over a network with speeds of at least 25/3 Mbps and that it offers mouth-to-ear latency of no more than 200 ms—and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network or any successor network that utilizes numbers issued pursuant to the North American Numbering Plan. We find that these standards better accomplish our goal of encouraging the development of modern communications service offerings than

the proposed standards on which we sought comment—*i.e.*, that the replacement service in question must have been available for a minimum time period of the immediately preceding six months throughout the affected service area, and that at least 50 percent of the carrier's total voice service customer base in the affected service area must be subscribed to the alternative voice service (this analysis is not limited to residential subscribers alone, and should include enterprise subscribers.)—without undue delay while still ensuring that consumers have available to them an adequate replacement service. Finally, the service must provide access to 911 and comply fully with our 911 requirements applicable to that service. We require carriers to describe any such replacement service and to certify that it meets these temporal, subscriber percentage, and public safety requirements. As a whole, we find that these requirements adequately balance the need to ensure a service is stable and satisfies the Commission's goal of ensuring that carriers can rapidly transition their resources and investments toward next-generation services. No commenters disputed the appropriateness of such service as an adequate replacement for purposes of eligibility for streamlined processing, and we find it reasonable to accept such service as an adequate replacement.

28. *Widely available alternative voice service.* We find a widely available alternative voice service offered by a third party that is available in all locations throughout an affected service area and provides access to 911 and complies fully with applicable 911 requirements, to be an adequate replacement for purposes of being eligible for streamlined processing if the carrier certifies that based on publicly available information, the service offers substantially similar levels of network performance and availability and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network or any successor network that utilizes numbers issued pursuant to the North American Numbering Plan. Permitting a discontinuing carrier to rely on the availability of an adequate replacement service offered by a third party to support a technology transitions discontinuance application and to rely on publicly available information to make the requisite showing is consistent with previous Commission action. We find that this flexible approach will minimize burdens on carriers while

safeguarding consumers' need for an adequate replacement service.

29. Permitting third-party alternative voice service with access to 911 and substantially similar levels of network performance and availability as the service being discontinued to serve as a replacement service will enable innovative new service offerings, such as low-earth orbit satellite-based services, to qualify as replacement services without requiring the Commission to engage in additional time-consuming rulemaking proceedings and is consistent with both our standards applicable to voice services funded by our modernized high-cost universal service support mechanisms discussed earlier in this section and the standards the Commission previously adopted in connection with the Adequate Replacement Test.

30. We find that the standards we adopt for eligibility of a widely available alternative voice service for streamlined processing obviate NTCA's concerns regarding that the proposed widely adopted alternative voice service category as set forth in the *Network and Services Modernization Notice* is a "highly detailed and fact-specific view of a particular market/geographic area," and that such a "fact-specific inquiry is more suited to a waiver proceeding under which the Commission can analyze data brought forth by a petitioning provider as opposed to utilizing a certification that fails to analyze such data across the market in question." We further find that these standards address the concerns raised by Public Knowledge after release of the public draft of this Order that this replacement service category would not afford sufficient safeguards for consumers and thus might incentivize discontinuing carriers to rely on third-party services for which they do not need to make the showings required when relying on the carrier's own already-available alternative voice service. The standards we adopt today for this alternative service option provide sufficient backstops to provide predictability and protect consumers. Moreover, as we have noted above, our streamlined processing rules still require carriers to notify customers of their applications to discontinue service and provide information regarding replacement service options. Customers with concerns about the adequacy of the purportedly "widely available" alternative service, as well as other interested parties, can file comments or objections to an application for streamlined processing with the Commission, and the Bureau has the

discretion to remove the application from streamlined processing for further review, including the ability to request supplemental information from the applicant. We further expressly delegate to the Bureau the authority to remove from streamlined processing an application relying on this category of replacement service if the service has little to no customers. Bureau staff may consider the extent to which the widely available service has been adopted outside the affected service area. We find that these safeguards address commenter concerns raised in the record and obviate the need for staff to conduct such time-consuming reviews of every application filed relying on this category of replacement service.

b. *Voice Service Need Not Be Offered on a Stand-Alone Basis To Be Considered an Adequate Replacement*

31. We affirm the Bureau's finding in the *Stand-Alone and Single-Service Waiver Order* that VoIP need not be offered on a stand-alone basis to be considered an adequate replacement and thus decline to impose such a requirement in the consolidated technology transitions rule we adopt today. (We note that while bundled services that include VoIP may still be considered an adequate replacement, broadband-only service would not qualify under this rule as an acceptable replacement service. Broadband provides fundamentally different functionality from traditional voice telephony, and while it does enable users to engage in activities such as email and messaging, it is not an adequate replacement for voice telephony service for the purposes of our discontinuance rules. With that said, broadband facilities may be used to provision a qualifying voice replacement service.) In doing so, we conclude that the record in this proceeding supports both the Bureau's finding in that *Order* that the elimination of the stand-alone requirement is warranted due to rapid developments in the communications marketplace since the adoption of the Alternative Options Test and extending that finding to apply to each of the categories of replacement service delineated in the consolidated technology transitions discontinuance rule we adopt today.

32. Since the Commission adopted its Alternative Options Test with its stand-alone requirement, the technologies associated with voice services have improved and the marketplace for voice services, such as interconnected VoIP and mobile voice, has vastly expanded and spurred the creation of new and

innovative communications technologies and bundled service offerings that benefit consumers. While interconnected VoIP lines accounted for just 60% of all wireline retail voice service connections in December 2018, that number had already risen to almost 80% by the end of 2024. The number of legacy switched access connections has also dropped precipitously since the adoption of the Alternative Options Test, and the number of fixed broadband connections that support over-the-top interconnected VoIP service has risen from 61 residential fixed broadband connections per 100 households with speeds of at least 25 Mbps/3 Mbps in 2018 to 91 by December 2024.

33. The proliferation of interconnected VoIP providers has “brought advanced communications services to the marketplace to the benefit of consumers,” and ensures that strong competition for IP-based voice service exists in every locality with broadband access. As of December 2023, more than three-quarters of adults in this country had gone fully wireless for their voice service. As the Commission recently noted, “there are many other types of telecommunications offerings, including apps running solely on data networks that are nearly indistinguishable to the consumer from the core communications functionality of the public switched telephone network . . . [that] combine the benefits of voice, video, and text communications into one data-based service,” obviating the need or desire for stand-alone voice service. These rapid changes in the marketplace have granted consumers access to a wide array of voice services with many capabilities, and in response few providers now offer stand-alone interconnected VoIP service. Indeed, as the Commission recently noted, “there are many other types of telecommunications offerings, including apps running solely on data networks that are nearly indistinguishable to the consumer from the core communications functionality of the public switched telephone network . . . [that] combine the benefits of voice, video, and text communications into one data-based service.”

34. We disagree with commenters who contend that consumers must retain access to stand-alone voice service separate from a bundled broadband service simply to obtain and maintain access to voice communications. The fact that technologically advanced VoIP services may only be available in certain areas and from certain providers bundled

with broadband, text messaging, or some other service should not preclude it being considered an adequate replacement if the price the consumer would pay for the bundle is comparable to the price the consumer pays for the legacy voice service or is otherwise affordable.

35. We agree with the Bureau that the Commission’s findings in the *2024 Communications Marketplace Report* about the variety of services now available to consumers obviates the need for stand-alone voice service. We require applicants to provide pricing information so that the Bureau can compare the price of the legacy voice service to post-promotional and non-sale pricing of any bundled options carriers might rely on as a replacement service in order to consider the likelihood of any unreasonable price increases for consumers. When it adopted the Adequate Replacement Test, the Commission required that a technology transitions discontinuance application include, among other things, the information set forth in § 63.505. Among other things, § 63.505 requires that a discontinuance application include the “difference, if any, between present charges to the public and charges for the service to be substituted.” We conclude that maintaining the requirement to provide this information will ensure that Bureau staff have this important information when evaluating such applications.

36. Carriers are still required under our streamlined processing rules to notify their customers of their applications to discontinue service and provide information regarding replacement service options and the customers’ ability to object to the proposed discontinuance, and we note that this broad requirement encompasses particular demographics raised in the record, such as customers in rural areas or older customers. While an application may be eligible for streamlined treatment under the rule we adopt today by the applicant demonstrating the availability of its own or another voice service throughout the affected area that may only be available on a bundled basis, customers with concerns about the adequacy or affordability of a replacement service, as well as other interested parties, may file comments or objections to that carrier’s discontinuance application with the Commission. (More generally, when evaluating discontinuance applications, the Bureau will continue to evaluate the cost of alternative services in a manner appropriate to the circumstances, and we therefore need not go further in adopting specific requirements

governing pricing or pricing information as some have proposed.)

37. The Commission’s standards for processing streamlined and non-streamlined applications for discontinuance continue to apply regardless of whether the replacement service is available on a stand-alone or bundled basis. If the Bureau has concerns regarding whether it is in the public interest to grant a particular request to discontinue service, it can remove that application from streamlined processing and engage in a further review, which may include looking at whether bundled services that include interconnected VoIP could result in raised consumer prices or reduced voice service quality. With the added safeguard of the requirement that an application disclose pricing differential information, we thus reject AARP’s request and affirm the finding in the *Stand-Alone and Single-Service Waiver Order* that interconnected VoIP need not be offered on a stand-alone basis to be considered an adequate replacement.

c. Access to Emergency Services

38. We find that the rules we adopt today are sufficient to safeguard access to emergency services. In the record, several commenters urged the Commission to take steps to ensure that any revisions to our discontinuance rules not reduce or otherwise impair access to 911 service to any part of the affected community. We agree with these commenters that modernizing our discontinuance rules cannot come at the expense of legitimate safety concerns and that consumers must be able to rely on swift and accurate access to emergency services. We add certain safeguards for discontinuances related to trunk lines, 911 TDM circuits, TDM private line circuits, and transport services that provide 911 connectivity as one way to address this concern, as explained below. Providers of voice service remain subject to our 911 and outage reporting requirements, and it is our expectation that the speedy implementation of NG911 will greatly improve the success, reliability, and accessibility of 911. At the same time, we must facilitate the transition away from deteriorating, outdated networks that could ultimately jeopardize access to emergency services.

39. While some commenters are concerned that replacing plain old telephone service (POTS) provided over copper lines with IP-based service over fiber, wireless, or satellite networks could jeopardize communications during emergencies, the experiences of rural commenters demonstrate that such

concerns, while certainly well intentioned, may be misplaced. Deteriorating copper is more susceptible to adverse weather events than fiber and requires more time to restore than alternative services like mobile wireless. And alternative voice services can still work during outages or emergencies. For example, mobile wireless services are designed to work during cellular network outages through built-in redundancies such as cellular failover and satellite connectivity. Additionally, interconnected VoIP service will continue to work during a power outage if internet service is operational and the end user maintains a backup power supply. And despite commenter arguments that phone service provisioned over copper lines always works during a power outage, this is not true. Utility poles that carry copper can and do go down during severe weather events and natural disasters, cutting off both service and power to residents and businesses, while not all alternative services are vulnerable to the same type of disruption.

d. Accessibility

40. As we clear the way for providers to replace legacy networks and services with modern technologies, we expect that the technology transitions expedited by today's Order will speed the availability of advanced internet-based accessibility solutions. With regard to telecommunications relay services (TRS) specifically, the Commission has recently initiated proceedings to modernize TRS to ensure that those services remain effective, accessible, and sustainable for the individuals who use them. We believe that the Commission's comprehensive review in that proceeding is the appropriate avenue to address the needs of relay users in the transition to internet-based alternatives from analog relay services. Significantly, carriers remain obligated to comply with all accessibility requirements applicable to the services they offer and provide, and Bureau staff may remove applications from streamlined processing, if necessary, to review any concerns regarding the accessibility of the proffered replacement service. We thus decline to adopt an accessibility-specific requirement as part of the service discontinuance review under Section 214 in this Order.

41. In their comments, the Accessibility Organizations argue that "any replacement test the FCC adopts should require carriers to explain, with specific examples, how at least one replacement service offered permits [individuals who are deaf, deafblind,

hard-of-hearing, or who have speech disabilities] to access TRS and effectively engage in other telephone communications."

42. In the *TRS Modernization Notice* (91 FR 104 (01/02/2026)) adopted in November 2025, the Commission, in light of technological advances and declining use of analog relay services, sought to ensure that "relay services remain effective, accessible, and sustainable for individuals who are deaf, hard of hearing, deafblind, or have speech disabilities, by proposing a series of reforms to transition users to internet-based alternatives." We agree with Hamilton Relay that the *TRS Modernization* proceeding—which focuses on reforms designed to ensure that relay services remain effective, accessible, and sustainable as technology advances and networks transition—is the best venue in which to address any TRS issues related to technology transitions. However, we find that expanding IP-based services through streamlined technology transitions will work hand-in-hand with the *TRS Modernization* proceeding to ensure that no individuals who are deaf, deafblind, deafdisabled, hard of hearing, or who have speech disabilities are left without access to services that are functionally equivalent to those provided to voice telephony users. (As Chairman Carr noted when the Commission adopted the *IP TRS Modernization Notice*, "this action supports our broader effort to encourage the IP transition. As we make the transition, we are mindful of consumer protection provisions and necessary updates to them like those we propose today.") Concerns regarding the accessibility features of the five categories of replacement services contained in the consolidated technology transitions discontinuance rule we adopt today should be addressed in that proceeding.

e. Other Issues

43. *Technology transition definition.* In the *Network and Services Modernization Notice*, we sought comment on whether we should retain the definition of "technology transition" in § 64.60(i) of our rules or whether we should adopt a different definition. Section 64.60(i) currently defines a "technology transition" as "any change in service that would result in the replacement of a wireline TDM-based voice service with a service using a different technology or medium for transmission to the end user, whether internet Protocol (IP), wireless, or another type" We received no comments on this proposal. Because we

still consider the existing language to be an accurate and comprehensive definition of the term "technology transition" for purposes of our discontinuance rules, we retain it at this time.

44. *Edge cases requiring additional time.* We recognize that there are some instances—as in the case of isolated rural facilities, critical access hospitals, or customers with unique accessibility issues—in which discontinuances may require more time than is provided for by our streamlined processing to avoid stranding consumers without access to voice services. Carriers seeking to avail themselves of our streamlined processing rules for a technology transitions discontinuance are required to notify customers of their plan to discontinue a service and must show the availability of at least one of the replacement services enumerated above. Any customers with concerns, as well as other interested parties, can file comments or objections to specific applications with the Commission. Should the Bureau have any concerns about whether it is in the public interest to grant a particular request to discontinue service, it will remove the application from streamlined processing for further review, thus mitigating the risk that customers will be left without voice services in the wake of a discontinuance. In cases where a party submits plausible objections to a specific discontinuance application based on critical access needs, the Bureau may determine that it is appropriate to remove the application from streamlined processing so that it may work with the discontinuing carrier to ensure that no at-risk customers are left stranded.

45. To ensure that this process operates as intended, we direct the Wireline Competition Bureau to (1) create a master docket number for consumer Section 214 discontinuance objections or comments, (2) work with the Office of the Managing Director to make any necessary changes to the Electronic Comment Filing System to accommodate such consumer objections, and (3) release a Public Notice announcing the opening of the master docket and providing instructions for discontinuing carriers. Additionally, we require carriers seeking Commission authorization for a technology transitions discontinuance application to include in their notice to customers of such planned discontinuances specific information as to how a customer who wants to object to a specific proposed discontinuance of service will be able to do so, including but not limited to providing the master

docket number for such objections and the web page(s) identified by the Bureau for further guidance and resources to file an objection or comment.

46. *Consumer outreach and education.* We decline to adopt any specific consumer outreach and education requirements in connection with the discontinuance rules we adopt today. While some commenters assert that comprehensive consumer outreach and education are essential to minimizing the potential for consumer harm during any technology transition, we find, consistent with prior Commission action in this regard, that any such requirements would be unduly burdensome in light of current marketplace incentives for carriers to provide customers with timely and necessary information regarding replacement voice services when those carriers seek to cease offering legacy TDM voice service. As noted previously, the Commission also puts discontinuance applications on public notice, which triggers the discontinuance review process and gives affected customers and other interested parties an opportunity to comment on or object to an application. If customers facing a discontinuance of their legacy voice service do not believe they have sufficient data regarding a replacement service from a carrier seeking Commission approval to discontinue a legacy voice service, they can raise these objections with the Commission and ask the Commission to remove the application from streamlined processing for further review.

47. There are strong marketplace incentives for providers to communicate with and educate customers regarding replacement services related to their technology transitions. As the Commission has previously found, competition among carriers and differing technologies encourages carriers to communicate with customers to retain them and remain competitive. Carriers' ongoing customer relationship experience best positions them to understand and implement effective customer education and communication strategies. Our existing rules ensure that carriers make available necessary information to consumers regarding replacement voice services when those carriers seek to discontinue legacy voice services. We thus decline to adopt specific consumer outreach and education requirements in connection with the discontinuance rules we adopt today, requirements that would be redundant in light of our existing regulatory framework and notice requirements.

48. *Additional commenter proposals.* We decline to adopt USTelecom's proposal that we begin the 31-day period before streamlined applications are automatically granted when the provider submits its application to the Bureau, instead of the date the Bureau issues a Public Notice of the proposed discontinuance. While existing customers who would potentially be affected by a discontinuance will have received notice no later than when the carrier files its application, other interested parties in an affected area are only made aware of the discontinuance application and given time to comment after the Bureau releases a Public Notice of the discontinuance application. The process also enables the Bureau to confirm that an application is complete before letting the "clock" begin for a streamlined approval, consistent with Section 214(a)'s mandate that the Commission consider whether a discontinuance will adversely affect the future public convenience and necessity. This benefit outweighs any short potential delays experienced by providers as a result of this requirement. We note Bureau staff's diligence in releasing Public Notices once applications are posted to the Commission's Electronic Comment Filing System (ECFS) and their speed in processing applications once they are complete. However, to ensure that application processing is not unreasonably delayed, we direct the Bureau to release a Public Notice of a complete discontinuance application filing as soon as practicable but not later than ten business days of when the application is posted to the Commission's ECFS or, if the application is not complete, to communicate deficiencies in the application to the applicant within that timeframe.

49. We also decline to adopt USTelecom's proposal that we establish specific restrictions governing when the Commission can remove discontinuance applications from streamlined processing, and a timeline for the Bureau to act on an application after removing it from streamlined processing. In light of the above-discussed changes consolidating the applicable tests for technology transitions discontinuances and expanding the range of applications eligible for a 31-day streamlined review, it is not necessary to adopt additional rules restricting the Bureau's application review or creating additional time periods for objections and responses. USTelecom does not point to specific applications that have

previously been subject to unnecessary discretionary delay under the current rules. Indeed, over the last five years, Bureau staff have removed only 11 discontinuance applications from streamlined processing, nine of which were in 2025 and were the result of a shutdown of certain agency operations due to a lapse in federal appropriations. In all 11 instances, staff released Public Notices granting all of those applications 51 days after such removal. And we believe that the rule changes we adopt today will make delay even less likely, because this Order broadens and clarifies the circumstances in which an alternative service is to be considered an adequate replacement for the service being discontinued. The Commission therefore maintains the necessary flexibility to address proposed discontinuances that would otherwise result in the loss of service altogether, while the treatment of discontinuances that include an adequate replacement for customers is clarified and expedited.

2. Eliminating Grandfathering Filing Requirements for Certain Services

50. We revise our rules to grant blanket Section 214(a) authority for carriers to grandfather the following services to the extent they come within the purview of Section 214(a): (1) any legacy voice service; (2) any lower-speed data telecommunications service; and (3) any interconnected VoIP service provisioned over copper wire. We define low-speed data telecommunications services as those operating at speeds below 25/3 Mbps while we consider forbearance from the incumbent LEC-specific interconnection and related obligations as proposed in the *IP Interconnection Notice*, after which we will revisit this definition. (This definition is consistent with § 63.71(k) and l) of our current rules.) This blanket grant of authority eliminates the need for carriers to file a Section 214(a) application when grandfathering these services, allowing carriers to focus their resources on the development and deployment of next-generation networks while still providing service to current customers.

51. In the *Network and Services Modernization Notice*, we proposed to codify the relief granted in the Bureau's *March 2025 Grandfathering Order* and *May 2025 Grandfathering and Technical Appendix Order*. In the *March 2025 Grandfathering Order*, the Bureau granted Section 214(a) authority for carriers to grandfather any legacy voice or telecommunications data service covered by § 63.71(k) and (1) of the Commission's rules and waived the requirement that carriers file a Section

214(a) application seeking Commission authorization in that instance. The *May 2025 Grandfathering and Technical Appendix Order* extended the relief granted in the *March 2025*

Grandfathering Order to interconnected VoIP service provisioned over copper lines. The Bureau determined in both *Orders* that granting blanket Section 214(a) authority was warranted due to developments in communications technologies that allow consumers to be less dependent on these legacy services.

52. We agree with commenters that eliminating unnecessary grandfathering requirements reduces carriers' burdens while not affecting existing subscribers, as current customers are entitled to keep the grandfathered service. A carrier still must file a discontinuance application seeking authority to permanently discontinue one of these services, and affected customers will be notified of the planned discontinuance and have the opportunity to comment. In the *March 2025 Grandfathering Order*, the Bureau noted that "carriers grandfathering these services will necessarily need to communicate to customers the grandfathering status of their service beforehand." (Indeed, to the extent that an incumbent LEC has already retired its copper facilities before grandfathering or seeking to permanently discontinue any of the services covered by our actions today, it will have already engaged with its customers.) We take the next step and require that carriers continue to notify current customers before grandfathering a service, including TDM-based transport services and services reliant on TDM-based trunk lines, 911 TDM circuits, and TDM private line circuits, which shall include (1) a "no earlier than" date, by which it intends to seek to permanently discontinue the service, and (2) a statement regarding alternative services available in the affected service area.

53. We retain a notification requirement because this relatively low burden on carriers will help ensure that customers learn as soon as possible that their service is likely to be discontinued at some point in the future, so they can make informed decisions about what services to purchase even before a discontinuance is imminent. And any customers that still subscribe to the grandfathered service when the carrier later seeks permanent discontinuance authority will have the ability to object and ask to have the application removed from streamlined processing. These requirements alleviate concerns raised in the record that eliminating the need to file grandfathering applications in the

above scenarios will allow carriers to eliminate services without any notice.

54. We define "lower-speed" data telecommunications service for purposes of this blanket grant of authority consistent with our existing grandfathering rules—*i.e.*, encompassing the data telecommunications services currently subject to § 63.71(k) and (l) of our rules. We proposed in the *Network and Services Modernization Notice* to define lower-speed data telecommunications service as a data telecommunications service operating at speeds below 25/3 Mbps. When the Commission adopted § 63.71(k), which allows streamlined treatment of applications to grandfather low-speed services, it defined that term as those operating at speeds below 1.544 Mbps. The Commission accounted for rising network speeds in the *Second Wireline Infrastructure Order* (83 FR 31659 (07/09/2018)) by extending the streamlined treatment of grandfathering applications to services operating at speeds below 25/3 Mbps if replaced with services operating at 25/3 Mbps or higher.

55. In connection with our proposed definition, we sought comment on whether we should define lower-speed service as services operating below 45 Mbps symmetrical "given the rapidly increasing bandwidths of networks today." As discussed below, we agree with commenters' concerns regarding potential unintended impacts, particularly for emergency services, if we raise the speed threshold for blanket grandfathering authority too soon. We thus find it appropriate to defer consideration of such action until after the Commission acts on the proposed forbearance from the incumbent LEC-specific interconnection and related obligations. Defining lower-speed data telecommunications service as those services operating under 25/3 Mbps strikes the appropriate balance between acknowledging the increased bandwidth capabilities of modern networks and minimizing any unintended impacts on emergency services.

56. Finally, we decline to extend the scope of the blanket grandfathering authority we grant today to all interconnected VoIP services, regardless of transmission medium. While we agree with USTelecom that many consumers use interconnected VoIP lines provisioned over a variety of transmission mediums, we limit the blanket Section 214(a) authority we grant today to interconnected VoIP services provisioned over copper lines to promote the ongoing transition from legacy and copper-based networks to IP networks. Many consumers use

interconnected VoIP service as a replacement service and have expectations about its availability, and we continue to find that the Section 214(a) discontinuance requirements applicable to grandfathering for the majority of interconnected VoIP services is an important safeguard.

(Interconnected VoIP lines accounted for 79% of all retail voice service connections by June of 2024, the last time the Commission reported such data.)

3. Additional Requirements for Applications To Discontinue a Service Supporting Interconnection Trunks or the Exchange of Traffic

57. As part of the rules we adopt today, we require carriers seeking authority to discontinue a service supporting interconnection trunks or the exchange of traffic, including but not limited to 911 trunks and 911 traffic—*e.g.*, a discontinuance resulting from the decommissioning of one or more trunk lines, TDM lines directly connected to 911 selective routers, dedicated 911 TDM circuits, or TDM private line circuits, or the discontinuance of a TDM-based transport service—to specifically identify the service to be discontinued, not just the branded name of the service being discontinued. Carriers must also include in such discontinuance applications, in addition to the information required by §§ 63.500 and 63.501, (1) a statement that at least 90 days prior to the planned discontinuance filing, the carrier provided a designated point of contact with authority to facilitate the orderly transition from legacy facilities that support 911 to the 911 Authorities, 911 service providers as defined above, and directly interconnecting local exchange service providers that support essential functions within 911 networks, including delivering 911 traffic to selective routers for transmission to public safety answering points (PSAPs) in the affected service area for coordination of the transition to ensure continued 911 connectivity, and (2) a list of providers that received notice as described above in the affected service area with which the carrier has coordinated and the date(s) of that coordination. (We note that because our rules require carriers to send copies of their discontinuance applications to state public utility commissions, we do not need to amend our rules to include such notice, as proposed by certain commenters.)

58. We expect the carrier's designated point of contact for facilitating the orderly transition to know whether to

file either an application to dismantle or remove trunk lines, or an application to sever physical connections or to terminate or suspend interchange of traffic with another carrier. We find that a pre-filing notice and coordination period of at least 90 days is sufficient and decline to adopt either a shorter or longer period. We similarly decline to adopt Intrado's request that we do not streamline discontinuance authorization requests "to dismantle circuits that carry 9-1-1 traffic" or to adopt a presumption that initial extension requests of up to 90 days should be presumed reasonable "if the circuit customer certifies to the circuit provider that the circuit in question is carrying live 9-1-1 traffic and there is no alternative available within the time frame of the notice." Rather, we expect the parties to work cooperatively during this pre-filing coordination period, including the granting of good faith requests from 911 service providers for reasonable extensions upon a showing of both continued live 911 traffic over the affected facilities and the lack of an alternative available within the timeframe of the planned discontinuance, to ensure that 911 continuity is not disrupted.

59. To comply with this certification requirement, we expect that carriers and service providers will engage in a planned and managed process for the orderly shutdown or reduction of services to customers, including 911 Authorities handling live traffic, while ensuring compliance with regulatory requirements and a smooth transition to alternative providers. (The discontinuing carrier is responsible in the first instance to ensure it is complying with the proper discontinuance application requirements and that it is taking the steps necessary to fulfil its role in a managed and orderly shutdown of service. Where a carrier falls short in any of those respects, the Bureau is empowered to more closely scrutinize, remove from streamlining, or condition future discontinuance requests by that carrier. Given this, we are not persuaded of the need to go further to ensure that discontinuing carriers, like 911 authorities and other service providers, do their part to ensure a smooth and orderly transition process, as some suggest.) While we agree with USTelecom that "an email account for a centralized team (e.g., "publicsafety@provider.com") that is available to address any customer concerns if a vendor learns from a PSAP that a circuit is being disconnected is sufficient for purposes of this requirement," we

expect that inquiries sent to that account would be timely addressed by a person with decision-making authority to ensure a timely, good faith response to such communications. We believe this modification, in conjunction with the existing requirement that an application to sever a physical connection or terminate or suspend the interchange of traffic with another carrier include a "statement as to whether severance of physical connection or termination or suspension of interchange of traffic is being made with consent of other carrier," strikes the correct balance to promote the Commission's goals of encouraging the development and deployment of advanced, next-generation networks and services and supporting the parallel adoption of NG911 emergency services networks, while ensuring seamless 911 connectivity.

60. We decline Bandwidth's proposals to include an explicit requirement that carriers "perform pre-filing diligence to determine whether an application under rule 63.500 or 63.501 is required" and to require a discontinuing carrier to include in all other discontinuance applications that the discontinuance will not impact 911. We find that the coordination requirement we adopt today, together with our short-term network change and copper retirement disclosure requirements and the certification requirement for all discontinuance applications, is transparent and sufficient to ensure that carriers seeking to discontinue a service supporting interconnection trunks or the exchange of traffic, including but not limited to 911 trunks and 911 traffic, will engage in the requisite coordination and comply with all applicable discontinuance application content requirements. We also find that the guardrails we adopt today obviate the concerns raised by Allerium regarding the service quality of available replacement services.

61. While we find that forbearance relief is not appropriate for lower-speed data telecommunications services as defined in this Order, we decline to adopt NTCA's proposal to specifically disallow the discontinuance of DS1 and DS3 circuits "absent a showing by the provider . . . that the carrier has an alternative IP offering available for the same route pathway as the discontinued service on reasonable rates, terms, and conditions." NTCA contends that many of its members rely in part on DS1 and DS3 connections provided by larger providers for the exchange of voice traffic through subtended tandems, and that price cap carriers have been increasing pricing on these transmission

circuits. It further asserts that in some instances, price cap carriers suggested discontinuance altogether despite the purported lack of meaningful alternative facilities or services, whether in IP or TDM.

62. We agree with NTCA that these circuits are critical infrastructure for many rural providers and that price cap carriers' ability to discontinue DS1s and DS3s without adequate replacement services could harm rural communities. However, our rules already require that carriers obtain Commission authorization before dismantling or removing a trunk line or severing a physical connection or terminating or suspending the interchange of traffic with another carrier, and the availability of an adequate replacement service is already factored into Bureau staff's consideration of whether to grant discontinuance authorization. (In evaluating whether "the public convenience and necessity is otherwise adversely affected" by the discontinuance, the Commission has long considered: (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) increased charges for alternative services; and (5) the existence, availability, and adequacy of alternatives.) We find that any further requirements relating to such situations are more appropriately addressed in our *IP Interconnection* proceeding in which we will examine the regulatory framework for TDM and IP interconnection for voice services. In the interim, incumbent LECs remain obligated to provide direct notice to interconnected telephone exchange service providers, 911 service providers, and directly interconnecting local exchange service providers that support essential functions within 911 networks, of planned network changes and copper retirements, and to obtain Commission authorization should any planned network change or copper retirement result in a discontinuance of service, including complying with the pre-application filing coordination requirement we adopt today. The additional requirements we adopt here for discontinuances involving dismantling or removing a trunk line or severing a physical connection or terminating or suspending the interchange of traffic with another carrier ensure collaboration between the respective parties and provide safeguards to avoid unintended disruptions of 911 connectivity. And wholesale customers that use circuits

for 911 purposes may request priority designation from their wholesale provider so that the circuits are identified as 911 circuits.

63. Finally, as discussed further below, we retain at this time our rules setting forth the content requirements for applications seeking to dismantle or remove a trunk line, to sever physical connections, or to terminate or suspend interchange of traffic with another carrier. We find that these backstops should be sufficient to address 911 service provider concerns. Regardless, the Commission can deny individual applications to discontinue TDM services if the backstops prove insufficient and discontinuance would adversely affect the public convenience or necessity.

4. Limited Section 214(a) Forbearance

64. We grant forbearance relief to resellers “for resold services that are the subject of a technology transition discontinuance by the reseller’s wholesale provider,” conditioned on appropriate notice to customers. However, we do not grant broader forbearance relief from any Section 214(a) discontinuance requirements or associated regulations at this time. Based on the record in this proceeding, we conclude that the conditions for granting forbearance relief from discontinuance requirements beyond that described above do not exist at this time. Rather, the subject of broader forbearance relief is more appropriately addressed after any forbearance from the incumbent LEC-specific interconnection and related obligations as proposed in the October 2025 *IP Interconnection Notice of Proposed Rulemaking*.

a. Conditional Forbearance for Resold Services

65. In this Order, we determine that it is appropriate to forbear from all Section 214(a) discontinuance requirements for resellers discontinuing resold services where the reseller’s wholesale provider is engaging in a technology transitions discontinuance, with the condition that the discontinuing resellers provide reasonable notice to their customers. We sought comment on such forbearance relief in the *Network and Services Modernization Notice*, and no commenters objected to this relief.

66. *Ensuring practices are just and reasonable (Section 10(a)(1)).* We find that enforcement of Section 214(a)’s discontinuance requirements, as well as the requirements of the Commission’s implementing rules, where a resold service is being discontinued as a result of the wholesale provider’s technology

transitions discontinuance is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that carrier or service are just and reasonable and are not unjustly or unreasonably discriminatory. We agree with INCOMPAS that “[a] review of the consequences of the reseller’s ‘charges, practices, classifications, or regulations by, for, or in connection with’ those services is an empty formalism.” In these situations, the discontinuance is due to circumstances beyond the reseller’s control. Moreover, the discontinuance of the resold service at issue will be subject to Commission consideration in the context of the wholesale provider’s technology transitions discontinuance application, including consideration of any objections filed in response to such application. Thus, there is no need to engage in a redundant review when the reseller then seeks to discontinue the resold service.

67. *Protection of consumers (Section 10(a)(2)).* We also find that enforcement of Section 214(a)’s requirements, as well as the requirements of the Commission’s implementing rules, is not necessary in this context to protect consumers. When a wholesale provider discontinues a legacy voice service, the reseller in nearly all cases has no available alternative sources from which to obtain replacement TDM-based services to resell to its end-user customers. The only requirement needed to ensure that consumers are protected in such situations is notice from the reseller to its customers. We thus impose on any reseller availing itself of this forbearance relief the condition that it provide such notice to its affected customers as soon as practicable after the reseller receives notice from its wholesale provider of the planned technology transitions discontinuance that it will no longer be able to provide the relevant legacy voice service. Such notice is to be provided to customers as soon as practicable via any method for which the customer has previously provided express, verifiable approval, and it must set forth the following: (1) the name and address of the carrier; (2) the date of the planned service discontinuance; (3) the points of geographic areas of service affected; (4) a brief description of type of service affected; and (5) a statement regarding the availability of alternative services in the affected service area. We find that this condition will sufficiently protect consumers when a reseller discontinues a resold service because it will no longer be available from the wholesale provider.

68. *Consistent with the public interest (Section 10(a)(3)).* Finally, we hold that forbearance from applying the discontinuance requirements in the circumstances described above is consistent with the public interest. The discontinuance of the resold service at issue will be subject to Commission consideration in the context of the wholesale provider’s technology transitions discontinuance application, and the Commission will not grant that underlying discontinuance application if the discontinuance would adversely impact the public interest, including with respect to the provision of 911 service. Moreover, forbearance in this limited situation is consistent with the public interest because it will conserve carrier resources that might otherwise be spent on regulatory compliance, and we expect carriers to make those resources available for better bundling of services, better tailoring of packages to businesses and consumers, and by providing support to customers. This could include managing first-level technical support, billing, and customer service, and acting as the primary contact for customers, and offering value-added services, including specialized expertise, customized solutions, and bundled IT services.

b. No Broad Section 214(a) Forbearance

69. We find that broader forbearance from discontinuance requirements, whether limited to legacy voice service in specific instances or with respect to all applications to discontinue any type of service, without qualification, is not warranted at this time. The streamlined approach we adopt above speeds transitions where acceptable marketplace alternatives exist. Broader forbearance risks unintended disruptions to public safety and the proper operation of, among other things, security and medical monitoring services, and thus is not consistent with the public interest.

70. *Ensuring practices are just and reasonable (Section 10(a)(1)).* We conclude that the requirements of Sections 214(a) of the Act and 63.71 of our rules are still necessary at this time to ensure that charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory. Areas still exist in this country where, despite the broad scope of wireless and satellite service offerings, no alternative services exist. The record reflects concerns regarding price increases, whether real or potential, that could negatively impact customers. The filing of discontinuance applications allows the Commission and all stakeholders to

receive notice and review in real time service transitions as carriers plan them.

71. *Ensuring protection of consumers (Section 10(a)(2)).* We find that enforcement of the requirements at issue are necessary for the protection of consumers. As illustrated in the record, locations exist where fiber has not yet been deployed and where wireless service may not reach or be sufficiently robust to support reliable voice service. By retaining the requirement that a carrier must seek Commission authorization to discontinue the service at issue, we ensure that customers and other interested parties, including state regulators, will have the opportunity to raise such concerns in objections to the discontinuance application, thereby allowing the Commission to more fully examine the merits of such claims and work with carriers to ensure that no consumers lose access to vital communications capabilities. This concern applies with equal force to the type of conditional forbearance proposed by USTelecom and supported by the Ohio Telecom Association and the Texas Association of Business.

72. *Consistent with the public interest (Section 10(a)(3)).* In the *Network and Services Modernization Notice*, we proposed that forbearance in certain circumstances would “promote competitive market conditions by eliminating superfluous regulations that slow the transition to next-generation IP-based services and by enabling carriers to redirect resources away from legacy voice services—which are no longer competitive and are not in high demand—and toward maintaining and building out the next-generation IP-based services that consumers not only desire but have come to expect.”

73. Based on the record, we do not adopt this proposal and determine that forbearance from Section 214(a) discontinuance requirements as a general matter is not consistent with the public interest at this time. Without the backstop of customer objections and Commission review of an application and those objections, the Commission would not be able to confirm the availability of an adequate replacement service for the affected customers, including in instances where a provider may be relying on “not-yet-deployed technologies,” particularly in less economically attractive locations. Moreover, we find that forbearance from Section 214(a) discontinuance requirements would remove the safeguard of the objection process that might reveal the potential for unintended impacts on, among other things, continued 911 connectivity. Our streamlined application of Section

214(a)’s requirements with less burdensome non-dominant procedures in place is predictable and functions as a backstop that allows the Commission to promote competitive market conditions.

74. We also specifically find that granting forbearance relief from the Section 214 requirements for discontinuance of lower-speed data telecommunications services is not in the public interest because of potential impacts on, among other things, the provision of 911 service.

5. The 31-Day Automatic Grant Period Applies to All Discontinuance Applications

75. We adopt our proposal to revise § 63.71 of our rules to extend the 31-day automatic grant period applicable to applications to discontinue a service for which a carrier is non-dominant to all instances in which a domestic carrier submits a request to discontinue a service, along with the corresponding 15-day objection period. Section 63.71(f)(1) of the Commission’s rules allows a discontinuance application filed by a domestic, non-dominant carrier to be automatically granted on the 31st day after it is filed with the Commission, unless the Commission notifies the applicant otherwise. (An application is deemed filed on the date the Commission releases a Public Notice of the filing. The 31-day period thus only begins to run once the Commission releases the Public Notice of the filing of the discontinuance application.) If a carrier is dominant, however, the current automatic grant period is 60 days after filing. (The Commission first established the dominant/non-dominant distinction in 1980 to “reduce barriers to entry” caused by dominant carriers’ “substantial opportunity and incentive to subsidize the rates for [their] more competitive services with revenues obtained from [their] monopoly or near-monopoly services.”) Expanding the applicability of the 31-day automatic grant period to include dominant carrier discontinuance applications will speed up the processing of those applications and further the critical goal of transitioning to modern networks for all consumers. And because the Commission retains the authority to remove applications from streamlined processing, the public interest will still be protected as required by Section 214(a).

76. We conclude that 31 days is sufficient time for the Commission to determine whether to remove a dominant carrier’s discontinuance application from streamlined processing or to allow automatic grant of the

discontinuance. Some commenters suggest that the 31-day auto-grant period, which provides a 15-day window for customers and other interested parties to file objections, is not enough time for consumers to learn about adequate replacements and ensure there are no unintended consequences of the discontinuance, such as loss of 911 services. However, 31 days has proven to be sufficient for the public to review recent non-dominant carrier applications, including technology transitions discontinuance applications, and assess any changes or disruptions that may occur due to the discontinuance. (AICC asks the Commission to “ensure that any streamlining measures preserve adequate time for public safety evaluation and stakeholder response.”) And since 2013, the Commission has received, on average, only 12 dominant carrier discontinuance applications each year, with objections filed with respect to only approximately 10 percent of those applications and only three being removed from streamlined processing and subsequently granted.

77. We thus determine that 31 days will be sufficient time to review dominant carriers’ applications as well. Additionally, the Commission retains discretion to remove an application from streamlined processing at any point during the 31-day period should the discontinuance raise concerns. This notice requirement and the backstop retained by the Commission ensure adequate review of applications by dominant carriers as the public and carriers are notified of the discontinuance application and have the ability to raise concerns about applications with the Commission before the automatic grant.

78. We decline to adopt USTelecom’s request to amend § 63.71(f)(1) to allow the automatic grant period to begin to run upon the carrier’s filing of an application rather than after the Commission releases the Public Notice. Without the Public Notice, affected customers and other interested parties, such as state regulators, public safety organizations, and public interest groups, would not be able to submit objections in the docket ultimately assigned to the relevant application, thus delaying staff’s receipt of those objections. This would have the effect of reducing the amount of time available to Bureau staff to review an application for completeness or to determine, as required by statute, whether the application raises concerns regarding the potential impact of the requested discontinuance authorization on the public interest, regardless of whether it

receives objections. We find such a potential effect to be unacceptable. However, as discussed above, we direct the Bureau, within ten business days of posting of an application in ECFS, to either contact the applicant to identify deficiencies and request any additional information necessary to make the application complete or to issue a Public Notice of filing of the complete application to ensure timely processing that will support our modernization efforts.

79. We disagree with Bandwidth's assertion that § 63.71 and its automatic grant provisions apply only to retail, loop-side services and not to trunk-side services. In support of its assertion, Bandwidth points to §§ 63.500 and 63.501 as the purportedly governing provisions for such services. However, those provisions simply set forth the content requirements for the formal applications required for the specified types of discontinuances. The discontinuance application procedures, on the other hand, are set forth in § 63.71, and those procedures apply to all formal discontinuance applications other than emergency discontinuance applications, which are specifically covered by § 63.63.

6. Contents of Discontinuance Applications

80. We revise § 63.71(c) of our rules to consolidate the following content requirements applicable to all discontinuance applications, unless otherwise provided for or otherwise stated herein (for example, the contents of emergency discontinuance applications are set forth in § 63.63, and applications to dismantle or remove a trunk line or to sever physical connection or to terminate or suspend interchange of traffic with another carrier must comply with §§ 63.500 and 63.501, respectively, of our rules), to ensure that Bureau staff have sufficient information before them when evaluating discontinuance applications: (1) for technology transitions discontinuance applications only, the difference in price, if any, between the service being discontinued and replacement services available in the affected service area; (2) for technology transitions discontinuance applications only, description of the affected community or part of a community, including the population size and demographics and general characteristics of customers affected; (3) description of replacement services, whether available from the applicant or third parties, that would remain in the affected community or part of the community in the event the application

is granted, including the name of any other carrier(s) providing replacement services to the affected community; and (4) statement of the factors otherwise showing that neither the present nor future public convenience and necessity would be adversely affected by the granting of the applications. (These content requirements are in addition to those we adopt elsewhere in this Order.) And carriers will be required to include in their discontinuance applications a certification, executed by an officer or other authorized representative of the applicant, that the information required by our rules is true and accurate. Our current rules already explicitly require this information for technology transitions discontinuance applications. We conclude that this information is necessary for evaluating all discontinuance applications, particularly in this rapidly changing technological environment.

81. As discussed above, pricing differentials between services being discontinued and available replacement services is important for evaluating the affordability of the replacement service. And information regarding the affected community, a description of the replacement services that would remain available, and other information relevant to the determination of whether the discontinuance would not adversely affect the public convenience and necessity, the statutory standard, are also important to staff evaluation of discontinuance applications. Our rules already require that specific types of discontinuance applications, including technology transitions discontinuance applications, include this information. In conjunction with our elimination of § 63.602, which currently sets forth the content requirements for technology transitions discontinuance applications, including the elements of the Adequate Replacement Test, we incorporate these existing requirements for technology transitions discontinuance applications in § 63.71. (Because we are eliminating this provision, we are revising the cross-references to it in § 63.19(a) and (b).) And the content requirements of §§ 63.500, 63.501, and 63.505 remain unchanged. For other types of discontinuances that do not fall within any of these categories, we do not expressly require pricing differential and affected community information. (We note that applications to discontinue a business data service that supports interconnection trunks or the exchange of traffic remain subject to the content requirements set forth in §§ 63.500 and 63.501.) However, in this rapidly changing communications

environment, we do extend the requirement that applications to discontinue such services—*i.e.*, not involving “technology transitions” and not covered by §§ 63.500, 63.501, and 63.505—include a description of the replacement services that would remain available, other information relevant to the determination of whether the discontinuance would not adversely affect the public convenience and necessity, the statutory standard, and the certification described in the preceding paragraph. (For example, a competitive LEC application to discontinue a legacy voice service in a service area where that legacy voice service is still available from the incumbent LEC does not qualify as a technology transitions discontinuance and thus need not comply with the requirements specific to that category of discontinuances. However, competitive LEC applications seeking discontinuance authorization for a legacy voice service still must demonstrate the existence of an adequate replacement service, which in this case would include the legacy voice service available from the incumbent LEC.) As the Commission has repeatedly noted, the adequacy and availability of replacement services is one of the traditional five factors the Commission considers when determining whether discontinuance of a service to a community or part of a community would adversely affect the current or future public convenience and necessity. Expressly requiring this information will minimize the need for Bureau staff to request from the applicant additional information necessary for their evaluation of applications to discontinue those services, thus making the process more efficient and predictable and, combined with the overall regulatory relief we grant today, should not result in burdensome filing requirements that delay service transitions for consumers. (§ 63.71 requires applicants to provide “[a]ny other information the Commission may require.” Many carriers already provide the types of information required by our revised requirements in their discontinuance applications in order to paint a fuller picture for Bureau staff and avoid further questions from staff about the proposed discontinuance(s).)

7. Emergency Discontinuances

82. We adopt our proposal to revise our emergency discontinuance rules to explicitly provide that a carrier may permanently discontinue a service a showing that: (1) the carrier has previously obtained emergency

discontinuance authority for the service in question, (2) the service is one for which the requesting carrier has had no customers or reasonable requests for service during the 60-day period immediately preceding the permanent discontinuance, and (3) an adequate replacement service is available throughout the affected service area. We decline at this time to allow for streamlined processing of requests to permanently discontinue a service that is contained in an initial emergency discontinuance application.

a. Emergency Discontinuances Leading to No Customers

83. Section 63.63 of our rules sets forth procedures carriers must follow when seeking authority for an emergency discontinuance. (Our rules define an emergency discontinuance as “any discontinuance, reduction, or impairment of the service of a carrier occasioned by conditions beyond the control of such carrier where the original service is not restored or comparable service is not established within a reasonable time.” Providers must submit an application for authority for an emergency discontinuance of service as soon as practicable but not later than 65 days following the occurrence of the conditions which occasion the discontinuance. Authority is deemed granted as of the date the request is filed unless the Commission notifies the carrier otherwise on or before the 15th day after the date of filing, and a carrier may request to have the authorization renewed if the conditions leading to the emergency discontinuance “may reasonably be expected to continue for a further period and what efforts the applicant has made to restore the original or establish comparable service of such authority.” The carrier must notify the Commission if “the same or comparable service is reestablished before the termination of the emergency authorization.”) We now revise that rule to allow carriers to permanently discontinue a service for which the carrier has previously obtained emergency discontinuance authority upon a showing that (1) the service is one for which the requesting carrier has had no customers or reasonable requests for service during the 60 days immediately preceding the permanent discontinuance, and (2) an adequate replacement service is available throughout the affected service area. While our proposal in the *Network and Services Modernization Notice* referred to “comparable service,” we find it more appropriate to use the phrase “adequate replacement service” in this instance to confirm that the

standards for replacement services are the same for all permanent discontinuances, whether the provider proceeds under § 63.63(b) or § 63.71(g) of our rules.

84. Under our existing rules, carriers may submit an informal request to permanently discontinue a service for which the carrier has already received emergency discontinuance authority, which the Commission may authorize “upon a proper showing.” Our rules do not define what constitutes a “proper showing.” We conclude that the amendment we adopt today, which addresses a narrow set of circumstances, strikes the appropriate balance between safeguarding consumers and enabling carriers to be more deft and responsive in reacting to natural disasters and other emergencies. The amendment also allows carriers to focus their rebuilding efforts on modernized, more resilient networks rather than restoring deteriorating, obsolete legacy networks and services. We find that there is little risk that a permanent discontinuance of the affected service will adversely affect any existing or potential customers in instances where a carrier has previously filed for emergency discontinuance authority, has had no customers nor reasonable requests for service for a minimum of 60 days, and an adequate replacement service is available. (Contrary to USTelecom’s assertion, when the Commission forbore in the *Second Wireline Infrastructure Order* from applying the discontinuance approval obligations set forth in Section 214(a) of the Act and our implementing rules to carriers choosing to discontinue services for which the carrier has had no customers and no reasonable requests for service for at least the immediately preceding 30 days it excluded from this forbearance the requirements associated with emergency discontinuances where a carrier’s existing customers are without service for a period of time exceeding 30 days. By extending the period in which the carrier has had no customers or reasonable requests for the affected service to 60 days and limiting the application of the rule we adopt today to only those areas where an adequate replacement service is available in the affected service area, we believe we have adequately addressed the concerns that prompted this carve-out in the *Second Wireline Infrastructure Order*.)

85. When legacy voice service facilities are damaged or destroyed during a natural disaster or other event outside the carrier’s control, it may be costly as well as inefficient to require the carriers to restore these legacy facilities, especially in areas where the

requesting carrier has had no customers or reasonable requests for service for 60 days prior to the request for permanent discontinuance and where an adequate replacement service is already available. Such an approach also mitigates the risk that consumers in an affected area will be stranded without service. Indeed, the increasing incidences of copper thefts have resulted in emergency discontinuances that leave affected customers without service, sometimes repeatedly. (Incumbent LECs filed 11 emergency discontinuance applications in 2024 caused by copper thefts, and another 19 in 2025. And the repair processes during the pendency of certain of these emergency discontinuance applications have been impeded by continued copper thefts.) Consumers will also benefit in the long term as this amendment to our rules will allow carriers to begin building out more reliable and more robust next-generation networks sooner by redirecting money and time that would otherwise be spent making lengthy and costly repairs to vulnerable legacy facilities serving fewer and fewer customers.

86. We decline to adopt a commenter’s proposal to extend the relevant time period for an emergency discontinuance from 60 days to six months and to require carriers to affirmatively contact each customer during that time to obtain explicit consent prior to any permanent discontinuance. Such requirements would impose burdensome requirements where a comparable service is already available across the affected service area. Additionally, this proposal would require carriers to make repeated attempts to contact consumers who may choose not to respond or who may have permanently relocated during the emergency discontinuance period, and would completely negate any added efficiencies and benefits of this amendment to our rules. The rule we adopt today strikes an appropriate balance between increasing market efficiency and allowing carriers to refocus their efforts away from maintaining vulnerable and unreliable legacy networks. It would also encourage carriers to deploy higher-quality and more resilient next-generation networks and safeguard consumers by ensuring that they are not left stranded without voice service.

b. Processing of Requests to Permanently Discontinue

87. To ensure the efficacy of the consumer safeguards we adopt in this Order, we decline to allow the streamlined processing of requests in an

initial emergency discontinuance application to permanently discontinue the affected service. While we are constantly seeking ways to increase efficiency and speed the transition to next-generation networks and services, we find that streamlined processing of a discontinuance request as the result of a natural disaster or other emergency would not allow sufficient time for the Commission to conduct its review, nor for affected consumers and other stakeholders to lodge comments or objections. Instead, we find that the existing procedures for processing requests to permanently discontinue services, as well as the requirements we adopt today where the emergency discontinuance leads to the carrier no longer having customers for the affected service, strike the correct balance between allowing providers to phase out damaged legacy networks and affording customers and other stakeholders sufficient time to be made aware of such discontinuances and to raise objections with the Commission. We reserve the right to revisit this conclusion at a later date, if future circumstances warrant a reconsideration of this finding.

8. Eliminating Outdated Discontinuance Rules

88. We next adopt our proposal in the *Network and Services Modernization Notice* to eliminate a number of outdated discontinuance rules that have outlived their usefulness. As proposed in the *Network and Services Modernization Notice*, we conclude that these discontinuance rules are outdated, obsolete, or redundant and are no longer relevant or necessary in today's communications marketplace, with certain exceptions. Commenters support these streamlining efforts. Specifically, we eliminate all of the outdated discontinuance rules discussed in the *Network and Services Modernization Notice*, except for §§ 63.60(f), 63.500, and 63.501.

a. Eliminated Rules

89. *Public toll stations.* We eliminate § 63.504 of the Commission's rules, which details the contents of an application to close a public toll station where no other such toll station of the applicant will continue service in the community and where telephone toll service is not otherwise available to the public through a telephone exchange connected with the toll lines of a carrier. (§ 63.60(f) of the Commission's rules defines "public toll station" as "a public telephone station, located in a community, through which a carrier provides service to the public, and which is connected directly to a toll line

operated by such carrier.") Commenters support this deletion. (One commenter, however, appears to have misunderstood our proposal to eliminate § 63.504. Discontinuances of public toll stations remain subject to our general discontinuance rules.) As we stated in the *Network and Services Modernization Notice*, "[t]hese rules were created more than six decades ago, at a time when public toll stations were far more prevalent . . . [and] it no longer makes sense to treat applications to discontinue this service distinctly from other types of service." In order to ensure that a carrier seeks Commission authorization to close a public toll station in a location where telephone toll service is not otherwise available, as contemplated by § 63.62(b) of our rules, we now make applications for the closures of such public toll stations subject to the general application content requirements set forth in § 63.505. We thus decline at this time to eliminate § 63.60(f), defining public toll stations for purposes of discontinuance applications. For these same reasons, we retain the references to public toll stations in § 63.60(b), addressing the types of actions encompassed within the term "discontinuance, reduction, or impairment of service."

90. *Telephone exchanges at military establishments.* We eliminate § 63.66 of the Commission's rules, which requires that carriers file an informal request, in quintuplicate, with the Commission before altering service hours at telephone exchanges at deactivated military establishments. When Congress amended Section 214 of the Act, it was concerned about "loss or impairment of service during" wartime, particularly with respect to military establishments and industries. That was a very real concern at that time, when POTS was the only voice service widely available. However, this is no longer the case. The nation at large and the military specifically have at their disposal voice, email, text, and video communications services provisioned over a variety of mediums, including fiber, wireless, and satellite. Commenters support these streamlining efforts. We thus conclude that § 63.66 no longer serves any purpose and should be eliminated.

91. *Publication and posting of notices.* We eliminate § 63.90 of the Commission's rules, imposing extensive requirements regarding the publication and physical posting of notices of discontinuances or reduced hours. While the specific requirements of this rule have changed over the years since this rule was adopted to accommodate the evolution of the communications marketplace and consumers' access to a

variety of modes of communication, we agree with commenters that the physical posting of notices of discontinuances or reduced hours is no longer necessary and that posting the information on a carrier's website is now sufficient notice for network changes.

92. *Notification of service outage.* We eliminate § 63.100 of our rules, which directs providers to part 4 of the Commission's rules for the requirements concerning notifications of service outages. The outage notification requirements originally listed in § 63.100 are now found in part 4 of the Commission's rules. Commenters support these streamlining efforts. As § 63.100 itself no longer contains any substantive regulations, we conclude that it is no longer relevant or necessary.

93. *Public coast stations.* We eliminate § 63.601, pertaining to public coast stations, and remove the references to public coast stations in § 63.60(b), 63.60(c), and 63.63(a) of our rules. (Public coast stations are "land station[s] in the maritime mobile service" that "offer[] radio communication common carrier services to ship radio stations.") As we noted in the *Network and Services Modernization Notice*, the Commission classified public coast stations as part of commercial mobile radio service (CMRS) in 1994, rendering it subject to the forbearance simultaneously granted from Section 214 discontinuance requirements for CMRS stations. Commenters support these streamlining efforts. Any remaining discontinuance obligations pertaining to public coast stations are addressed exclusively elsewhere in our rules. We thus find that these rules no longer serve any useful purpose.

b. Retaining Sections 63.500 and 63.501

94. We decline to eliminate §§ 63.500 and 63.501 of the Commission's rules at this time. (We thus also retain the references to these rules in §§ 63.19 and 63.62(a) and (b).) Section 63.500 sets forth the required contents of applications to dismantle or remove a trunk line. Section 63.501 does the same for applications to sever physical connection or to terminate or suspend interchange of traffic with another carrier. Given the ongoing network evolution and the ever-decreasing reliance on copper lines, we sought comment in the *Network and Services Modernization Notice* on whether eliminating these rules would better serve the public interest.

95. Based on the record in this proceeding, we determine that eliminating §§ 63.500 and 63.501 of the Commission's rules is not consistent

with the public interest at this time. More specifically, we conclude that eliminating these rules at this time may cause unintended public safety consequences on the provision of 911 service. While copper is no longer the dominant transmission medium, it remains necessary for local exchange service provider interconnection with incumbent LECs for the provision of 911 service where IP interconnection is unavailable between the incumbent LEC and the local exchange service provider. We thus defer any potential elimination of these provisions until after we act on the proposed forbearance from the incumbent LEC-specific interconnection and related obligations.

C. State Mandates Conflicting With the FCC's Section 214 Discontinuance Authorizations and Authority Are Subject to Preemption

96. We determine below that existing legacy voice services can be jurisdictionally mixed. We then discuss the scope of the Commission's and the states' respective authority with respect to regulating the discontinuance of jurisdictionally mixed services. Finally, we determine that, where the Commission has authorized discontinuance of interstate or jurisdictionally mixed legacy voice services, state requirements that make it impossible or impracticable for carriers to discontinue those services—and so in effect require carriers to continue providing interstate or jurisdictionally mixed telecommunications services—conflict with federal law, and the important federal policy represented by our modernized regulatory framework established in this Order for network changes and service discontinuances and are subject to preemption.

97. *Jurisdictional nature of legacy voice service.* Legacy voice service is the transmission of voice communications, usually over copper wires, using circuit-switched technology known as “time-division multiplexing” (TDM). Legacy voice service generally includes what is sometimes colloquially described as “local telephone service,” although that term does not accurately reflect the jurisdictional nature of the service as a practical matter in today's networks. Few, if any, networks today operate on a purely local or even intrastate level. Local exchange service and local toll service, while typically occurring within a single state, do in certain instances cross state lines. And the vast majority of consumers use the same provider for both their local and long distance service, with some customers purchasing bundled access that includes local exchange service, local toll calling,

and interstate long distance toll service. (In the past, local exchange carriers were required to provide “equal access” service to long-distance carriers. “Equal access” refers to a class of service whereby all long-distance service providers receive equivalent connections to the local exchange carrier's network. Recognizing transformations in the market for voice telephone services, the Commission in 2019 forbore from “the requirement that independent rate-of-return carriers offer long-distance telephone service through a separate affiliate.”) However, these services are provisioned over the same network using the same technology. (To the extent that USTelecom argues that all POTS offerings are jurisdictionally mixed services, we reject that conclusion. The Commission will consider on a case-by-case basis whether certain legacy voice services are interstate or jurisdictionally mixed.) We acknowledge that, in the *2016 Technology Transitions Order*, the Commission stated that “wholly intrastate services such as local telephone service are excluded from [the] reach” of the Commission's Section 214 discontinuance authority. Insofar as that statement might be understood to suggest that legacy voice service is a purely intrastate service, we find that the Commission in 2016 did not consider how state requirements might, on a practical level, prevent or conflict with the discontinuance of interstate or jurisdictionally mixed services.

98. *Federal discontinuance authority under Section 214.* Section 214 authorizes the Commission to determine when interstate or jurisdictionally mixed telecommunications services may be discontinued. The Commission has recognized that Congress enacted Section 214 to “protect Americans' continued access to the nation's communications networks while also preserving carriers' ability to upgrade their services without the interruption of federal micromanaging.” Section 214 thus does not guarantee that a particular service, such as legacy voice service, remains available to consumers or that consumers can purchase a particular service from a particular carrier. Rather, Section 214 seeks to ensure that consumers retain access to vital communications services, regardless of the identity of the service provider. Under Section 214(a), except on a temporary or emergency basis, “[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community,” without first “obtain[ing] from the Commission a

certificate that neither the present nor future public convenience and necessity will be adversely affected thereby,” and Section 214(c) allows the Commission to tailor the scope of the discontinuance it authorizes “as in its judgment the public convenience and necessity may require.” Once the Commission authorizes discontinuance, a carrier may discontinue the covered service “without securing [other] approval.” Section 214 thus creates an exclusively federal discontinuance regime for interstate or jurisdictionally mixed telecommunications services.

99. The federal discontinuance regime established in Section 214(a) through (c) is consistent with the framework for the designation and relinquishment of eligible telecommunications carrier (ETC) status set out in Section 214(e), including Section 214(e)(4)'s mandate that a state commission permit an ETC to relinquish its designation if the area is served by at least one other ETC. Section 214(e) governs the approval and relinquishment of designations for common carriers that are eligible for universal service support pursuant to Section 254(e). There is nothing in the language of Section 214(e) that supersedes or limits the federal processes established pursuant to Section 214(a) through (c) with regard to service discontinuance. Thus, while a carrier's ETC status determines whether that carrier may receive universal service support for the provisioning, maintenance, and upgrading of particular facilities or services under Section 254(e), the question of whether a carrier may discontinue a specific interstate service is wholly governed by Section 214(a) through (c) and the carrier need only show in its advance notice to the relevant state commission that the affected service area is “served by more than one eligible telecommunications carrier.”

100. *State authority.* Section 214 provides states with a limited role in the federal discontinuance regime, but that role does not provide states with additional authority over services for which a provider has obtained Commission approval for discontinuance. Section 214(b) requires a carrier to notify each state in which the carrier proposes to construct, acquire, or operate a line or proposes to discontinue, reduce, or impair a service, and grants those states “the right . . . to be heard.” This provision allows states to object to any federal discontinuance application prior to any Commission authorization. (Such a grant of an “explicit consultative role . . . works against, rather than for, [any] claim of other powers” by states in the context

of service discontinuance.) But it is the Commission that has sole jurisdiction to decide whether a carrier's proposed discontinuance adversely affects the public convenience and necessity and whether it should be approved or rejected. In Section 214(c), Congress gave both states and state public utility commissions (PUCs) the right to bring a federal court action to enjoin any discontinuance of service that occurs "contrary to the provisions of" Section 214. This provision allows states to bring suit in federal court to enjoin discontinuance if discontinuing a service would be in violation of, or without, a Commission authorization. (Even if a state has obtained an injunction in federal court to prevent a carrier from discontinuing service, the basis for that injunction is "evaporated" once the carrier obtains Commission authorization for the discontinuance.) But Section 214(c) does not grant states the right to obtain federal court injunctions against discontinuances that are lawfully granted by the Commission. Accordingly, neither Section 214(b) nor Section 214(c) provides states with the power to decide whether a carrier may discontinue interstate or jurisdictionally mixed service, or empowers states to impose requirements that frustrate or add extra conditions to Commission decisions allowing discontinuance. Instead, Congress provided that, after obtaining the Commission's approval, carriers could "without securing approval other than such certificate . . . proceed with the discontinuance . . . of service."

101. We find that Section 253(b) of the Act similarly does not provide states with additional authority over services for which a provider has obtained discontinuance approval at the federal level. Section 253(b) provides a safe harbor from preemption under Section 253(a) when states "impose, on a competitively neutral basis . . . , requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." Two commenters argue that Section 253(b) thus preserves several COLR obligations. To the extent these commenters suggest that Section 253(b) gives states discontinuance authority over interstate services or jurisdictionally mixed services, we disagree. While Section 253(b) does offer states a safe harbor from the reach of the Commission's Section 253 preemption authority, the safe harbor is limited on its face to the provisions of

Section 253 itself. As stated in Section 253(b), "[n]othing in this section"—i.e., in Section 253—"shall affect the ability of states" to exercise the rights enumerated therein. We find the safe harbor for the states in Section 253 does not confer authority over services that have received federal approval for discontinuance under Section 214.

102. *State requirements subject to preemption.* As explained below, once the Commission has authorized a carrier to discontinue an interstate or jurisdictionally mixed telecommunications service, states may not enforce any law, regulation, or other requirement that on its face or in practical terms requires the carrier to continue providing the interstate or jurisdictionally mixed service the Commission has authorized the carrier to discontinue. States may not, consistent with federal law, impose any additional conditions on the Commission's authorization of discontinuance, including conditions that purport to be technology neutral, but that have the practical effect of requiring the carrier to continue providing an interstate or jurisdictionally mixed telecommunications service. (Since we do not have the record before us to, in this Order, opine on the application of this preemption to any specific state law, we decline to do so—including to exempt any specific state law or category of state law from the reach of this Order.)

103. It is well established that, under the "impossibility exception" to state jurisdiction, the Commission may preempt state law when (1) it is impossible or impracticable to regulate the intrastate aspects of a service without affecting interstate communications and (2) the Commission determines that such regulation would interfere with federal regulatory objectives. More generally, under the U.S. Constitution, federal law is the "supreme Law of the Land." As relevant here, state law is subject to conflict preemption if it "prevent[s] or frustrate[s] the accomplishment of a federal objective," and Commission actions taken under statutory authority will preempt state law. (We disagree with the California Public Utilities Commission's (California PUC) assertion that only an "unmistakably clear" statement in the Act could allow the Commission to preempt state statutes, regulations, and other legal requirements that require a carrier to continue providing a service for which the Commission has already granted discontinuance authorization. As stated above, we find that the clear language of

Section 214 creates a federal regime for determining when a carrier may discontinue an interstate or jurisdictionally mixed telecommunications service.) The doctrine of "conflict preemption—true to its name—[applies] when the operation of federal and state law clash in a way that makes 'compliance with both state and federal law . . . impossible,' or when 'state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'"

104. We determine that certain state and local statutes, regulations, and requirements are subject to federal preemption. We sought comment in the *Network and Services Modernization Notice* on state or local requirements that would inhibit or impede the transition to next-generation networks and services, and asked whether such requirements would conflict with this critical goal by, for example, compelling carriers to continue providing legacy voice service or preventing carriers from discontinuing service. The record indicates that some states have adopted requirements that carriers assert operate to prevent them from discontinuing legacy voice service—whether as a matter of law or in practical effect. The record also includes assertions that certain state or local statutes, regulations, or requirements have the effect of preventing carriers from seeking to retire deteriorating legacy networks and discontinuing outdated TDM-based services taken by ever-fewer customers for undetermined periods of time, leaving these providers unable to redirect time and resources away from the development and deployment of next-generation networks and technologies. We agree with USTelecom that, where the Commission has exercised its Section 214 discontinuance authority over interstate and/or jurisdictionally mixed services to allow a carrier to discontinue legacy voice service, state requirements that operate to require the carrier to continue providing those services conflict with federal law. Such state or local statutes, regulations, or legal requirements effectively "negate the Commission's exercise of its lawful authority because regulation of the interstate aspects of the matter cannot be severed from regulation of the intrastate aspects." We conclude that if state and local requirements prevent a provider from discontinuing the interstate portion of a legacy voice service for which the Commission has already granted discontinuance authorization pursuant to Section 214, then the requirements

negate a valid federal regulatory objective because the interstate impacts of the state or local requirements cannot be unbundled from the intrastate aspects of those requirements. We stress that states lack authority to regulate interstate services. And, moreover, where the Commission has lawfully exercised its Section 214 authority to allow discontinuance of a service within its regulatory sphere, Section 214(c) expressly provides that carriers do not require any other “approval” to discontinue the covered service, including any state commission or Commission approval that might otherwise be required under Section 214(e)(4) for relinquishment of the carrier’s ETC status, if there is another ETC throughout the relevant service area. (As discussed elsewhere in this Order, the Commission will deny a discontinuance application if it finds that the discontinuance will adversely affect the present or future public convenience and necessity, as required by Section 214(a) of the Act. If a state commission believes that a carrier’s discontinuance of a service for which it has requested Commission authorization would have such an adverse effect, the state may file an objection with the Commission. Moreover, after a carrier receives a discontinuance grant from the Commission and makes a showing to the relevant state commission that another ETC serves the affected service area, Section 214(e)(4) requires the state to allow the carrier to relinquish its ETC designation without erecting additional hurdles.) We determine here that any such state requirements, to the degree they regulate services shown to be jurisdictionally mixed, are subject to preemption pursuant to both the impossibility exception and general principles of conflict preemption. (Similarly, where the Commission has exercised its Section 214(a) authority over interstate and/or jurisdictionally mixed service to allow a carrier to grandfather legacy voice service, *see supra* Section III.B.2, federal law preempts state requirements that operate to require the carrier to continue offering that interstate or jurisdictionally mixed grandfathered service to new customers.)

105. It is beyond the scope of this proceeding to evaluate individual state requirements in their particulars, or to determine whether they conflict with federal law. We accordingly do not, in this Order, make any preemption determination as to any specific state or local law or requirement. If, however, the Commission has authorized a carrier

to discontinue legacy voice service and any state requirement conflicts with that authorization, or if a carrier wants to seek Commission discontinuance authorization for a legacy voice service but that carrier believes that a state requirement prevents it from doing so, the carrier may opt to seek a determination from the Commission that the state requirement is preempted.

II. Final Regulatory Flexibility Analysis

106. 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 *Network and Services Modernization Notice (Notice)* released in 2025. The Commission sought written public comment on the proposals in the *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 Rules

107. In the *Report and Order (Order)*, the Commission takes important steps aimed at bringing the existing regulatory environment in line with today’s communications marketplace by overhauling the Commission’s rules applicable to technology transitions discontinuance applications under Section 214 of the Communications Act of 1934, as amended (the Act), and reforming and updating the filing requirements associated with its rules implementing Section 251(c)(5)’s network change disclosure mandate. Specifically, within the *Order*, the Commission: (1) eliminates the filing requirements associated with our rules implementing Section 251(c)(5)’s network change disclosure mandate; (2) adopts one consolidated rule applicable to all technology transitions discontinuance applications and eliminates rule provisions thereby rendered irrelevant; (3) grants blanket Section 214(a) authority for carriers to grandfather legacy voice services, lower-speed data telecommunications services, and interconnected VoIP service provisioned over copper wire; (4) grants forbearance relief to resellers when the wholesale provider of their resold service engages in a technology transitions discontinuance; (5) revises § 63.71 of its rules to apply the 31-day automatic grant period to all discontinuance applications regardless of the applicants’ status as dominant or non-dominant; (5) adopts discontinuance application content

requirements; (6) revises its rules applicable to emergency discontinuances to permit permanent discontinuance of a service under specific circumstances; (7) eliminates a number of outdated discontinuance rules rendered irrelevant or redundant by today’s communications marketplace; and (8) finds any state or local statute, regulation, or other legal requirement that—either by law or in practice—has the effect of continuing to require carriers to provide POTS or other legacy services in an area where carriers have obtained Commission authorization under Section 214(a) of the Act to discontinue the legacy service in question or where carriers have been discouraged from seeking such Commission authorization are subject to preemption.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

108. There were no comments raised that specifically addressed the proposed rules and policies presented in the *Notice*. However, 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 the Small Business Administration Office of Advocacy

109. 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 the Small Business Administration (SBA) Office of Advocacy, 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

110. 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 adopted rules. 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 (SBA). (Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register.**”) 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. The SBA establishes small business size standards that agencies are required to use when promulgating regulations relating to small businesses; agencies may establish alternative size standards for use in such programs, but must consult and obtain approval from SBA before doing so.

111. These actions, over time, may affect small entities that are not easily

categorized at present. We therefore describe three broad groups of small entities that could be directly affected by these actions. 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 are not dominant in their field.

112. While we do 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, we estimate that at least 48,724 out of 90,835 local government jurisdictions have a population of less than 50,000.

113. The rule reforms and modifications adopted in the *Order* will apply to small entities in the industries identified in the chart below by their six-digit North American Industry Classification System (NAICS) codes and corresponding SBA size standard. (The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The size standards in this chart are set forth in 13 CFR 121.201, by six digit NAICS code.) Based on currently available U.S. Census data regarding the estimated number of small firms in each identified industry, we conclude that the adopted rules will impact a substantial number of small entities. Where available, we also provide additional information regarding the number of potentially affected entities in the identified industries below.

TABLE 1—2022 U.S. CENSUS BUREAU DATA BY NAICS CODE

Regulated industry (footnotes specify potentially affected entities within a regulated industry where applicable)	NAICS code	SBA size standard	Total firms	Total small firms	% Small firms
Wired Telecommunications Carriers (Affected Entities in this industry include Cable System Operators (Telecom Act Standard), Competitive Local Exchange Carriers (CLECs), Incumbent Local Exchange Carriers (Incumbent LECs), Interexchange Carriers (IXCs), Local Exchange Carriers (LECs), and Other Toll Carriers.)	517111	1,500 employees ..	3,403	3,027	88.95
Wireless Telecommunications Carriers (except Satellite)	517112	1,500 employees ..	1,184	1,081	91.30
Telecommunications Resellers (Affected Entities in this industry include Local Resellers, Prepaid Calling Card Providers, and Toll Resellers.)	517121	1,500 employees ..	955	847	88.69
Satellite Telecommunications	517410	\$44 million	332	195	58.73
All Other Telecommunications	517810	\$40 million	1,673	1,007	60.19

TABLE 2—TELECOMMUNICATIONS SERVICE PROVIDER DATA

2024 Universal service monitoring report telecommunications service provider data (data as of December 2023)	SBA size standard (1,500 employees)		
	Total number FCC Form 499A filers	Small firms	% Small entities
Affected entity			
Cable/Coax CLEC	67	62	92.54
Competitive Local Exchange Carriers (CLECs) (Affected Entities in this industry include all reporting local competitive service providers.)	3,729	3,576	95.90
Incumbent Local Exchange Carriers (Incumbent LECs)	1,175	917	78.04
Interexchange Carriers (IXCs)	113	95	84.07
Local Exchange Carriers (LECs) (Affected Entities in this industry include all reporting fixed local service providers (CLECs & ILECs).)	4,904	4,493	91.62
Local Resellers	222	217	97.75
Other Toll Carriers	74	71	95.95
Prepaid Card Providers	47	47	100.00
Toll Resellers	411	398	96.84
Wired Telecommunications Carriers (Local Resellers fall into another U.S. Census Bureau industry (Telecommunications Resellers) and therefore data for these providers is not included in this industry.)	4,682	4,276	91.33
Wireless Telecommunications Carriers (except Satellite) (Affected Entities in this industry include all reporting wireless carriers and service providers.)	585	498	85.13

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

114. The RFA directs agencies to describe the economic impact of adopted 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 requirement and the type of professional skills necessary for preparation of the report or record.

115. In the *Order*, the Commission reforms and modifies its existing rules applicable to discontinuance applications under Section 214 of the Act generally and as to technology transitions discontinuance applications specifically, as well as the filing requirements associated with its rules implementing Section 251(c)(5)'s network change disclosure mandate. The Commission minimized the burdens associated with any new reporting, recordkeeping, or compliance requirements adopted in the *Order*, which are aimed at ensuring 911 continuity and that consumers are sufficiently protected. The Commission anticipates the approaches taken in these rule modernization efforts will have minimal cost implications because the reporting, recordkeeping and compliance requirements that remain after these reforms and updates already exist. We do not expect any additional burdens for small businesses entities.

116. In determining the economic impact and projected compliance requirements for small and other entities, the Commission sought comment on the costs and benefits associated with the proposals made in the *Order*. As discussed above, several comments were filed related to small entities. The Commission finds that the reforms adopted in the *Order* will expedite the Commission's existing discontinuance process without imposing any additional burdens.

117. We estimate that the rule changes discussed in the *Order* will result in a reduction in the time and expense associated with filing petitions and will not result in significant, material changes to reporting, recordkeeping, or compliance obligations for small and other Commission licensees. Additional resources or personnel should not be required to fulfill these requirements because all affected providers should already be familiar with these procedures, as they are required to comply with existing Commission regulations.

118. After reviewing the record, we received no concerns about unique burdens from small businesses that would be impacted by the modifications adopted in the *Order* and proposed in the *Further Notice*. The Commission believes these revisions will make its rules more transparent and accessible to small entities and reduce the time and cost associated with its discontinuance requirements. As a result, we cannot estimate the cost of complying with the rules, or compare such costs for small and other entities.

119. In addition, we received no concerns about unique burdens from small businesses that would be impacted by the new certifications adopted in the *Order*. As such, we do 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.

F. Discussion of Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

120. 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."

121. The Commission sought comment on whether any of the burdens associated with the filing, recordkeeping and reporting requirements described in the *Order* could be minimized for small entities. As discussed above, the Commission minimized the burdens associated with any new reporting, recordkeeping, or compliance requirements adopted, which are aimed at ensuring 911 continuity and that consumers are sufficiently protected. As such, the Commission finds that the costs associated with the adopted rules and clarifications are likely minimal as a result of the anticipated decrease in filing burdens as well as through the elimination of outdated discontinuance rules. Thus, the Commission anticipates that the approaches it has taken to implement these reforms and updates will have minimal reporting, recordkeeping, or other compliance requirements or costs. We do not expect any additional burdens for small businesses entities.

G. Report to Congress

122. The Commission will send a copy of the *Order*, including this Final Regulatory Flexibility Analysis, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Order*, including this Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA and will publish a copy of the will publish a copy of the *Order*, and this Final Regulatory Flexibility Analysis (or summaries thereof) in the **Federal Register**.

III. Procedural Matters

123. *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 51.329, 51.333, 63.60, 63.62(a) and (b), (d), 63.63, 63.66, 63.71, 63.90, 63.100, 63.504, 63.601, and 63.602 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.

124. *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.

125. *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 Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

IV. Ordering Clauses

126. Accordingly, *it is ordered* that pursuant to Sections 1–4, 10, 201(b), 214(a)–(c), 251(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 160, 201(b), 214(a)–(c), 251(c)(5), the Report and Order hereby *is adopted*. (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).)

127. *It is further ordered* that the Commission’s rules *are hereby amended* as set forth in Appendix A and such amendments shall become effective 30 days after publication in the **Federal Register**, except that the amendments to §§ 51.329, 51.333, 63.60, 63.62(a)–(b), (d) and (e), 63.63, 63.71, and 63.602, 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 §§ 51.329, 51.333, 63.60, 63.62(a)–(b), (d) and (e), 63.63, 63.71, and 63.602 by subsequent Public Notice.

128. *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 Report and Order will commence on the date that a summary of this Report and Order is published in the **Federal Register**.

129. *It is further ordered* that the Commission’s Office of the Secretary, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

130. *It is further ordered* that the Office of the Managing Director, Performance Evaluation and Records Management, *shall send* a copy of this Report and Order 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

47 CFR Part 51

Communications, Communications common carriers, Telecommunications, Telephone.

47 CFR Part 63

Authority delegations (government agencies), Cable television, Communications, Communications common carriers, Organization and functions (Government agencies), Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Final Rules

For the reasons set forth above, parts 51 and 63 of title 47 of the Code of Federal Regulations are amended as follows:

PART 51—INTERCONNECTION

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

Authority: 47 U.S.C. 151–55, 201–05, 207–09, 218, 225–27, 251–52, 271, 332 unless otherwise noted.

■ 2. Delayed indefinitely, amend § 51.329 by:

- a. Revising paragraph (a); and
- b. Removing paragraph (c).

The revision reads as follows:

§ 51.329 Notice of network changes: Methods for providing notice.

(a) An incumbent LEC may provide the required notice to the public of network changes through publicly accessible industry fora, industry publications, or the incumbent LEC’s website.

* * * * *

■ 3. Delayed indefinitely, amend § 51.333 by:

- a. Revising the section heading and paragraph (a);
- b. Removing paragraphs (b) through (f);
- c. Redesignating paragraph (g) as paragraph (b);
- d. Removing newly redesignated paragraph (b)(1)(iii);
- e. Further redesignating newly redesignated paragraphs (b)(1)(iv) and (v) as paragraphs (b)(1)(iii) and (iv); and
- f. Revising newly redesignated paragraph (b)(2)(i) and (ii).

The revisions read as follows:

§ 51.333 Notice of network changes: Short-term network changes and copper retirement.

(a) *Direct notice.* If an incumbent LEC wishes to provide less than six months’ notice of planned network changes, or provide notice of a planned copper retirement, the incumbent LEC must serve a copy of its public notice upon each telephone exchange service provider that directly interconnects with the incumbent LEC’s network, 911 service providers, and directly interconnecting local exchange service providers that support essential functions within 911 networks in the affected service areas, provided that, with respect to copper retirement notices, such service may be made by postings on the incumbent LEC’s website if the directly interconnecting telephone exchange service provider has agreed to receive notice by website postings. For purposes of this section, “911 service provider” is defined as an entity that provides 911, E911, or NG911 capabilities such as call routing, automatic location information, automatic number identification, or the functional equivalent of those capabilities, directly to a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority as defined in § 9.3 of this chapter; and/or operates one or more central offices that directly serve a PSAP.

(1) An incumbent LEC must provide the required direct notice of a short-term network change at least 10 days prior to implementation.

(2) An incumbent LEC must provide direct notice of a planned copper retirement at least 90 days prior to implementation, except that it must provide direct notice of a planned copper retirement involving copper facilities not being used to provision services to any customers at least 15 days prior to implementation.

(b) * * *

(2) * * *

(i) Notwithstanding the requirements of this section, if in response to circumstances outside of its control other than a force majeure event addressed in paragraph (b)(1) of this section, an incumbent LEC cannot comply with the timing requirement set forth in paragraph (a) of this section, hereinafter referred to as the waiting period, the incumbent LEC must give notice of the network change as soon as practicable.

(ii) A short-term network change or copper retirement notice subject to paragraph (b)(2) of this section must include a brief explanation of the circumstances necessitating the reduced

waiting period and how the incumbent LEC intends to minimize the impact of the reduced waiting period on directly interconnected telephone exchange service providers.

* * * * *

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

■ 4. The authority citation for part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, 571, unless otherwise noted.

■ 5. Amend § 63.19 by revising the introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 63.19 Special procedures for discontinuances of international services.

(a) With the exception of those international carriers described in paragraphs (b) and (c) of this section, any international carrier that seeks to discontinue, reduce, or impair service, including the retiring of international facilities, dismantling or removing of international trunk lines, shall be subject to the following procedures in lieu of those specified in §§ 63.61 through 63.505:

* * * * *

(b) The following procedures shall apply to any international carrier that the Commission has classified as dominant in the provision of a particular international service because the carrier possesses market power in the provision of that service on the U.S. end of the route. Any such carrier that seeks to retire international facilities, dismantle or remove international trunk lines, but does not discontinue, reduce or impair the dominant services being provided through these facilities, shall only be subject to the notification requirements of paragraph (a) of this section. If such carrier discontinues, reduces or impairs the dominant service, or retires facilities that impair or reduce the service, the carrier shall file an application pursuant to §§ 63.62 and 63.505.

* * * * *

■ 6. Delayed indefinitely, amend § 63.60 by revising paragraphs (a), (b)(1) and (2), (c), and (g) to read as follows:

§ 63.60 Definitions.

* * * * *

(a) For the purposes of §§ 63.60 through 63.71, the term “carrier,” when

used to refer either to all telecommunications carriers or more specifically to non-dominant telecommunications carriers, shall include interconnected VoIP providers.

(b) * * *

(1) The closure by a carrier of a telephone exchange rendering interstate or foreign telephone toll service, or a public toll station serving a community or part of a community.

(2) The reduction in hours of service by a carrier at a telephone exchange rendering interstate or foreign telephone toll service or at any public toll station (except at a toll station at which the availability of service to the public during any specific hours is subject to the control of the agent or other persons controlling the premises on which such office or toll station is located and is not subject to the control of such carrier); the term reduction in hours of service does not include a shift in hours which does not result in any reduction in the number of hours of service.

* * * * *

(c) *Emergency discontinuance, reduction, or impairment of service* means any discontinuance, reduction, or impairment of the service of a carrier occasioned by conditions beyond the control of such carrier where the original service is not restored or comparable service is not established within a reasonable time. For the purpose of this part, a reasonable time shall be deemed to be a period not in excess of 60 days.

* * * * *

(g) For the purposes of §§ 63.60 through 63.71, the term “service,” when used to refer to a real-time, two-way voice communications service, shall include interconnected VoIP service as that term is defined in § 9.3 of this chapter but shall not include any interconnected VoIP service that is a “mobile service” as defined in § 20.3 of this chapter.

* * * * *

■ 7. Delayed indefinitely, amend § 63.62 by revising the introductory text and paragraphs (a), (b), and (d) to read as follows:

§ 63.62 Type of discontinuance, reduction, or impairment of telephone service requiring formal application.

Authority for the following types of discontinuance, reduction, or impairment of service shall be requested by formal application containing the information required by the Commission in the appropriate sections to this part, including § 63.505, or in emergency cases (as defined in § 63.60(b)) as provided in § 63.63:

(a) The dismantling or removal of a trunk line (for contents of application see §§ 63.71 and 63.500) for all domestic carriers and for dominant international carriers except as modified in § 63.19;

(b) The severance of physical connection or the termination or suspension of the interchange of traffic with another carrier (for contents of application see §§ 63.71 and 63.501);

* * * * *

(d) The closure of a public toll station where no other such toll station of the applicant in the community will continue service (for contents of application, see § 63.505); *Provided, however*, That no application shall be required under this part with respect to the closure of a toll station located in a community where telephone toll service is otherwise available to the public through a telephone exchange connected with the toll lines of a carrier;

* * * * *

■ 8. Delayed indefinitely, amend § 63.63 by revising the introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 63.63 Emergency discontinuance, reduction or impairment of service.

(a) Application for authority for emergency discontinuance, reduction, or impairment of service shall be made by electronically filing an informal request through the “Submit a Non-Docketed Filing” module of the Commission’s Electronic Comment Filing System. Such requests shall be made as soon as practicable but not later than 65 days after the occurrence of the conditions which have occasioned the discontinuance, reduction, or impairment. The request shall make reference to this section and show the following:

* * * * *

(b) Authority for the emergency discontinuance, reduction, or impairment of service for a period of 60 days shall be deemed to have been granted by the Commission effective as of the date of the filing of the request unless, on or before the 15th day after the date of filing, the Commission shall notify the carrier to the contrary. Renewal of such authority may be requested by letter, filed with the Commission not later than 10 days prior to the expiration of such 60-day period, making reference to this section and showing that such conditions may reasonably be expected to continue for a further period and what efforts the applicant has made to restore the original or establish comparable service. If the same or comparable service is reestablished before the termination of

the emergency authorization, the carrier shall notify the Commission promptly. However, the Commission may, upon specific request of the carrier and upon a proper showing, contained in such informal request or in the initial application, authorize such discontinuance, reduction, or impairment of service for an indefinite period or permanently. In addition, the carrier may permanently discontinue, reduce, or impair a service for which it has received authority for emergency discontinuance, reduction, or impairment upon a showing that:

- (1) It has had no customers or reasonable requests for service during the 60-day period immediately preceding the discontinuance; and
- (2) An adequate replacement service is available throughout the affected service area.

§ 63.66 [Removed and Reserved]

- 9. Remove and reserve § 63.66.
- 10. Delayed indefinitely, amend § 63.71 by:
 - a. Revising paragraph (a)(5);
 - b. Removing paragraphs (a)(6) and (c)(4);
 - c. Redesignating paragraphs (c)(2), (3), and (5) as paragraphs (c)(3), (4), and (9);
 - d. Adding new paragraphs (c)(2) and (5) and paragraphs (c)(6) through (8);
 - e. Revising paragraph (f);
 - f. Removing paragraphs (h) and (l);
 - g. Redesignating paragraphs (i), (j), and (k) as paragraphs (h), (i), and (j), respectively;
 - h. Revising newly redesignated paragraphs (h) and (j); and
 - i. Adding new paragraph (k).

The revisions and additions read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers.

(a) * * *

(5) One of the following statements:

(i) The following statement: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to

the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(ii) For discontinuances involving technology transitions, as defined in § 63.60(i), in addition to the statement required by paragraph (a)(5)(i) of this section, specific information as to how a customer who wants to object to or comment on the proposed discontinuance of service will be able to do so, including but not limited to providing the master docket number established by the Wireline Competition Bureau for such objections and comments and the web page(s) identified by the Wireline Competition Bureau for further guidance and resources to file an objection or comment.

* * * * *

(c) * * *

(2) For technology transitions discontinuance applications, as defined in § 63.60(i):

(i) Statement identifying the application as involving a technology transition;

(ii) Statement of the difference in price, if any, between the service being discontinued and replacement services available in the affected service area; and

(iii) Brief description of the affected community or part of a community, including the population size and any relevant characteristics of the customer population affected;

* * * * *

(5) Brief description of replacement services, whether available from the applicant or third parties, that would remain in the affected community or part of the affected community in the event the application is granted, including the name of any other carrier(s) providing replacement services to the affected community, and where in the affected community those services are available;

(6) Statement of the factors otherwise showing that neither the present nor future public convenience and necessity would be adversely affected by the granting of the application;

(7) For applications to discontinue a service supporting interconnection trunks or the exchange of traffic, in addition to the requirements set forth in §§ 63.500 and 63.501:

(i) Specific identity of the type of service to be discontinued in addition to any branded name of the service being discontinued;

(ii) Statement that at least 90 days prior to the planned discontinuance, the carrier provided a designated point of contact with authority to facilitate the orderly transition from legacy facilities that support 911 to the 911 Authorities, as defined in § 9.28 of this chapter, 911 service providers, and local exchange service providers that support essential functions within 911 networks in the affected service area. For purposes of this section, "911 service provider" is defined as an entity that provides 911, E911, or NG911 capabilities such as call routing, automatic location information, automatic number identification, or the functional equivalent of those capabilities, directly to a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority as defined in § 9.3 of this chapter; and/or operates one or more central offices that directly serve a PSAP; and

(iii) List of the 911 Authorities, 911 service provider, and local exchange service providers that support essential functions within 911 networks in the affected service areas with which the carrier has coordinated and the date(s) of that coordination;

(8) A certification, executed by an officer or other authorized representative of the applicant and meeting the requirements of § 1.16 of this chapter, that the information required by this section is true and accurate; and

* * * * *

(f)(1) The application to discontinue, reduce, or impair service that does not constitute a technology transition or, if constituting a technology transition, meets the requirements of paragraph (f)(2) of this section, shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. For purposes of this section, an application will be deemed filed on the date the Commission releases public notice of the filing.

(2) An application to discontinue, reduce, or impair an existing retail service as part of a technology transition, as defined in § 63.60(i), may be automatically granted only if the applicant certifies that in every location throughout the affected service area, at least one of the following types of services is available:

(i) A facilities-based interconnected VoIP service, as defined in § 9.3 of this chapter;

(ii) A facilities-based mobile wireless service operating at speeds of at least 5 Mbps download and 1 Mbps upload, consistent with the coverage parameters set forth in § 1.7004(c)(3) of this chapter;

(iii) A voice service offered pursuant to an obligation from one of the Commission's modernized high-cost support programs;

(iv) A voice service already available from the applicant in the affected service area that the applicant certifies offers substantially similar levels of network performance and availability as the legacy voice service being discontinued based on the applicant's own internal network testing in connection with rolling out a new product or service, provides access to 911 and complies with applicable 911 requirements in part 9 of this title, and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network or any successor network that utilizes numbers issued pursuant to the North American Numbering Plan and supports access to 911 and complies with applicable 911 requirements in part 9 of this title; or

(v) A widely available alternative service offered by a third party that the applicant certifies offers substantially similar levels of network performance and availability as the legacy voice service being discontinued, and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network or any successor network that utilizes numbers issued pursuant to the North American Numbering Plan and supports access to 911 and complies with applicable 911 requirements in part 9 of this title.

* * * * *

(h) An application to discontinue, reduce, or impair a service filed by a competitive local exchange carrier in response to a copper retirement notice provided pursuant to § 51.333 of this chapter shall be automatically granted on the effective date of the copper retirement; provided that:

(1) The competitive local exchange carrier submits the application to the Commission for filing at least 40 days prior to the copper retirement effective date; and

(2) The application includes a certification, executed by an officer or other authorized representative of the applicant and meeting the requirements

of § 1.16 of this chapter, that the copper retirement is the basis for the application and that the applicant has notified and coordinated with all 911 Authorities as defined in § 9.28 of this chapter with jurisdiction within the affected service area.

* * * * *

(j)(1) Notwithstanding any other provision of this section, a carrier is not required to file an application to grandfather a legacy voice service, lower-speed data service, or interconnected VoIP service provisioned over copper wire; however, it must provide notice to existing customers that it is grandfathering a service they current receive from that carrier. Such notice shall include:

(i) An approximate date by which it intends to seek to permanently discontinue the service; and

(ii) A statement regarding alternative services available in the affected service area.

(2) For purposes of this paragraph (j), "lower-speed data service" is defined as a data service operating at speeds below 25 Mbps download and 3 Mbps upload.

(k) Notwithstanding any other provision of this section, where a wholesale provider is engaging in a technology transitions discontinuance of a legacy voice service resold by another provider, the reseller is not required to file an application to discontinue the resold service, except that the reseller must provide notice to its customers, as soon as practicable, that it will no longer be able to provide the relevant legacy voice service. Such notice shall be via any means to which the customer has previously provided express, verifiable approval. Notice shall include the following:

(1) Name and address of carrier;

(2) Date of planned service discontinuance, reduction or impairment;

(3) Points of geographic areas of service affected;

(4) Brief description of type of service affected; and

(5) Statement regarding the availability of alternative services in the affected service area.

§§ 63.90, 63.100, 63.504, and 63.601 [Removed and Reserved]

■ 11. Remove and reserve §§ 63.90, 63.100, 63.504, and 63.601.

§ 63.602 [Removed and Reserved]

■ 12. Delayed indefinitely, remove and reserve § 63.602.

[FR Doc. 2026-07622 Filed 4-17-26; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Regulations Governing the Taking and Importing of Marine Mammals

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 50 of the Code of Federal Regulations, parts 200 to 227, revised as of October 1, 2025, in section 216.3, reinstate the definition of "Export fishery" in alphabetical order to read as follows:

§ 216.3 Definitions.

* * * * *

Export fishery means a foreign commercial fishing operation determined by the Assistant Administrator to be the source of exports of commercial fish and fish products to the United States and to have more than a remote likelihood of incidental mortality and serious injury of marine mammals (as defined in the definition of an "exempt fishery") in the course of its commercial fishing operations. Where reliable information has not been provided by the harvesting nation on the frequency of incidental mortality and serious injury of marine mammals caused by the commercial fishing operation, the Assistant Administrator may determine whether the likelihood of incidental mortality and serious injury is more than "remote" by evaluating information concerning factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or other factors at the discretion of the Assistant Administrator that may inform whether the likelihood of incidental mortality and serious injury of marine mammals caused by the commercial fishing operation is more than "remote." Commercial fishing operations not specifically identified in the current List of Foreign Fisheries as either exempt or export fisheries are deemed to be export fisheries until the next List of Foreign Fisheries is published unless the Assistant Administrator has reliable information from the harvesting nation to properly

classify the foreign commercial fishing operation. Additionally, the Assistant Administrator, may request additional information from the harvesting nation and may consider other relevant	information as set forth in § 216.24(h)(3) about such commercial fishing operations and the frequency of incidental mortality and serious injury of marine mammals, to properly classify	the foreign commercial fishing operation. * * * * * [FR Doc. 2026-07610 Filed 4-17-26; 8:45 am] BILLING CODE 0099-10-P

Proposed Rules

Federal Register

Vol. 91, No. 75

Monday, April 20, 2026

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3555

[Docket No. RHS-25-SFH-0003]

RIN 0575-AD47

Single Family Housing Guaranteed Loan Program—Limited Party Concessions

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

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS or Agency), an agency of the Rural Development (RD) mission area within the U.S. Department of Agriculture (USDA), proposes to amend the current Single Family Housing Guaranteed Loan Program (SFHGLP) regulation to specify that real estate commission fees are excluded from interested party limitations.

DATES: Comments must be submitted on or before June 22, 2026.

ADDRESSES: Comments may be submitted by going to the Federal eRulemaking Portal, *regulations.gov* and in the “Search for dockets and documents on agency actions” box, enter the docket number, “Docket No. RHS-25-SFH-0003”, and click the “Search” button. From the search results: click on or locate the document title: Single Family Housing Guaranteed Loan Program-Limited Party Concessions” and select the “Comment” button. Before inputting comments, commenters may review the “Commenter’s Checklist” (optional), or the Regulatory Information Number (RIN) provided above in this notice and click the “Search” button. To submit a comment: Insert comments under, choose the “Comment” title, click “Browse” to attach files (if available), input email address, select box to opt to receive email confirmation of submission and tracking (optional), select the box “I’m not a robot,” and

then select “Submit Comment” button associated with this rulemaking. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available under the site’s “FAQ” link. All comments will be available for public inspection online at the Federal eRulemaking Portal (*regulations.gov*) tab at the bottom of the Home page.

Additional information about Rural Development and its programs is available on the internet at <http://www.rurdev.usda.gov/index.html>.

FOR FURTHER INFORMATION CONTACT: Laurie Mohr, Finance and Loan Analyst, Single Family Housing Guaranteed Loan Division, Rural Development 1400 Independence Avenue SW, Washington, DC 20250-0784. Telephone: (314) 679-6917; or email: laurie.mohr@usda.gov.

SUPPLEMENTARY INFORMATION:

Abbreviations

CFR Code of Federal Regulations
ET SEQ. Et Sequens/Sequentes (“and what follows”)
FNMA Federal National Mortgage Association, “Fannie Mae”
FHA Federal Housing Administration
FR Federal Register
FHLMC Federal Home Loan Mortgage Corporation, “Freddie Mac”
HB-3555 Handbook-1-3555, Single Family Housing Guaranteed Loan Program Technical Handbook
HUD U.S. Department of Housing and Urban Development
RHS Rural Housing Service
§ Section
U.S.C. United States Code
VA U.S. Department of Veterans Affairs

I. Authority

SFHGLP is authorized by Section 502(h) of Title V of the Housing Act of 1949 (42 U.S.C. 1472(h)), as amended; and is implemented by 7 CFR part 3555.

II. Background

The Agency offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single and multi-family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers, and much more. The RHS also provides technical assistance loans and grants in partnership with non-

profit organizations, Indian tribes, State and Federal Government agencies, and local communities.

Under the authority of the Housing Act of 1949, (42 U.S.C. 1472, *et seq.*), as amended, the SFHGLP makes loan guarantees to provide low- and moderate-income persons in rural areas an opportunity to own decent, safe, and sanitary dwellings and related facilities. Approved lenders make the initial eligibility determinations, and the Agency reviews those determinations to make a final eligibility decision.

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

III. Discussion of the Proposed Rule

Currently, under 7 CFR part 3555, if the seller agrees to pay fees on behalf of the buyer, including real estate commission fees, the amount of those fees is included in the maximum interested party contribution limitation of 6 percent. Specifically, 7 CFR 3555.102(h) states seller concessions include all the following items: purchaser’s mortgage financing costs, closing costs, escrow accounts, furniture, or other giveaways that are paid by the seller or other interested third party.

The Agency is specifically addressing the real estate commission fee in this proposal as it is expected that homebuyers will become responsible to pay these fees due to changing market conditions in the real estate environment because of a national lawsuit and settlement.¹ The result is that real estate commission fees could be paid by the buyer or negotiated into the purchase contract as a seller concession. This could increase closing costs to the SFHGLP buyer and make it more difficult for them to purchase a home using this program, as sellers or other interested parties are limited to contributing a combined maximum of 6 percent of the sales price in the transaction. The mortgage industry is taking the stance that with these anticipated changes within the industry,

¹ *National Association of Realtors (NAR), et al., Burnett et al. and Moehrl, et al. cases.*

real estate commission fees should not be included when calculating the interested party concession maximum calculation.² The U.S. Department of Housing and Urban Development (HUD), administered through the Federal Housing Administration (FHA) has stated that if the seller continues to pay for the buyer's side real estate agent commissions and fees as a matter of state and local custom, and if the commissions and fees are reasonable in amount, these fees would not be included in the interested party contributions, provided all other requirements of FHA are met.³ The U.S. Department of Veterans Affairs (VA) interpretation of seller concessions already excluded the real estate commission fees from the 6 percent limitation. However, VA did need to provide a new variance to allow the VA applicant to pay the real estate commission fee, as previously it was prohibited. The government sponsored enterprises (GSEs), Fannie Mae (FNMA) and Freddie Mac (FHLMC), also permit interested parties to make contributions to borrowers' closing costs subject to maximum limits for common and customary fees or costs.

If the real estate commission fee is reasonable and customary and meets all other requirements, FHA, VA, Fannie Mae, and Freddie Mac allow the commission fee to be excluded from the limited party contribution calculations. This proposed rule aligns the program with these entities by excluding the fee from the seller concession calculation. This allows more applicants access to the SFHGLP to purchase homes in rural areas. The Agency proposes to alter the current regulation by clarifying the real estate commission fees are excluded from the calculation of the 6 percent interested party concession limitation.

The proposed rule adjusts to changes in the mortgage industry to allow the real estate commission fee to be a negotiated fee in the real estate environment. SFHGLP borrowers can finance this fee if it is deemed a normal and customary fee pursuant to 7 CFR 3555.101(b)(6)(vii), however if the seller pays the fee on the buyer's behalf, it currently would be included in the 6 percent limit, severely limiting potential SFHGLP applicants. Allowing the real estate commission fee to be excluded from the 6 percent seller concession calculation would allow additional funds contributed by the seller to be used to help applicants pay closings

costs, fund repairs, or cover other necessary items in the real estate transaction. This allows applicants to save more of their own funds for future expenditures; make home improvements; or allow them to buy goods and services, putting money back into the economy. Borrowers become financially stronger and rural America benefits with more homeownership.

IV. Request for Comment

Stakeholder input is vital to the Agency to ensure that the proposed changes support the Agency's mission, while ensuring that new regulations and policies don't unreasonably burden potential lenders and their customers. Comments must be submitted on or before June 22, 2026 and may be submitted electronically by going to the Federal eRulemaking Portal. Details on how to submit comments to the Federal eRulemaking Portal are in the ADDRESSES section of this proposed rule.

V. Executive Orders/Acts

Executive Order 12372—Intergovernmental Review of Federal Programs

This proposed rule is not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented under USDA's regulations at 2 CFR part 415, subpart C.

Executive Order 12866—Regulatory Planning and Review

This proposed rule has been designated not significant for purposes of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

The policies contained in this proposed rule do not have any substantial direct effect on States, on the relationship between the National

Government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this proposed rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes. Consultation is also required for any regulation that preempts tribal law or that imposes substantial direct compliance costs on Indian tribal governments and that is not required by statute.

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

Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and promoting flexibility. This proposed rule has been designated a "non-significant regulatory action," under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

Civil Rights Impact Analysis

This proposed rule was reviewed in accordance with USDA Regulation 4300-004, "Civil Rights Impact Analysis," to identify any major civil rights impacts the proposed rule might have on program participants on the basis of age, race, religion, color,

² FHA Info 2024-12 Bulletin (March 28, 2024), Fannie Mae Selling Notice (April 15, 2024), Freddie Mac Industry Letter (April 15, 2024).

³ FHA Info 2024-12 Bulletin (March 28, 2024).

national origin, sex, disability, marital status, or familial status. Based on the results of the review and analysis of the proposed rule and all available data, issuance of this proposed rule is not likely to negatively impact any group identified by protected group status.

Unfunded Mandates Reform Act

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

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

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this proposed rule has been reviewed in accordance with 7 CFR part 1b (“National Environmental Policy Act”). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1b and (ii) no extraordinary circumstances exist. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

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

does it require any more action on the part of a small business than required of a large entity.

Programs Affected

The program affected by this proposed rule is listed in the Assistance Listing (AL) Number 10.410, Very Low-to Moderate-Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

This proposed rule contains no new reporting or recordkeeping burdens under OMB control number 0575–0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E-Government Act Compliance

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

Non-Discrimination Policy

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.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the State or local Agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *How to File a Program Discrimination Complaint* (<https://www.usda.gov/about-usda/general-information/staff-offices/office-assistant-secretary-civil-rights/how-file-program-discrimination-complaint>) and at any USDA office or write a letter

addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Mail Stop 9410, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: program.intake@usda.gov. USDA is an equal opportunity provider, employer, and lender.

List of Subjects in 7 CFR Part 3555

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

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

PART 3555—GUARANTEED RURAL HOUSING PROGRAM

- 1. The authority citation for 7 CFR part 3555 continues to read as follows:

Authority: 5 U.S.C. § 301; 42 U.S.C. § 1472(h)

Subpart C—Loan Requirements

- 2. Amend § 3555.102 by revising the definition terms for seller concessions in paragraph (h) to read as follows:

§ 3555.102 Loan restrictions.

* * * * *

(h) *Seller concessions.* Purchasing a home if the seller, or other interested third party, contributes more than 6 percent, unless otherwise provided by the Agency, of the property's sales price toward the purchaser's mortgage financing costs, closing costs, escrow accounts, furniture, or other giveaways. Real estate commission fees are excluded from the 6 percent seller concession limitation.

* * * * *

George Kelly,

Administrator, Rural Housing Service.

[FR Doc. 2026–07617 Filed 4–17–26; 8:45 am]

BILLING CODE 3410–XV–P

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

[Docket No. FAA–2025–2423; Airspace
Docket No. 23–AAL–10]

RIN 2120–AA66

**Modification of Class E Airspace;
Ralph Wien Memorial Airport,
Kotzebue, AK**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Supplemental notice of
proposed rulemaking (SNPRM).

SUMMARY: This action updates a notice of proposed rulemaking (NPRM) published by the FAA in the **Federal Register** on November 24, 2025, proposing to modify the Class E airspace area designated as a surface area (Class E2 airspace area) and Class E airspace extending upward from 700 feet above the surface (Class E5 700-foot (ft) airspace area) to optimize instrument flight procedure (IFP) containment at the Ralph Wien Memorial Airport, Kotzebue, AK. This proposal supports the safety and management of instrument flight rules (IFR) operations at the airport. The proposal has been updated based on amendments to four IFPs.

DATES: Comments must be received on or before June 4, 2026.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2025–2423 and Airspace Docket No. 23–AAL–10 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200

New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11K, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT:

Bryant Jay Toves, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3465.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify Class E airspace to support IFR operations at Ralph Wien Memorial Airport, Kotzebue, AK.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting

on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class E2 and E5 airspace designations are published in paragraphs 6002 and 6005, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These updates would be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

Background

The FAA published an NPRM in the **Federal Register** for Docket No. FAA–2025–2423 (90 FR 52899; November 24, 2025), proposing to modify the Class E2 airspace area and Class E5 700-ft

airspace area to optimize instrument flight procedure containment at the Ralph Wien Memorial Airport, Kotzebue, AK. Following the above NPRM publication, four procedures were amended due to magnetic variation changes and/or procedure updates. Accordingly, this SNPRM updates the proposal based on those changes.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would modify the Class E2 airspace area and Class E5 700-ft airspace area at Ralph Wien Memorial Airport to optimize instrument flight procedures containment.

The NPRM proposed modifying the Class E2 airspace area by increasing the radius from 4.3 miles to 4.4 miles to better accommodate the circling maneuvering areas to runways (RWYs) 18 and 19. Additionally, the FAA proposed 1.4 mile and .6 mile extensions to the southeast and west, respectively, to contain departing aircraft until reaching the base of the next adjacent airspace when executing the COGAS TWO Area Navigation (RNAV) (Required Navigation Performance [RNP]) DEPARTURE and BALIN TWO RNAV (RNP) DEPARTURE from RWYs 9 and 27. Under this modified proposal, the FAA proposes shift the western extension 0.5 miles west to more appropriately contain the BALIN TWO Area Navigation (RNAV) (Required Navigation Performance [RNP]) Runway (RWY) 27 instrument approach procedure.

The NPRM proposed modifying the Class E5 airspace extending upward from 700 feet above the surface to remove unneeded controlled airspace to the northeast, east, southwest, and west, and to expand the E5 airspace to targeted areas southeast and northwest of the airport. The expansion to the southeast was proposed to better contain aircraft until reaching 1,200 feet above the surface on the RNAV (Global Positioning System [GPS]) RWY 27 missed approach procedure and BALIN TWO RNAV (RNP) DEPARTURE RWY 9. The FAA proposed an expansion to the northwest of an additional 1x5-mile area of airspace to provide sufficient containment for arriving aircraft that descend to below 1,500 feet above the surface on the instrument landing system (ILS) or localizer (LOC) RWY 9 approach. Under this modified proposal, the FAA would also extend the eastern boundary approximately 1.6 miles and the western boundary by approximately 10.7 miles to more appropriately contain the Very High Frequency Omnidirectional Range

(VOR) RWY 9 and the VOR RWY 27 instrument approach procedures, respectively.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Order 2100.6B, “Rulemaking and Guidance Procedure” (March 10, 2025); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1G, “FAA National Environmental Policy Act Implementing Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11K, Airspace Designations and Reporting Points, dated August 4, 2025, and effective September 15, 2025, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AAL AK E2 Kotzebue, AK [Amended]
Ralph Wien Memorial Airport, AK

(Lat. 66°53′05″ N, long. 162°35′53″ W)

That airspace extending upward from the surface up to and including 2,500 feet above the surface and within a 4.4-mile radius of the Ralph Wien Memorial Airport, within 2.9 miles northeast and 0.8 miles southwest of the airport’s 130° bearing extending from its 4.4-mile radius to 5.8 miles southeast, and within 0.8 miles on either side of the airport’s 266° bearing extending from its 4.4-mile radius to 4.9 miles west.

* * * * *

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

* * * * *

AAL AK E5 Kotzebue, AK [Amended]

Ralph Wien Memorial Airport, AK
(Lat. 66°53′05″ N, long. 162°35′53″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the airport, within 3-miles north and 3.2-miles south of the airport’s 095° bearing extending from its 6.8-mile radius to 13.6 miles east, within the airport’s 118° bearing clockwise to its 137° bearing along the airport’s 8.3-mile radius, and within 4 miles either side of the airport’s 280° bearing extending from its 6.8-mile radius to 10.7 miles west; that airspace extending upward from 1,200 feet above the surface within a 45-mile radius of the airport, excluding that airspace extending beyond 12 miles from the coast.

* * * * *

Issued in Des Moines, Washington, on April 15, 2026.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2026–07612 Filed 4–17–26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 242

[Release No. 34–105251; File No. S7–2026–12]

RIN 3235–AN54

Concept Release on Consolidated Audit Trail and Other Audit Trails and Data Sources

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: The Securities and Exchange Commission (the “Commission”) is publishing this concept release to solicit comments in support of a comprehensive review of the Consolidated Audit Trail and other audit trails and related data sources currently used in the regulation of U.S.

securities markets, including comments regarding the funding mechanisms for these audit trails and/or related data sources. There have been several developments since the Commission last evaluated the scope and sufficiency of these audit trails and related data sources. These developments have prompted the Commission to consider whether changes should be made to the rules and regulations governing existing audit trails and related data sources to better respond to and reflect current market conditions; demonstrated regulatory needs; civil liberty, privacy, and confidentiality concerns; cost-efficient technology solutions; and cybersecurity considerations.

DATES: Comments should be received on or before June 22, 2026.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/submitcomments.htm>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7–2026–12 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–2026–12. 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 of submission. The Commission will post all comments on the Commission's website (<https://www.sec.gov/rules-regulations/rulemaking-activity>). All comments received will be posted without change. Do not include personally identifiable information in submissions; you should submit only information that you wish to make available publicly. The Commission may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at www.sec.gov to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: David Hsu, Assistant Director, and Erika Berg, Special Counsel, at (202) 551–5500, Office of Market Supervision, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

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I. Introduction

The Securities and Exchange Act of 1934 (the "Exchange Act"), as amended,¹ tasks the Commission with overseeing the U.S. securities markets, including supervising certain market participants such as broker-dealers, clearing agencies, and national

securities exchanges.² The Exchange Act further provides that specified entities, including national securities exchanges and registered securities associations, fall within the definition of a self-regulatory organization ("SRO").³ As an SRO, each national securities exchange and national securities association must comply, and enforce the compliance by its members and associated persons, with the Exchange Act, the Commission's rules and regulations thereunder, and the SRO's own rules.⁴

Effective market oversight by the Commission and SROs relies on, among other things, access by regulatory users at the Commission and the SROs to accurate and timely market data. Because the vast majority of securities transactions in modern markets occur electronically, at high speeds and volumes and across trading venues, cross-market audit trails and related data sources have come to play an important role in the oversight of securities markets. Such audit trails and related data sources aid regulators in conducting robust cross-market surveillances, investigations, enforcement activities, and engaging in cross-market reconstructions and analyses, as appropriate.

For several decades, broker-dealers furnished information to the Commission and the SROs through questionnaires known as "blue sheets" due to the color on which the forms were printed. In the late 1980s, as the volume of trading and securities transactions dramatically increased, the Commission and the SROs worked together to develop and implement a request-and-response system with a universal electronic format, commonly known as the "electronic blue sheet" or

² See, e.g., 15 U.S.C. 78b, 78f, 78i, 78j, 78k, 78k–1, 78o, 78o–3, and 78s.

³ 15 U.S.C. 78c(a)(26). The national securities exchange and registered securities association SROs, also referred to herein as "the Participants," include 24X National Exchange, BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc. ("Cboe"), Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAx Emerald, LLC, MIAx PEARL, LLC, MIAx Sapphire, LLC, Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC ("Nasdaq"), Nasdaq Texas, LLC, New York Stock Exchange LLC ("NYSE"), NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Texas, Inc.

⁴ 15 U.S.C. 78f(b)(1); 15 U.S.C. 78o–3(b)(2); 15 U.S.C. 78s(g)(1). FINRA currently is the only national securities association. As a national securities association, FINRA is also responsible for enforcing compliance by its members and associated persons with the rules of the Municipal Securities Rulemaking Board ("MSRB").

¹ 15 U.S.C. 78a *et seq.*

“EBS” system, to replace the paper-based process.⁵ The Commission and the SROs also obtained data through other methods—including manual requests to market participants, daily reports produced by clearing agencies that provide aggregated information to the SROs and the Commission, market-specific matching engines and/or order book feeds, market-specific audit trails, trade reporting facilities, proprietary data feeds made available by SROs and/or off-exchange trading venues, and publicly-available consolidated data feeds provided by securities information processors.⁶

Regulators also obtained data through audit trails. For example, in 1996, the National Association of Securities Dealers (n/k/a FINRA) was required, pursuant to a settled order, to design and implement an audit trail to provide an accurate, time-sequenced record of orders and transactions on Nasdaq-listed equities, which came to be known as the Order Audit Trail System (“OATS”).⁷ OATS was later expanded to include over-the-counter equity securities⁸ and all NMS stocks.⁹ FINRA also created an internal process by which it augmented the data it collected via OATS with order and trade execution data collected from other SROs with which it had regulatory services agreements.¹⁰ Similarly, in

2000, a group of options exchanges was required, pursuant to a settled order, to design and implement an audit trail to provide an accurate, time-sequenced record of orders, quotations, and transactions on those options exchanges.¹¹ That audit trail became known as the Consolidated Options Audit Trail System (“COATS”) and was later expanded to incorporate reporting for activity on additional options exchanges.¹²

Although these audit trails and related data sources were useful, they did not produce a comprehensive cross-market audit trail. Even with augmented OATS data, assembling a consolidated audit trail from the various data sources described above was a cumbersome, complex, and time-consuming process that was prone to error.¹³

To improve the accuracy, completeness, accessibility, and timeliness of the data available to regulators, in 2012, the Commission adopted Rule 613 to require the SROs to jointly develop and submit to the Commission a national market system plan to create, implement, and maintain a consolidated audit trail (the “CAT”).¹⁴ In proposing and adopting Rule 613, the Commission stated that the increasingly high-speed, electronic, and widely

dispersed markets had given rise to a need for efficient access to a more robust and comprehensive, cross-market audit trail, explaining that existing audit trails and/or data sources were otherwise limited in their scope and effectiveness.¹⁵ The national market system plan submitted by the SROs—the CAT NMS Plan—was approved by the Commission in 2016.¹⁶ On July 15, 2024, the SROs represented to the Commission that the CAT had been fully implemented.¹⁷

There have been a number of developments in the nearly ten years since the Commission approved the CAT NMS Plan. Chief amongst these developments is the implementation and operation of the CAT itself in accordance with the CAT NMS Plan and its amendments. Once it was able to determine that its members were effectively reporting to the CAT and that the CAT’s accuracy and reliability met certain standards, FINRA retired OATS, effective as of September 1, 2021.¹⁸ Other data sources, such as the EBS system, remain operational. The Commission has also provided exemptive relief and approved amendments to the CAT NMS Plan to enable the SROs to remove personally-identifiable information (“PII”) from the CAT, meaning that regulators have continued to rely on alternative data sources (including the EBS system) for fulfilling their regulatory obligations compared to what was contemplated by the Commission when it approved the CAT NMS Plan in 2016.¹⁹

⁵ See Securities Exchange Act Release No. 44494 (June 29, 2001), 66 FR 35836 (July 9, 2001) (“EBS Adopting Release”).

⁶ See 15 U.S.C. 78c(a)(22)(A) (“The term ‘securities information processor’ means any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations.”).

⁷ In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3–9056, Securities Exchange Act Release No. 37358 (Aug. 8, 1996), available at <https://www.sec.gov/files/litigation/admin/34373538.txt>.

⁸ See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45728 (Aug. 1, 2012) (“Rule 613 Adopting Release”); see also Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556, 32558–59 (June 8, 2010) (“Rule 613 Proposing Release”).

⁹ To avoid duplicative reporting requirements after OATS expansion to all NMS stocks, NYSE-affiliated exchanges replaced their market-specific audit trail requirements for members that were also members of either FINRA or Nasdaq—and therefore already reporting to OATS—with rules that allowed these members to satisfy their reporting obligations by meeting the new OATS reporting requirements in 2011. See, e.g., Rule 613 Adopting Release, *supra* note 8, at 45728; 17 CFR 242.600(65) (defining “NMS stock” as “any NMS security other than an option”).

¹⁰ See, e.g., Rule 613 Adopting Release, *supra* note 8, at 45729.

¹¹ See In the Matter of Certain Activities of Options Exchanges, Administrative Proceeding File No. 3–10282, Securities Exchange Act Release No. 43268 (Sept. 11, 2000), available at <https://www.sec.gov/enforcement-litigation/administrative-proceedings/34-43268>.

¹² See Staff Paper on Cross-Market Regulatory Coordination, available at <https://www.sec.gov/about/divisions-offices/division-trading-markets/staff-paper-cross-market-regulatory-coordination>.

¹³ See, e.g., Rule 613 Adopting Release, *supra* note 8, at 45728 (“Although these developments with respect to the scope of FINRA’s OATS rules reduce the number of audit trails with disparate requirements, they still do not result in a comprehensive audit trail that provides regulators with accurate, complete, accessible, and timely data on the overall markets for which regulators have oversight responsibilities.”); see also, e.g., Securities Exchange Act Release No. 77724 (Apr. 27, 2016), 81 FR 30614, 30670 (May 17, 2016) (“Regardless of whether order lifecycle reports are reflected in the same or different data sources, the process of linking lifecycle events is complex and can create inaccuracies. Merging different data sources often involves translating the data sources into the same format, which can be a complex process that is prone to error. Linking records within or across data sources also requires the sources to share ‘key fields’ that facilitate linkage, along with a successful linking algorithm. Regulators may be unable to link some data source combinations accurately because the data sources do not have key fields in common or the key fields are not sufficiently granular. . . . The inability to link all records affects the accuracy of the resulting data and can force an inefficient manual linkage process that would delay the completion of the data collection and analysis portion of the examination, investigation, or reconstruction.” (citations omitted)).

¹⁴ See Rule 613 Adopting Release, *supra* note 8; 17 CFR 242.613.

¹⁵ See, e.g., Rule 613 Adopting Release, *supra* note 8, at 25722–23.

¹⁶ See Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”). The CAT NMS Plan is Exhibit A to the CAT NMS Plan Approval Order. See CAT NMS Plan Approval Order, at 84943–85034.

¹⁷ See CAT Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024), available at https://catnmsplan.com/sites/default/files/2024-07/CAT_Q2-and-Q3-2024-QPR.pdf. On April 20, 2020, the Commission granted conditional exemptive relief to allow for the implementation of phased Industry Member reporting to the CAT across five phases. See Securities Exchange Act Release No. 88702, 85 FR 23075 (Apr. 24, 2020) (“Phased Reporting Exemptive Relief Order”).

¹⁸ See, e.g., FINRA Regulatory Notice 21–21, “FINRA Eliminates the Order Audit Trail System (OATS) Rules” (June 17, 2021), available at <https://www.finra.org/rules-guidance/notices/21-21>. The CAT is currently the only audit trail and/or data source that provides cross-market order-level information to regulators.

¹⁹ See, e.g., Securities Exchange Act Release No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020) (the “2020 PII Exemptive Relief Order”) (providing conditional exemptive relief from CAT NMS Plan requirements obligating the SROs to collect social security numbers (“SSNs”) and/or individual tax payer identification numbers (“ITINs”), dates of birth, and account numbers associated with natural

Importantly, the annual costs of maintaining and operating the CAT have grown well beyond the Commission's 2016 estimate of approximately \$55.8 million,²⁰ increasing to over \$248 million per year in the 2025 budget initially approved by the SROs.²¹ Markets have experienced much higher volumes and more trading activity than the Commission anticipated in 2016, which has contributed to increased costs associated with storage, data processing, and message traffic.²² Recently, trading venues have also pushed to extend trading hours,²³ which could further

increase trading volumes.²⁴ Although steps have been taken by the Commission and the SROs to manage and contain costs,²⁵ the 2026 budget approved by the SROs of approximately \$156 million²⁶ remains significantly in excess of the operational costs estimated by the Commission when it approved the CAT NMS Plan in 2016.²⁷

In addition, the Commission has received suggestions from the SROs and other market participants about potential considerations for, and improvements to, audit trails and/or related data sources,²⁸ including

petitions for rulemaking related to the operation and funding of the CAT.²⁹

To further consider these market developments, as well as suggestions received from and concerns raised by the SROs and other market participants, the Commission has determined to conduct a comprehensive review of the CAT and other audit trails and related data sources currently used by securities regulators, including regulatory users at the SROs. This review will allow the Commission to examine the effectiveness, regulatory use, and costs of these data sources and to obtain crucial feedback regarding whether changes should be made to their structure, scope, functionality, and security, including changes that would strike a different balance between privacy considerations and regulatory need.

This concept release begins with a brief overview of the audit trails and data sources used by the Commission

persons); Securities Exchange Act Release No. 102386 (Feb. 10, 2025), 90 FR 9642, 9643 (Feb. 14, 2025) (the "2025 PII Exemptive Relief Order") (providing conditional exemptive relief from CAT NMS Plan requirements obligating the SROs to collect names, addresses, and years of birth for U.S. natural persons); Securities Exchange Act Release No. 104586 (Jan. 13, 2026), 91 FR 2164 (Jan. 16, 2026) (the "CAIS Order") (codifying the 2020 PII Exemptive Relief Order and the 2025 PII Exemptive Relief Order and, among other things, enabling the SROs to eliminate: (1) historical customer and account-level data, including, among other things, names, addresses, and years of birth, (2) names, addresses, and years of birth (where applicable) for foreign natural persons, for legal entities, and for authorized traders, and (3) employer identification numbers).

²⁰ See, e.g., CAT NMS Plan Approval Order, *supra* note 16, at 84918–20.

²¹ See https://catnmsplan.com/sites/default/files/2024-11/11.20.24-CAT-LLC-2025-Financial_and_Operating-Budget.pdf.

²² For example, the CAT NMS Plan approved in 2016 anticipates that the CAT will process and load more than 58 billion records a day, or approximately 14.6 trillion records a year. (58,000,000,000 × 252 trading days = 14,616,000,000,000). See CAT NMS Plan, *supra* note 16, at Appendix D, Section 1.3 n.262. However, current CAT data volumes are and have been significantly higher than this initial estimate. See e.g., Securities Exchange Act No. 103960 (Sept. 12, 2025), 90 FR 44910 (Sept. 17, 2025) ("2025 Funding Model Amendment") (stating that CAT data volumes have grown 41% over a three-year period—109 trillion events in 2022, 116 trillion events in 2023, and 154 trillion events in 2024); Cboe, "Growth of U.S. Equities Volumes and Rise of Retail" (Nov. 14, 2024), available at: <https://www.cboe.com/insights/posts/growth-of-u-s-equities-volumes-and-rise-of-retail> (stating that U.S. equities average daily volume has grown steadily since 2018, and that the average daily volume is at a new norm of over 10 billion shares post-COVID–19 pandemic). There have also been dramatic increases in quoting activity on Listed Options. See 17 CFR 242.600(b)(52) of Regulation NMS (defining "Listed Option" as "any option traded on a registered national securities exchange or automated facility of a national securities association"); see also CAT NMS Plan, *supra* note 16, at Section 1.1. (defining a "Listed Option" as having "the meaning set forth in Rule 600(b)(35) of Regulation NMS," which provision has been redesignated as Rule 600(b)(52) without any changes to its terms). According to SEC staff calculations, the median daily Options Price Reporting Authority ("OPRA") quote count in January 2017 was approximately 8.8 billion, whereas the median daily OPRA quote count by March 2025 was approximately 243.8 billion—an increase of approximately 2,670 percent.

²³ See, e.g., Securities Exchange Act Release No. 101777 (Nov. 27, 2024), 89 FR 97092, 97104–06

(Dec. 6, 2024) (order approving 24X National Exchange's Form 1 application, but stating that a proposed rule change must be filed with the Commission pursuant to Section 19(b) of the Exchange Act and approved before 24X National Exchange can provide the 24X Market Session); Securities Exchange Act Release No. 102400 (Feb. 11, 2025), 90 FR 9794 (Feb. 18, 2025) (order approving proposal by NYSE Arca, Inc. to lengthen the hours of its extended trading sessions, but stating that a proposed rule change must be filed with the Commission pursuant to Section 19(b) of the Exchange Act and approved before such changes can be made); DTCC, "DTCC's NSCC to Increase Clearing Hours to Support Extended Trading" (Mar. 18, 2025), available at <https://www.dtcc.com/news/2025/march/18/dtccs-nscc-to-increase-clearing-hours-to-support-extended-trading> (stating that NSCC will increase clearing hours to support overnight trading activity from alternative trading systems and exchanges, with implementation targeted for Q2 2026).

²⁴ See, e.g., Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities LLC ("Citadel"), to Vanessa A. Countryman, Secretary, Commission (Oct. 17, 2025), at 5, available at <https://www.sec.gov/comments/4-698/4698-669947-2018874.pdf> ("Citadel Letter I").

²⁵ See Part III.D *infra* for further discussion of these steps.

²⁶ See https://catnmsplan.com/sites/default/files/2025-12/12.08.25-CAT-LLC-2026-Financial_and_Operating_Budget.pdf.

²⁷ See Securities Exchange Act Release No. 105003 (Mar. 16, 2026), 91 FR 13410 (Mar. 19, 2026) (the "2026 Funding Model Order"), at Part IV. A.1, for a full discussion of realized costs to build and operate the CAT.

²⁸ See, e.g., Letter from Joanna Mallers, Secretary, FIA Principal Traders Group ("PTG"), to Hon. Paul S. Atkins, Chairman, Commission (June 26, 2025), available at <https://www.sec.gov/comments/4-853/4853-618547-1815754.pdf> ("PTG Letter I"); Letter from James Toes, President and CEO, Security Traders Association, to Hon. Paul S. Atkins, Chairman, Commission (June 25, 2025), available at <https://www.sec.gov/comments/4-853/4853-616887-1809874.pdf> ("STA Letter I"); Letter from Joseph Corcoran, Managing Director and Associate General Counsel, and Gerald O'Hara, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), to Hon. Paul S. Atkins, Chairman, Commission (June 6, 2025), available at <https://www.sec.gov/comments/4-698/4698-610487-1785814.pdf> ("SIFMA Letter I"); Letter from Howard Meyerson, Managing Director, Financial Information Forum ("FIF"), to Commission (July 14, 2025), available at <https://www.sec.gov/comments/4-698/4698-625367-1847814.pdf> ("FIF Letter I"); Letter from Jaime Klima, General Counsel, New York Stock Exchange, to Hon. Paul S. Atkins, Chairman, Commissioner (Apr. 24, 2025), available at <https://www.sec.gov/comments/4-698/4698-598195-1737842.pdf>. See

also, e.g., Securities Exchange Act Release No. 104504 (Dec. 23, 2025), 90 FR 61506, 61553–36 (Dec. 31, 2025) (identifying, without formally proposing, two potential cost-savings measures for the Commission's consideration). Although some suggestions were beyond the scope of the Commission's consideration in other contexts, nothing precludes the Commission from evaluating such suggestions in the context of this review.

²⁹ See, e.g., Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel, to Vanessa A. Countryman, Secretary, Commission (Jan. 15, 2026), available at <https://www.sec.gov/files/rules/petitions/2026/petn4-878.pdf> ("Citadel Petition"); Letter from J. Matthew DeLesDernier, Deputy Secretary, Commission, to Stephen John Berger, Global Head of Government and Regulatory Policy, Citadel (Feb. 18, 2026), available at https://www.sec.gov/files/rules/petitions/2026/4-878_rulemaking-petition-letter.pdf ("Response to Citadel Petition"). See also, e.g., Letter from Tyler Gellash, President and CEO, Healthy Markets Association, to Hon. Gary Gensler, Chair, Commission (Sept. 19, 2024), available at <https://www.sec.gov/files/rules/petitions/2024/petn4-843.pdf> ("Healthy Markets Petition"); Letter from John A. Zecca, Executive Vice President, Global Chief Legal, Risk & Regulatory Officer, Nasdaq, and J. Patrick Sexton, Executive Vice President, General Counsel & Corporate Secretary, Cboe, to Hon. Paul S. Atkins, Chairman, Commission (Apr. 24, 2025), available at <https://www.sec.gov/comments/4-698/4698-598775-1738922.pdf>. There have also been legal challenges to the CAT, including to the Commission's authority to require the SROs to implement and operate the CAT. See, e.g., Amended Class-Action Complaint for Declaratory, Injunctive, and Mandamus Relief, *Davidson et al. v. Atkins*, No. 6:24-cv-00197 (W.D. Tex. Jan. 13, 2025). On February 4, 2026, the Court granted the Commission's motion to continue to hold the case in abeyance until July 15, 2026. Text Order, *Davidson et al. v. Atkins*, No. 6:24-cv-00197 (W.D. Tex. Feb. 4, 2026). In addition, market participants have challenged the CAT's funding model. See *Am. Sec. Ass'n et al. v. SEC*, No. 26–10936 (11th Cir. Mar. 24, 2026); see also *Am. Sec. Ass'n v. SEC*, 147 F.4th 1264 (11th Cir. 2025) (11th Cir. 2025) (vacating an order that implemented a modified funding model for the CAT and remanding the matter to the Commission for further proceedings consistent with its opinion).

and the SROs to meet market oversight responsibilities. The release then solicits comments on whether changes should be made to the rules and regulations governing existing audit trails and related data sources to better respond to and reflect current market conditions, demonstrated regulatory needs, civil liberty and privacy concerns, cost-efficient technology solutions, and cybersecurity considerations.

II. Current Audit Trails and Data Sources Utilized by Regulators

Pursuant to Section 17 of the Exchange Act,³⁰ the Commission can request books and records to monitor and oversee trading in the securities markets under its jurisdiction. Each SRO has its own recordkeeping rules and similarly can request books and records from its members.³¹ The Commission and the SROs have used these powers to create audit trails and/or data sources and/or to obtain data for market oversight purposes as follows.

A. The CAT

The CAT is intended to furnish both the Commission and the SROs with timely access to a comprehensive, uniform, accurate, and linked set of trading data that allows them to efficiently retrieve relevant information about the full lifecycle of all orders in NMS and OTC Equity Securities³² across the markets and trading centers

that comprise the national market system.³³ The CAT collects data from both SROs and Industry Members³⁴ about the original receipt or origination of an order, the routing of an order and the receipt of an order that has been routed, executions, modifications, and cancellations.³⁵ The Plan Processor,³⁶ FINRA CAT, LLC (“FINRA CAT”), uses this data to “link and create the order lifecycle” using a “daisy chain approach,” in which “a series of unique order identifiers, assigned to all order events handled by CAT Reporters[,] are linked together by the Central Repository^[37] and assigned a single CAT-generated CAT-Order-ID that is associated with each individual order event and used to create the complete lifecycle of an order.”³⁸ In addition to this linked data, the CAT is required to provide regulators with SIP Data.³⁹

³³ See, e.g., Rule 613 Adopting Release, *supra* note 8, at 45723, 45726.

³⁴ See also CAT NMS Plan, *supra* note 16, at Section 1.1 (defining “Industry Member” as “a member of a national securities exchange or a member of a national securities association”).

³⁵ Rule 613 and the CAT NMS Plan identify the information that must be reported by the SROs and the information that the SROs must obligate their members to report through compliance rules. See, e.g., 17 CFR 242.613(c)(7); CAT NMS Plan, *supra* note 16, at Sections 6.3–6.4. Further guidance about how to report to the CAT is provided by detailed technical specifications available on the CAT NMS Plan website. See <https://catnmsplan.com/specifications/participants>; <https://catnmsplan.com/specifications/im>.

³⁶ “Plan Processor” means “the Initial Plan Processor or any other Person selected by the Operating Committee pursuant to SEC Rule 613 and Sections 4.3(b)(i) and 6.1, and with regard to the Initial Plan Processor, the Selection Plan, to perform the CAT processing functions required by SEC Rule 613 and set forth in this Agreement.” See CAT NMS Plan, *supra* note 16, at Section 1.1; see also *id.* (defining “Operating Committee” as “the governing body of the Company designated as such and described in Article IV”).

³⁷ “Central Repository” means “the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement.” *Id.* at Section 1.1.

³⁸ *Id.* at Appendix D, Section 3. The “CAT-Order-ID” is “a unique order identifier or series of unique order identifiers that allows the central repository to efficiently and accurately link all reportable events for an order, and all orders that result from the aggregation or disaggregation of such order.” See also 17 CFR 242.613(j)(1).

³⁹ “SIP Data” means: “(A) information, including the size and quote condition, on quotes including the National Best Bid and National Best offer for each NMS Security; (B) Last Sale Reports and transaction reports reported pursuant to an effective transaction reporting plan filed with the SEC pursuant to, and meeting the requirements of, SEC Rules 601 and 608; (C) trading halts, Limit Up/Limit Down price bands, and Limit Up/Limit Down indicators; and (D) summary data or reports described in the specifications for each of the SIPs and disseminated by the respective SIP.” *Id.* at Section 6.5(a)(ii); see also 17 CFR 242.613(e)(7). Although the CAT was originally required to link SIP Data with other transactional data reported to the CAT, the Commission has granted exemptive

relief from that requirement. See, e.g., 2025 Cost Savings Exemptive Relief Order, *supra* note 25, at 47856–57.

Although the CAT is no longer required to collect customer and account-level information pursuant to an amendment to the CAT NMS Plan approved by the Commission on January 13, 2026,⁴⁰ the CAT’s architecture of identifiers and lifecycle linkage enables regulators with a specific regulatory purpose to analyze a particular customer’s trading activity for Eligible Securities⁴¹ across markets, brokers, and/or accounts through generation of a CAT Customer ID (“CCID”).⁴² This transactional data may only be associated with customer and account-level information if such information is obtained separately from Industry Members through a manual request.⁴³

B. EBS System

Requests for data outside of the CAT system are predominantly made through the EBS system. In 2001, the Commission adopted Rule 17a–25 under the Exchange Act to codify and enhance the EBS system.⁴⁴ Rule 17a–25 requires firms to report to the Commission standard data elements for proprietary securities transactions such as security symbol, date executed, amount traded, type of transaction, transaction price, account number, execution venue, and identification information for the parties on either side of the transaction.⁴⁵ For customer securities transactions, Rule 17a–25 further requires firms to include the customer name, address, branch office number, registered representative number, type of order, date account opened, taxpayer identification number, employer name, and the role of the intermediary (agent or principal) if any.⁴⁶ This kind of customer information is no longer required to be collected or stored by the CAT and is therefore only accessible through the EBS system or manual requests.⁴⁷

The EBS system is also used to process requests made by the Commission for account-level

relief from that requirement. See, e.g., 2025 Cost Savings Exemptive Relief Order, *supra* note 25, at 47856–57.

⁴⁰ See CAIS Order, *supra* note 19.

⁴¹ “Eligible Security” includes “(a) all NMS Securities and (b) all OTC Equity Securities.” See CAT NMS Plan, *supra* note 16, at Section 1.1.

⁴² See 2020 PII Exemptive Relief Order, *supra* note 19, for further explanation of how CCIDs are generated.

⁴³ See Part III.F, Modification and/or Replacement of the EBS System *infra* for further discussion of this process.

⁴⁴ See EBS Adopting Release, *supra* note 5, at 35837; 17 CFR 240.17a–25.

⁴⁵ 17 CFR 240.17a–25(a)(1).

⁴⁶ *Id.* at (a)(2). Rule 17a–25 also requires certain prime brokerage identifiers, average price account identifiers, and identifiers used by depository institutions to be reported upon request. *Id.* at (b).

⁴⁷ See CAIS Order, *supra* note 19.

³⁰ 15 U.S.C. 78q(a)(1) (requiring every national securities exchange, member thereof, broker or dealer who transacts a business in securities through the medium of any such member, registered securities association, and registered broker or dealer, among other parties, to make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter). Specific books and records requirements, including storage and retention requirements, are set forth for the SROs and broker-dealers in rules promulgated by the Commission. See, e.g., 17 CFR 240.17a–1; 17 CFR 240.17a–3; 17 CFR 240.17a–4; 17 CFR 240.17a–6; 17 CFR 240.17a–7.

³¹ See, e.g., Nasdaq Options 6E, Section 1; Cboe Rule 7.1; NYSE Rule 440. Under Section 19(b) of the Exchange Act, SROs generally must file proposed rule changes with the Commission for notice, public comment, and Commission review, prior to implementation. See 15 U.S.C. 78s; 17 CFR 240.19b–4.

³² An “NMS Security” means “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in Listed Options.” An “OTC Equity Security” means “any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association’s equity trade reporting facilities.” See CAT NMS Plan, *supra* note 16, at Section 1.1.

information and transactional data pursuant to Rule 13h–1,⁴⁸ which sets forth broker-dealer record-keeping, reporting, and monitoring requirements for large traders.⁴⁹ This rule is designed to enable the Commission to promptly and efficiently identify significant market participants and to collect data on their trading activity so that Commission staff can reconstruct market events and conduct investigations.⁵⁰ Under Rule 13h–1, large traders are required to identify themselves to the Commission and to make certain disclosures on Form 13H.⁵¹ Upon receipt of Form 13H, the Commission issues a unique identification number to the large trader (“LTID”), which the large trader is then required to provide to those broker-dealers through which it trades.⁵² Rule 13h–1 enables the Commission to request account-level information and transactional data from broker-dealers for large traders (as well as Unidentified Large Traders⁵³) via the EBS system and using the EBS reporting template.

Information retrievable through the EBS system is limited to executed trades and does not contain information on orders or quotes, and thus does not contain information on routes, modifications, and cancellations.⁵⁴ Such information is available through the CAT and is used to investigate various forms of potential market manipulation like layering and spoofing.

C. Other Audit Trails and Related Data Sources

Regulators may make manual requests for books and records information—for

example, by sending emails to broker-dealers requesting the relevant data.⁵⁵ In addition, the Commission and the SROs also rely on other data sources to fulfill their regulatory obligations.

One such data source is the National Securities Clearing Corporation’s (“NSCC”) equity cleared report,⁵⁶ which is generated on a daily basis by the SROs and provided to the NSCC in a database accessible by the Commission. It shows the number of trades and daily volume of all equity securities transacted, sorted by clearing member and searchable by security name and CUSIP number.⁵⁷ The Options Clearing Corporation (“OCC”) ⁵⁸ provides several other reports to regulators, including: (1) the OCC Trades report, which provides similar data as the NSCC’s equity cleared report for options securities; (2) the OCC End-of-Day Positions File, which provides the current aggregate position for customer, firm, and market-maker clearing ranges; and (3) the Large Options Position Report (“LOPR”), which provides start-of-day and end-of-day positions per option security on a customer and account-level basis, along with several other reports. OCC generates these reports on a daily basis and provides them to the SROs; the Commission then accesses OCC reports through the FINRA regulatory portal.⁵⁹

Regulators may also obtain data from privately- and publicly-available market data feeds. Specifically, SROs may leverage data feeds from their own, market-specific matching engines and/or order book feeds, data from their own audit trails⁶⁰ or other trade reporting or display facilities,⁶¹ data from

proprietary feeds made available by other SROs and/or off-exchange execution venues, and/or publicly-available consolidated data feeds provided by various securities information processors that provide top-of-the-book information like quotes, National Best Bid and Offer (“NBBO”), and trade- or last sale-data.⁶² The Commission maintains a tool called the Market Information Data Analytics System (“MIDAS”) that similarly collects and processes equity data from the consolidated data feeds as well as from separate proprietary feeds.⁶³ Even when combined in a tool like MIDAS, though, these data feeds do not provide a comprehensive, cross-market audit trail that would enable regulators to track an order through its entire lifecycle, from order origination through routing and on to execution, modification, or cancellation, because each of the above-described audit trails and/or related data sources has its own limitations.

III. Request for Comment

The Commission encourages comment from all interested parties, including, but not limited to, SROs, broker-dealers, retail and institutional investors and those who represent their interests, academics, economists, technology experts and service providers, trade associations, and civil liberties groups. While the release poses a number of general and specific questions, the Commission also welcomes comments on any other aspects of the audit trails and related data sources currently in use (or comments on any potential audit trails and related data sources that should be created), particularly on any costs, burdens, or benefits that may result from the possible regulatory responses identified in this release or otherwise proposed by commenters.

A. Regulatory Purpose of the CAT

1. What are the regulatory use cases that must be enabled for the Commission and the SROs to fulfill their statutory obligations? Is the CAT necessary to enable those use cases? For example, is the CAT necessary to inform any regulatory decision-making and/or policy-making? Are other audit trails and/or related data sources sufficient to

⁴⁸ See 17 CFR 240.13h–1.

⁴⁹ *Id.* at (a)(1) (defining “large trader” as “any person that: (i) [d]irectly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level; or (ii) [v]oluntarily registers as a large trader by filing electronically with the Commission Form 13H”); *id.* at (a)(7) (defining “identifying activity level” as “aggregate transactions in NMS securities that are equal to or greater than: (i) [d]uring a calendar day, either two million shares or shares with a fair market value of \$20 million; or (ii) [d]uring a calendar month, either twenty million shares or shares with a fair market value of \$200 million”).

⁵⁰ See, e.g., Rule 613 Adopting Release, *supra* note 8, at 45733.

⁵¹ 17 CFR 240.13h–1(b).

⁵² *Id.* at (b)(2).

⁵³ *Id.* at (a)(9) (“Unidentified Large Trader” means “each person who has not complied with the identification requirements” of Rule 13h–1(b)(1) and (b)(2) “that a registered broker-dealer knows or has a reason to know is a large trader”).

⁵⁴ See also notes 182–191 and associated text *infra* for additional discussion of the data accessible through the EBS system.

⁵⁵ See notes 30–31 and associated text *supra*.

⁵⁶ NSCC is a subsidiary of the Depository Trust and Clearing Corporation and provides centralized clearing information and settlement services to broker-dealers for trades involving equities, corporate and municipal debt, American depository receipts, exchange traded funds, and unit investment trusts.

⁵⁷ A CUSIP number is a unique alphanumeric identifier assigned to a security.

⁵⁸ OCC provides clearing and settlement services for equity derivatives, options, futures, and securities lending transactions.

⁵⁹ The high-level, end-of-day, and often netted nature of these NSCC and OCC reports, and the limited information they provide, means that they typically serve only as a starting point for certain types of investigations—a tool that regulators use to narrow down the parties to contact for additional information on certain transactions.

⁶⁰ In addition to market-specific audit trails, the SROs have maintained COATS. OATS, however, was retired as of September 1, 2021. See note 18 and associated text *supra*.

⁶¹ FINRA maintains trade reporting facilities that provide a mechanism for the reporting of transactions in listed equity securities effected otherwise than on a national securities exchange, as well as an over-the-counter reporting facility and an alternative display facility (collectively, “FINRA Facilities”). See, e.g., FINRA Rules 6200, 6300, 6600, 7100, 7200, and 7300.

⁶² These consolidated data feeds include: (1) the Consolidated Tape System (“CTS”) and the Consolidated Quote System (“CQS”) (Tape A and Tape B); the UTP Quotation Data Feed (“UQDF”) and the UTP Trade Data Feed (“UTDF”) (Tape C); and OPRA.

⁶³ See <https://www.sec.gov/securities-topics/market-structure-analytics/midas-market-information-data-analytics-system>.

enable necessary regulatory use cases? Why or why not?

2. Are there features of the CAT that could be eliminated because they are unnecessary or because they could be replaced by other currently-existing audit trails and/or related data sources in an efficient and/or cost-effective manner? If so, please identify such features, explain why they could be eliminated, and, if relevant, identify the alternative data sources that could replace such features.

3. Should the Commission eliminate the CAT in favor of developing a different audit trail and/or data source to enable necessary regulatory use cases? Why or why not? How should a new audit trail and/or data source differ from the CAT? What improvements could be gained by developing a new audit trail and/or data source that could not be achieved through incremental improvement to the CAT?

B. Structure and Governance of the CAT

Historically, the structure and governance of audit trails and/or related data sources has varied. OATS and COATS, for example, were owned, implemented, and operated by the SROs. Commission staff could obtain access to the data supplied by these systems through ad hoc requests. With respect to the EBS system, the Commission promulgated a rule to require broker-dealers to electronically submit specified data to the Commission upon request, in a format set by the SROs,⁶⁴ but did not otherwise specify how systems that collect EBS data from broker-dealers should be structured. Currently, Commission staff access EBS data through a system owned, implemented, and operated by FINRA, which licenses use of the system to the Commission. Rule 613 of Regulation NMS,⁶⁵ on the other hand, is more specific about the structure of the CAT. It requires the SROs to act jointly to develop a national market system plan to implement the CAT to collect specified data from the SROs and their members⁶⁶ and to provide access to such data to each SRO and the Commission “for the purpose of performing . . . regulatory and oversight responsibilities pursuant to the federal securities laws, rules, and regulations.”⁶⁷ The rule further requires that each SRO be a sponsor of the CAT

NMS Plan⁶⁸ and that the CAT NMS Plan “include a governance structure to ensure fair representation of the plan sponsors, and administration of the central repository, including the selection of the plan processor.”⁶⁹

CAT NMS Plan

Under the CAT NMS Plan developed by the SROs and approved by the Commission, the CAT collects data that can be accessed by authorized regulatory users from the SROs and the Commission in a system that is jointly owned by the SROs,⁷⁰ but implemented and operated by the Plan Processor. FINRA CAT—a subsidiary of FINRA—is the current Plan Processor and, as such, acts as a vendor to the SROs.

4. What are the advantages and disadvantages of structuring the CAT as a national market system plan (an “NMS plan”)? Should the CAT continue to be structured as an NMS plan? Does the fact that both the SROs and the Commission rely on the CAT to fulfill their regulatory functions counsel for or against structuring the CAT as an NMS Plan?

5. If the CAT should not continue to be structured as an NMS plan, how should the Commission and/or the SROs direct and oversee the operation of the CAT?⁷¹ What specific benefits, actions, and costs would be associated with transitioning to an alternative structure? Would transitioning to an alternative structure for the CAT provide offsetting benefits to the costs of transitioning? For example, would replacing the CAT NMS Plan with an SEC rule requiring the reporting of certain information to the Commission and/or the SROs strengthen the

Commission’s ability to control the scope and associated costs of the CAT?

Operating Committee

The CAT is governed by the Operating Committee, which is composed of one voting member for each SRO.⁷² The CAT NMS Plan, however, does not specify or provide any constraints on who each SRO may choose as its voting member. The Operating Committee generally meets on a bi-weekly basis; except as otherwise provided in the CAT NMS Plan, the Operating Committee makes all decisions and authorizes all actions taken by the Company.⁷³ Because the CAT NMS Plan allocates votes on the Operating Committee by SRO, affiliated SRO groups may exert a level of control over the operations of the CAT that is not required to be correlated with their market share or their share of operating expenses.⁷⁴

6. Should the Commission amend the CAT NMS Plan to implement a different voting structure? If so, what should this voting structure be and why? What are the advantages and disadvantages, for example, of allocating one vote to each affiliated SRO group and each non-affiliated SRO,⁷⁵ as opposed to the current structure of allocating one vote to each SRO regardless of affiliation?⁷⁶

⁷² See CAT NMS Plan, *supra* note 16, at Section 4.1; see also *id.* at Section 4.2(a) (stating that one voting member may have the right to vote on behalf of multiple affiliated SROs and that an alternate voting member representing each SRO shall have a right to vote in the absence of that SRO’s voting member).

⁷³ *Id.*

⁷⁴ For instance, FINRA “has repeatedly questioned the voting structure that governs the CAT NMS Plan,” which it states allows “large voting blocks for affiliated exchanges to impose costs on other SROs.” According to FINRA, “four blocks of affiliated exchanges together represent 21 out of 27 votes, resulting in voting dynamics that are susceptible to outcomes that favor some Participants at the expense of the broader securities industry.” See Letter from Steffen N. Johnson, Wilson Sonsini Goodrich & Rosati P.C., to Vanessa Countryman, Secretary, Commission (Oct. 17, 2025), at 16, available at <https://www.sec.gov/comments/4-698/4698-670027-2019234.pdf>.

⁷⁵ The national market system plan regarding the consolidated equity market data (the “CT Plan”) takes a similar approach, stating that the CT Plan operating committee “shall include one Voting Representative designed by each SRO Group and each Non-Affiliated SRO to vote on behalf of such SRO Group or such Non-Affiliated SRO” and that “[e]ach Voting Representative shall be authorized to cast one vote on behalf of the SRO Group or Non-Affiliated SRO that he or she represents” See Securities Exchange Act Release No. 101672 (Nov. 20, 2024), 89 FR 94924 (Nov. 29, 2024), at Sections 4.2(a) and 4.3(a).

⁷⁶ See, e.g., Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel, to Vanessa A. Countryman, Secretary, Commission (July 14, 2023), at 3, available at <https://www.sec.gov/>

Continued

⁶⁴ See, e.g., 17 CFR 240.17a–25. As discussed above, the SROs have similar rules that enable them to obtain data from their members. See, e.g., note 31 *supra*.

⁶⁵ See 17 CFR 242.613.

⁶⁶ *Id.* at (a)(1), (c).

⁶⁷ *Id.* at (e)(1).

⁶⁸ *Id.* at (a)(4).

⁶⁹ *Id.* at (b)(1).

⁷⁰ The CAT NMS Plan functions as the limited liability company agreement of Consolidated Audit Trail, LLC, the jointly owned limited liability company formed under Delaware state law through which the SROs conduct the activities of the CAT (“CAT LLC” or the “Company”). Each SRO is a member of the Company and jointly owns the Company on an equal basis. See CAT NMS Plan, *supra* note 16.

⁷¹ See, e.g., Healthy Markets Petition, *supra* note 29, at 2 n.2 (suggesting that the Commission “end the CAT NMS Plan” and instead “contract with a third party, including FINRA CAT, LLC, to continue to develop, maintain, and operate the CAT”); Letter from Katie Kolchin, CFA, Managing Director, Head of Equity & Options Market Structure, and Joseph Corcoran, Managing Director & Associate General Counsel, SIFMA, to Vanessa A. Countryman, Secretary, Commission (Mar. 12, 2026), at 7–8, available at <https://www.sec.gov/comments/4-698/4698-722187-2261374.pdf> (“SIFMA Letter II”) (“SIFMA continues to believe that the CAT structure as an NMS plan is a very inefficient way to manage the equity and listed options audit trail that CAT represents. . . . We continue to believe that the audit trail the CAT represents can be run more efficiently by the Commission.”).

If votes should be allocated to each affiliated SRO group and each non-affiliated SRO, are there any circumstances in which an affiliated SRO group or non-affiliated SRO should be given extra votes?⁷⁷ If so, please explain what these circumstances are and why they should affect the voting structure of the CAT NMS Plan.

7. Action of the Operating Committee is authorized either by a Majority Vote⁷⁸ or a Supermajority Vote⁷⁹ of these voting members, as specified by the CAT NMS Plan.⁸⁰ Should the Commission amend the CAT NMS Plan to require a different vote threshold—for example, a Majority Vote, Supermajority Vote, or a unanimous vote—for any specific action?⁸¹ If so, what should that vote threshold be, for which actions, and why?

8. Are there measures that could increase transparency and accountability around CAT NMS Plan voting while protecting sensitive information? For example, should more information be made public about the Operating Committee's deliberations? Are there any privacy or security concerns regarding disclosure of such information?

comments/4-698/4698-224499-470142.pdf (“Citadel Letter II”) (recommending that the Commission “[a]llocate voting rights similar to the NMS Plan for consolidated equity market data”).

⁷⁷ See, e.g., CT Plan, *supra* note 74, at Section 4.3(a) (“[E]ach Voting Representative representing an SRO Group or Non-Affiliated SRO whose combined market center(s) have consolidated equity market share of more than fifteen (15) percent during four of the six calendar months preceding an Operating Committee vote shall be authorized to cast two votes.”).

⁷⁸ “Majority Vote” is defined as “the affirmative vote of at least a majority of all of the members of the Operating Committee or any Subcommittee, as applicable, authorized to cast a vote with respect to a matter presented for a vote (whether or not such a member is present at any meeting at which a vote is taken) by the Operating Committee or any Subcommittee, as applicable (excluding, for the avoidance of doubt, any member of the Operating Committee or any Subcommittee, as applicable, that is recused or subject to a vote to recuse from such matter pursuant to Section 4.3(d)).” See CAT NMS Plan, *supra* note 16, at Section 1.1.

⁷⁹ “Supermajority Vote” is defined as “the affirmative vote of at least two-thirds of all of the members of the Operating Committee or any Subcommittee, as applicable, authorized to cast a vote with respect to a matter presented for a vote (whether or not such a member is present at any meeting at which a vote is taken) by the Operating Committee or any Subcommittee, as applicable (excluding, for the avoidance of doubt, any member of the Operating Committee or any Subcommittee, as applicable, that is recused or subject to a vote to recuse from such matter pursuant to Section 4.3(d)); provided that if two-thirds of all of such members authorized to cast a vote is not a whole number then that number shall be rounded up to the nearest whole number.” *Id.*

⁸⁰ *Id.* at Section 4.3.

⁸¹ See, e.g., Citadel Letter II, *supra* note 75, at 3 (“All actions relating to funding should require authorization by a Supermajority vote.”).

Advisory Committee

Rule 613 requires that the CAT NMS Plan “include an Advisory Committee,” whose purpose “shall be to advise the plan sponsors on the implementation, operation, and administration of the central repository.”⁸² The rule states that “[m]embers of the Advisory Committee shall have the right to attend any meetings of the plan sponsors, to receive information concerning the operation of the central repository, and to provide their views to the plan sponsors; provided, however, that the plan sponsors may meet without the Advisory Committee members in executive session if, by affirmative vote of a majority of the plan sponsors, the plan sponsors determine that such an executive session is required.”⁸³ Members of the Advisory Committee do not have the right to vote,⁸⁴ which market participants have stated limits their ability to influence CAT operations.⁸⁵ However, in addressing the questions below, commenters are requested to take notice of a decision of the United States Court of Appeals for the District of Columbia Circuit,⁸⁶ which held that Section 11A of the Exchange Act⁸⁷ does not allow non-SRO representatives to serve as voting representatives on the operating committee of an NMS plan.

9. What powers, responsibilities, or rights should be given to the CAT Advisory Committee? How would such powers, responsibilities, or rights affect the SROs' ability to govern the CAT? Would such powers, responsibilities, or rights raise concerns about conflicts of interest, given that the members of the CAT Advisory Committee are parties regulated by the SROs?

10. Should the membership of the CAT Advisory Committee be reserved for representatives of certain interests or individuals with specific experience? Should the membership of the CAT Advisory Committee be expanded to

⁸² See 17 CFR 242.613(b)(7).

⁸³ *Id.* at (b)(7)(ii).

⁸⁴ *Id.* at Section 4.13(d).

⁸⁵ See, e.g., PTG Letter I, *supra* note 28, at 2 (“[M]arket participants have no meaningful representation on the Operating Committee charged with designing and operating the CAT and, thus, have been excluded from key decisions regarding design, scope, and budget.”); Citadel Letter II, *supra* note 75, at 6 (“Industry Members lack even a single representative on the CAT Operating Committee and, therefore, cannot vote on the design, implementation, or funding of CAT. While there is a separate Advisory Committee that contains industry representation, its recommendations are non-binding and thus can be (and have been) completely ignored by the CAT Operating Committee.”).

⁸⁶ See *Nasdaq Stock Mkt. LLC v. SEC*, 38 F.4th 1126 (D.C. Cir. 2022).

⁸⁷ 15 U.S.C. 78k-1.

include any other market participants not currently represented, such as operators of alternative trading systems (“ATs”), technology experts, or those with technical and operational expertise related to the management of trading, trade processing, and/or trade data management systems? If so, in what way should representation be apportioned?

11. While the CAT Advisory Committee is entitled to “receive the same information concerning the operation of the Central Repository as the Operating Committee,” the Operating Committee “may withhold information it reasonably determines requires confidential treatment.”⁸⁸ What non-public information should the CAT Advisory Committee have access to and how should confidentiality of this information be maintained? What is the correct balance between providing the public with transparency into the recommendations of the CAT Advisory Committee (and the Operating Committee's responses to these recommendations) and maintaining the confidentiality of potentially sensitive information about CAT operations?

12. Should additional information about the operation of the CAT, including security measures taken by the SROs to protect CAT Data,⁸⁹ be provided to Industry Members beyond those representatives that sit on the Advisory Committee? If so, what information should be provided? How would disclosure of such information affect the security of the CAT?

13. Should the Commission form a separate advisory committee to provide advice and recommendations to it on topics related to the CAT? If so, what are appropriate topics for the advisory committee to consider? For example, should the advisory committee counsel the Commission on matters relating to the CAT's scope, functionality, design, security, cost management, and/or civil liberties and privacy protections? Who should participate as members of this advisory committee? Should it include market participants and others with technical and operational expertise related to the management of trading, trade processing, and/or trade data management systems? Should it include civil liberty and privacy advocates? Should it include representatives of other relevant constituencies? What non-public information should such an advisory committee have access to and

⁸⁸ *Id.* at Section 4.13(e).

⁸⁹ “CAT Data” means “data derived from Participant Data, Industry Member Data, SIP Data, and such other data as the Operating Committee may designate as “CAT Data” from time to time.” See CAT NMS Plan, *supra* note 16, at Section 1.1.

how should the confidentiality of this information be maintained?

C. CAT Funding and Cost Management

The CAT is funded by both SROs and Industry Members, in accordance with the funding model recently approved by the Commission (the “2026 Funding Model Order”).⁹⁰ There have been legal challenges to the CAT and its funding model,⁹¹ but the Commission has taken the position that it has the requisite authority under Section 17 and Section 11A of the Exchange Act to direct the creation of the CAT.⁹² It also maintains that the CAT funding model approved by the 2026 Funding Model Order is a reasonable approach that satisfies the relevant standards set forth in federal statutes, rules, and regulations.

The funding model approved by the 2026 Funding Model Order is based on executed equivalent share volumes of transactions in Eligible Securities. Fees would be paid evenly by the SROs, executing brokers representing buyers, and executing brokers representing sellers.⁹³ Pursuant to this funding model, no Participant may file with the Commission a proposed rule change under Section 19(b) of the Exchange Act⁹⁴ and Rule 19b–4⁹⁵ thereunder that would establish a new fee for directly passing through to its members the CAT fee charged to such Participant.⁹⁶ This funding model also includes a sunset provision, stating that the Plan Processor and the Participants will not be permitted to bill or otherwise request CAT fees from Industry Members after March 31, 2028.⁹⁷ In approving this sunset provision, the Commission explained that it would be premature to adopt a permanent funding model while engaged in a comprehensive review of the CAT and that ensuring the continued existence and funding of the CAT during this interim period would avoid potential destabilization.⁹⁸

Cost Management

14. Is there sufficient transparency with respect to CAT costs and expenses? If not, what additional information should be made public? What is the correct balance between providing public transparency into CAT costs and expenses and protecting potentially

sensitive information about CAT operations?

15. The Commission has recently approved amendments to the CAT NMS Plan that would implement a spending cap.⁹⁹ Are there any additional cost management controls that should be required for the CAT? If so, please describe such controls and explain why they would be appropriate.¹⁰⁰ Does the answer depend on how the CAT is structured and/or funded? For example, are there any aspects of CAT operations that could be performed more cost-effectively by SRO staff instead of by the Plan Processor or other third-party service providers? If so, please identify those tasks, explain why it would be more cost effective for such tasks to be performed by SRO staff, and describe reasonable costs for those tasks.

Funding Model and Allocation of Fees

16. Should the Commission set fees for the SROs and Industry Members? Would a different funding model help the Commission to weigh more carefully the costs and benefits associated with the CAT? What features should a new funding model have? Does the answer depend on whether or not the CAT should continue to be structured as an NMS plan?

17. The 2026 Funding Model Order approves a CAT funding model which provides that no SRO will file with the Commission a proposed rule change pursuant to Section 19(b) of the Exchange Act¹⁰¹ and Rule 19b–4¹⁰² thereunder that would establish a new fee for directly passing through to its members the CAT fee charged to each SRO.¹⁰³ Should a new funding model explicitly allow the SROs to directly pass through the fees allocated to the SROs that are related to the build or operation of the CAT to their members, subject to Commission review of Rule 19b–4 fee filings?¹⁰⁴ Why or why not?

18. How should fees be allocated to and among SROs and/or Industry

Members? Is there a specific percentage of cost that the SROs should bear? Does the answer depend on whether the SRO is a non-profit or for-profit entity? Does the answer depend on whether the SRO is a national securities exchange for equities or options? If so, please explain how these factors and any other such factors should be taken into account. Is there a specific percentage of cost that Industry Members should bear? Does the answer depend on whether the Industry Member is facilitating or engaging in trading with respect to equities or options? Does the answer depend on the business model of the Industry Member—for example, whether the Industry Member is acting as a market maker? If so, please explain how these and any other such factors should be taken into account. Should ATSs be treated like execution venues or Industry Members for purposes of establishing CAT fees? Why?

19. Should fees be based on the burden that each party places on the CAT system? If so, what is the appropriate way to calculate the burden that each party places on the CAT system? Market share? Message traffic? Regulatory use? Are there other appropriate measures of burden? If so, please identify such measures and explain why they would provide an appropriate metric to calculate the burden that each party places on the CAT. For example, should CAT Reporters be charged for late reporting, given the costs associated with re-processing late-received data? If fees should not be based on the burden that each party places on the CAT system, what are other guiding principles that should be used to create an appropriate funding model for the CAT? Should fees continue to be based on executed equivalent share volumes of transactions in Eligible Securities, for example? Would executed notional value be a better measure? Why? Please identify any appropriate guiding principles and explain why those principles should inform the structure of a CAT funding model.

Reserve Funds

On September 6, 2023, the Commission approved a proposal that amended the method by which CAT fees would be calculated and implemented a funding model to allocate costs between SROs and Industry Members (the “2023 Funding Model Order”).¹⁰⁵ On July 25, 2025, however, the United States Court of Appeals for the Eleventh Circuit issued

⁹⁰ See 2026 Funding Model Order, *supra* note 27.

⁹¹ See, e.g., note 29 *supra*.

⁹² 15 U.S.C. 78k–1; 15 U.S.C. 78q.

⁹³ See *id.*

⁹⁴ 15 U.S.C. 78s(b).

⁹⁵ 17 CFR 240.19b–4.

⁹⁶ See, e.g., 2026 Funding Model Order, *supra* note 27, at 13412–13.

⁹⁷ *Id.* at 13412–14.

⁹⁸ *Id.* at 13412.

⁹⁹ See Securities Exchange Act Release No. 105107 (Mar. 27, 2026), 91 FR 16284, 16307 (Apr. 1, 2026) (“2026 Cost Savings Order”).

¹⁰⁰ See, e.g., Citadel Letter II, *supra* note 75, at 3 (setting forth proposed independent cost review mechanisms).

¹⁰¹ See 15 U.S.C. 78s(b).

¹⁰² See 17 CFR 240.19b–4.

¹⁰³ See, e.g., 2026 Funding Model Order, *supra* note 27, at 13412–13.

¹⁰⁴ As discussed in the 2026 Funding Model Order, the Exchange Act already expressly contemplates the ability of the SROs to recoup the costs of fulfilling their statutory obligations by indirectly passing costs associated with regulatory activities through to their members. This process is cabined by the Rule 19b–4 fee filing process and the necessity for a SRO to establish that an increase in any existing fee is, among other things, reasonable, equitable, and not unfairly discriminatory. See, e.g., *id.* at 13422; 17 CFR 240.19b–4.

¹⁰⁵ See Securities Exchange Act Release No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023).

an opinion vacating the 2023 Funding Model Order and remanding the matter to the Commission for further proceedings consistent with its opinion.¹⁰⁶ After the 2023 Funding Model Order was vacated, the SROs determined to use liquidity reserve funds previously collected pursuant to that Order to fund the continued operations of the CAT.¹⁰⁷

On January 15, 2026, Citadel submitted a rule-making petition to the Commission raising concerns about and requesting amendments to the CAT NMS Plan to address CAT LLC's accumulation and use of these reserve funds.¹⁰⁸ On February 18, 2026, the Commission responded to the petition, stating that it raised important questions as to whether additional limits on the accumulation and use of any operational reserve may be appropriate and that the Commission would specifically consider those issues in its ongoing review of the CAT.¹⁰⁹ But the Commission stated that it would not engage in an immediate rulemaking focused on the use of the current reserve.¹¹⁰ The Commission subsequently stated, in the 2026 Funding Model Order, that it does not agree that the SROs were prohibited from using the reserve funds to fund the continued operations of the CAT either by the Eleventh Circuit's decision vacating the 2023 Funding Model Order or by the terms of the CAT NMS Plan.¹¹¹ While the reserve provisions approved in the 2026 Funding Model Order are reasonable and satisfy the relevant standards set forth in federal statutes, rules, and regulations, to the extent that the Commission should establish a new funding model for the CAT, the Commission seeks additional feedback regarding the accumulation and use of reserve funds.

20. Should the SROs be allowed to collect a reserve to fund CAT operations? For what purposes should the SROs be able to use CAT reserves?

21. What are appropriate controls to place around the amount of reserve funds that the SROs may collect? Should the Commission require that the SROs seek and obtain Commission approval before using the CAT reserves?

22. Under what circumstances should CAT reserves be returned to Industry Members and SROs? Explain what processes should be used to return funds to Industry Members and SROs.

Section 31 Fees and Alternative Methods of Funding the CAT

Several market participants have suggested that the Commission should include the CAT in its budget, because the CAT "is a regulatory system used by the SEC."¹¹² These market participants believe that the CAT "should be subject to the checks and balances of the Congressional appropriations process used to fund the SEC's budget," which would "serve to better align incentives to control CAT costs and address longstanding concerns about ineffective CAT governance."¹¹³

The Commission is interested in exploring further the advantages or disadvantages of the Commission using appropriated funds to cover costs with respect to the CAT. Section 31(a) of the Exchange Act states that the Commission shall "collect transaction fees and assessments that are designed to recover the costs to the Government of the annual appropriation to the Commission by Congress."¹¹⁴ These Section 31 fees are imposed on SROs,¹¹⁵ and Section 31 does not address the manner or extent to which covered SROs may seek to recover the costs of their Section 31 obligations from their members or to which members of the SROs may seek to pass on these costs to their customers. "In practice," the Commission has previously observed,

¹¹² See SIFMA Letter I, *supra* note 28, at 6. See also, e.g., Letter from Joanna Mallers, Secretary, PTG, to Vanessa A. Countryman, Secretary, Commission (Nov. 24, 2025), at 3, available at <https://www.sec.gov/comments/4-698/4698-678568-2084374.pdf> ("PTG Letter II"); Citadel Letter I, *supra* note 24, at 3; Healthy Market Petition, *supra* note 29, at 2–3.

¹¹³ See SIFMA Letter I, *supra* note 28, at 6. See also, e.g., PTG Letter II, *supra* note 111, at 3 ("Re-architecting CAT's budget in this way would be significant improvement from the status quo, addressing many of the governance failures and conflicts of interest that persist under the current structure."); Citadel Letter I, *supra* note 24, at 13 (stating that the Commission "must include the CAT in its appropriated budget" to provide "meaningful checks and balances as part of the governance process—the Commission will be incentivized to carefully oversee the size of the CAT budget and carefully weigh the costs and benefits of required functionality, while Congress will have a clear role in order to protect against waste and regulatory overreach"); Healthy Markets Petition, *supra* note 29, at 2 ("[E]nsure that the funding for this essential governmental tool would be subject to Congressional appropriations[.]").

¹¹⁴ See 15 U.S.C. 78ee(a) ("The Commission shall, in accordance with this section, collect transaction fees and assessments that are designed to recover the costs to the Government of the annual appropriation to the Commission by Congress.").

¹¹⁵ 17 CFR 240.31.

"the covered SROs obtain the funds for these fees and assessments by assessing charges on their members, and the members in turn pass these charges to their customers."¹¹⁶

23. What are the advantages and disadvantages, relative to the funding model approved by the 2026 Funding Model Order, of the Commission being appropriated additional funds to cover costs with respect to the CAT?

24. Should the Commission own and operate the CAT itself? If the Commission were to own the CAT, what changes would the Commission need to make to the CAT's structure, governance, and operations? Please discuss ownership structures the Commission should consider for the CAT. If the Commission were to own the CAT, how would the roles, rights, and responsibilities of the Operating Committee and/or the Advisory Committee need to evolve? Are there any alternative methods by which the Commission and/or the SROs could direct and oversee the operation of the CAT if the Commission were to request additional appropriated funds to cover costs with respect to the CAT? Please identify such alternative methods and explain, in detail, how the CAT would be owned, operated, and funded pursuant to such alternative methods. For example, could an SRO assume sole ownership of the CAT and contract with regulators to provide regulatory services and/or access to the CAT?

25. If the Commission were appropriated funds to cover costs with respect to the CAT, what constraints could be used to protect against cost overruns and budget inflation?

26. If the Commission owned and operated the CAT, how would that affect the contractual relationship between FINRA CAT and the SROs?

27. If the Commission owned and operated the CAT, would that affect the SROs' ability to access the system? Would it be appropriate for the SROs, most of which are for-profit entities with their own regulatory obligations, to have cost-free access to a system that is owned and operated by the Commission and funded in full through appropriated funds? Should the Commission instead license use of the CAT to the SROs if the CAT is owned and operated by the Commission? Would such a structure raise any conflicts of interest concerns,

¹¹⁶ See Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (further stating that "Section 31 places no obligation on members of covered SROs or their customers, and it is misleading to suggest that a customer or an SRO member incurs an obligation to the Commission under Section 31").

¹⁰⁶ See Opinion, *ASA v. Commission*, No. 23–113396 (11th Cir. July 25, 2025).

¹⁰⁷ See https://catnmsplan.com/sites/default/files/2025-12/12.08.25-CAT-LLC-2026-Financial_and_Operating_Budget.pdf.

¹⁰⁸ See Citadel Petition, *supra* note 29.

¹⁰⁹ See Response to Citadel Petition, *supra* note 29.

¹¹⁰ *Id.*

¹¹¹ See 2026 Funding Model Order, *supra* note 27, at 13444.

given that the SROs are parties that the Commission regulates?

D. CAT Design and Scope

Both the Commission and the SROs have taken steps to manage and contain CAT costs. For instance, on December 12, 2024, the Commission approved an amendment to the CAT NMS Plan proposed by the SROs that was designed to cut costs by relaxing certain CAT functionality and storage requirements (the “2024 Cost Savings Order”).¹¹⁷ Specifically, the 2024 CAT Cost Savings Order approved: (1) provisions that changed processing, query, and storage requirements for Options Market Maker quotes in Listed Options (“OMM Quotes”);¹¹⁸ (2) provisions that permitted the Plan Processor to move raw unprocessed data and interim operational copies of CAT Data older than 15 days to more cost-effective storage tiers; and (3) provisions that codified and expanded exemptive relief previously provided by the Commission related to certain recordkeeping and data retention requirements for industry testing data.¹¹⁹

Additional cost savings measures were enabled by certain conditional exemptive relief issued by the Commission *sua sponte* on September 30, 2025 (the “2025 Cost Savings Exemptive Relief Order”).¹²⁰ The 2025 Cost Savings Exemptive Relief Order was designed to further reduce CAT costs by enabling the SROs to relax requirements related to: (1) deadlines for the creation of lifecycle linkages; (2) re-processing of late records; (3) the online targeted query tool (“OTQT”); and (4) data storage and retention.¹²¹

These steps have reduced CAT costs significantly. The CAT budget initially approved by the SROs for 2025 exceeded \$248 million.¹²² This budget

was reduced to approximately \$228 million in May 2025¹²³ and then again to approximately \$188 million in November 2025¹²⁴ due to the implementation of cost savings measures approved by the Commission and other optimizations made by the SROs and the Plan Processor. The CAT budget approved for 2026 is approximately \$156 million¹²⁵—a decrease of approximately \$92 million from the budget originally approved for 2025.

Furthermore, in early 2026, the Commission approved certain proposed amendments to the CAT NMS Plan submitted by the SROs to codify and expand exemptive relief previously granted by the Commission, including amendments that would implement a spending cap provision.¹²⁶ These cost savings measures have not been fully implemented yet, but the SROs have estimated that such measures will generate additional savings on top of the reduced costs already enabled by the 2024 Cost Savings Order and the 2025 Cost Savings Exemptive Relief Order.¹²⁷ The recent cost savings achieved are important first steps to creating a more efficient and cost-effective CAT, but the costs of operating the CAT remain significantly higher than originally estimated by the Commission. The Commission therefore seeks feedback regarding additional changes that could be made to the design and scope of the CAT to make it more efficient and cost-effective.

Scope

28. From which market participants should the CAT collect information? Should information be provided by parties who originate, route, and/or send orders, as well as parties that receive and/or execute orders? Please explain whether the CAT should maintain two-sided reporting requirements, whether the application of two-sided reporting requirements should depend on the underlying product and/or asset class, and from which parties the CAT should require

reporting if two-sided reporting is eliminated.¹²⁸ What are the costs and benefits associated with one-sided reporting versus two-sided reporting? Is there a material difference in accuracy between one-sided reporting and two-sided reporting? Are there regulatory use cases enabled by two-sided reporting that would not be possible with one-sided reporting?

29. What quote, order origination, routing, request, modification, cancellation, reject, trade, and/or allocation events should be captured by the CAT? What features or data elements of a quote, order origination, routing, request, modification, cancellation, reject, trade, and/or allocation event should be captured by the CAT? What level of detail should be reported for each kind of event? Are certain kinds of events costly, burdensome, or otherwise difficult to collect? What are material terms for quote, order origination, routing, request, modification, cancellation, reject, trade, and/or allocation events?

30. Should the Commission optimize and/or simplify CAT reporting requirements?¹²⁹ Please specifically identify any proposed optimizations, describe the costs and benefits associated with such optimizations (including any potential impact on data accuracy and/or regulatory use), explain whether such optimizations would require changes to existing trading workflows and/or reporting processes, and explain how such optimizations should be developed and/or implemented. What are the current costs for Industry Members to report to the CAT? What are the current costs for SROs to report to the CAT?

31. Should any changes be made to the CAT Reporting Technical Specifications for Industry Members?¹³⁰

¹¹⁷ See Securities Exchange Act Release No. 101901 (Dec. 12, 2024), 89 FR 103033 (Dec. 18, 2024).

¹¹⁸ An “Options Market Maker” is a “broker-dealer registered with an exchange for the purpose of making markets in options contracts on the exchange.” See CAT NMS Plan, *supra* note 16, at Section 1.1. Each Participant has also promulgated rules for its members that generally govern what constitutes a “market maker quote” and/or “market maker quotation” for that Participant. See, e.g., The Nasdaq Stock Market LLC Rules, Options 2, Section 5, “Market Maker Quotations”; Cboe Exchange, Inc. Rule 5.52, “Market Maker Quotes”; NYSE Arca, Inc. Rule 6.37AP-O, “Market Maker Quotations.” See also note 22 *supra*.

¹¹⁹ 2024 CAT Cost Savings Amendment, *supra* note 116.

¹²⁰ See Securities Exchange Act Release No. 104144 (Sept. 30, 2025), FR 90 47853, 47854–55 (Oct. 2, 2025).

¹²¹ *Id.*

¹²² See https://catnmsplan.com/sites/default/files/2024-11/11.20.24-CAT-LLC-2025-Financial_and_Operating-Budget.pdf.

¹²³ See https://catnmsplan.com/sites/default/files/2025-05/05.19.25-CAT-LLC-2025-Financial_and_Operating-Budget.pdf.

¹²⁴ See https://catnmsplan.com/sites/default/files/2025-11/11.07.25-CAT-LLC-2025-Financial_and_Operating-Budget.pdf.

¹²⁵ See https://catnmsplan.com/sites/default/files/2025-12/12.08.25-CAT-LLC-2026-Financial_and_Operating_Budget.pdf.

¹²⁶ See 2026 Cost Savings Order, *supra* note 98; see also CAIS Order, *supra* note 19.

¹²⁷ See Securities Exchange Act Release No. 104504 (Dec. 23, 2025), 90 FR 61506, 61506–08 (Dec. 31, 2025) (“2025 Cost Savings Amendment”); see also, e.g., CAIS Order, *supra* note 19, at 2186–88.

¹²⁸ See, e.g., PTG Letter I, *supra* note 28, at 3 (urging the Commission to “[e]liminate duplicative reporting of orders and cancellations sent to exchanges”); Citadel Letter I, *supra* note 24, at 13 (“Reduce, simplify, and streamline the data fields required to be reported, rely on TRF or exchange-reported data when possible, and eliminate unnecessary records.”).

¹²⁹ See, e.g., PTG Letter I, *supra* note 28, at 3 (“Optimize overall reporting requirements.”); SIFMA Letter I, *supra* note 28, at 6 (“Optimize CAT Reporting.”).

¹³⁰ See note 35 *supra*; see also, e.g., See SIFMA Letter I, *supra* note 28, at 6 (“CAT transaction technical specifications and resulting database are unnecessarily large and complex. They could be scaled back to include only essential transactions, errors, and data elements.”); PTG Letter I, *supra* note 28, at 3 (“The CAT database (and associated technical specifications) can be optimized and should only include essential transaction, error, and data elements to reduce compute and storage costs.”); Citadel Letter I, *supra* note 24, at 13 (“Reduce, simplify, and streamline the data fields

Should any changes be made to the CAT Industry Member Reporting Scenarios?¹³¹ Should any changes be made to the CAT Reporting Technical Specifications for Plan Participants?¹³² If so, please specifically identify changes to the technical specifications and/or reporting scenarios that should be made, describe the costs and benefits associated with those changes (including any potential impact on data accuracy and/or regulatory use), explain how those changes could affect existing reporting processes and/or trading workflows, and explain how those changes should be developed and/or implemented. If the recommended changes involve eliminating transaction, error, and/or data fields or elements, please explain whether such fields and/or elements can be obtained from an alternative source, identify that alternative source, and describe any costs or burdens associated with obtaining such fields and/or elements from that alternative source.

General Functionality

32. Would structural and/or architectural changes to the CAT enhance its efficiency and/or reduce costs? What information would be helpful to help commenters analyze measures that could enhance efficiency and/or reduce costs?

33. How frequently should market participants be required to report data to the CAT? Does the answer depend on the product and/or asset class? What are the costs and benefits associated with altering the CAT's current reporting requirements? What are the potential regulatory impacts of collecting data on a less-than-daily basis? Would reporting data less often reduce costs?

34. FINRA CAT currently accepts data from CAT Reporters in a range of formats, meaning that FINRA CAT must expend computing power to normalize the data for regulatory use. In the experience of Commission staff, this can create downstream issues for processing and interpreting data, which makes regulatory use less efficient. Should a common and/or unified industry data standard with a common data taxonomy be used for submission of data to the CAT and/or pre-submission data quality validations? For example, should the CAT leverage the Financial Information eXchange ("FIX") protocol or another industry data standard? If so, how?

required to be reported, rely on TRF or exchange-reported data when possible, and eliminate unnecessary records.").

¹³¹ See Industry Member Reporting Scenarios, available at <https://catnmsplan.com/specifications/imreportingscenarios>.

¹³² See note 35 *supra*.

35. Are there transaction, error, or data fields and/or elements that are currently reported to the CAT that are not captured by the FIX protocol or other industry data standards? If so, please identify these fields and/or elements and explain how such fields and/or elements would be captured if the FIX protocol or another industry data standard was used for CAT reporting. Should the FIX protocol or another industry data standard only be leveraged with respect to some events? If so, which events? Should the FIX protocol or another industry data standard only be leveraged with respect to some underlying products and/or asset classes? If so, which products and/or asset classes? What are the costs and benefits associated with leveraging the FIX protocol or another industry data standard for CAT reporting?¹³³ Would the CAT Reporter Portal need to be altered in any way to enable a different reporting regime? What changes would be required to FINRA CAT's processes to accommodate a different reporting regime? What changes to the existing trading workflows and/or reporting processes of CAT Reporters would be required to accommodate a different reporting regime? Would leveraging the FIX protocol or another industry data standard reduce or increase the costs to operate the Central Repository? By how much? How would such an approach affect data accuracy and/or regulatory use?

36. Should the CAT be required to comply with a specified error rate? If so, what is an appropriate error rate and how should that error rate be calculated? Do the answers depend on the kind of data collected and/or from whom the data is collected?

37. What kind of validations, linkages, corrections, or other processing should be performed on data reported to the CAT? Should data be validated, linked, and/or processed centrally by the Plan Processor for the CAT or should that task be left to individual regulatory users? Does the answer depend on the completeness of the data contained in the CAT? Should data that is received after the deadline for corrections be validated, linked, and/or processed in

¹³³ See, e.g., Letter from Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, and Howard Meyerson, Managing Director, FIF, to Commission (July 31, 2023), at 17, available at <https://www.sec.gov/comments/4-698/4698-238359-498762.pdf> ("SIFMA and FIF Letter") (indicating that the use of "common FIX standards as the data format, and deriving industry members' CAT reports from their FIX engines, rather than their downstream "ticket" systems" may have better enabled two-sided reporting).

the same manner as data that is timely received? If not, what manner of validation, linkage, and/or processing should be performed, and what are the costs and benefits associated with that choice?

Lifecycle Linkage and Processing Timelines

The CAT NMS Plan requires the Plan Processor to "link and create the order lifecycle" using a "daisy chain approach," in which "a series of unique order identifiers, assigned to all order events handled by CAT Reporters[,] are linked together by the Central Repository and assigned a single CAT-generated CAT-Order-ID that is associated with each individual order event and used to create the complete lifecycle of an order."¹³⁴ The CAT NMS Plan further sets forth a linkage and processing timeline. Data for each CAT Trading Day¹³⁵ is required to be reported to the CAT by T+1 (transaction date + one day) at 8 a.m. Eastern Time ("ET").¹³⁶ The Plan Processor must perform initial validations and provide error feedback to CAT Reporters by T+1 at 12 p.m. ET.¹³⁷ Prior to 8:00 a.m. ET on T+2 (transaction date + two days), raw unprocessed data must be made available to regulators.¹³⁸ CAT Reporters must resubmit corrected data to the CAT by 8 a.m. ET on T+3 (transaction date + three days).¹³⁹ Corrected and linked data is then required to be made available to regulators by 8 a.m. ET on T+6 (transaction day + six days).¹⁴⁰

38. How quickly should regulators be able to access raw, unlinked data? How

¹³⁴ See CAT NMS Plan, *supra* note 16, at Appendix D, Section 3; see also *id.* at Section 1.1 (defining "CAT Reporter" as "each national securities exchange, national securities association and Industry Member that is required to record and report information to the Central Repository pursuant to SEC Rule 613(c)").

¹³⁵ According to the CAT NMS Plan, "Trading Day" shall "have such meaning as is determined by the operating Committee. For the avoidance of doubt, the Operating Committee may establish different Trading Days for NMS Stocks . . . , Listed Options, OTC Equity Securities, and any other securities that are included as Eligible Securities from time to time." See *id.* at Section 1.1. Currently, the Trading Day for Industry Members runs from 4:15 p.m. ET on one trade to 4:15 p.m. on the next trade date, and the Trading Day for Participants runs from midnight on one trade date to midnight on the next trade date. See <https://catnmsplan.com/specifications/participants>; <https://catnmsplan.com/specifications/im>.

¹³⁶ See CAT NMS Plan, *supra* note 16, at Appendix D, Section 6.1.

¹³⁷ *Id.* at Appendix D, Section 6.1.

¹³⁸ *Id.* at Appendix D, Section 6.2; see also 2026 Cost Savings Order, *supra* note 98, at 16300–01.

¹³⁹ See CAT NMS Plan, *supra* note 16, at Appendix D, Section 6.1.

¹⁴⁰ *Id.*; see also 2026 Cost Savings Order, *supra* note 98, at 16300–01.

quickly should regulators be able to access data that has been validated, processed, and linked, but not corrected? How quickly should regulators be able to access validated, processed, linked, and corrected data? How much time should market participants have to correct data that has been reported to the CAT? What are the costs and benefits of altering these requirements?

39. In the 2025 Cost Savings Amendment, the SROs sought public comment on, but did not formally propose, changes that would reduce the amount of linkage processing performed by the Plan Processor. Under this approach, error feedback would only be provided twice to Industry Members—once on T+2 at 8:00 a.m. ET for linkage errors discovered for on-time submissions and again on T+3 at 8:00 a.m. ET for later-discovered errors.¹⁴¹ The SROs stated that “Industry Members would be permitted to submit corrections outside of this 24-hour window and would receive reconciliation credit. However, these submissions would be marked late and would not receive any feedback indicating whether the correction was successful.”¹⁴² In seeking public comment, the SROs stated that “members of the CAT Advisory Committee and other Industry Member groups had previously raised issues with the shortened amount of time that would be available to Industry Members to review and provide corrected data under the reduced linkage timeline,” which they were concerned may increase regulatory compliance risks and costs for Industry Members and reduce the accuracy of CAT Data.¹⁴³ These concerns were duly reflected in a comment letter that the Commission subsequently received in connection with the 2025 Cost Savings Amendment.¹⁴⁴ However, the Commission is interested in gathering feedback from market participants as to whether there may be other ways to alter the CAT’s existing processing and/or linkage timelines that would both preserve core regulatory functionality and achieve cost savings. Should the Commission extend or otherwise alter the processing and/or linkage timelines set forth in the CAT NMS Plan? If so, how? Are there other ways to reduce or

optimize the amount of linkage processing performed by the Plan Processor?¹⁴⁵

40. SIFMA has requested that the SROs work with Industry Members with the “goal of reducing ‘late to the lifecycle’ linkage errors . . . while still allowing for firms to confirm successful repairs within a reasonable window.”¹⁴⁶ Are there changes that could be made to the CAT Reporting Technical Specifications and/or the CAT NMS Plan to reduce “late to the lifecycle” linkage errors? Alternatively, or in addition, should the CAT NMS Plan and/or other compliance rules, regulations, standards, and/or guidance regarding error thresholds, error corrections, and/or reconciliation credits be amended to relax requirements relating to correction and/or accuracy of late-submitted historical data? Would such amendments require increased reliance on other audit trails and/or data sources for corrected historical data? If so, what are the costs associated with that increased reliance?

Data Storage and Retention

41. How should the Plan Processor store historical data? How quickly should data be moved to medium- and long-term storage? For how long should data be stored? Does the answer depend on how and/or what kind of data is stored?

42. The 2026 Cost Savings Order approved amendments to the CAT NMS Plan that would reduce data storage and retention requirements. Specifically, the amendments permit the SROs to: (1) delete all CAT Data older than three years; (2) delete OMM Quotes older than six months; (3) delete Interim Operational Data¹⁴⁷ older than 15 days; and (4) delete Options SIP Data¹⁴⁸ older

than six months.¹⁴⁹ Are there further optimizations that should be made to the CAT NMS Plan data storage and retention requirements to reduce costs? If so, please identify those optimizations, explain why such optimizations are appropriate, describe the costs and/or benefits associated with such optimizations (including any impact on data accuracy and/or regulatory use), and, if such optimizations involve eliminating requirements to collect and/or store certain kinds of data, explain whether such optimizations would require increased reliance on other audit trails and/or data sources for those kinds of data and describe any costs associated with that increased reliance.

CCID Generation

Currently, a CCID is generated for each customer using a two-phase transformation process that was developed by the SROs in consultation with Commission staff and security experts from SIFMA members to avoid the collection by and storage in CAT of social security numbers (“SSNs”) and/or individual tax payer identification numbers (“ITINs”) that was originally required by the CAT NMS Plan.¹⁵⁰ In the first phase, a CAT Reporter transforms an SSN and/or ITIN into an interim value known as a Transformed Identifier or “TID.” The TID, and not the SSN and/or ITIN, is reported to and stored in an isolated, secure database called the CCID Subsystem, separate from any other information reported to the CAT.¹⁵¹ In the second phase, the CCID Subsystem again transforms the TID to create a unique CCID for each customer.¹⁵²

In the 2025 Cost Savings Amendment, the SROs sought public comment on,

¹⁴¹ See 2025 Cost Savings Amendment, *supra* note 126, at 61535–36.

¹⁴² *Id.* at 61535 n.139.

¹⁴³ *Id.* at 61535.

¹⁴⁴ See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Commission (Feb. 10, 2026), at 4, available at <https://www.sec.gov/comments/4-698/4698-702007-2205454.pdf> (“FIF Letter III”).

¹⁴⁵ See, e.g., PTG Letter I, *supra* note 28, at 3 (“The CAT linkage processes are overly complex and costly. We recommend optimizing the linkage process and extending associated timelines to reduce costs and increase efficiency.”); SIFMA Letter I, *supra* note 28, at 6 (“We recommend a set of detailed changes that would optimize linkage processing based on regulatory utility and need, resulting in significantly decreased processing times and costs.”); Citadel Letter I, *supra* note 24, at 14 (“Optimize the linkage process, including by eliminating the production of all interim linkage data by FINRA CAT.”).

¹⁴⁶ See SIFMA Letter I, *supra* note 28, at 5 n.18.

¹⁴⁷ “Interim Operational Data” means “all processed, validated and unlinked data made available to regulators by T+2 at 8:00 a.m. ET and all iterations of processed data made available to regulators between T+2 and T+6, but excludes the final version of corrected data that is made available at T+6 at 8:00 a.m. ET” as well as processed data relating to OMM Quotes that is made available to regulators by T+2 at 8:00 a.m. ET. See CAT NMS Plan, *supra* note 16, at Appendix D, Section 6.4.

¹⁴⁸ “Options SIP Data” means “quote and NBBO data included in the SIP Data from the OPRA Plan or any successor SIP for Listed Options.” See *id.*

¹⁴⁹ See 2026 Cost Savings Order, *supra* note 98, at 16288–92.

¹⁵⁰ See, e.g., Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Jan. 29, 2020), available at <https://catnmsplan.com/sites/default/files/2020-02/Amended-Exemptive-Request-CCID-and-Modified-PII-Approaches%28Final%29.pdf>.

¹⁵¹ See, e.g., 2020 PII Exemptive Relief Order, *supra* note 19, at 16152; see also Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (July 25, 2025), at 8 n.30, available at <https://www.sec.gov/comments/4-698/4698-632107-1870294.pdf>.

¹⁵² See, e.g., 2020 PII Exemptive Relief Order, *supra* note 19, at 16152–53. The Commission has recognized that “there is a risk that the CAT may not reliably generate unique CCIDs for foreign Customers, as a unique foreign Customer may have multiple government issued IDs used across multiple broker-dealers to generate . . . multiple CCIDs.” See CAIS Order, *supra* note 19, at 2174. The “potential existence of multiple CCIDs for one customer may make it more difficult for regulators to identify the full extent of such persons’ trading activity. . . .” *Id.* at 2174–75.

but did not formally propose, changes that would fully eliminate requirements related to the generation of CCIDs.¹⁵³ In seeking public comment, the SROs stated that “members of the Advisory Committee and members of other Industry Member groups had previously raised concerns regarding this alternative, including the potential for increased Electronic Blue Sheet and other inquiries from the Participants and the SEC that may occur without the ability to track Customer activity across market, brokers, accounts using the CCID, and the increased costs related to such requests.”¹⁵⁴ These concerns were duly reflected in a comment letter that the Commission subsequently received in connection with the 2025 Cost Savings Amendment.¹⁵⁵ However, the Commission is interested in gathering feedback from market participants as to whether there may be ways to enhance or improve the current process of generating CCIDs and/or alternative methods of generating unique customer identifiers that could be used to track a particular customer’s trading activity across markets, brokers, and/or accounts that would be more cost-effective.

43. Are there enhancements or improvements that could be made to the current process of generating CCIDs? Please identify such enhancements or improvements with specificity, describe the costs and benefits associated with the implementation of such enhancements or improvements, and describe any privacy, confidentiality, and security measures or controls that should be implemented in connection with enhancements and improvements.

44. Are there any alternative methods of generating unique customer identifiers that could be used to analyze a particular customer’s trading activity across markets, brokers, and/or accounts, when regulatory users have a specific regulatory purpose? Please identify such alternative methods, describe the costs and benefits associated with the implementation of such alternative methods, explain what information would need to be gathered from market participants to enable the

generation of the alternative unique customer identifier, and describe any privacy, confidentiality, and security measures or controls that should be implemented to protect that information and the alternative unique customer identifiers generated.

45. Are there different considerations the Commission should take into account with respect to the generation of unique customer identifiers for non-US persons and/or legal entities?

E. Previous Changes to CAT Requirements

The Commission has previously acted to change certain requirements of the CAT NMS Plan, both by approving proposed amendments to the CAT NMS Plan and by issuing orders providing exemptive relief to the SROs. The Commission seeks comment as to whether and how such previous amendments and/or exemptive relief orders should be expanded and/or codified in the CAT NMS Plan.¹⁵⁶

Verbal Activity on Exchange Floors

On June 16, 2025, the Commission approved amendments to the CAT NMS Plan that provided that “floor broker verbal announcements of firm orders on an exchange that are otherwise reported as systematized orders” and “market maker verbal announcements of firm quotes on an exchange trading floor”—collectively referred to herein as “verbal activity on exchange floors”—were not reportable to the CAT under Section 6.3(d) and Section 6.4(d) of the CAT NMS Plan until July 31, 2030.¹⁵⁷ Although the SROs had proposed to permanently exclude verbal activity on exchange floors from CAT reporting

requirements, the Commission modified the amendments after determining that the SROs had not met their burden to “establish that providing a permanent exception to reporting obligations for verbal activity on exchange floors is necessary or appropriate.”¹⁵⁸

The Commission explained, in the Verbal Quotes Order, that the cost estimates provided by commenters in connection with the amendments proposed by the SROs had been based not only on verbal activity on exchange floors, but also on upstairs verbal and manual activity.¹⁵⁹ The Commission stated that costs for upstairs verbal and manual activity were distinct, because “much of the relevant information that would be reported to CAT” for verbal activity on exchange floors “is already systematized, floor brokers and floor market makers have handheld and other electronic devices to facilitate the open outcry process, and floor verbal activity is governed by exchange rules.”¹⁶⁰ The Commission also stated its view that the SROs and Industry Members “could establish methods for capturing verbal order and quote information communicated on exchange floors that are more cost-effective and efficient than the proposal that each floor participant be required to hire a full-time employee solely for CAT reporting.”¹⁶¹

46. Should the Commission permanently exclude information about verbal activity on exchange floors from CAT reporting requirements? Should the Commission extend the deadline set forth in the CAT NMS Plan for reporting such activity past July 31, 2030?

47. What are the benefits and/or regulatory value provided by collecting information about verbal activity on exchange floors? What is the additive value of collecting information about verbal activity on exchange floors when certain order information is already required to be systematized pursuant to SRO rules? Would it be duplicative to require market participants to report information about verbal activity on exchange floors to the CAT?

48. What are the costs associated with reporting information about verbal activity on exchange floors to the CAT? Please provide specific data. Should the Commission conduct an industry survey to obtain this information?

49. Other than requiring each floor participant to hire a full-time employee solely for CAT reporting, are there alternative data sources and/or

¹⁵³ See 2025 Cost Savings Amendment, *supra* note 126, at 61534–35.

¹⁵⁴ *Id.* at 61534.

¹⁵⁵ See, e.g., FIF Letter III, *supra* note 143, at 2–3. See also, e.g., Letter from Jaime Klima, General Counsel, NYSE, to Vanessa Countryman, Secretary, Commission (July 22, 2025), available at <https://www.sec.gov/comments/4-698/4698-598195-1737842.pdf> (“At this time, CCIDs are needed for the NYSE Exchanges to comply effectively with their SRO obligations, and we presume the same holds true for other exchange and association SROs. Transitioning to a CAT without CCIDs would bring further increased costs to both the SROs and the industry to allow for changes to the CAT system and to meet new reporting requirements.”).

¹⁵⁶ Some market participants have already generally urged the Commission to “codify its orders granting temporary exemptive relief for certain CAT requirements that are unreasonable and burdensome,” but such comments were received before the most recent exemptive relief was granted by the Commission. See PTG Letter I, *supra* note 28, at 4; see also, e.g., SIFMA Letter I, *supra* note 28, at 5 (“The SEC should review all of its orders granting temporary exemptive relief from CAT reporting requirements with a view to making them permanent (e.g., representative order, verbal quotes).”).

¹⁵⁷ See Securities Exchange Act Release No. 103275 (June 16, 2025), 90 FR 26337 (June 20, 2025) (the “Verbal Quotes Order”). In issuing the Verbal Quotes Order, the Commission recognized that CAT LLC disputes that verbal activity on exchange floors is required to be reported under Section 6.3(d) of the CAT NMS Plan. The Commission stated that it did not intend the Verbal Quotes Order to “establish any new Plan requirements or to resolve any dispute over whether [verbal activity on exchange floors] is required under the Plan.” Rather, the Commission stated its understanding that the Verbal Quotes Order excluded verbal activity on exchange floors until July 31, 2030, to the extent that such data is reportable under Section 6.3(d) of the CAT NMS Plan. See *id.* at 26341 n.63.

¹⁵⁸ See *id.* at 26342.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 26342–43.

alternative methods of surveilling verbal activity on exchange floors, including, if applicable, any artificial intelligence or algorithmic technology solutions?¹⁶² Are those data sources and/or methods more cost-effective or efficient than requiring that such data be reported to the CAT? Is it possible to develop and implement such methods before July 31, 2030? If not, please explain how long it would take to develop and implement such methods. Would these methods necessarily collect information beyond reportable verbal activity on exchange floors and, if so, what measures could be introduced to prevent the storage, reporting, and/or use of such information?

Not Immediately Actionable Electronic Requests for Quotes

On January 23, 2026, the Commission provided exemptive relief from certain reporting requirements in Section 6.4(d) of the CAT NMS Plan relating to the reporting of bids and/or offers made in response to a request for quote (“RFQ”) or other form of solicitation response provided in standard electronic format (e.g., FIX) that is not “immediately actionable” (i.e., further action is required by the responder providing the quote to execute or cause a trade to be executed) (the “NIA Electronic RFQ Exemptive Relief Order”).¹⁶³ This relief was granted without conditions and without an expiration date.¹⁶⁴ In granting such relief, the Commission stated that “the regulatory value of this information does not justify the difficulty and costs associated with collecting and reporting such information.”¹⁶⁵

In addition, the Commission stated that “regulators will still have insight into the RFQ process, because any follow-up order activity subsequent to the transmission of NIA Electronic RFQ Responses that results in an execution[] will be reported to the CAT.”¹⁶⁶ The Commission stated that the NIA Electronic RFQ Responses that are subject to this exemptive relief are: (1) “those that satisfy the definition of an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan”; (2) those that “do not include RFQ responses that were required to be reported commencing in

Phase 2c and Phase 2d” of CAT implementation;¹⁶⁷ and (3) those that “do not include activity that is subject to section 6.3(g) of the CAT NMS Plan.”¹⁶⁸

50. Do market participants agree that the regulatory value of NIA Electronic RFQ Responses does not justify the difficulty and costs associated with collecting and reporting such information? Are there any alternative data sources for such information, or, if not, is it sufficient that regulators will still have insight into the RFQ process through any follow-up order activity? Are there any technology solutions in use and/or in development that would make it easier for Industry Members to capture and report NIA Electronic RFQ Responses?

51. Should the Commission codify the NIA Electronic RFQ Exemptive Relief Order? If so, should any changes be made to its scope?

Port-Level Settings

Port-level settings are used by Industry Members and the SROs as one method of communicating various Material Terms of the Order, including, in some cases, special handling instructions.¹⁶⁹ When port-level settings are used to communicate Material Terms of the Order, Rule 613 and the CAT NMS Plan require those port-level settings to be reported for that order by both senders and receivers.¹⁷⁰

On November 2, 2023, the Commission issued an order that granted conditional exemptive relief from several requirements of the CAT NMS Plan (the “November 2023

Order”),¹⁷¹ including, among other things, the requirements as applied to port-level settings that are set forth in Rule 613(c)(7) and the CAT NMS Plan for six specific handling instructions (the “Exempted Port-Level Settings”).¹⁷² The November 2023 Order stated that the SROs would “not be required to obligate Industry Members to report these six special handling instructions when an Industry Member routes an order to a national securities exchange over an exchange port that is configured for one of these special handling instructions,”¹⁷³ on the condition that the SROs report the Exempted Port-Level Settings in the order receipt record, regardless of whether such Exempted Port-Level Settings are “triggered” or “applied.”¹⁷⁴

The conditional exemptive relief granted by the November 2023 Order was limited to the Exempted Port-Level Settings and did not extend exemptive relief to port-level settings on ATSs or broker-dealer port-level settings—or to any other special handling instructions that may be set at the port-level at a national securities exchange and that may constitute Material Terms of the Order.¹⁷⁵ Accordingly, to supplement the November 2023 Order, the Commission granted additional exemptive relief on January 23, 2026 from the requirements as applied to port-level settings that are set forth in Rule 613 and the CAT NMS Plan (the “Port-Level Settings Exemptive Relief Order”).¹⁷⁶ Pursuant to the Port-Level Settings Exemptive Relief Order, the SROs are no longer required to obligate Industry Members to report port-level settings that are used to communicate Material Terms when an Industry Member routes an order through a port that is configured to apply port-level settings, regardless of whether the port is an exchange or a port maintained by an ATS or a broker-dealer.¹⁷⁷ The

¹⁶⁷ Pursuant to the Phased Reporting Exemptive Relief Order, any bid or offer in response to a request for quote or other form of solicitation response provided in standard electronic format (e.g., FIX) that required no further action by the responder providing the quote to execute or cause a trade to be executed was reportable in Phase 2c for equities and in Phase 2d for options. Phased Reporting Exemptive Relief Order, *supra* note 17, at 23079. The exemption did not specifically address NIA Electronic RFQ Responses.

¹⁶⁸ See NIA Electronic RFQ Exemptive Relief Order, *supra* note 162, at 3574.

¹⁶⁹ “Material Terms of the Order” includes “the NMS Security or OTC Equity Security symbol; security type; price (if applicable); size (displayed and non-displayed); side (buy/sell); order type; if a sell order, whether the order is long, short, short exempt; open/close indicator (except on transactions in equities); time in force (if applicable); if the order is for a Listed Option, option type (put/call), option symbol or root symbol, underlying symbol, strike price, expiration date, and open/close (except on market maker quotations); and any special handling instructions.” See CAT NMS Plan, *supra* note 16, at Section 1.1.

¹⁷⁰ See 17 CFR 242.613(c)(7); CAT NMS Plan, *supra* note 16, at Sections 6.3(d)(i)(F), 6.3(d)(ii)(G), 6.3(d)(iii)(F), 6.3(d)(iv)(E), and 6.4(d)(i).

¹⁷¹ See Securities Exchange Act Release No. 98848 (Nov. 2, 2023), 88 FR 77128, 77131–32 (Nov. 8, 2023).

¹⁷² These settings included: (1) ATT—Attributable; (2) DNI—Do Not Increase; (3) DNR—Do Not Reduce; (4) DNRT—Do Not Route; (5) RLO—Retail Liquidity Order; and (6) STP—Self Trade Prevention. *Id.*

¹⁷³ *Id.* at 77131.

¹⁷⁴ *Id.* at 77132. In addition, the exemptive relief was subject to a condition that the SROs maintain and communicate to Industry Members via a CAT Alert a mapping of each exchange-specific port-level setting related to the Exempted Port-Level Settings, substantially in the form of the draft mapping that the SROs had previously provided to the Commission. *Id.*

¹⁷⁵ *Id.* at 77131.

¹⁷⁶ See Securities Exchange Act Release No. 104664 (Jan. 23, 2026), 91 FR 3557 (Jan. 27, 2026).

¹⁷⁷ *Id.* at 3559.

¹⁶² In the Verbal Quotes Order, the Commission observed that the “scenarios, examples, and discussion of the challenges of natural language processing” provided by commenters had all related to upstairs verbal and manual activity. *Id.* at 26342.

¹⁶³ See Securities Exchange Act Release No. 104662 (Jan. 23, 2026), 91 FR 3572 (Jan. 27, 2026).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 3573.

¹⁶⁶ *Id.* at 3573–74.

Commission stated, however, that such relief did not “alter the obligation of the recipient of the order that utilizes a port-level setting to communicate a Material Term of the Order to report the port-level setting as part of the same order receipt record.”¹⁷⁸

52. Does the regulatory value of two-sided reporting for port-level settings that communicate Material Terms of the Order justify the difficulty and costs associated with collecting and reporting such information? What are the costs and benefits of collecting such information on a two-sided basis? Is it sufficient that regulators will still have insight into port-level settings that communicate Material Terms of the Order from order receipt records? Why or why not?

53. Are there any technology solutions in use and/or in development that would make it easier for Industry Members and/or SROs to capture and report port-level settings? If so, please identify such technology solutions, describe the costs associated with implementation of such solutions, and explain when they would be expected to become available to market participants.

54. Should the Commission align the conditions attached to the exemptive relief granted in the November 2023 Order with the conditions attached to the exemptive relief granted in the Port-Level Settings Exemptive Relief Order? If so, please explain which features of each order should be retained, why those features are appropriate, and what costs and benefits would be associated with retaining those features and discarding others. For example, should all port-level settings that communicate Material Terms of the Order be reported by recipients of an order, regardless of whether such port-level settings are “triggered” or “applied”?

55. Should the Commission amend the CAT NMS Plan to make permanent and codify all or part of the November 2023 Order and/or the Port-Level Settings Exemptive Relief Order? If so, please explain which features of each order should be codified, why those features are appropriate, and what costs and benefits would be associated with

retaining those features and discarding others.

56. The Commission understands that some SROs and Industry Members may disagree with the Commission’s position that port-level settings are required to be reported to the CAT NMS Plan.¹⁷⁹

Should the CAT NMS Plan be amended to eliminate the requirement that SROs and Industry Members report Material Terms of the Order that are set at the port-level? What are the costs and benefits associated with reporting such information? Can regulators sufficiently and accurately understand trading activity if certain (and potentially unknown) Material Terms of the Order have been excluded from the data set? Are there any alternative data sources that would provide regulators with insight into Material Terms of the Order that are set at the port level?

Representative Order Linkage

On January 23, 2026, the Commission granted temporary conditional exemptive relief until January 1, 2028 from certain reporting requirements set forth in Appendix D, Section 3 of the CAT NMS Plan regarding lifecycle linkages between customer orders and representative orders for scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems (the “Representative Order Exemptive Relief Order”).¹⁸⁰ In granting such relief, the Commission acknowledged that some market participants believed there were “unresolved issued related to reporting these orders, including, but not limited to, the absence of a method to report linkage for some specific types of representative orders.”¹⁸¹ The Commission therefore determined that “additional time is needed to identify and evaluate appropriate long-term solutions for certain trading scenarios.”¹⁸²

57. Should the Commission extend the exemptive relief already granted

and, if so, for how much longer should exemptive relief be provided? Should the Commission instead amend the CAT NMS Plan to make permanent and codify the Representative Order Exemptive Relief Order?

58. If the Commission should either codify or extend the Representative Order Exemptive Relief Order, should any changes be made to its scope? For example, are there specific trading workflows and/or linkage scenarios involving representative orders, beyond those workflows and/or scenarios in which Industry Members do not have a systematic or direct link between their order management systems and execution management systems, that should be exempted or excluded from the reporting and linkage requirements of the CAT NMS Plan?

F. Potential Changes to Other Data Sources and Related Rules

The Commission stated in the CAT NMS Plan Approval Order that duplicative reporting through systems like EBS would “impose significant burdens and costs on broker-dealers, that certain SEC rules require the reporting of some information that will also be collected through CAT, and that certain SEC rules may need to be modified or eliminated in light of CAT” when it approved the CAT NMS Plan in 2016.¹⁸³ However, consideration of retiring EBS, as a practical matter, was not timely until the CAT’s Customer and Account Information System (the “CAIS”) was fully implemented to provide an alternative source for the customer and account-level data that regulators can otherwise request through the EBS system. The Commission, the SROs, and market participants also required time to develop familiarity with the full scope of the CAT’s functionality, including the CAIS, before EBS could be retired. Because the SROs did not represent to the Commission that the CAIS was fully implemented until July 15, 2024,¹⁸⁴ the Commission, the SROs, and market participants were not previously able to review whether the data provided by the CAT meets minimum standards of accuracy and reliability.¹⁸⁵

¹⁸³ See CAT NMS Plan Approval Order, *supra* note 16, at 84777.

¹⁸⁴ See, e.g., note 17 *supra*.

¹⁸⁵ The Commission directed staff to develop a proposal for Commission consideration, within six months of the effective date of the CAT NMS Plan Approval Order, to amend Rule 17a–25 and Rule 13h–1 to eliminate the components of EBS that are redundant of CAT, among other things, at such time as CAT Data meets minimum standards of accuracy and reliability. See CAT NMS Plan Approval Order, *supra* note 16, at 84777. The SROs’ Plan to Eliminate Existing Rules and Systems, set forth in

¹⁷⁸ *Id.* In issuing the Port-level Settings Exemptive Relief Order, the Commission stated that “the regulatory benefits” of two-sided reporting of port-level settings that communicate Material Terms of the Order “are not sufficient to justify the implementation costs and technical difficulty of accurate reporting of port-level settings by both the sender and receiver of an Order.” *Id.* The Commission observed that port-level settings are not generally part of standard order messages (e.g., FIX messages) sent by firms, that firms do not have the relevant data in their books and records, and that implementing reporting of port-level settings would likely require a costly industry-wide effort. *Id.*

¹⁷⁹ See, e.g., November 2023 Order, *supra* note 170, at 77131 n.26; PTG Letter I, *supra* note 28, at 3 (“The Commission should confirm that port-level settings are not required CAT records.”); SIFMA Letter I, *supra* note 28, at 5 (“The SEC should issue immediate permanent exemptive relief related to the reporting of so-called ‘Port Settings,’ which, despite the SEC staff’s historical insistence, the industry does not believe is required to be reported under the CAT NMS Plan.”).

¹⁸⁰ See Securities Exchange Act Release No. 104663 (Jan. 23, 2026), 91 FR 3601 (Jan. 27, 2026). The Commission clarified that such relief was not limited to any specific type of CAT-reportable security. *Id.* at 3602 n.23.

¹⁸¹ *Id.* at 3602. See also SIFMA and FIF Letter, *supra* note 132, at 20–23.

¹⁸² See Representative Order Exemptive Relief Order, *supra* note 179, at 3602.

The EBS system provides regulators at the Commission and the SROs with access to certain data that is not captured by the CAT. Retiring EBS requires consideration of how transactional and customer and account-level information accessible through EBS, but not collected by or stored in the CAT, could be obtained by regulators. With respect to transactional information, the EBS system provides access to transactional information for Eligible Securities that is either not reported to CAT in the first place¹⁸⁶ or that is older than the data stored in the CAT.¹⁸⁷ This data is otherwise accessible only through manual requests for books and records. While there is some transactional information in the CAT that overlaps with transactional information that can also be requested through the EBS system, the way that EBS data and CAT Data are used by regulators differs. This is, in large part, the case because the EBS system provides access not only to transactional information, but also to customer and account-level information that is no longer required to be reported to the CAT. The EBS system also provides access to customer and account-level information about transactions in fixed income securities that are otherwise reported to FINRA's Trade Reporting and Compliance Engine ("TRACE")¹⁸⁸ or the MSRB's Real-Time Transaction Reporting System.¹⁸⁹

Additionally, pursuant to recent Commission action, the CAT is no

longer required to collect certain customer and account-level information, including, among other things, SSNs/ITINs, names, addresses, dates and years of birth, and LTIDs.¹⁹⁰ The loss of the above-described data from the CAT means that regulators will need to rely on other methods of obtaining customer and account-level information from broker-dealers—namely, the EBS system and/or manual requests for books and records data. As this information is still necessary to conduct market oversight, examinations, and enforcement, continued and/or increased regulatory reliance on the EBS system and/or manual requests for books-and-records data could, in turn, impose certain reporting costs on broker-dealers beyond those anticipated by the Commission when it evaluated and approved the CAT NMS Plan in 2016,¹⁹¹ although the Commission did consider such costs in approving the CAIS Order, the 2026 Cost Savings Order, and other related exemptive relief, as well as measures that could potentially mitigate such costs, like the development of a more efficient request-and-response system.¹⁹²

Retirement of Partially Duplicative Systems

59. Are there audit trails and/or related data sources that contain partially duplicative information to the CAT, such that overlapping requirements should be eliminated, modified, or replaced? If so, please explain why or under what circumstances those requirements should be eliminated, modified, or replaced and identify any potential costs and benefits associated with such elimination, modification, or replacement.¹⁹³

¹⁹⁰ See note 19 *supra*; see also 2026 Cost Savings Order, *supra* note 98, at 16301–07. The SROs are still in the process of implementing the changes to the CAT made possible by the CAIS Order and the 2026 Cost Savings Order.

¹⁹¹ See, e.g., CAT NMS Plan Notice, *supra* note 13, at 30728 (estimating that a period of duplicative reporting would last for up to 2.5 years); CAT NMS Plan Approval Order, *supra* note 16, at 84865–66 (estimating that a period of duplicative reporting would last less than 2.5 years). The Commission did not anticipate that CAT implementation would take 8 years. Nor did the Commission anticipate that the CAT would not contain customer and account-level information. However, while costs associated with reporting this information through the EBS system may increase due to the implementation of the CAIS Order, costs associated with maintaining and operating the CAIS will decrease. See, e.g., CAIS Order, *supra* note 19, at 2186–88.

¹⁹² See, e.g., CAIS Order, *supra* note 19, at 2169, 2179–93; 2026 Cost Savings Order, *supra* note 98, at 16308; 2025 PII Exemptive Relief Order, *supra* note 19, at 9645.

¹⁹³ See, e.g., PTG Letter I, *supra* note 28, at 3 (suggesting that the Commission "[e]liminate overlapping requirements such as . . . reporting

Modification and/or Replacement of the EBS System

CCIDs, once generated, are associated with transactional data through the use of FDIDs¹⁹⁴—persistent identifiers that are reported by each individual broker-dealer for its transactional records.¹⁹⁵ Regulators can thus use CCIDs to identify all of the FDIDs associated with a particular customer and then make manual requests to broker-dealers for information associated with a particular set of FDIDs to obtain customer and account-level data.¹⁹⁶

Some market participants have explicitly recognized that the "removal of PII from CAIS raises the question of how regulators can link transactional data to the associated customer information going forward . . . because EBS does not contain FDIDs or CCIDs. . . ." ¹⁹⁷ FIF proposed that EBS therefore be "replaced by a process and system that is specifically focused on enabling regulators to link FDIDs and CCIDs to customer information." ¹⁹⁸ The Commission agrees that a request-and-response system (an "R&R System") "could decrease regulators' reliance on

regulatory information to the FINRA Trade Reporting Facilities").

¹⁹⁴ "FDID" or "Firm Designated ID" means "(1) a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account; (2) a unique and persistent relationship identifier when an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt, provided, however, such identifier must be masked; or (3) a unique and persistent entity identifier when an employee of an Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination, where each such identifier is unique among all identifiers from any given Industry Member." See CAT NMS Plan, *supra* note 16, at Section 1.1. Unlike CCIDs, FDIDs are not designed or intended to be consistent values across broker-dealers.

¹⁹⁵ See 2025 PII Exemptive Relief Order, *supra* note 19, at 9643.

¹⁹⁶ Broker-dealers do not have access to CCIDs; moreover, the EBS system does not require broker-dealers to report FDIDs. See, e.g., FINRA Rule 8211 ("Automated Submission of Trading Data Requested by FINRA"); FINRA Regulatory Notice 20–19, FINRA and ISG Announce the Update of Blue Sheet Data Elements and Repositioning of Exchange Code Field (June 23, 2020), available at <https://www.finra.org/rules-guidance/notices/20-19>.

¹⁹⁷ See FIF Letter I, *supra* note 28, at 2. According to FIF, its participants include broker-dealers, exchanges, back office service bureaus, and market data, regulatory reporting and other technology vendors in the securities industry. *Id.* at 1 n.1.

¹⁹⁸ *Id.* at 2, 4. See also, e.g., PTG Letter II, *supra* note 111, at 3 ("The Commission should also retire duplicative and costly legacy reporting systems, including the electronic blue sheets system ('EBS')."); Citadel Letter I, *supra* note 24, at 14 ("Retire the Electronic Blue Sheets system.").

Appendix C of the CAT NMS Plan, stated that, to the extent the Commission modified or eliminated Commission rules that require information that is duplicative of information available through the Central Repository, such as Rule 17a–25 and Rule 13h–1, each SRO would analyze its own rules and systems to determine whether any modifications are necessary. See CAT NMS Plan, *supra* note 16, at Appendix C, Section 9. This Plan further provided that each SRO should complete its analysis within three months and that the SROs would coordinate with the Commission regarding modification of the CAT NMS Plan to include information sufficient to eliminate or modify Commission rules or systems that the Commission deemed appropriate. *Id.*

¹⁸⁶ As one example, Rule 13h–1(d) sets forth record-keeping and reporting requirements with respect to certain information regarding primary offerings. See 17 CFR 240.13h–1(a)(6)(ii). Such information is not currently reported to the CAT.

¹⁸⁷ See 2025 Cost Savings Exemptive Relief Order, *supra* note 119, at 47857–58 (permitting the SROs to delete all CAT Data older than five years and other changes to data retention requirements); see also, e.g., 17 CFR 240.17a–4 (requiring broker-dealers to preserve certain records that could be requested via EBS for six years).

¹⁸⁸ TRACE facilitates the mandatory reporting of over-the-counter transactions in eligible fixed income securities. See FINRA Rule 6700.

¹⁸⁹ Municipal securities dealers submit data about all transactions to the MSRB. Transaction information collected by the MSRB is made public on its website and is available on a subscription basis. See MSRB Rule G–14; see also <https://www.msrb.org/Trade-Data>.

EBS, which could facilitate the eventual elimination of EBS and could reduce the cost and burdens to Industry Members and increase efficiencies.”¹⁹⁹

Market participants have suggested different methods of implementing an R&R System. FIF, for example, suggested that “the Commission and the SROs, in consultation with Industry Members, should implement a request and response system operated by FINRA that the Commission and the SROs would use to request from Industry Members customer data associated to specified FDIDs. FINRA would direct the Industry Member responses to the requesting party, and the responses would be stored by the requesting party. This system should use the data format of the CAIS system (prior to the removal of PII).”²⁰⁰ SIFMA, on the other hand, suggested that an R&R System could be part of the CAT System²⁰¹ and facilitated by the Plan Processor. Specifically, SIFMA proposed that “a regulatory user that wanted to know the identity of a customer to a trade” could “submit a FDID and trade date(s) request through the CAT Processor into a secure file transfer protocol (FTP) that would in turn direct the PII request to an Industry Member acting as a CAT Reporter. . . . The Industry Member would then direct the encrypted data through the FTP back into the CAT control environment for the requesting regulatory user to analyze and use the data.”²⁰²

Previously, the Commission has urged the SROs to “work with industry members to establish such a request-response system by taking advantage of the systems industry members have already established to format and submit customer information consistent

with CAT specifications,”²⁰³ and the Commission understands that such efforts are currently underway.²⁰⁴

60. Will CAT data be sufficiently accurate and reliable to prove an adequate substitute data source for transactional data otherwise obtainable through the EBS system? What criteria should the Commission use to evaluate this question?

61. Should an R&R System be implemented? If so, what functionality should an R&R System have? Does the answer depend on which regulators have access to the system? Does the answer depend on how the system is funded? Does the answer depend on the extent to which an R&R System is intended to replace the EBS system? Does the answer depend on whether an R&R System should be part of the CAT System or separate from it?

62. Should the Commission direct the creation of an R&R System? If it should be separate from the CAT System, should the creation and implementation of an R&R System be structured as a national market system plan and, if so, how should it be funded and governed?

63. If an R&R System should not be structured as a national market system plan or included as part of the CAT System, is there another method by which the Commission should direct the creation of such a system? Should the Commission, for example, promulgate a data collection rule that leaves the SROs with discretion as to how to structure and fund an R&R System? If so, please explain what requirements should be included in such a rule and why those requirements are appropriate. Does the answer depend on the parties that would own and/or operate the system? Does the answer depend on the parties that would use the system? Does the answer depend on which parties would fund the system?

64. If an R&R System should be implemented separate from the CAT System, who should own and/or operate the system? What kind of staff and/or expertise is needed to own, operate, or maintain such a system? What kinds of technological capabilities are needed to own, operate, or maintain such a system? Should the Commission license use of a Commission-owned R&R

System to the SROs? If so, how should the Commission determine the rates at which an R&R System is licensed out to the SROs? How would such a licensing arrangement work? Would the SROs seek to recoup any of those licensing costs from their members? Would this approach raise any conflicts of interest concerns, given that the SROs are parties that the Commission regulates?

65. If an R&R System should be implemented separate from the CAT System, should the Commission and/or one or more SROs contract with a third-party service provider to create and develop an R&R System? If so, how should decisions on an R&R System’s functionality, funding, and other items be made?

66. What are the advantages and disadvantages if the Commission were appropriated funds to cover costs with respect to an R&R System? Does the answer depend on which parties would have access to the system?

67. If an R&R System should be implemented separate from the CAT System, should the SROs and/or their members fund part or all of the costs associated with an R&R System? Should the Commission establish a funding model that allocates fees amongst the SROs and their members? Does the answer depend on how the R&R System is structured and/or governed? If the Commission should establish a funding model that allocates fees amongst the SROs and their members, what features should that model have? How should fees be allocated to and amongst SROs and/or their members?

68. Is it feasible to link CAT Data with customer and account information obtained from an R&R System in the manner that market participants have suggested—*i.e.*, using the CAT to identify relevant CCIDs and related FDIDs, populating an R&R System’s request form with those FDIDs, sending that request through an R&R System to the appropriate broker-dealers, and then associating any customer and account-level information received from those broker-dealers with CAT transactional data? Would it be beneficial to automate the process for receiving and responding to regulatory requests for customer and account information? For instance, is it possible to automate regulator queries to an R&R System and in what fashion? Is it possible for broker-dealers to automate their responses to an R&R System? What technology build would be required at the broker-dealer level? What technology build would be required for regulators at the Commission and/or the SROs? What issues does an automated response process create or solve?

¹⁹⁹ See CAIS Order, *supra* note 19, at 2169.

²⁰⁰ *Id.* at 3. See also, *e.g.*, FINRA Blog, *supra* note 220 (“[O]ver the years there have been concerns about the efficiency and design of Blue Sheets, and consideration could be given to creating a new request and response utility operated in conjunction with CAT to facilitate and streamline the information collection process for both regulators and the impacted broker-dealers.”).

²⁰¹ “CAT System” means “all data processing equipment, communications facilities, and other facilities, including equipment, utilized by the Company or any third parties acting on the Company’s behalf in connection with operation of the CAT and any related information or relevant systems pursuant to this Agreement.” See CAT NMS Plan, *supra* note 16, at Section 1.1.

²⁰² See Letter from Joseph Corcoran, Managing Director & Associate General Counsel, and Gerald O’Hara, Vice President and Assistant General Counsel, to Vanessa Countryman, Secretary, Commission (May 30, 2025), at 3 n.11, available at <https://www.sec.gov/comments/4-698/4698-608327-1776534.pdf> (“SIFMA Letter III”); see also, *e.g.*, SIFMA Letter II, *supra* note 70, at 5 (suggesting that an R&R System “rely on the systems and processes used by Industry Members to previously report PII to the CAIS database in CAT”).

²⁰³ See CAIS Order, *supra* note 19, at n.83.

²⁰⁴ See, *e.g.*, Letter from Robert Walley, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 10, 2026), at 8, available at <https://www.sec.gov/comments/4-698/4698-721247-2258814.pdf> (“FINRA is currently considering how such a request-response system might be developed and has stated during recent meetings with industry that their input would be welcomed.”).

69. What data should be accessible through an R&R System? Should an R&R System only cover the securities currently required to be reported to the CAT²⁰⁵ or should it also cover other types of securities currently accessible through EBS (e.g., fixed income)? Are there customer and account fields from the existing EBS template that should be accessible through an R&R System? Are there any fields from the existing CAIS template (or from a previous CAIS template) that should be accessible through an R&R System? Should SSNs, ITINs, and/or legal entity identifiers be accessible through an R&R System? Should names, addresses, dates of birth, and employer names be accessible through an R&R System? Should information about authorized traders be accessible through an R&R System? Should FDIDs be accessible through an R&R System? Should the large trader identification numbers assigned by the Commission pursuant to Rule 13h-1²⁰⁶ be accessible through an R&R System? Do the answers depend on the security measures put in place for an R&R System? Are there any data elements that are not currently included in an existing audit trail and/or data source that should be accessible through an R&R System? What data elements would be required to properly enable customer and account information accessible through an R&R System to be linked to transactional CAT Data?

70. How should data be requested and provided through an R&R System? Does the answer depend on whether an R&R System is part of the CAT System?

71. How should regulators at the Commission and the SROs be able to submit requests for data through an R&R System? For example, should an R&R System provide regulators with a web interface or an application programming interface? What are the advantages and disadvantages associated with either approach? What kinds of queries should regulators be able to submit through an R&R System?

72. How should requests for data be communicated to responding broker-dealers? How should broker-dealers be able to respond to requests received through an R&R System? For example, should an R&R System provide broker-dealers with a web interface or an application programming interface? What are the advantages and disadvantages associated with either approach? Should broker-dealers receive email alerts or other reminders regarding the existence of requests made via an R&R System? What format should

data accessible through an R&R System be provided in? Is there a specific template that should be used by broker-dealers? How long should broker-dealers be given to respond to a request received through an R&R System?²⁰⁷

73. What are the costs and benefits associated with implementing an R&R System? Please provide specific estimates of any cost savings or burdens that would flow from the implementation of an R&R System, explain whether those estimates are premised on full or partial retirement of the EBS system, and the extent to which the EBS system would have to be retired and/or modified to align with those estimates. To what extent would broker-dealers have to re-program their systems to report through an R&R System? How long would it take broker-dealers to re-program their systems? To what extent would regulators have to adjust their regulatory programs to use an R&R System instead of the EBS system? Are there use cases made possible by the EBS system that would not be possible through linking CAT Data with customer data retrieved from an R&R System? Please identify these use cases and explain why they would not be possible utilizing the R&R system approach suggested by market participants. What costs are associated with the development of new workflows to properly link CAT Data with customer data that may be reported to an R&R System? How long would it take regulators to make any necessary adjustments?

LTID

Rule 13h-1 currently sets forth certain record-keeping and reporting requirements for large traders. When it approved the CAT NMS Plan in 2016, the Commission stated that it believed the CAT would provide “the additional transaction data captured in connection with Rule 13h-1 concerning large traders,” which data can otherwise be requested by regulators via the EBS system.²⁰⁸ The transaction reporting aspects of Rule 13h-1 are not independent of EBS, as they were implemented through the addition of new fields in the EBS reporting template to capture the LTID number and the time of execution. Relatedly, Rule 13h-1 involves periodic monitoring of customer activity by broker-dealers to alert customers when trading in their

accounts may indicate large trader status.

74. Should the Commission amend Rule 13h-1 to eliminate and/or modify any of its transaction reporting and/or record-keeping requirements or the customer monitoring safe harbor? If so, please specifically identify the reporting, record-keeping, and/or monitoring requirements that should be eliminated and/or modified, explain why it is appropriate to eliminate and/or modify those requirements, explain whether the data provided by those requirements is otherwise contained in or ascertainable from the CAT, and describe any costs and/or benefits associated with the recommended amendments.²⁰⁹

75. Will CAT data be sufficiently accurate and reliable to prove an adequate substitute data source for Rule 13h-1 transaction data otherwise obtainable via EBS? What criteria should the Commission use to evaluate this question?

76. In the CAT NMS Plan Approval Order, the Commission stated that “Form 13H collects information to identify a large trader, its securities affiliates, and its operations, and does not collect audit trail data on effected transactions.”²¹⁰ The Commission therefore stated that the “self-identification and other Form 13H filing requirements of Rule 13h-1” would not be “duplicated by or redundant of CAT.”²¹¹ Nevertheless, to achieve cost savings in connection with Form 13H, should the identifying activity levels of Rule 13h-1 be increased to classify fewer persons as large traders? For example, should the current thresholds be increased from 2 million shares or \$20 million per day to 10 million shares or \$100 million per day; and from 20 million shares or \$200 million per month to 100 million shares or \$1 billion per month? If so, please explain by how much the current thresholds should be increased, explain how those higher thresholds would be more appropriate given recent market developments, and explain whether those higher thresholds would continue to appropriately identify persons whose trading activity in NMS securities merits classification as a large trader. Should

²⁰⁹ See FIF Letter II, *supra* note 143, at 6 (recommending that the Commission “engage in a cost-benefit analysis as to whether to retain, modify or retire large trader reporting in light of CAT and CAIS data now being available,” including a consideration of “any current reliance on EBS and whether and how the replacement of EBS would impact the Commission’s current use of large trader reporting data”).

²¹⁰ See CAT NMS Plan Approval Order, *supra* note 16, at 84778.

²¹¹ *Id.*

²⁰⁵ See note 32 *supra*.

²⁰⁶ See 17 CFR 240.13h-1.

²⁰⁷ With respect to EBS requests, firms submit requested information to the Commission and/or FINRA within 10 business days of the request. See, *infra*, note 231 and accompanying text.

²⁰⁸ See 17 CFR 240.13h-1.

additional exceptions be considered from large trader status, such as one-time or infrequent transactions? Are there other elements of Form 13H that could be eliminated and/or modified to achieve cost savings? If so, please specifically identify the elements that should be eliminated and/or modified, explain why it is appropriate to eliminate and/or modify those elements, explain whether the data provided by those elements is otherwise contained in the CAT or available via an alternative data source, and describe any costs and/or benefits associated with the recommended modifications to Form 13H. Is the information provided by the CAT or the alternative data source sufficiently accurate and reliable to prove an adequate substitute data source for the information provided on Form 13H? What criteria should the Commission use to evaluate this question?

77. Rule 13h–1 sets forth record-keeping and reporting requirements not only for large traders, but also for “Unidentified Large Traders”—*i.e.* a person who has not complied with the identification requirements for large traders, but who “a registered broker-dealer knows or has reason to know is a large trader.”²¹² Rule 13h–1 further specifies that a “registered broker-dealer shall be deemed not to know or have reason to know that a person is a large trader if it does not have actual knowledge that a person is a large trader and it establishes policies and procedures reasonably designed to: (1) [i]dentify persons who have not complied with the identification requirements [for large traders] but whose transactions effected through an account or a group of accounts carried by such broker-dealer or through which such broker-dealer executes transactions, as applicable (and considering account name, tax identification number, or other identifying information available on the books and records of such broker-dealer) equal or exceed the identifying activity level; (2) [t]reat any persons identified in [item 1] as an Unidentified Large Trader for purposes of this section; and (3) [i]nform any person identified in [item 1] of its potential obligation under this section.”²¹³ For the purposes of Rule 13h–1, “a registered broker-dealer need take into account only transactions in NMS securities effected by or through such broker-dealer.”²¹⁴ One commenter

has stated that the “approach for monitoring large trader reporting adopted by the Commission is ineffective because a broker-dealer would not know about a customer’s trading activity at other broker-dealers.”²¹⁵ This commenter believed that the Commission, using information already reported to the CAT, could “readily determine if any CCID has exceeded the applicable trading thresholds for large trader reporting and an LTID has not been reported for the FDIDs to which the CCID is associated.”²¹⁶ The commenter stated that the availability of such data through the CAT “obviates the need for broker-dealers to create identifiers for unidentified large traders and to report them to CAT.”²¹⁷ Should the Commission eliminate record-keeping, reporting, and/or monitoring requirements from Rule 13h–1 for Unidentified Large Traders? What costs do broker-dealers incur to monitor for and comply with Rule 13h–1 requirements for Unidentified Large Traders? Please provide specific data. Could the Commission surveil for Unidentified Large Traders by determining whether any CCID has exceeded the applicable trading thresholds for large trader reporting and whether an LTID has been reported for the FDIDs to which that CCID is associated now that LTIDs have been removed from the CAT by the amendments approved in the 2026 Cost Savings Order?²¹⁸ Is there an alternative method of finding Unidentified Large Traders using CAT Data?

G. Civil Liberties and Privacy Considerations

Market participants have questioned whether the scope of the CAT’s collection of market data raises privacy and civil liberties concerns.²¹⁹ For example, one commenter asserts that the CAT’s previous collection of PII violates Americans’ Fourth Amendment right to privacy.²²⁰ The Commission is committed to ensuring that the CAT and other audit trails and related data sources used by regulators comply with

all relevant constitutional and statutory limits and takes seriously concerns related to the appropriateness of government surveillance.

78. Does the CAT’s collection and/or transmission of transactional information without associated customer and account-level information raise confidentiality, privacy, and/or civil liberties concerns? If so, what are they, and how should those concerns be addressed?

79. Does enabling the transmission of customer and account-level information to regulators through the EBS System or an R&R System raise confidentiality, privacy, and/or civil liberties concerns? If so, what are those concerns, and how should they be addressed? Does the answer depend on the type of interface that enables the transmission of this data—for instance, whether a request for specific information from a regulator is required before such data is requested, transmitted, and/or collected? Does the answer depend on the scope of the data requested, transmitted, and/or collected? Does the answer depend on the purpose for which the data is requested, transmitted, and/or collected? Does the answer depend on the extent of automation involved in requesting, transmitting and/or collecting the data?

80. To the extent that imposing additional limits on the collection and/or transmission of market data to address potential confidentiality, privacy, and/or civil liberties concerns creates trade-offs with costs, efficiency, and data security, such as any additional burdens that would be imposed if data was provided by broker-dealers upon request rather than through the CAT or another audit trail or data source, how should the Commission weigh those trade-offs?

81. What other confidentiality, privacy, and/or civil liberties considerations should be taken into account?

H. Cybersecurity

The CAT NMS Plan sets forth robust requirements designed to protect the data reported to and retained in the Central Repository.²²¹ In light of the

²¹² See 17 240.13h–1(a)(9); *see also id.* at (d)–(e) for the record-keeping and reporting requirements of Rule 13h–1.

²¹³ *Id.* at (f).

²¹⁴ *Id.* at (a)(9).

²¹⁵ See FIF Letter II, *supra* note 143, at 3.

²¹⁶ *Id.* at 5.

²¹⁷ *Id.*

²¹⁸ See, e.g., 2026 Cost Savings Order, *supra* note 98, at 16302; *see also*, e.g., FIF Letter II, *supra* note 143, at 4–5.

²¹⁹ See, e.g., Letter from Christopher A. Iacovella, President & Chief Executive Officer, American Securities Association, to Vanessa Countryman, Secretary, Commission (Oct. 31, 2025), at 2, available at <https://www.sec.gov/comments/4-698/4698-672447-2037474.pdf>.

²²⁰ *Id.* at 2; *see also* note 29 *supra*. The CAIS Order removed requirements that the CAT collect PII from the CAT NMS Plan. *See* note 19 *supra*,

²²¹ See, e.g., Securities Exchange Act Release No. 89632 (Aug. 21, 2020), 85 FR 65990, 65991 (Oct. 16, 2020) (“CAT Data reported to and retained in the Central Repository is thus subject to what the Commission believes are stringent security policies, procedures, standards, and controls.”); *see also* Robert Cook, President and CEO, FINRA, “CAT Should Be Modified to Cease Collecting Personal Information on Retail Investors” (Jan. 17, 2025), available at <https://www.finra.org/media-center/blog/cat-should-be-modified-to-cease-collecting-personal-information-on-retail-investors> (“FINRA Blog”) (“CAT has extensive controls in place to

constantly shifting cybersecurity and threat management landscape, the Commission seeks comment on the security requirements governing the CAT.

The CAT

82. Are there enhancements that should be made to the security requirements set forth in the CAT NMS Plan? Are there technological changes that could be made to the Central Repository to enhance its protection? If so, please identify these enhancements, explain how such enhancements would improve the security of the CAT and/or CAT Data, and identify the costs associated with implementing such enhancements.

83. Are there enhancements that could be made to the measures that protect the CCID Subsystem and/or to the process for generating CCIDs²²² that would further strengthen the protection of the information used by the Plan Processor to generate CCIDs? If so, please identify these enhancements, explain how such enhancements would improve the privacy, confidentiality, and security of the CAT and/or CAT Data, and identify the costs associated with implementing such enhancements.

84. The CAT NMS Plan already sets forth a non-exclusive list of industry standards for information security with which the CAT is required to comply, including standards promulgated by the U.S. National Institute of Standards and Technology (“NIST”) regarding security and privacy controls for information systems and organizations²²³ and providing a cybersecurity framework.²²⁴ Are there additional security, privacy, or confidentiality controls that should be implemented to secure the CAT? Are there additional industry standards for information security with which the CAT should be required to comply—for example, NIST standards for zero trust

architecture?²²⁵ What are the benefits and costs associated with the implementation of or compliance with such additional security, privacy, or confidentiality controls and/or industry standards for information security?

85. The CAT NMS Plan already requires the Chief Information Security Officer²²⁶ to “review the information security policies and procedures of the Participants that are related to the CAT to ensure that such policies and procedures are comparable to the information security policies and procedures applicable to the Central Repository.”²²⁷ Instead of “comparable” policies and procedures, should uniform security policies and/or procedures be imposed on all parties that may access and/or use the CAT? Does some measure of variance in security policies and/or procedures provide more protection to the underlying data? What are the costs and/or benefits associated with providing flexibility with respect to the application of specified security requirements? Should the CAT NMS Plan impose any additional requirements to control how CAT Data is retained, stored, and/or tracked once it is downloaded from the CAT? For how long should data be stored? Does the answer depend on how and/or what kind of data is stored? Does the answer depend on the potential use of artificial intelligence to analyze CAT Data? Should the SROs be required to implement zero trust architecture for

CAT Data? Does the answer depend on how this approach would impact regulatory use? Does the answer depend on the costs associated with this approach?

86. The CAT NMS Plan currently sets forth robust access control requirements for the CAT and for CAT Data. It requires both the SROs and the Plan Processor to implement various safeguards to secure access and use of the CAT, including: (1) role-based access controls; (2) authentication of individual users; (3) multi-factor authentication and password controls; (4) implementation of information barriers to prevent unauthorized staff from accessing CAT Data; (5) data encryption and use of secure connectivity methods; (6) security-driven monitoring and logging; (7) escalation procedures for non-compliance and/or security events; and (8) remote access controls.²²⁸

a. Should additional access control measures be implemented for the CAT? What kinds of controls should be put in place to manage and review access entitlements and regulatory use? Please identify any additional access control measures that should be implemented, explain how such measures would enhance the security of the CAT and/or CAT Data, and identify any costs associated with implementing such measures.

b. Should the existing logging requirements of the CAT NMS Plan be enhanced? For example, are there artificial intelligence or algorithmic technology solutions that could assist either the Plan Processor and/or regulators to detect misuse of CAT Data? If so, please identify such technology solutions, explain how they would help the Plan Processor and/or regulators to detect misuse of CAT Data, and describe any costs or challenges associated with their implementation.

c. What types of audit procedures should be put in place to assess whether CAT Data has been used appropriately by regulatory users?

d. What types of access control measures are necessary to prevent a bad actor at the Commission or the SROs from using the CAT to target an individual(s) for monitoring based on personal, competitive, or political animus?

87. Rule 613 and the CAT NMS Plan prohibit the use of CAT Data for commercial purposes, as well as the use of CAT Data by parties that are not regulators and in non-regulatory contexts—for example, by private

address data security concerns that are continually being evaluated and enhanced.”).

²²² See, e.g., FIF Letter I, *supra* note 28, at 9–10 (raising potential security and privacy concerns regarding the retention of certain information used to generate CCIDs); see also CAIS Order, *supra* note 19, at 2167–69 (approving proposed amendments that codify the current approach to generating CCIDs, but stating that the Commission is engaged in a comprehensive review of the CAT and expected to engage with the CCID creation process as part of that review).

²²³ U.S. NIST, Special Publication 800–53, Rev. 5, Security and Privacy Controls for Information Systems and Organizations (Sept. 2020), available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r5.pdf> (“NIST SP 800–53”).

²²⁴ U.S. NIST, The NIST Cybersecurity Framework (CSF) 2.0 (Feb. 26, 2024), available at <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.29.pdf>.

²²⁵ U.S. NIST, Special Publication 800–207, Zero Trust Architecture (Aug. 2020), available at <https://nvlpubs.nist.gov/nistpubs/specialpublications/NIST.SP.800-207.pdf>. According to NIST, “[z]ero trust security models assume that an attacker is present in the environment and that an enterprise-owned environment is no different—or no more trustworthy—than any nonenterprise-owned environment. In this new paradigm, an enterprise must assume no implicit trust and continually analyze and evaluate the risks to its assets and business functions and then enact provisions to mitigate these risks. In zero trust, these protections usually involve minimizing access to resources (such as data and compute resources and applications/services) to only those subjects and assets identified as needing access as well as continually authenticating and authorizing the identity and security posture of each access request.”). *Id.* at 1.

²²⁶ “Chief Information Security Officer” means “the individual then serving (even on a temporary basis) as the Chief Information Security Officer pursuant to Section 4.6, Section 6.1(b), and Section 6.2(b).” See CAT NMS Plan, *supra* note 16, at Section 1.1.

²²⁷ *Id.* at Section 6.2(b)(vii) (“If the Chief Information Security Officer, in consultation with the Chief Compliance Officer, finds that any such policies and procedures are not comparable to the policies and procedures applicable to the CAT System, and the issue is not promptly addressed by the applicable Participant, the Chief Information Security Officer, in consultation with the Chief Compliance Officer, will be required to notify the Operating Committee of such deficiencies.”).

²²⁸ See, e.g., *id.* at Section 6.5(c)(i), Section 6.5(f), and Appendix D, Sections 4.1, 8.1, 8.2.2

litigants.²²⁹ Should the Commission further reinforce or enhance these restrictions on how CAT Data can be used?

88. In addition to the existing requirement that CAT Data only be used for regulatory purposes,²³⁰ what security measures or controls would further strengthen protections that prevent regulatory users at the Commission and/or the SROs from using the CAT for inappropriate or illegal purposes, such as targeting an individual for monitoring based on personal, competitive, or political animus? For example, should the Commission further restrict the way that regulatory users can use the CAT to support regulatory activities? If so, how? What standards should be satisfied before a regulatory user can access and/or use CAT Data? Does the answer depend on whether the regulatory user is Commission staff or SRO staff? Does the growing use of artificial intelligence affect this analysis? If so, how?

89. Should information about the policies, procedures, and/or controls that govern the regulatory use of the CAT be made public? For example, should the Commission and/or the SROs publish information regarding the internal controls and/or safeguards that govern access to or use of CAT Data, information about how the Commission,

the SROs and/or FINRA CAT monitor the storage and/or usage of CAT Data, information about the number of regulatory users at the Commission and/or the SROs and/or the regulatory purposes for which they are using CAT Data? Would disclosure of such information pose security or confidentiality concerns?

90. Under what circumstances, if any, should the Commission make CAT Data available to interested market participants in the rulemaking context? What conditions and/or controls should apply? At what level of data aggregation should the data be made available? What are the costs and benefits associated with releasing such data? Does the answer depend on the type of data relied upon? Does the answer depend on the costs of making such data available?

EBS

The Commission and/or FINRA typically make EBS requests via a regulatory portal maintained by FINRA. Firms then submit requested information to the Commission and/or FINRA via one of the file sharing options provided by FINRA²³¹ within 10 business days of the request.²³² NYSE maintains its own separate system that provides it with similar functionality. Some market participants have expressed concern about the security of PII made available through the EBS system. One commenter stated, for example, that the “response to a single EBS request could contain tens or hundreds of thousands of plaintext SSNs,” that “the transmission of SSNs and account numbers in plaintext risks the unauthorized disclosure of personal data,” and that they “are not aware of any EBS controls to require the encrypted storage of SSNs and other

PII.”²³³ This commenter also stated that “the EBS system provides for the reporting of SSNs and other PII in association to specific transactions,” unlike the CAT.²³⁴

91. Should information about the policies, procedures, and/or controls that govern the regulatory use of the EBS system be made public? For example, should the Commission and/or the SROs publish information regarding the internal controls and/or safeguards that govern access to or use of the EBS system, information about how the Commission and/or the SROs monitor the storage and/or usage of data accessed through the EBS system, information about the number of regulatory users at the Commission and/or the SROs and/or the regulatory purposes for which they are using data accessed through the EBS system? Would disclosure of such information pose security, privacy, or confidentiality concerns?

92. What confidentiality, privacy, and security measures or controls would further strengthen protections that prevent regulatory users at the Commission and/or the SROs from using the EBS system for inappropriate or illegal purposes, such as targeting an individual for monitoring based on personal, competitive, or political animus? For example, should the Commission further restrict the way that regulatory users can use the EBS system to support regulatory activities? If so, how? What standards should be satisfied before a regulatory user can access and/or use data using the EBS system? Does the answer depend on whether the regulatory user is Commission staff or SRO staff? Does the answer depend on whether the regulatory user is accessing transactional data or customer and account-level information?

93. What security, privacy, and confidentiality controls protect data transmitted and/or stored through the EBS system? What encryption protections secure EBS data that is transmitted and/or stored? Are there additional security measures that should be implemented to protect data transmitted and/or stored by FINRA’s and/or NYSE’s EBS systems? For example, are there more secure methods of transmitting and/or storing data than those currently employed by regulators to request and receive EBS data? If so, please identify any such methods,

²²⁹ See, e.g., 17 CFR 242.613(e)(4)(i)(A) (requiring the CAT NMS Plan to include policies and procedures that require the SROs and the Plan Processor to “agree not to use such data for any purpose other than surveillance and regulatory purposes, provided that nothing in this paragraph (e)(4)(i)(A) shall be construed to prevent a plan sponsor from using the data that it reports to the central repository for regulatory, surveillance, commercial, or other purposes as otherwise permitted by applicable law, rule, or regulation”). See also, e.g., CAT NMS Plan, *supra* note 16, Section 6.5(c)(i) (“[T]he Plan Processor shall provide Participants and the SEC access to the Central Repository (including all systems operated by the Central Repository), and access to and use of CAT Data stored in the Central Repository, solely for the purpose of performing their respective regulatory and oversight responsibilities pursuant to the federal securities laws, rules and regulations or any contractual obligations.”); *id.* at Section 6.5(f) (“[T]he Plan Processor shall . . . require all individuals who have access to the Central Repository . . . to agree . . . not to use CAT Data stored in the Central Repository for purposes other than surveillance and regulation in accordance with such individual’s employment duties; provided that a Participant will be permitted to use the Raw Data it reports to the Central Repository for regulatory, surveillance, commercial or other purposes as permitted by applicable law, rules, or regulation”); *id.* at Appendix D, Section 8.1 (“The Plan Processor must provide Participants’ regulatory staff and the SEC with access to all CAT Data for regulatory purposes only. Participants’ regulatory staff and the SEC will access CAT Data to perform functions, including economic analyses, market structure analyses, market surveillance, investigations, and examinations.”).

²³⁰ See, e.g., *id.*

²³¹ Firms may transmit the requested information to the Securities Industry Automation Corporation (“SIAC”), which will then route the information to the Commission or to an SRO as applicable; alternatively, firms may transmit the requested information using Request Manager, an information exchange application made available via a regulatory portal maintained by FINRA, or FINRA fileX, a secure file sharing solution maintained by FINRA. See, e.g., <https://www.finra.org/filing-reporting/electronic-blue-sheets-ebs#overview>.

²³² See EBS Adopting Release, *supra* note 5, at 35836 (“Firms are requested to submit, within ten business days, information concerning transactions by all proprietary and customer accounts that bought or sold a security during a specified review period.”); FINRA Regulatory Notice 05–58, “Intermarket Surveillance Group Requires Validation of Electronic Blue Sheets Submissions” (Sept. 7, 2025), available at <https://www.finra.org/rules-guidance/notices/05-58> (“In general, blue sheet submissions are to be received by a requesting organization within ten (10) business days following the date of the request for such information.”).

²³³ See FIF Letter I, *supra* note 24, at 4; see also SIFMA Letter III, *supra* note 201, at 4 (stating that SIFMA members believe EBS “has long-standing security concerns, such as unmasked SSNs and other PII, that have not been addressed”).

²³⁴ See FIF Letter I, *supra* note 24, at 4

explain why they would be more appropriate, and describe any costs associated with implementing and/or maintaining such methods of transmission, including any costs associated with burdens on regulatory use.

94. Should the Commission require the creation and/or implementation of specific data retention policies that would shorten the amount of time that EBS data may be retained and/or control the way that such data may be stored by the SROs? What are the costs and benefits associated with such an approach? How would shortened data retention policies interact with federal rules and regulations governing record retention? Would shortening data retention policies potentially lead to duplicative requests? Are there policies and procedures regarding the storage and/or retention of data that could potentially decrease the number of duplicative requests made via the EBS system?

R&R System

95. If an R&R System is implemented, what security standards or controls should govern it? For instance, should an R&R System be required to comply with any particular industry standards or controls for information security, like standards promulgated by NIST regarding security and privacy controls for information systems and organizations, providing a cybersecurity framework, or implementing zero trust architecture?²³⁵ Does the answer depend on the parties that have access to the system? Does the answer depend on the functionality provided by the system—for example, the extent to which requests and responses are automated?

96. FIF has suggested that FINRA could “provide a secure method” for broker-dealers to respond to requests made by regulators through an R&R System.²³⁶ What would constitute a secure method for broker-dealers to respond to requests? What would constitute a secure method for regulators to make requests? Please specifically identify secure methods that could be used to request and provide data, explain why those methods are appropriate, and identify any costs or benefits associated with those methods.

97. Should requests and/or responses made via an R&R System be encrypted? Does the answer depend on the data that is required to be reported via an R&R System? If data should be encrypted, please identify appropriate encryption

protocols and explain why they should be applied to data provided through an R&R System. What are the costs and benefits that would be associated with such a measure? To what extent would broker-dealers have to re-program their systems to encrypt this data? To what extent would regulators have to adjust their regulatory programs if the information sent through an R&R System was encrypted?

98. What access and use controls or measures should be implemented for an R&R System?²³⁷ Do the answers depend on how particular security measures or controls would impact regulatory use? Do the answers depend on the costs associated with particular security measures or controls? Do the answers depend on the type of data or the volume of data being accessed or used? For example, should customer and account information be protected with different security measures or controls than those applied to transactional data? Should security policies and/or procedures be uniform across all SROs that access and/or use an R&R System? Does some measure of variance in security policies and/or procedures provide more protection to the underlying data?

99. What security measures or controls would prevent regulatory users at the Commission and/or the SROs from using an R&R System for inappropriate or illegal purposes, such as targeting an individual for monitoring based on personal, competitive, or political animus? For example, should the Commission restrict the way that regulatory users can use an R&R System to support regulatory activities? If so, how? What policies, procedures, or controls should govern the regulatory use of an R&R System and should information about those policies, procedures, or controls be made public? What standards should be satisfied before a regulatory user can access and/or use data using an R&R System? Does the answer depend on whether the regulatory user is Commission staff or SRO staff?

100. How long should the SROs be able to retain data obtained from an R&R System?²³⁸ Does the answer depend on the type or volume of data obtained? Does the answer depend on how the

data is downloaded, accessed, analyzed, tracked, logged, and/or stored? Does the answer depend on data privacy or confidentiality considerations? For example, should customer and account information be stored separately from and for different periods of time than transactional data? Does the answer depend on the particular regulatory use case for the data? Does the answer depend on federal rules and regulations governing record retention and statute of limitations periods applicable to enforcement actions? Should data retention policies and/or procedures be uniform across all SROs that may access and/or use an R&R System? Does some measure of variance in security policies and/or procedures provide more protection to the underlying data? Could shorter data retention periods and/or more restrictive use policies increase the likelihood of duplicative and/or repetitive requests being made to broker-dealers?

101. What breach management procedures should be required for an R&R System? Which parties, if any, should the owners and/or operators of an R&R System be required to notify in the event of a breach? What kinds of events should constitute a breach?

LOPR

FINRA Rule 2360 requires FINRA member firms to report large options positions to the LOPR, which FINRA uses to surveil for potentially manipulative behavior, including attempts to corner the market in the underlying equity, leverage an option position to affect the price, or move the underlying equity to change the value of a large option position.²³⁹

102. FIF has expressed concern about the “plaintext reporting of SSNs and other PII” in OCC’s LOPR data, urging the Commission to direct the removal of PII from this data set.²⁴⁰ What are the costs and benefits associated with such an approach? Would removal of customer and account level data from LOPR make its regulatory use less efficient? For example, would regulators have to obtain the required information through an alternative (and potentially manual) method that could involve requesting information from a larger number of broker-dealers? Would this raise costs for broker-dealers? If so, please identify and quantify the burdens associated with this alternative approach. Are there alternative methods for enhancing the security of LOPR

²³⁷ See, e.g., FIF Letter I, *supra* note 24, at 8 (suggesting that an R&R System should implement policies that address . . . [c]ategories of personnel that can access the data in the system and for what purpose[s], access controls[, s]urveillance and audit”).

²³⁸ See, e.g., *id.* (suggesting that data requested through an R&R System should be deleted “upon the termination of the applicable investigation” and that there should be “oversight processes to monitor for compliance”).

²³⁹ See Securities Exchange Act Release No. 98738 (Oct. 13, 2023), 88 FR 75100, 75108 n.78 (Nov. 1, 2023).

²⁴⁰ See, e.g., FIF Letter I, *supra* note 24, at 8.

²³⁵ See notes 222–224 *supra*.

²³⁶ See FIF Letter I, *supra* note 24, at 7.

data? If so, please identify any such measures and explain why it would be appropriate to implement such measures.

Other Audit Trails and/or Related Data Sources

103. If not eliminated, modified, and/or replaced, do any other audit trails and/or related data sources raise cybersecurity, privacy, and/or civil liberties concerns? If so, how should the Commission address these concerns?

I. Transparency and Process of Comprehensive Review

The Commission seeks input from commenters as to whether, in addition to seeking comment through this release, there are other meaningful ways for it to gather information and/or for market participants to provide feedback regarding the CAT and other existing audit trails and/or related data sources.

104. Are there any other methods of gathering information from market participants regarding any potential changes that should be made to the functionality of existing audit trails and/or related data sources? For example, should the Commission issue industry surveys to broker-dealers and SROs? If so, please describe what the content of these surveys should be and to which parties such surveys should be distributed. Should the Commission hold a roundtable conference and/or establish a working group? Please identify any measures the Commission should take to gather information and explain why such measures are appropriate.

105. Several market participants have suggested that the Commission should “require the CAT Operating Committee to engage an independent technology firm to review the operations and technological design of CAT to identify further opportunities to optimize CAT and reduce costs.”²⁴¹ Should the Commission require an independent audit of the CAT’s technological design? If so, please describe what the scope of such an audit should be,²⁴² explain why

that scope would be appropriate, and describe any criteria that should be used to select the party conducting the independent audit. Does the answer depend on the costs of such an independent audit? Does an independent audit pose any security risks? Should an independent audit be conducted for any other existing audit trail and/or data source? Should the results of the independent audit be made public? Would making such information public compromise the security of the CAT?

IV. General Request for Comment

We request and encourage any interested person to submit comments on any aspect of this concept release, other matters that might have an impact on the topics discussed in this concept release, and any suggestions for additional changes or improvements to existing audit trails and related data sources. Please be as specific as possible in your discussion and analysis of any additional issues. We particularly welcome comments on any costs, burdens, or benefits that may result from possible regulatory responses related to the items identified in this release or otherwise proposed by commenters.

V. Other Matters

This concept release and request for comment is a significant regulatory action under section 3(f)(1) of Executive

plan that includes a review of all Plan Processor policies, procedures, control structures, and tools that monitor and address data security. *See, e.g.,* CAT NMS Plan, *supra* note 16, at Section 6.2(a)(v)(C) (“The Chief Compliance Officer shall . . . in collaboration with the Chief Information Security Officer, and consistent with Appendix D, Data Security, and any other applicable requirements related to data security and Reference Data, identify and assist the Company in retaining an appropriately qualified independent auditor (based on specialized technical expertise, which may be the Independent Auditor or subject to the approval of the Operating [Committee] by Supermajority Vote, another appropriately qualified independent auditor), and in collaboration with such independent auditor, create and implement an annual audit plan (subject to the approval of the Operating Committee), which shall at a minimum include a review of all Plan Processor policies, procedures and control structures, and real time tools that monitor and address data security issues for the Plan Processor and the Central Repository.”); *see id.* at Section 1.1 (defining “Chief Compliance Officer” as “the individual then serving (even on a temporary basis) as the Chief Compliance Officer pursuant to Section 4.6, Section 6.1(b), and Section 6.2(a)”). *See also, e.g., id.* at Appendix D, Section 4.1.3 (“The Plan Processor must include penetration testing and an application security code audit by a reputable (and named) third party prior to launch as well as periodically as defined in the SLA(s).”); *id.* at Appendix D, Section 5.3 (“The Plan Processor must conduct third party risk assessments at regular intervals to verify the security controls implemented are in accordance with NIST SP 800–53.”).

Order 12866, as amended, and has been reviewed by the Office of Management and Budget.

VI. Conclusion

The Commission is interested in the public’s views regarding the matters discussed in this concept release. The existing audit trails and/or data sources discussed above serve a critical role in protecting our markets, but it is important to assess whether these audit trails and data sources respond to and reflect current market conditions, demonstrated regulatory needs, civil liberty, privacy, and confidentiality concerns, cost-efficient technology solutions, and cybersecurity considerations. The Commission therefore encourages all interested parties to submit comments on the topics being considered in this concept release. If possible, please reference the specific question numbers or sections of this release when submitting comments.

By the Commission.

Dated: April 16, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–07651 Filed 4–17–26; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–108706–25]

RIN 1545–BS11

Enrolled Agent Special Enrollment Examination User Fee Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the Department of the Treasury (Treasury Department) and the IRS are issuing interim final regulations that amend the current regulations to reduce the user fee for each part of the special enrollment examinations for enrolled agents (EA SEE) from \$99 per part to \$66 per part.

DATES: Electronic or written comments and requests for a public hearing must be received by May 20, 2026.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and

²⁴¹ See PTG Letter I, *supra* note 28, at 4. *See also* SIFMA Letter I, *supra* note 28, at 6 (“[T]he SEC should require the SROs to engage an independent external technology firm at their expense (subject to appropriate security measures to protect CAT data and processes), with input from industry-member experts, to complete a holistic review of the current operations of CAT—including its regulatory uses by the SEC and SROs—to identify ways to further optimize and improve CAT and reduce its costs.”); Citadel Letter I, *supra* note 24, at 13 (“Engage a third-party technology firm to perform an independent review of the technological design of CAT to identify opportunities to optimize and reduce costs.”).

²⁴² The CAT NMS Plan already requires the Plan Processor to create and implement an annual audit

REG–108706–25) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Treasury Department and the IRS will publish for public availability any comments submitted to the IRS’s public docket. Send paper submissions to: CC:PA:01:PR (REG–108706–25), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sean Dix at (202) 317–6845; concerning cost methodology, CFO Cost and User Fees at (202) 317–6400; concerning submissions of comments or requests for a public hearing, the Publications and Regulations Section at (202) 317–6901 (not toll-free numbers) or by email at publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Interim final regulations in the Rules and Regulations section of this issue of the **Federal Register** amend regulations under 26 CFR part 300 setting a user fee for the special enrollment examinations for enrolled agents. The Independent Offices Appropriation Act of 1952 (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish user fees for services provided by the agency. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are set forth in the Office of Management and Budget Circular A–25, 58 FR 38142 (July 15, 1993).

The text of the interim final regulations also serves as the text of these proposed regulations. The preamble to the interim final regulations explains the interim final regulations and these proposed regulations.

Special Analyses

I. Regulatory Planning and Review

These proposed regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby

certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The EA SEE user fee primarily affects individuals who take the EA SEE. Only individuals, not businesses, can be enrolled agents. Thus, the economic impact of these regulations on any small entity would be a result of an individual enrolled agent owning a small entity or a small entity employing an enrolled agent who must take the EA SEE. The Treasury Department and the IRS estimate that an average of 28,898 EA SEE examination parts will be taken by individuals annually. Therefore, a substantial number of small entities is not likely to be affected. Additionally, the economic impact on those entities is not significant. These regulations will establish a \$66 fee per examination part (plus \$251 payable directly to the third-party contractor) and will not have a significant economic impact on a small entity. Accordingly, the rule is not expected to have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These interim final regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. Submission to Small Business Administration

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at <https://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Sean Dix, Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 300

Estate taxes, Excise taxes, Fees, Gift taxes, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 300 as follows:

PART 300—USER FEES

Paragraph 1. The authority citation for part 300 continues to read in part as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.4 is amended by revising paragraphs (b) and (d) to read as follows:

§ 300.4 Enrolled agent special enrollment examination fee.

* * * * *

(b) [The text of proposed § 300.4(b) is the same as the text of § 300.4(b) in the

interim final rule published elsewhere in this issue of the **Federal Register**].

* * * * *

(d) [The text of proposed § 300.4(d) is the same as the text of § 300.4(d) in the interim final rule published elsewhere in this issue of the **Federal Register**].

Frank J. Bisignano,
Chief Executive Officer.
[FR Doc. 2026–07682 Filed 4–17–26; 8:45 am]
BILLING CODE 4831–GV–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 25–190, 24–85; Report No. 3233; FR ID 341007]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: Petition for Reconsideration (Petition) has been filed in the Commission’s proceedings by David S. Keir on behalf of Kinéis.

DATES: Oppositions to the Petition must be filed on or before May 5, 2026. Replies to oppositions to the Petition must be filed on or before May 15, 2026.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Stephen Duall, Deputy Bureau Chief, Space Bureau, (202) 418–1103, stephen.duall@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s document, Report No. 3233, released April 9, 2026. The full text of the Petition can be accessed online via the Commission’s Electronic Comment Filing System at: <http://apps.fcc.gov/ecfs/>. The Commission will not send a

Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: Review of the Commission’s Assessment and Collection of Regulatory Fees for Fiscal Year 2025 (MD Docket No. 25–190); Assessment and Collection of Space and Earth Station Regulatory Fees for Fiscal Year 2024 (MD Docket No. 24–85).

Number of Petitions Filed: 1.

Authority: 47 CFR 1.429(e).

Federal Communications Commission.

Marlene Dortch,
Secretary, Office of the Secretary.
[FR Doc. 2026–07609 Filed 4–17–26; 8:45 am]
BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 91, No. 75

Monday, April 20, 2026

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 requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 20, 2026 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program Education and Obesity Prevention Grant (SNAP-Ed) State Plan and Report System.

OMB Control Number: 0584–0683.

Summary of Collection: This information collection updates existing reporting and recordkeeping requirements under the Supplemental Nutrition Assistance Program Education and Obesity Prevention Grant Program (SNAP-Ed), a program established by Public Law 85–525, Section 28 of the Food and Nutrition Act of 2008, as amended (7 U.S.C. 2036a.) and administered by the U.S. Department of Agriculture's (USDA's) Food and Nutrition Service (FNS).

Section 28(c)(2) of the Food and Nutrition Act of 2008, as amended (the Act), requires States seeking SNAP-Ed funds to submit a Nutrition Education Plan (SNAP-Ed State Plan) to USDA for approval by August 15 of each year, pursuant to 7 CFR 272.2(d)(2). Section 28(c)(8) of the Act requires States receiving SNAP-Ed grant funds to submit to USDA an annual report (SNAP-Ed Annual Report) to USDA by January 31 of each year, pursuant to 7 CFR 272.2(d)(2).

Section 28(c)(2)(B)(iii) of the Act requires States to use an electronic reporting system to measure and evaluate projects and account for the allowable State agency administrative costs. Section 28(c)(7) of the Act requires the Agency to provide technical assistance to State agencies in creating or maintaining systems to compile program data. In response to these mandates, FNS improved the SNAP-Ed data reporting process by launching an electronic State Plan and Annual Report System in fiscal year 2023. The system collects consistent data across States, facilitating data aggregation and evaluation of SNAP-Ed grants.

Need and Use of the Information: On July 4, 2025, President Donald J. Trump signed Public Law 119–21, the One Big Beautiful Bill Act of 2025 (OBBA). Section 10107 of OBBA amends Section 28(d)(1)(F) of the Food and Nutrition Act, as amended, by ending required funding of SNAP-Ed with the fiscal year (FY) 2025 grant allocation. As a result, this information collection is being renewed for States to submit their final SNAP-Ed annual reports prior to program closeout.

SNAP State agencies—with support from their contracted implementing agency partners, which include other State, Local, and Tribal Government agencies and Not-for-Profit Institutions (Business Level)—submit a SNAP-Ed State Plan (FNS–925B) and a SNAP-Ed Annual Report (FNS–925A) through N–PEARS. FNS reviews the Plans for allowability, compliance, appropriateness, and incorporation of evidence-based strategies. The review process may result in changes to the plan prior to approval of funding. Following the completion of the plan year, FNS reviews annual reports for program evaluation, compliance, and opportunities for technical assistance to program implementers.

In addition, FNS uses data from the Plans and Reports to analyze program efficacy, strengthen program oversight, and inform the provision of technical assistance to States, as required by Section 28(c)(2)(B)(iii) of the Act. FNS also recently conducted an assessment of the data submitted through N–PEARS to ensure quality and reliability, and to identify opportunities to improve the information collection instruments.

Description of Respondents: State, Local, or Tribal Government, and Not-For-Profit Businesses.

Number of Respondents: 197.

Frequency of Responses: Reporting: Annual.

Total Burden Hours: 186,455.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2026–07649 Filed 4–17–26; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2026–0432]

Notice of Request for Extension of Approval of an Information Collection; Special Need Requests Under the Plant Protection Act

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this

notice announces the intention of the Animal and Plant Health Inspection Service (APHIS) to request an extension of approval of an information collection associated with the regulations to allow States to impose prohibitions or restrictions on specific articles in addition to those required by APHIS to help protect against the introduction and establishment of plant pests.

DATES: We will consider all comments that we receive on or before June 22, 2026.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov. Enter APHIS–2026–0432 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2026–0432, Regulatory Analysis and Development, PPD, APHIS, 5601 Sunnyside Avenue, Beltsville, Maryland 20705.

Supporting documents and any comments we receive on this docket may be viewed at regulations.gov or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on special need requests under the Plant Protection Act, contact Mr. Matthew Travis, Director, Biocontrol, and Forest, Wood and Rangeland Pests and Emergency Domestic Programs, PPQ, APHIS, 5601 Sunnyside Avenue, Beltsville, Maryland 20705; (240) 240–5394. For more information on the information collection reporting process, contact Ms. Sheniqua Harris, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2528 or email APHIS.PRA@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Special Need Requests Under the Plant Protection Act.

OMB Control Number: 0579–0291.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the

United States or their dissemination within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, which administers regulations to implement the PPA. Regulations governing the interstate movement of plants, plant products, and other articles are contained in 7 CFR part 301, “Domestic Quarantine Notices.” The regulations in “Subpart A-Preemption and Special Need Requests” allow States or political subdivisions of States to request approval from APHIS to impose prohibitions or restrictions on the movement in interstate commerce of specific articles that pose a plant health risk that are in addition to the prohibitions and restrictions imposed by APHIS. This process requires information collection activities, including a pest data detection survey with a pest risk analysis showing that a pest is not present in a State, or if already present, the current distribution in the State, and that the pest would harm or injure the environment and/or agricultural resources of the State or political subdivision.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 160 hours per response.

Respondents: State governments.

Estimated annual number of respondents: 1.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 1.

Estimated total annual burden on respondents: 160 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 15th day of April 2026.

Kelly Moore,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2026–07661 Filed 4–17–26; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–214–2026]

Foreign-Trade Zone 200; Application for Subzone; Shiseido America, Inc.; Cranbury and East Windsor, New Jersey

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the County of Mercer, grantee of FTZ 200, requesting subzone status for the facilities of Shiseido America, Inc., located in Cranbury and East Windsor, New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on April 15, 2026.

The proposed subzone would consist of the following sites: *Site 1* (28.0 acres) 366 Princeton Hightstown Road, East Windsor, and *Site 2* (1.06 acre) 5 Broadway Road, Cranbury. No authorization for production activity has been requested at this time. A notification of proposed production activity has been submitted and will be published separately for public comment. The proposed subzone would be subject to the existing activation limit of FTZ 200.

In accordance with the FTZ Board's regulations, Juanita Chen of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is June

1, 2026. Rebuttal comments in response to material submitted during the foregoing period may be submitted through June 15, 2026.

A copy of the application will be available for public inspection in the "Online FTZ Information Section" section of the FTZ Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Juanita Chen at juanita.chen@trade.gov.

Dated: April 15, 2026.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2026-07582 Filed 4-17-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-41-2026]

Foreign-Trade Zone 27; Application for Subzone; Applied Materials, Inc.; Boylston, Gloucester, Newburyport, and Rowley, Massachusetts

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Massachusetts Port Authority, grantee of FTZ 27, requesting subzone status for the facilities of Applied Materials, Inc. (Applied Materials), located in Boylston, Gloucester, Newburyport, and Rowley, Massachusetts. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on April 15, 2026.

The proposed subzone would consist of the following sites: *Site 1* (19.43 acres) 35 Dory Road, Gloucester; *Site 2* (1.85 acres) 14 Blackburn Drive, Gloucester; *Site 3* (20.37 acres) 11 Dory Road, Gloucester; *Site 4* (4.79 acres) 41 Great Republic Drive, Gloucester; *Site 5* (0.49 acres) 21 Pond Road, Gloucester; *Site 6* (1.02 acres) 70 Blackburn Drive, Gloucester; *Site 7* (0.93 acres) 80 Blackburn Drive, Gloucester; *Site 8* (0.23 acres) 99 Blackburn Circle, Gloucester; *Site 9* (10.63 acres) 4 Stanley Tucker Drive, Newburyport; *Site 10* (3.10 acres) 17 Malcolm Hoyt Drive, Newburyport; *Site 11* (0.94 acres) 428 Newburyport Turnpike, Rowley; *Site 12* (0.64 acres) 19 Turcotte Memorial Drive, Rowley; and *Site 13* (6.89 acres) 158 Shrewsbury Street, Boylston. A notification of proposed production activity has been submitted and will be published separately for public comment.

In accordance with the FTZ Board's regulations, Juanita Chen of the FTZ

Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is June 1, 2026. Rebuttal comments in response to material submitted during the foregoing period may be submitted through June 15, 2026.

A copy of the application will be available for public inspection in the "Online FTZ Information Section" section of the FTZ Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Juanita Chen at juanita.chen@trade.gov.

Dated: April 15, 2026.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2026-07648 Filed 4-17-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-170, C-570-171]

Disposable Aluminum Containers, Pans, Trays, and Lids From the People's Republic of China: Preliminary Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that imports of disposable aluminum containers, pans, trays, and lids (aluminum containers), completed in Thailand using aluminum foil produced in the People's Republic of China (China), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum containers from China. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable April 20, 2026.

FOR FURTHER INFORMATION CONTACT:

Justin Enck at (202) 482-1614 and Ann Marie Caton at (202) 482-2607, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 2025 and May 21, 2025, Commerce published in the **Federal Register** the AD and CVD orders on aluminum containers from China.¹ On July 11, 2025, Commerce initiated a country-wide circumvention inquiry pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), to determine whether imports of aluminum containers completed in Thailand using aluminum foil manufactured in China are circumventing the *Orders* and, accordingly, should be covered by the scope of the *Orders*.² On August 20, 2025, Commerce selected, in alphabetical order, Peak Legends (Thailand) Co., Ltd. (Peak Legends) and Wohler Household Products (Thailand) Co., Ltd (Wohler Thailand) as the mandatory respondents in this circumvention inquiry.³

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁴ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁵ On January 16, 2026, Commerce extended the deadline for issuing the preliminary determination in this circumvention inquiry by 60 days.⁶ Accordingly, the

¹ See *Disposable Aluminum Containers, Pans, Trays, and Lids from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 90 FR 19467 (May 8, 2025); see also *Disposable Aluminum Containers, Pans, Trays, and Lids from the People's Republic of China: Antidumping and Countervailing Duty Orders; Correction*, 90 FR 21751 (May 21, 2025) (collectively, *Orders*).

² See *Disposable Aluminum Containers, Pans, Trays, and Lids from the People's Republic of China: Initiation of Circumvention Inquires on the Antidumping and Countervailing Duty Orders*, 90 FR 30850 (July 11, 2025) (*Initiation Notice*), and accompanying Initiation Checklist, "Disposable Aluminum Containers, Pans, Trays, and Lids from the People's Republic of China," dated July 7, 2025 (Initiation Checklist).

³ See Memorandum, "Respondent Selection," dated August 20, 2025.

⁴ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 17, 2025.

⁵ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁶ See Memorandum, "Extension of Deadline for the Preliminary Determination in the Circumvention Inquiry," dated January 16, 2026.

deadline for this preliminary determination is now April 15, 2026.

For a complete description of the events that followed the initiation of this circumvention inquiry, *see* the Preliminary Decision Memorandum.⁷ The Preliminary Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Orders

The merchandise subject to the *Orders* is disposable aluminum containers, pans, trays, and lids produced primarily from flat-rolled aluminum. For a full description of the scope of the *Orders*, *see* the Preliminary Decision Memorandum.⁸

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers aluminum containers assembled and completed in the Thailand using Chinese-origin aluminum foil, that is subsequently exported from Thailand to the United States (inquiry merchandise).

Methodology

Commerce is conducting this circumvention inquiry in accordance with section 781(b) of the Act and 19 CFR 351.226. For a complete description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice.

Preliminary Circumvention Determination

As detailed in the Preliminary Decision Memorandum, Commerce preliminarily determines that aluminum containers completed in Thailand using Chinese-origin aluminum foil and subsequently exported from Thailand to the United States is circumventing the *Orders* on a country-wide basis. As a result, in accordance with section 781(b) of the Act, we preliminarily determine that this merchandise should be included within the scope of the *Orders*.

See the “Suspension of Liquidation and Cash Deposit Requirements” section below for details regarding suspension of liquidation and cash deposit requirements. *See* the “Certifications” and “Certification Requirements” sections below for details regarding the use of certifications.

Suspension of Liquidation and Cash Deposit Requirements

Based on the preliminary affirmative country-wide determination of circumvention with respect to Thailand, in accordance with 19 CFR 351.226(l)(2), Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of inquiry merchandise that were entered, or withdrawn from warehouse, for consumption, on or after October 28, 2024,⁹ the date of Commerce’s first imposition of provisional measures under the CVD order.¹⁰

Aluminum containers completed in Thailand from aluminum foil that is not of Chinese origin is not subject to this inquiry. Therefore, cash deposits are not required for such merchandise under the *China Orders*. However, Commerce preliminarily finds that aluminum containers completed in Thailand using China-origin aluminum foil is circumventing the AD and CVD orders on aluminum containers from China. Imports of aluminum containers completed in Thailand are subject to certification requirements, and cash deposits may be required.

Entries for which the importer and exporter have met the certification and documentation requirements described below and in Appendix II of this notice will not be subject to suspension of liquidation or the cash deposit requirements.

In accordance with 19 CFR 351.228(b), where the certification and documentation requirements are not met for an entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the rates applicable to the AD and CVD *Orders* on aluminum containers from China (*i.e.*, the AD cash deposit rate established for the China-wide entity (287.80 percent) and the CVD cash deposit rate established for all-others (317.85

percent) under the following third-country case numbers: A–549–170 and C–549–171, and may instruct CBP to assess antidumping or countervailing duties at the applicable rate. For companies with their own company-specific rate under the *China Orders*, the cash deposit rate will be the company-specific rate.

These suspension of liquidation requirements will remain in effect until further notice.

Certifications

To administer the preliminary affirmative country-wide determination of circumvention for Thailand, Commerce established importer and exporter certifications, which allow companies to certify that specific entries of aluminum containers from Thailand are not subject to suspension of liquidation or the collection of cash deposits pursuant to this preliminary affirmative country-wide determination of circumvention because the merchandise is not made with Chinese-origin aluminum foil or is made with an input other than aluminum foil (*see* Appendix II to this notice).

Importers and exporters that claim that the entry of aluminum containers is not subject to suspension of liquidation or the collection of cash deposits because the merchandise is not made with Chinese-origin aluminum foil or is made with an input other than aluminum foil must complete the applicable certification and meet the certification and documentation requirements described below, as well as the requirements identified in the applicable certification.

Certification Requirements

Importers are required to complete and maintain the applicable importer certification, and maintain a copy of the applicable exporter certification, and retain all supporting documentation for both certifications. With the exception of the entries described below, the importer certification must be completed, signed, and dated by the time the entry summary is filed for the relevant entry.

The importer, or the importer’s agent, must submit the importer’s certification, the exporter’s certification, the commercial invoice, the bill of lading, and the aluminum mill certificate for the aluminum input used to produce the aluminum containers (*e.g.*, aluminum foil), to CBP at the time of entry by uploading these documents into the document imaging system (DIS) in ACE. The aluminum mill certificates must identify the country of smelt and cast. Where the importer uses a broker to

⁷ *See* Memorandum, “Preliminary Decision Memorandum in the Circumvention Inquiry of the Antidumping Duty and Countervailing Duty Orders on Disposable Aluminum Containers, Pans, Trays, and Lids from the People’s Republic of China,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁸ *Id.* at 4–5.

⁹ *Id.* at 18; *see also* 19 CFR 351.226(l)(2)(iii)(A).

¹⁰ *See Disposable Aluminum Containers, Pans, Trays, and Lids from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances, and Alignment of Final Determination With Final Antidumping Duty Determination*, 89 FR 85495 (October 28, 2024).

facilitate the entry process, the importer should obtain the entry summary number from the broker. Agents of the importer, such as brokers, however, are not permitted to certify on behalf of the importer. Consistent with CBP's procedures, importers shall identify certified entries by using importers' additional declaration (record 54) AD/CVD Certification Designation (type code 06) when filing an entry summary.¹¹

Exporters are required to complete and maintain the applicable exporter certification and provide the importer with a copy of that certification and all supporting documentation (e.g., invoice, purchase order, production records, mill certificates, *etc.*). With the exception of the entries described below, the exporter certification must be completed, signed, and dated by the time of shipment of the relevant entries. The exporter certification should be completed by the party selling the aluminum containers that were manufactured in Thailand and exported to the United States.

Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce or CBP. Importers and exporters are required to maintain the certifications and supporting documentation until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

For all aluminum containers from Thailand that were entered, or withdrawn from warehouse, for consumption during the period October 28, 2024 (the date of the first imposition of provisional measures under the CVD order), through May 6, 2026, where the entry has not been liquidated (and entries for which liquidation has not become final), the importer and exporter certifications should be completed and signed as soon as practicable, but not later than June 5, 2026. The importer/exporter certifications, commercial invoice, bill of lading, and the aluminum mill certificate for the aluminum input used to produce the aluminum containers (e.g., aluminum foil) should be uploaded to the DIS in ACE as soon as practicable, but not later than June 5, 2026. For such entries, importers and exporters have the option

to complete a blanket certification covering multiple entries, individual certifications for each entry, or a combination thereof.

For unliquidated entries (and entries for which liquidation has not become final) of aluminum containers that were declared as non-AD or non-CVD type entries (e.g., type 01) and entered, or withdrawn from warehouse, for consumption in the United States during the period October 28, 2024 (the date of the first imposition of provisional measures under the CVD order) through May 6, 2026, for which none of the above certifications may be made, importers must file a Post Summary Correction with CBP, in accordance with CBP's regulations, regarding conversion of such entries from non-AD/CVD type entries to AD/CVD type entries (e.g., from type 01 to type 03). Importers must report those AD/CVD type entries using the third country case numbers identified in the "Suspension of Liquidation and Cash Deposit Requirements" section, above. The importer must pay cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties.

Interested parties may comment on these certification requirements, and on the certification language contained in Appendix II to this notice in their case briefs.

Public Comment

Pursuant to 19 CFR 351.226(f)(4), case briefs or other written comments should be submitted to the Assistant Secretary for Enforcement and Compliance no later than 14 days after the date of the publication of this notice.¹² Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for case briefs.¹³ Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁴

As provided under 19 CFR 351.309(c)(2) and (d)(2), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁵ Further, we request that

interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this proceeding. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁶

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**, filed electronically via ACCESS. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to issues raised in the respective comments.¹⁷ If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined and will notify the parties through ACCESS.¹⁸ Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

All submissions, including affirmative and rebuttal comments, as well as hearing requests, should be filed using ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

U.S. International Trade Commission (ITC) Notification

Consistent with section 781(e) of the Act, Commerce will notify the ITC of this preliminary determination to include the merchandise subject to this circumvention inquiry within the *Orders*. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the inquiry merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60

in a comment of the Issues and Decision Memorandum.

¹⁶ See *APO and Service Final Rule*.

¹⁷ See 19 CFR 351.310.

¹⁸ See 19 CFR 351.310(d).

¹¹ See Cargo System Messaging Service #59384253, dated February 12, 2024; see also *Announcing an Importer's Additional Declaration in the Automated Commercial Environment Specific to Antidumping/Countervailing Duty Certifications*, 89 FR 7372 (February 2, 2024).

¹² See 19 CFR 351.309(f)(4).

¹³ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹⁴ See 19 CFR 351.309(c)(2)(d)(2).

¹⁵ We use the term "issue" here to describe an argument that Commerce would normally address

days from the date of notification by Commerce to provide written advice.

Notification to Interested Parties

This determination is issued and published in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(1).

Dated: April 15, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Orders
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Period of Circumvention Inquiry
- VI. Surrogate Country and Methodology for Valuing Factors of Production from Non-Market Economy Sources and Processing in China
- VII. Statutory and Regulatory Framework for a Circumvention Inquiry
- VIII. Analysis of Statutory Criteria for the Circumvention Inquiry
- IX. Other Statutory Criteria
- X. Summary of Analysis
- XI. Suspension of Liquidation Prior to Initiation
- XII. Verification
- XIII. Certification Process and Country-Wide Affirmative Determination of Circumvention
- XIV. Recommendation

Appendix II

Importer Certification

I hereby certify that:

A. My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY};

B. I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of disposable aluminum containers, pans, trays, and lids (aluminum containers) produced in Thailand that entered under entry summary number(s), identified below, and are covered by this certification. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the importation of aluminum containers, including the exporter's and/or foreign seller's identity and location;

C. If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The aluminum containers covered by this certification were imported by {IMPORTING COMPANY} on behalf of {U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER};

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

D. The aluminum containers covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

E. I have personal knowledge of the facts regarding the production of the imported products covered by this certification. "Personal knowledge" includes facts obtained from another party, (e.g., correspondence received by the importer (or exporter) from the producer regarding the source of aluminum (aluminum foil) or other inputs used to produce the imported aluminum containers);

F. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:

Entry Summary Line Item #:

Foreign Seller:

Foreign Seller's Address:

Foreign Seller's Invoice #:

Foreign Seller's Invoice Line Item #:

Aluminum Containers Producer:

Aluminum Containers Producer's Address:

Name of Producer of aluminum input (e.g., foil):

Address of Producer of aluminum input (e.g., foil):

Country of Origin of aluminum input (e.g., foil):

G. The aluminum containers covered by this certification were not produced using aluminum foil produced in China;

H. I understand that {IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (i.e., documents maintained in the normal course of business, or documents obtained by the certifying party, for example, certificates of origin, product data sheets, mill test reports, productions records, invoices, etc.) until the later of: (1) the date that is five years after the date of the latest entry covered by the certification or; (2) the date that is three years after the conclusion of any litigation in the United States courts regarding such entries;

I. I understand that {IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to the production and exportation of the imported merchandise identified above), and any supporting documentation provided to the importer by the exporter, until the later of: (1) the date that is five years after the date of the latest entry covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries;

J. I understand that {IMPORTING COMPANY} is required to submit a copy of the importer and exporter certifications, commercial invoice, the bill of lading, and the aluminum mill certificate for the aluminum input used to produce the aluminum containers (e.g., aluminum foil) at the time of entry summary by uploading these documents into the Document Imaging System in the Automated Commercial

Environment, and to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with the importer certification, a copy of the exporter's certification, and any supporting documentation provided to the importer by the exporter, upon request of either agency. Consistent with CBP's procedures, importers shall identify certified entries by using importers' additional declaration (record 54) AD/CVD Certification Designation (type code 06) when filing entry summary.

K. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

L. I understand that entries of aluminum containers from Thailand that are accompanied by deficient certifications may be subject to antidumping and/or countervailing duties.

M. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are within the scope of the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum containers from China. I understand that such finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

N. I understand that agents of the importer, such as brokers, are not permitted to make this certification;

This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is after May 7, 2026. If the entry date is on or before May 6, 2026, this certification was completed, signed, and uploaded to CBP's ACE DIS by no later than June 5, 2026.

O. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}

{TITLE OF COMPANY OFFICIAL}

{DATE}

Exporter Certification

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

A. My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES}; located at {ADDRESS OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES};

B. I have direct personal knowledge of the facts regarding the production and

exportation of the disposable aluminum containers, pans, trays, and lids (aluminum containers) and the aluminum input to the aluminum containers for which sales are identified below. “Direct personal knowledge” refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer’s identity and location;

C. The aluminum containers covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED};

D. The aluminum containers covered by this certification were not produced using aluminum foil produced in China;

E. This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller’s Invoice # to U.S. Customer:
Foreign Seller’s Invoice to U.S. Customer
Line item #:

Aluminum Containers Producer Name:
Aluminum Containers Producer’s Address:
Producer’s Invoice # to Foreign Seller: (*If the foreign seller and the producer are the same party, put NA here.*)

Name of Producer of aluminum input (*e.g., foil*):

Address of Producer of aluminum input (*e.g., foil*):

Country of Origin of aluminum input (*e.g., foil*):

F. The aluminum containers covered by this certification were shipped to {NAME OF U.S. PARTY TO WHOM MERCHANDISE WAS SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED};

G. I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product data sheets, mill test reports, productions records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in the United States courts regarding such entries;

H. I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES} is required to provide the U.S. importer with a copy of this certification, commercial invoice, the bill of lading, and the aluminum mill certificate for the aluminum input used to produce the aluminum containers (*e.g.*, aluminum foil), and is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with this certification, and any supporting documents, upon request of either agency;

I. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

J. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are within the scope of the antidumping duty and countervailing duty orders on aluminum containers from China. I understand that such a finding will result in:

(i) suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and

(iii) the seller/exporter no longer being allowed to participate in the certification process.

K. I understand that agents of the seller/exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.

L. This certification was completed and signed, and a copy of the certification was provided to the importer, on, or prior to, the date of shipment if the shipment date is after May 7, 2026. If the shipment date is on or before May 6, 2026, this certification was completed and signed, and a copy of the certification was provided to the importer, by no later than June 5, 2026; and

M. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}

{TITLE OF COMPANY OFFICIAL}

{DATE}

[FR Doc. 2026–07660 Filed 4–17–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–170, C–570–171]

Disposable Aluminum Containers, Pans, Trays, and Lids From the People’s Republic of China: Preliminary Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that imports of disposable aluminum containers, pans, trays, and lids (aluminum containers), completed in the Socialist Republic of Vietnam (Vietnam) using aluminum foil produced in the People’s Republic of China (China), are circumventing the

antidumping duty (AD) and countervailing duty (CVD) orders on aluminum containers from China. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable April 20, 2026.

FOR FURTHER INFORMATION CONTACT: Justin Enck at (202) 482–1614 and Yun Liang at (202) 482–3108, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 2025 and May 21, 2025, Commerce published in the **Federal Register** the AD and CVD orders on aluminum containers from China, respectively.¹ On July 11, 2025, Commerce initiated a country-wide circumvention inquiry pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), to determine whether imports of aluminum containers completed in Vietnam using aluminum foil manufactured in China are circumventing the *Orders* and, accordingly, should be covered by the scope of the *Orders*.² On August 20, 2025, Commerce selected Able Ready Packaging Co. Ltd. (Able) as the mandatory respondent in this circumvention inquiry.³

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁴ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government

¹ See *Disposable Aluminum Containers, Pans, Trays, and Lids from the People’s Republic of China: Antidumping and Countervailing Duty Orders*, 90 FR 19467 (May 8, 2025); see also *Disposable Aluminum Containers, Pans, Trays, and Lids from the People’s Republic of China: Antidumping and Countervailing Duty Orders; Correction*, 90 FR 21751 (May 21, 2025) (collectively, *Orders*).

² See *Disposable Aluminum Containers, Pans, Trays, and Lids from the People’s Republic of China: Initiation of Circumvention Inquires on the Antidumping and Countervailing Duty Orders*, 90 FR 30850 (July 11, 2025) (*Initiation Notice*), and accompanying Initiation Checklist, “Disposable Aluminum Containers, Pans, Trays, and Lids from the People’s Republic of China,” dated July 7, 2025 (Initiation Checklist).

³ See Memorandum, “Respondent Selection,” dated August 20, 2025.

⁴ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 17, 2025.

shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁵ On January 16, 2026, Commerce extended the deadline for issuing the preliminary determination in this circumvention inquiry by 60 days.⁶ Accordingly, the deadline for this preliminary determination is now April 15, 2026.

For a complete description of the events that followed the initiation of this circumvention inquiry, *see* the Preliminary Decision Memorandum.⁷ The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Orders

The merchandise subject to the *Orders* is disposable aluminum containers, pans, trays, and lids produced primarily from flat-rolled aluminum. For a full description of the scope of the *Orders*, *see* the Preliminary Decision Memorandum.⁸

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers aluminum containers assembled and completed in Vietnam using Chinese-origin aluminum foil, that is subsequently exported from Vietnam to the United States (inquiry merchandise).

Methodology

Commerce is conducting this circumvention inquiry in accordance with section 781(b) of the Act and 19 CFR 351.226. For a complete description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice.

⁵ *See* Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁶ *See* Memorandum, "Extension of Deadline for the Preliminary Determination in the Circumvention Inquiry," dated January 16, 2026.

⁷ *See* Memorandum, "Circumvention Inquiry of the Antidumping Duty and Countervailing Duty Orders on Disposable Aluminum Containers, Pans, Trays, and Lids from the People's Republic of China: Preliminary Decision Memorandum," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁸ *Id.* at 4–5.

Preliminary Circumvention Determination

As detailed in the Preliminary Decision Memorandum, Commerce preliminarily determines that aluminum containers completed in Vietnam using Chinese-origin aluminum foil and subsequently exported from Vietnam to the United States is circumventing the *Orders* on a country-wide basis. As a result, in accordance with section 781(b) of the Act, we preliminarily determine that this merchandise should be included within the scope of the *Orders*. *See* the "Suspension of Liquidation and Cash Deposit Requirements" section below for details regarding suspension of liquidation and cash deposit requirements. *See* the "Certifications" and "Certification Requirements" sections below for details regarding the use of certifications.

Suspension of Liquidation and Cash Deposit Requirements

Based on the preliminary affirmative country-wide determination of circumvention with respect to Vietnam, in accordance with 19 CFR 351.226(l)(2), Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of inquiry merchandise that were entered, or withdrawn from warehouse, for consumption, on or after October 28, 2024,⁹ the date of Commerce's first imposition of provisional measures under the CVD Order.¹⁰

Aluminum containers completed in Vietnam from aluminum foil that are not of Chinese origin is not subject to this inquiry. Therefore, cash deposits are not required for such merchandise under the *China Orders*. However, Commerce preliminarily finds that aluminum containers completed in Vietnam using China-origin aluminum foil is circumventing the AD and CVD orders on aluminum containers from China. Imports of aluminum containers completed in Vietnam are subject to certification requirements, and cash deposits may be required.

Entries for which the importer and exporter have met the certification and documentation requirements described below and in Appendix II of this notice

⁹ *Id.* at 20; *see also* 19 CFR 351.226(l)(2)(iii)(A).

¹⁰ *See Disposable Aluminum Containers, Pans, Trays, and Lids from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances, and Alignment of Final Determination With Final Antidumping Duty Determination*, 89 FR 85495 (October 28, 2024); *see also* 19 CFR 351.226(l)(2)(iii)(A).

will not be subject to suspension of liquidation or the cash deposit requirements.

In accordance with 19 CFR 351.228(b), where the certification and documentation requirements are not met for an entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the rates applicable to the AD and CVD *Orders* on aluminum containers from China (*i.e.*, the AD cash deposit rate established for the China-wide entity (287.80 percent) and the CVD cash deposit rate established for all-others (317.85 percent) under the following third-country case numbers: A–552–170 and C–552–171, and may instruct CBP to assess antidumping or countervailing duties at the applicable rate. For companies with their own company-specific rate under the *China Orders*, the cash deposit rate will be the company-specific rate.

These suspension of liquidation requirements will remain in effect until further notice.

Certifications

To administer the preliminary affirmative country-wide determination of circumvention for Vietnam, Commerce established importer and exporter certifications, which allow companies to certify that specific entries of aluminum containers from Vietnam are not subject to suspension of liquidation or the collection of cash deposits pursuant to this preliminary affirmative country-wide determination of circumvention because the merchandise is not made with Chinese-origin aluminum foil or is made with an input other than aluminum foil (*see* Appendix II to this notice).

Importers and exporters that claim that the entry of aluminum containers is not subject to suspension of liquidation or the collection of cash deposits because the merchandise is not made with Chinese-origin aluminum foil or is made with an input other than aluminum foil must complete the applicable certification and meet the certification and documentation requirements described below, as well as the requirements identified in the applicable certification.

Certification Requirements

Importers are required to complete and maintain the applicable importer certification, and maintain a copy of the applicable exporter certification, and retain all supporting documentation for both certifications. With the exception of the entries described below, the importer certification must be completed, signed, and dated by the

time the entry summary is filed for the relevant entry.

The importer, or the importer's agent, must submit the importer's certification, the exporter's certification, the commercial invoice, the bill of lading, and the aluminum mill certificate for the aluminum input used to produce the aluminum containers (e.g., aluminum foil), to CBP at the time of entry by uploading these documents into the document imaging system (DIS) in ACE. The aluminum mill certificates must identify the country of smelt and cast. Where the importer uses a broker to facilitate the entry process, the importer should obtain the entry summary number from the broker. Agents of the importer, such as brokers, however, are not permitted to certify on behalf of the importer. Consistent with CBP's procedures, importers shall identify certified entries by using importers' additional declaration (record 54) AD/CVD Certification Designation (type code 06) when filing an entry summary.¹¹

Exporters are required to complete and maintain the applicable exporter certification and provide the importer with a copy of that certification and all supporting documentation (e.g., invoice, purchase order, production records, mill certificates, etc.). With the exception of the entries described below, the exporter certification must be completed, signed, and dated by the time of shipment of the relevant entries. The exporter certification should be completed by the party selling the aluminum containers that were manufactured in Vietnam and exported to the United States.

Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce or CBP. Importers and exporters are required to maintain the certifications and supporting documentation until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

For all aluminum containers from Vietnam that were entered, or withdrawn from warehouse, for consumption during the period October 28, 2024 (first imposition of provisional measures under the CVD order), through May 6, 2026, where the entry has not

been liquidated (and entries for which liquidation has not become final), the importer and exporter certifications should be completed and signed as soon as practicable, but not later than June 5, 2026. The importer/exporter certifications, the commercial invoice, the bill of lading, and the aluminum mill certificate for the aluminum input used to produce the aluminum containers (e.g., aluminum foil) should be uploaded to the DIS in ACE as soon as practicable, but not later than June 5, 2026. For such entries, importers, and exporters each have the option to complete a blanket certification covering multiple entries, individual certifications for each entry, or a combination thereof.

For unliquidated entries (and entries for which liquidation has not become final) of aluminum containers that were declared as non-AD or non-CVD type entries (e.g., type 01) and entered, or withdrawn from warehouse, for consumption in the United States during the period October 28, 2024 (the date of the first imposition of provisional measures under the CVD order) through May 6, 2026, for which none of the above certifications may be made, importers must file a Post Summary Correction with CBP, in accordance with CBP's regulations, regarding conversion of such entries from non-AD/CVD type entries to AD/CVD type entries (e.g., from type 01 to type 03). Importers must report those AD/CVD type entries using the third country case numbers identified in the "Suspension of Liquidation and Cash Deposit Requirements" section, above. The importer must pay cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties.

Interested parties may comment on these certification requirements, and on the certification language contained in Appendix II to this notice in their case briefs.

Public Comment

Pursuant to 19 CFR 351.226(f)(4), case briefs or other written comments should be submitted to the Assistant Secretary for Enforcement and Compliance no later than 14 days after the date of the publication of this notice.¹² Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for case briefs.¹³ Parties who submit case or

rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁴

As provided under 19 CFR 351.309(c)(2) and (d)(2), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁵ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this proceeding. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁶

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**, filed electronically via ACCESS. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to issues raised in the respective comments.¹⁷ If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined and will notify the parties through ACCESS.¹⁸ Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

All submissions, including affirmative and rebuttal comments, as well as hearing requests, should be filed using ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹⁴ See 19 CFR 351.309(c)(2)(d)(2).

¹⁵ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁶ See *APO and Service Final Rule*.

¹⁷ See 19 CFR 351.310.

¹⁸ See 19 CFR 351.310(d).

¹¹ See Cargo System Messaging Service #59384253, dated February 12, 2024; see also *Announcing an Importer's Additional Declaration in the Automated Commercial Environment Specific to Antidumping/Countervailing Duty Certifications*, 89 FR 7372 (February 2, 2024).

¹² See 19 CFR 351.309(f)(4).

¹³ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*,

U.S. International Trade Commission (ITC) Notification

Consistent with section 781(e) of the Act, Commerce will notify the ITC of this preliminary determination to include the merchandise subject to this circumvention inquiry within the *Orders*. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the inquiry merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days from the date of notification by Commerce to provide written advice.

Notification to Interested Parties

This determination is issued and published in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(1).

Dated: April 15, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Period of Circumvention Inquiry
- VI. Surrogate Country and Methodology for Valuing Factors of Production From Non-Market Economy Sources and Processing in China
- VII. Surrogate Country and Methodology for Valuing Factors of Production and Inputs From Non-Market Economy Sources and Processing in Vietnam
- VIII. Statutory and Regulatory Framework for a Circumvention Inquiry
- IX. Analysis of Statutory Criteria for the Circumvention Inquiry
- X. Other Statutory Criteria
- XI. Summary of Analysis
- XII. Suspension of Liquidation Prior to Initiation
- XIII. Verification
- XIV. Certification Process and Country-Wide Affirmative Determination of Circumvention
- XV. Recommendation

Appendix II

Importer Certification

I hereby certify that:

A. My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY};

B. I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of disposable aluminum containers, pans, trays,

and lids (aluminum containers) produced in Vietnam that entered under entry summary number(s), identified below, and are covered by this certification. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the importation of aluminum containers, including the exporter's and/or foreign seller's identity and location;

C. If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The aluminum containers covered by this certification were imported by {IMPORTING COMPANY} on behalf of {U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER};

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

D. The aluminum containers covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

E. I have personal knowledge of the facts regarding the production of the imported products covered by this certification. "Personal knowledge" includes facts obtained from another party, (e.g., correspondence received by the importer (or exporter) from the producer regarding the source of aluminum (aluminum foil) or other inputs used to produce the imported aluminum containers);

F. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:

Entry Summary Line Item #:

Foreign Seller:

Foreign Seller's Address:

Foreign Seller's Invoice #:

Foreign Seller's Invoice Line Item #:

Aluminum containers Producer:

Aluminum containers Producer's Address:
Name of Producer of aluminum input (e.g., foil):

Address of Producer of aluminum input (e.g., foil):

Country of Origin of aluminum input (e.g., foil):

G. The aluminum containers covered by this certification were not produced using aluminum foil produced in the People's Republic of China (China);

H. I understand that {IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (i.e., documents maintained in the normal course of business, or documents obtained by the certifying party, for example, certificates of origin, product data sheets, mill test reports, productions records, invoices, etc.) until the later of: (1) the date that is five years after the date of the latest entry covered by the certification or; (2) the date that is three years after the conclusion of any litigation in the United States courts regarding such entries;

I. I understand that {IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to the production and exportation of the imported merchandise identified above), and any supporting documentation provided to the importer by the exporter, until the later of: (1) the date that is five years after the date of the latest entry covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries;

J. I understand that {IMPORTING COMPANY} is required to submit a copy of the importer and exporter certifications, the commercial invoice, the bill of lading, and the aluminum mill certificate for the aluminum input used to produce the aluminum containers (e.g., aluminum foil) at the time of entry summary by uploading these documents into the Document Imaging System in the Automated Commercial Environment, and to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with the importer certification, a copy of the exporter's certification, and any supporting documentation provided to the importer by the exporter, upon request of either agency. Consistent with CBP's procedures, importers shall identify certified entries by using importers' additional declaration (record 54) AD/CVD Certification Designation (type code 06) when filing entry summary.

K. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

L. I understand that entries of aluminum containers from Vietnam that are accompanied by deficient certifications may be subject to antidumping and/or countervailing duties.

M. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are within the scope of the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum containers from China. I understand that such finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

N. I understand that agents of the importer, such as brokers, are not permitted to make this certification;

This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is after May 7, 2026. If the entry date is on or before May 6, 2026, this certification was completed, signed, and uploaded to CBP's ACE DIS by no later than June 5, 2026.

O. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes

criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}
{DATE}

Exporter Certification

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

A. My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES}; located at {ADDRESS OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES};

B. I have direct personal knowledge of the facts regarding the production and exportation of the disposable aluminum containers, pans, trays, and lids (aluminum containers) and the aluminum input to the aluminum containers for which sales are identified below. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer's identity and location;

C. The aluminum containers covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED};

D. The aluminum containers covered by this certification were not produced using aluminum foil produced in the People's Republic of China (China);

E. This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller's Invoice # to U.S. Customer:
Foreign Seller's Invoice to U.S. Customer
Line item #:

Aluminum containers Producer Name:
Aluminum containers Producer's Address:
Producer's Invoice # to Foreign Seller: (*If the foreign seller and the producer are the same party, put NA here.*)

Name of Producer of aluminum input (*e.g.*, foil):

Address of Producer of aluminum input (*e.g.*, foil):

Country of Origin of aluminum input (*e.g.*, foil):

F. The aluminum containers covered by this certification were shipped to {NAME OF U.S. PARTY TO WHOM MERCHANDISE WAS SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED};

G. I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product data sheets, mill test reports,

productions records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in the United States courts regarding such entries;

H. I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES} is required to provide the U.S. importer with a copy of this certification, the commercial invoice, the bill of lading, and the aluminum mill certificate for the aluminum input used to produce the aluminum containers (*e.g.*, aluminum foil), and is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with this certification, and any supporting documents, upon request of either agency;

I. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

J. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are within the scope of the antidumping duty and countervailing duty orders on aluminum containers from China. I understand that such a finding will result in:

(i) suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and
(iii) the seller/exporter no longer being allowed to participate in the certification process.

K. I understand that agents of the seller/exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.

L. This certification was completed and signed, and a copy of the certification was provided to the importer, on, or prior to, the date of shipment if the shipment date is after May 7, 2026. If the shipment date is on or before May 6, 2026, this certification was completed and signed, and a copy of the certification was provided to the importer, by no later than June 5, 2026; and

M. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}
{DATE}

[FR Doc. 2026-07659 Filed 4-17-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Paperwork Submissions Under the Coastal Zone Management Act Federal Consistency Requirements

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The National Oceanic and Atmospheric Administration, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 22, 2026.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at NOAA.PRA@noaa.gov. Please reference OMB Control Number 0648-0411 in the subject line of your comments. All comments received are part of the public record and will generally be posted on <https://www.regulations.gov> without change. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Kim Penn, Communities Program Manager, NOAA's Office for Coastal Management, N/OCM, 1305 East West Highway, 10th Floor, Silver Spring, MD 20910, (410) 701-0407, or Kim.Penn@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice and request for public comment is for a request to extend a currently approved information collection made by the Office for Coastal Management within the National Ocean Service of NOAA pursuant to the requirements of Section 307 of the Coastal Zone Management Act

(CZMA), 16 U.S.C. 1456, and its implementing regulations at 15 CFR part 930. Information collected pursuant to these requirements is used by states to determine the consistency of proposed Federal actions with the enforceable policies of State Coastal Management Programs (CMPs) and by NOAA when deciding appeals to State objections in the exercise of the review authority that the CZMA provides.

The CZMA creates a State-Federal partnership to improve the management of the nation's coastal zone through the development of federally approved State CMPs. The CZMA provides two incentives for States to develop federally approved CMPs: (1) annual Federal appropriations that NOAA allocates to States to implement their federally-approved CMPs; and (2) the CZMA requires Federal agencies, non-Federal applicants for Federal licenses or permits, and State and local government recipients of Federal assistance to conduct their activities in a manner "consistent" with the enforceable policies of NOAA-approved CMPs. The latter incentive, referred to as the "Federal consistency" provision, is found at 16 U.S.C. 1456. The CZMA requires the Secretary of Commerce to promulgate regulations as may be necessary to carry out the provisions of the Act. 16 U.S.C. 1463. NOAA first published a Final Rule in 1979 to provide the procedures to implement the CZMA Federal consistency provision and published final rules in 2000 and 2006 updating the regulatory procedures. These procedures provide the means for State CMPs, Federal agencies, and non-Federal applicants to comply with the statutory requirements, including the procedures available for a non-Federal applicant to appeal a State's objection to a consistency certification as provided for in 16 U.S.C. 1456(c)(3)(A) and (B) and 1456(d).

Paperwork and information collection routinely occurs by State CMPs pursuant to the CZMA Federal consistency review requirements. Federal agencies proposing an action that may have reasonably foreseeable effects to coastal uses or resources must provide a consistency determination to affected states. The information requirements for consistency determinations are specified at 15 CFR 930.39. Non-Federal applicants for Federal licenses, permits, and other forms of authorization that are listed by State CMPs as subject to review must submit a statement certifying the consistency of the proposed activity to State CMPs pursuant to 15 CFR 930.57 accompanied by the necessary data and information specified at 15 CFR 930.58.

Necessary data and information includes a copy of the application for the Federal license or permit; all material relevant to the State CMP provided to the Federal agency in support of the license or permit request; a detailed description of the proposed activity, its associated facilities and coastal effects; information specifically identified in the State CMP; and an evaluation that includes findings relating to the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the State CMP. For State and local agency applicants for Federal financial assistance, the application shall be forwarded to the State CMP through the intergovernmental review process established pursuant to Executive Order 12372, or submitted directly to the State CMP if the Federal financial assistance is listed in the State CMP as subject to review. 15 CFR 930.94.

Information is provided to NOAA only when there is a State objection to a proposed Federal license or permit, or Federal financial assistance; when informal mediation is sought by a Federal agency or State; or when an applicant for a Federal license or permit, outer continental shelf (OCS) plan, or Federal financial assistance appeals to the Secretary of Commerce for an override to a State CMP objection to the issuance of the Federal license or permit, OCS plan, or award of financial assistance. Last, in 1990, Congress required State CMPs to provide for public participation in their permitting processes, consistency determinations and similar decisions. See 16 U.S.C. 1455(d)(14). How the public participation requirement is met is determined by each state with NOAA approval.

These submissions are intended to provide a reasonable, efficient, and predictable means of complying with CZMA requirements. The information will be used by coastal states with federally-approved CMPs to determine if Federal agency activities, Federal license or permit activities, OCS plans, and Federal assistance activities that affect a state's coastal zone are consistent with the State's CMP.

Information developed for and during state reviews will also be collected and considered by NOAA for appeals filed by non-Federal applicants seeking an override of state CZMA objections to Federal license or permit activities, OCS plans, or Federal assistance activities.

There have been no changes to the information collection requirements, their applicability or the methods of collection since the previous Paperwork Reduction Act extension.

II. Method of Collection

Information is submitted pursuant to the procedural requirements of the CZMA and its implementing regulations. Required information is case-specific and not submitted by form. Methods of submission include email and mail.

III. Data

OMB Control Number: 0648-0411.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: State, local, or tribal government; Federal government; business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 2,334.

Estimated Time per Response: Applications, certifications, and state objection or concurrence letters, 8 hours each; state requests for review of unlisted activities, 4 hours; public notices, 1 hour; interstate listing notices, 30 hours; mediation, 2 hours; appeals to the Secretary of Commerce, 210 hours.

Estimated Total Annual Burden Hours: 35,799.

Estimated Total Annual Cost to Public: \$37 in recordkeeping and reporting costs.

Respondent's Obligation: Required for the issuance of a Federal license or permit, and award of Federal financial assistance.

Legal Authority: 16 U.S.C. 1456.

IV. Request for Comments

We are soliciting public comments to permit NOAA to: (a) evaluate whether the proposed information collection is necessary for the proper functions of the agency, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your

comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–07619 Filed 4–17–26; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF544]

Marine Mammals; File No. 29418

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the University of Alaska Southeast, 1332 Seward Ave., Sitka, AK 99835 (Responsible Party: Lauren Wild, Ph.D.), has applied in due form for a permit to conduct research on marine mammals in Alaska.

DATES: Written comments must be received on or before May 20, 2026.

ADDRESSES: The application and related documents are available for review by selecting “Records Open for Public Comment” from the “Features” box on the Applications and Permits for Protected Species home page, <https://apps.nmfs.noaa.gov>, and then selecting “File No. 29418” from the list of available applications. These documents are also available upon written request via email to NMFS.Pr1Comments@noaa.gov.

Written comments on this application should be submitted via email to NMFS.Pr1Comments@noaa.gov. Please include “File No. 29418” in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to NMFS.Pr1Comments@noaa.gov. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT:

Courtney Smith, Ph.D., or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the

Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to conduct research on 18 species of cetaceans in Alaska, with studies targeted on killer whales (*Orcinus orca*; including the Southern Resident Distinct Population Segment [DPS]) and three endangered species: gray (*Eschrichtius robustus*; including the Western North Pacific DPS), humpback (*Megaptera novaeangliae*; including the Western North Pacific DPS and Mexico DPS), and sperm (*Physeter macrocephalus*) whales. Four species of pinnipeds may be unintentionally harassed. The objective of the research is to further biological understanding of Alaskan cetaceans by evaluating species abundance, population and stock structure, life history parameters, foraging behavior and prey specialization, social behavior, seasonal movements and migrations, and depredation interactions with longline fishing vessels. Research methods resulting in Level A and Level B harassment include close approach by vessels and unmanned aircraft systems to conduct photo-identification, behavioral observations, underwater photography/video, count/survey, active acoustic sonar for prey mapping, tagging (suction-cup and dart/barb), biological sampling (skin/blubber biopsy, prey samples, exhaled air, sloughed skin, feces), passive acoustic recordings, and collection of prey remains and water samples for environmental DNA. Some marine mammal parts may be exported for analysis. See the application for complete numbers of animals requested by species, stock or listing unit, life stage, and procedure. The permit is requested for 10 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 15, 2026.

Shannon Bettridge,

Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2026–07624 Filed 4–17–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Fisheries Finance Program Requirements

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 22, 2026.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at NOAA.PRA@noaa.gov. Please reference OMB Control Number 0648–0012 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Brian Summers, Loan Specialist, NOAA/NMFS/FFP/FMB5, 1315 East West Highway, Silver Spring, MD 20910, (301) 427–8783, brian.summers@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of the currently approved information collection. The National Oceanic and Atmospheric Administration (NOAA)

operates the Fisheries Finance Program, a direct government loan program that provides long term financing for the cost of construction or reconstruction of fishing vessels, shoreside fishery facilities, aquaculture facilities, and individual fishing quotas in the Northwest Halibut/Sablefish and Alaskan Crab Fisheries. To be eligible for this benefit program, an applicant must be an aquaculture operator or fisherman and a U.S. citizen. They must also meet all of the following:

- Have good credit and earnings record, net worth, and liquidity behind the project, and
- The project must be fully secured with their assets, including personal guarantees (non-recourse credit is not available), and
- Have at least a three-year history of owning or operating the fisheries project that will be the subject of the proposed application, or a three-year history owning or operating a comparable project.

Application information is required to determine loan eligibility pursuant to 50 CFR part 253 and to determine the type and amount of financial assistance available to the applicant. Applicants are required to submit NOAA FORM 88–1 and supporting financial documents. An annual financial statement is required from the recipients to monitor the financial status of the loan. While the core questions remain unchanged, we are implementing several formatting improvements and clarifying the required documentation. These revisions also streamline the signature and guarantor consent forms by removing outdated attestation language and specific credit report references to ensure a more efficient application process.

II. Method of Collection

Electronic Applications.

III. Data

OMB Control Number: 0648–0012.

Form Number(s): 88–1.

Type of Review: Regular submission (extension of current information collection).

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 316.

Estimated Time per Response: Program Application, 10 hours; Annual Financial statement, 2 hours; Guarantor Consent, 5 minutes.

Estimated Total Annual Burden Hours: 848 hours.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: 50 CFR part 253.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–07620 Filed 4–17–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Global Intellectual Property Academy (GIPA) Surveys

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comments.

SUMMARY: The United States Patent and Trademark Office (hereafter “USPTO” or “Agency”), as required by the Paperwork Reduction Act of 1995,

invites comments on the extension and revision of an existing information collection: 0651–0065 (Global Intellectual Property Academy (GIPA) Surveys). The purpose of this notice is to allow 60 days for public comments preceding submission of the information collection to the Office of Management and Budget (OMB).

DATES: To ensure consideration, you must submit comments regarding this information collection on or before June 22, 2026.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

• *Email:* InformationCollection@uspto.gov. Include “0651–0065 comment” in the subject line of the message.

• *Federal eRulemaking Portal:* <https://www.regulations.gov>.

• *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

• *Telephone:* Kortney Hammonds, 571–272–1626.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Kortney Hammonds at: Global Intellectual Property Academy (GIPA), United States Patent and Trademark Office, Mail Stop OPIA, P.O. Box 1450, Alexandria, VA 22313–1450; 571–272–1626; or usptogipa@uspto.gov with “0651–0065 comment” in the subject line. Additional information about this information collection is also available at <https://www.reginfo.gov> under “Information Collection Review.”

SUPPLEMENTARY INFORMATION:

I. Abstract

The Global Intellectual Property Academy (GIPA) was established in 2006 and is a critical resource of the United States Patent and Trademark Office (USPTO) for encouraging the development of effective and balanced intellectual property (IP) systems around the world. Through targeted international technical assistance activities, GIPA helps to promote both domestic and international IP rights. GIPA’s activities cover every aspect of intellectual property law and policy, including patents, trademarks, copyrights, trade secrets, commercialization, and enforcement. By participating in GIPA courses, foreign government officials learn about global intellectual property rights protection

and enforcement and discuss strategies to handle the protection and enforcement issues in their respective countries. GIPA is an important instrument that the USPTO utilizes to achieve its objective of preventing intellectual property theft and advancing intellectual property right policies.

The surveys in this information collection are conducted in an effort to measure the effectiveness of each activity or intervention. Specifically, the GIPA surveys help to demonstrate the impact of the specific activity on each participant's work and the relevance of each activity to the country's efforts to improve systems for protecting and enforcing IP rights. The survey information is then used to further tailor and improve future interventions. The data captured is also used to help meet organizational performance and accountability goals through the following legislative mandates and performance:

- Government Performance and Results Act of 1993;¹

- Government Performance and Results Modernization Act of 2010 (GPRMA);²
- President's Management Agenda (PMA);³ and
- Foundations for Evidence Based Policy Making Act of 2018.⁴

Evaluations and measurement efforts provide methodologically rigorous data activity and analyses rather than subjective, ad hoc, and non-standardized anecdotal material.

These voluntary surveys support various business goals developed by the USPTO to fulfill customer service and performance goals, to assist the USPTO in strategic planning for future initiatives, to verify existing service standards, and to establish new ones. The USPTO also uses these surveys to implement Executive Order 12862 of September 11, 1993, *Setting Customer Service Standards*, published in the **Federal Register** on September 14, 1993 (58 FR 48257).⁵

II. Method of Collection

Items in this information collection may be submitted as electronic

submissions and occasionally as in-person surveys.

III. Data

OMB Control Number: 0651–0065.

Forms: None.

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Individuals or households.

Respondent's Obligation: Voluntary.

Frequency: On occasion.

Estimated Number of Annual Respondents: 14,508 respondents.

Estimated Number of Annual Responses: 14,508 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately 15 minutes (0.25 hours) to complete. This includes the time to gather the necessary information, create the document, and submit the completed item(s) to the USPTO.

Estimated Total Annual Respondent Burden Hours: 3,627 hours.

Estimated Total Annual Respondent Hourly Cost Burden: \$355,700.

TABLE 1—TOTAL REPORTING BURDEN HOURS AND HOURLY COSTS TO INDIVIDUAL AND HOUSEHOLD RESPONDENTS

Item No.	Item	Estimated annual respondents	Responses per respondent	Estimated annual responses	Estimated time for response (hours)	Estimated burden (hour/year)	Rate ⁶ (\$/hour)	Estimated annual respondent cost burden
		(a)	(b)	(a) × (b) = (c)	(d)	(c) × (d) = (e)	(f)	(e) × (f) = (g)
1	Post-Program Streamlined Survey	4,000	1	4,000	0.25 (15 minutes)	1,000	\$98.07	\$98,070
2	Alumni Survey	10,508	1	10,508	0.25 (15 minutes)	2,627	98.07	257,630
	Totals	14,508	.....	14,508	.....	3,627	.....	355,700

Estimated Total Annual Respondent Non-hourly Cost Burden: \$0. There are no capital start-up costs, maintenance costs, recordkeeping costs, filing fees, or postage costs associated with this information collection.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate 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;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the

validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information for those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. The USPTO will include or summarize each comment in the request

to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be advised that the entire comment—including PII—may be made publicly available at any time. While one may request in a comment to withhold PII from public view, the USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2026–07575 Filed 4–17–26; 8:45 am]

BILLING CODE 3510–16–P

¹ <https://www.congress.gov/103/statute/STATUTE-107/STATUTE-107-Pg285.pdf>.

² <https://www.congress.gov/111/plaws/publ352/PLAW-111publ352.pdf>.

³ <https://www.performance.gov/blog/2025-pma-impact-report/>.

⁴ <https://www.congress.gov/115/plaws/publ435/PLAW-115publ435.pdf>.

⁵ <https://tile.loc.gov/storage-services/service/ll/fedreg/fr058/fr058176/fr058176.pdf>.

⁶ The USPTO uses the Bureau of Labor Statistics (BLS) Occupation Employment Statistics wage

category 23–1021 (Administrative Law Judges, Adjudicators, and Hearing Officials; Federal Executive Branch) to represent an estimated wage of program attendees. The USPTO estimates that the hourly wage rate will be in the 90th percentile, as respondents will likely be senior officials living in metropolitan areas; <https://data.bls.gov/oesprofile/>.

DEPARTMENT OF COMMERCE**Patent and Trademark Office****Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Patent Trial and Appeal Board (PTAB) Appeals**

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comments.

SUMMARY: The United States Patent and Trademark Office (hereafter “USPTO” or “Agency”), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0063 (Patent Trial and Appeal Board (PTAB) Appeals). The purpose of this notice is to allow 60 days for public comments preceding submission of the information collection to the Office of Management and Budget (OMB).

DATES: To ensure consideration, you must submit comments regarding this information collection on or before June 22, 2026.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- **Email:** InformationCollection@uspto.gov. Include “0651–0063 comment” in the subject line of the message.
- **Federal eRulemaking Portal:** <https://www.regulations.gov/>.
- **Mail:** Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- **Telephone:** Stacey White, 571–272–9797.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Stacey White at:

Patent Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; 571–272–9797; or Stacey.White@uspto.gov with “0651–0063 comment” in the subject line. Additional information about this information collection is also available at <https://www.reginfo.gov/public/> under “Information Collection Review.”

SUPPLEMENTARY INFORMATION:**I. Abstract**

The Patent Trial and Appeal Board (hereafter “PTAB” or Board”) is established by statute under 35 U.S.C. 6. This statute directs, in relevant part, that PTAB shall “on written appeal of an applicant, review adverse decisions of examiners upon applications for patents pursuant to section 134(a).” PTAB has the authority, under 35 U.S.C. 134 and 306 to decide appeals in applications and *ex parte* reexamination proceedings, and under pre-AIA sections of the Patent Act, *i.e.*, 35 U.S.C. 134, 135, and 315, to decide appeals in *inter partes* reexamination proceedings and interferences. In addition, 35 U.S.C. 6 establishes the membership of PTAB as the Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the Administrative Patent Judges. Appeals and interference are decided by a merits panel of at least three members of the Board.

The Board’s responsibilities under the statute include the review of *ex parte* appeals from adverse decisions of examiners in those situations where a written appeal is taken by a dissatisfied applicant or patent owner. In *inter partes* reexamination appeals, PTAB reviews an examiner’s decision adverse to a patent owner or a third-party requester. PTAB’s opinions and decisions for publicly available files are published on the USPTO website.¹ The Board also conducts interference proceedings.

The items associated with this information collection include appeals in applications and *ex parte* reexamination proceedings, and appeals

in *inter partes* reexamination proceedings and interference proceedings that are governed by the regulations in 37 CFR 41. Failure to comply with the appropriate regulations may result in dismissal of the appeal or denial of entry of the submission.

II. Method of Collection

Items in this information collection may be submitted as electronic submissions. Applicants may also submit the information in paper form by mail, fax, or hand delivery.

III. Data

OMB Control Number: 0651–0063.

Forms: (AIA = America Invents Act; SB = Specimen Book).

- PTO/AIA/31: (Notice of Appeal from the Examiner to the Patent Trial and Appeal Board).
- PTO/SB/31: (Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences).
- PTO/AIA/32: (Request for Oral Hearing before the Patent Trial and Appeal Board).
- PTO/SB/32: (Request for Oral Hearing before the Patent Trial and Appeal Board).

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private Sector.

Respondent’s Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual Respondents: 16,905 respondents.

Estimated Number of Annual Responses: 31,494 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately 30 minutes (0.50 hours) to 120 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed item(s) to the USPTO.

Estimated Total Annual Respondent Burden Hours: 337,662 hours.

Estimated Total Annual Respondent Hourly Cost Burden: \$150,934,914.

TABLE 1—TOTAL REPORTING BURDEN HOURS AND HOURLY COSTS TO PRIVATE SECTOR RESPONDENTS

Item No.	Item	Estimated annual respondents	Responses per respondent	Estimated annual responses	Estimated time for response (hours)	Estimated burden (hour/year)	Rate ² (\$/hour)	Estimated annual respondent cost burden
		(a)	(b)	(a) × (b) = (c)	(d)	(c) × (d) = (e)	(f)	(e) × (f) = (g)
1	Notice of Appeal	16,562	1	16,562	0.50 (30 minutes)	8,281	\$447	\$3,701,607
2	Appeal Brief	(*)	1	9,038	32	289,216	447	129,279,552

¹ <https://www.uspto.gov/patents/ptab/decisions>.

² 2023 Report of the Economic Survey, published by the Committee on Economics of Legal Practice

of the American Intellectual Property Law Association, pg. F–41. The USPTO uses the average billing rate for intellectual property work in all

firms, which is \$447 per hour (<https://www.aipla.org/home/news-publications/economic-survey>).

TABLE 1—TOTAL REPORTING BURDEN HOURS AND HOURLY COSTS TO PRIVATE SECTOR RESPONDENTS—Continued

Item No.	Item	Estimated annual respondents	Responses per respondent	Estimated annual responses	Estimated time for response (hours)	Estimated burden (hour/year)	Rate ² (\$/hour)	Estimated annual respondent cost burden
		(a)	(b)	(a) × (b) = (c)	(d)	(c) × (d) = (e)	(f)	(e) × (f) = (g)
3	Amendment to Cancel Claims	(*)	1	112	2	224	447	100,128
4	Reply Brief	(*)	1	4,795	5	23,975	447	10,716,825
5	Petitions to the Chief Administrative Patent Judge Under 37 CFR § 41.3.	(*)	1	35	4	140	447	62,580
6	Request for Oral Hearing	(*)	1	531	0.50 (30 minutes)	266	447	118,902
7	Request for Rehearing Before the PTAB.	304	1	304	5	1,520	447	679,440
8	Statements, Motions, Oppositions, and Replies in Preliminary and Priority Phases of an Interference.	39	3	117	120	14,040	447	6,275,880
	Totals	16,905		31,494		337,662		150,934,914

* These lines (2–6) are the same filers as the respondents in Item 1. As these are subsets of Item 1, they are not included in the total for this column.

Estimated Total Annual Respondent Non-hourly Cost Burden: \$24,085,946. There are no capital start-up costs, maintenance costs, or recordkeeping

costs associated with this information collection. However, the USPTO estimates that the total annual non-hour cost burden for this information

collection, in the form of filing fees and postage, is \$24,085,946.

Filing Fees

The fees are listed in Table 2 below.

TABLE 2—FILING FEES

Item No.	Fee code	Item	Estimated annual responses	Fee (\$)	Total cost (\$)
			(a)	(b)	(a) × (b) = (c)
1	1401	Notice of appeal (undiscounted)	12,176	\$905	\$11,019,280
1	2401	Notice of appeal (small)	3,978	362	1,440,036
1	3401	Notice of appeal (micro)	408	181	73,848
2	1404	Filing a brief in support of an appeal in an <i>inter partes</i> reexamination proceeding (undiscounted).	1	2,260	2,260
2	2404	Filing a brief in support of an appeal in an <i>inter partes</i> reexamination proceeding (small).	1	904	904
2	3404	Filing a brief in support of an appeal in an <i>inter partes</i> reexamination proceeding (micro).	1	452	452
4	1413	Forwarding an Appeal in an Application or <i>Ex Parte</i> Reexamination Proceeding to the Board (undiscounted).	3,908	2,535	9,906,780
4	2413	Forwarding an Appeal in an Application or <i>Ex Parte</i> Reexamination Proceeding to the Board (small).	920	1,014	932,880
4	3413	Forwarding an Appeal in an Application or <i>Ex Parte</i> Reexamination Proceeding to the Board (micro).	97	507	49,179
5	1405/2405/3405	Petitions to the Chief Administrative Patent Judge under 37 CFR § 41.3 (undiscounted).	35	452	15,820
7	1403	Request for oral hearing (undiscounted)	382	1,460	557,720
7	2403	Request for oral hearing (small)	135	584	78,840
7	3403	Request for oral hearing (micro)	14	292	4,088
		Totals	22,056		24,082,087

Postage Costs

The briefs, petitions, amendments, and requests may be submitted by mail through the United States Postal Service. The USPTO estimates that 1% of the 31,494 items in this information collection will be submitted by postal mail, resulting in 315 mailed items. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail legal flat-rate envelope, will be \$12.25. Therefore, the USPTO estimates the total mailing costs for this information collection is \$3,859.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate 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;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information for those who intend to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public

record. The USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be advised that the entire comment—including PII—may be made publicly available at any time. While one may request in a comment to withhold PII from public view, the USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2026-07574 Filed 4-17-26; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF EDUCATION

Notice Announcing Expanding Opportunity Through Quality Charter Schools Program—Grants to State Entities Competition

AGENCY: Department of Education (ED), Employment and Training Administration, Department of Labor (DOL).

ACTION: Notice.

SUMMARY: The Employment and Training Administration at the U.S. Department of Labor (DOL), is soliciting applications in support of the administration of the Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to State Entities Program on behalf of the U.S. Department of Education (ED). Assistance Listing Number (ALN) 84.282A.

DATES: Complete proposals must be submitted electronically through the *Grants.gov* “APPLY” function by 11:59:59 p.m. Eastern time, June 18, 2026.

FOR FURTHER INFORMATION CONTACT: Sareeta Schmitt. Telephone: (202) 987-1758. Email: *SE_Competition@ed.gov*.

SUPPLEMENTARY INFORMATION: Through the CSP—State Entity grants program, ED awards grants on a competitive basis to State entities that, in turn, award subgrants to eligible applicants for the purpose of opening new charter schools and replicating and expanding high-quality charter schools. The FY 2026 competition includes an absolute priority, seven competitive preference priorities, selection criteria, and requirements. The absolute priority is: Best Practices for Charter School Authorizers. The competitive preference priorities are: At Least One Authorized

Public Chartering Agency Other than a Local Educational Agency, or an Appeals Process; Equitable Financing; Best Practices to Improve Struggling Schools and Local Educational Agencies (LEAs); Charter School Facilities; Serving At-Risk Students; Returning Education to the States; and Expanding Education Choice.

To Apply: The complete funding opportunity announcement and all information needed to apply, including the priority and program requirements, are available on ED’s website at <https://www.ed.gov/grants-and-programs/grants-birth-grade-12/charter-school-programs/expanding-opportunities-through-quality-charter-schools-program-csp-grants-state-entities>, on DOL’s website at www.dol.gov/agencies/eta/grants/apply/find-opportunities, and on *Grants.gov* at <https://grants.gov/search-results-detail/361920>. The application notice and instructions on *Grants.gov* is the official document governing the grant competition.

Eligible Applicants: State entities in States with a specific State statute authorizing the granting of charters to schools are eligible to apply. “State entity” means—(a) A State educational agency; (b) A State charter school board; (c) A Governor of a State; or (d) A charter school support organization.

Program Authority: Title IV, part C of the ESEA (20 U.S.C. 7221–7221j).

Accessible Format: On request to the person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format.

Note: Henry Maklakiewicz signs this notice in furtherance of DOL’s role in providing support to ED.

Kirsten Baesler,

Assistant Secretary, Office of Elementary and Secondary Education, Department of Education.

In concurrence.

Henry Maklakiewicz,

Assistant Secretary for Employment and Training, Department of Labor.

[FR Doc. 2026-07671 Filed 4-17-26; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2026–SCC–1453]

Agency Information Collection Activities; Comment Request; Grant Application Form for Project Objectives and Performance Measures Information

AGENCY: Office of the Secretary (OS), Department of Education (ED).

ACTION: Notice.

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

DATES: Interested persons are invited to submit comments on or before June 22, 2026.

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–2026–SCC–1453. 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* site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Grant Policy Office, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C227, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kelly Terpak, 202–205–5231.

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: Grant Application Form for Project Objectives and Performance Measures Information.

OMB Control Number: 1894-0017.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 8,800.

Total Estimated Number of Annual Burden Hours: 44,000.

Abstract: The U.S. Department of Education Grant Application Form for Project Objectives and Performance Measures Information serves as a precursor to the U.S. Department of Education Grant Performance Report Form (ED 524 B) in which project objectives, measures, and targets will be entered by applicants at the time that grant applications are entered in *Grants.gov*.

The Grant Application Form for Project Objectives and Performance Measures Information form and instructions are used by many ED discretionary grant programs to enable grantees to meet ED deadline dates for submission of performance reports to the Department.

Ross Santy,

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

[FR Doc. 2026-07668 Filed 4-17-26; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Notice Announcing Supporting Effective Educator Development Program Competition

AGENCY: Department of Education; Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration at the U.S. Department of Labor (DOL) is soliciting applications in support of the administration of the Fiscal Year (FY) 2026 Supporting Effective Educator Development (SEED) program, Assistance Listing Number 84.423A, on behalf of the U.S. Department of Education (ED).

DATES: Complete proposals must be submitted electronically through the *Grants.gov* "APPLY" function by 11:59:59 p.m. Eastern time June 1, 2026.

FOR FURTHER INFORMATION CONTACT: Orman Feres. Telephone: 202-453-6921. Email: *Orman.Feres@Ed.gov* or *SEED@ED.gov*.

SUPPLEMENTARY INFORMATION: The SEED program provides funding to increase the number of highly effective educators by supporting the implementation of evidence-based practices that prepare, develop, or enhance the skills of educators. These grants will allow eligible entities to develop, expand, and evaluate practices that can serve as models to be sustained and disseminated. The FY 2026 competition includes four absolute priorities, three competitive preference priorities, selection criteria, and requirements. The absolute priorities are: Supporting Effective Teachers, Supporting Effective Principals and Other School Leaders, Promoting Evidence-Based Literacy, and Meaningful Learning Opportunities for Students. The competitive preference priorities are: Returning Education to the States, Advancing Artificial Intelligence in Education, and Career Pathways and Workforce Readiness.

Eligible Applicants: To receive funds under this program, an applicant must be:

(a) An institution of higher education that provides course materials or resources that are evidence-based in increasing academic achievement, graduation rates, or rates of postsecondary education matriculation;

(b) A national nonprofit entity with a demonstrated record of raising student academic achievement, graduation rates, and rates of higher education attendance, matriculation, or completion, or of effectiveness in providing preparation and professional development activities and programs for teachers, principals, or other school leaders;

(c) The Bureau of Indian Education; or

(d) A partnership consisting of—

(i) One or more entities described in paragraph (a) or (b); and

(ii) A for-profit entity.

Program Authority: Sections 2242 of the Elementary and Secondary Education Act, as amended (20 U.S.C. 6672).

To Apply: The complete funding opportunity announcement and all information needed to apply, including the priorities and program requirements, are available on ED's website at <https://www.ed.gov/grants-and-programs/teacher-preparation-grants/supporting-effective-educator-development-grant->

program, on DOL's website at www.dol.gov/agencies/eta/grants/apply/find-opportunities, and on *Grants.gov* at <https://www.grants.gov/search-results-detail/361921>. The application notice and instructions on *Grants.gov* is the official document governing the grant competition.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format.

Note: Henry Maklakiewicz signs this notice in furtherance of DOL's role in providing support to ED.

Kirsten Baesler,

Assistant Secretary, Office of Elementary and Secondary Education, Department of Education.

In concurrence.

Henry Maklakiewicz,

Assistant Secretary for Employment and Training, Department of Labor.

[FR Doc. 2026-07672 Filed 4-17-26; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2026-SCC-1420]

Agency Information Collection Activities; Comment Request; Income Driven Repayment Plan Request for the William D. Ford Federal Direct Loans and Federal Family Education Loan 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 revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 22, 2026.

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-2026-SCC-1420. 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* 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 20202-1200.

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: Income Driven Repayment Plan Request for the William D. Ford Federal Direct Loans and Federal Family Education Loan Programs.

OMB Control Number: 1845-0102.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 9,500,000.

Total Estimated Number of Annual Burden Hours: 3,135,000.

Abstract: The One Big Beautiful Bill Act (OBBBA) signed into law on July 4, 2025, made statutory changes to

Sections 455(a), 455(d), 455(e), 455(g), and 455(q) that impact borrower eligibility, terms and conditions, and borrowers' rights and responsibilities for Direct Loans received on or after July 1, 2026. Additionally, previous provisions regulated in 34 CFR 685.209 effective July 1, 2024, were invalidated as a result of court actions on March 10, 2026.

Section 493C of the Higher Education Act of 1965, as amended (the HEA), authorizes the Income-Based Repayment (IBR) Plan for borrowers who obtain student loans through the Federal Family Education Loan (FFEL) Program and William D. Ford Federal Direct Loan (Direct Loan) Program. Section 455(e) of the HEA describes income-contingent repayment plans for borrowers who obtain student loans through the Direct Loan Program. Section 455(q) of the HEA describes the Repayment Assistance Plan for borrowers who obtain student loans through the Direct Loan Program. These plans are collectively referred to as income driven repayment (IDR) plans and the regulations that govern them are in 34 CFR 682.215 (for FFEL Program loans) and 685.209 (for Direct Loans). There are three income-contingent repayment plans: the Saving on a Valuable Education (SAVE) Plan (formerly REPAYE), Pay As You Earn (PAYE) Plan, and the Income-Contingent Repayment (ICR) Plan. The court action effective March 10, 2026 invalidates the SAVE Plan and the OBBBA requires the remaining income-contingent plans be sunset by July 1, 2028.

The Department is updating the currently approved IDR Request Form that is used by a borrower to enroll, recertify, or change their IDR plan to support the provisions identified by the OBBBA and court action. Specifically, the form is being updated to add the Repayment Assistance Plan as an option for borrowers to select and revising the questions related to family size to accurately gather the borrower's number of dependents—a component unique to the Repayment Assistance Plan. Additionally, the form explains the terms of the Repayment Assistance Plan and provides notice that the PAYE and ICR plans will be sunset in 2028 (the SAVE Plan was removed in a previous version of the form as a result of a court injunction). Additional updates to improve clarity and the borrower

experience as a result of these changes have also been made.

Ross Santy,

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

[FR Doc. 2026-07614 Filed 4-17-26; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2026-SCC-1321]

Private School Universe Survey (PSS) 2025-26 and 2027-28 Data Collections, and 2027-28 PSS Frame Development Activities; Correction

AGENCY: National Center for Education Statistics (NCES), Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Correction notice.

SUMMARY: On April 16, 2026, the U.S. Department of Education published a 60-day comment period notice in the **Federal Register** with FR DOC# 2026-07410 (91 FR 20419, page 20419-20420) seeking public comment for an information collection entitled, "Private School Universe Survey (PSS) 2025-26 and 2027-28 Data Collections, and 2027-28 PSS Frame Development Activities". The OMB control number listed is incorrect. The correct OMB control number is 1850-0641.

The Chief Data Officer, Office of Planning, Evaluation and Policy Development, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: April 16, 2026.

Ross Santy,

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

[FR Doc. 2026-07626 Filed 4-17-26; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8632-023]

City of Kankakee, Illinois; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: Subsequent Minor License.

b. *Project No.*: 8632–023.

c. *Date filed*: April 3, 2026.

d. *Applicant*: City of Kankakee, Illinois.

e. *Name of Project*: Kankakee Hydroelectric Project (project).

f. *Location*: The project is located on the Kankakee River in Kankakee County, Illinois.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C.791(a)–825(r).

h. *Applicant Contact*: Mr. Zachary Newton, Utility Superintendent—City of Kankakee, Kankakee Environmental Services Utility—295 North Harrison Ave., Kankakee, IL 60901; telephone: 815–933–0454; or email: zjnewton@citykankakee-il.gov.

i. *FERC Contact*: Laura Washington at (202) 502–6072; or email at laura.washington@ferc.gov.

j. *Cooperating agencies*: Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource

agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status*: on or before 5:00 p.m. Eastern Time on June 2, 2026.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 10,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support at FEROnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy via U.S. Postal Service 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–8632–023.

m. The application is not ready for environmental analysis at this time.

n. *The project consists of*: (1) a 300-acre reservoir; (2) a 440-foot-long concrete dam topped by a 2-foot-high inflatable rubber dam; (3) a 100-foot-long intake channel; (4) a powerhouse with three 400-kilowatt generating units

with a total installed capacity of 1.2 megawatts; (5) a 60-foot-long tailrace channel; and (6) appurtenant facilities. The project is operated in a run-of-river mode with an estimated annual energy production of approximately 1,124 megawatt hours. The applicant proposes to continue to operate the project in a run-of-river mode.

o. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (e.g., license application) 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 (P–8632). For assistance, contact FERC at FEROnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may also register online at <https://ferconline.ferc.gov/FEROnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

q. *Procedural schedule and final amendments*: The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter and Request Additional Information	July 2026.
Issue Acceptance Letter and Notice	October 2026.
Issue Scoping Notice	October 2026.
Scoping Comments due	November 2026.
Issue Ready for Environmental Analysis Notice	December 2026.

r. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

(Authority: 18 CFR 2.1)

Dated: April 15, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–07655 Filed 4–17–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2082–074]

PacifiCorp; Notice of Availability of Environmental Assessment

The EA contains Commission staff's analysis of the potential environmental effects of the proposed amendment, alternatives to the proposed action, and concludes that the proposed

administrative removal of the Fall Creek development from the project license would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA may be viewed on the Commission's website at <http://www.ferc.gov> using the “eLibrary” link. Enter the docket number (P–2082) in the docket number field to access the document. For assistance, contact FERC Online Support at FEROnlineSupport@ferc.gov or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All comments must be filed May 15, 2026, 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne 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-2082-074.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

For further information, contact Diana Shannon at 202-502-6136 or diana.shannon@ferc.gov.

(Authority: 18 CFR 2.1)

Dated: April 15, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-07656 Filed 4-17-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26-183-000]

Scout V Hugoton Gathering, LP, Pan-Hugoton Gathering Company LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on April 2, 2026, Scout V Hugoton Gathering, LP (Scout), 13800 Montfort Drive, Dallas, Texas 75240, and Pan-Hugoton Gathering Company LLC (PHGC), 370 17th Street, Suite 2900, Denver, Colorado, 80202,

filed a joint application under sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting (1) permission for Scout to abandon, by sale, approximately 249.1 miles of 1-inch to 26-inch-diameter pipeline and related facilities and appurtenances (West Hugoton System); and (2) a certificate for PHGC to own and operate the West Hugoton System, and to provide transportation services thereupon under the same rates, terms, and conditions as under Scout's currently effective tariff. PHGC also requests a blanket certificate pursuant to Part 284 of the Commission's regulations, authorizing PHGC to transport natural gas for others on a firm and interruptible basis, and a blanket certificate pursuant to Part 157 of the Commission's regulations, authorizing PHGC to perform certain routine construction, operation, and abandonment activities, all as more fully set forth in the application which is on file with the Commission and open for 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 regarding the proposed project should be directed to John Phelan, Counsel & Chief Compliance Officer, Scout Energy Management LLC, 13800 Montfort Drive, Dallas, Texas 75240, by phone at (469) 200-0853, or by email at John.Phelan@scoutep.com and Craig Gleaton, General Counsel, Jonah Energy Parent, LLC, 370 17th Street, Suite 2900, Denver, Colorado 80202, by phone at (720) 577-1234, or by email at craig.gleaton@jonahenergy.com.

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,¹ within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on May 6, 2026. How to file protests, motions to intervene, and comments is explained below.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation (OPP) at (202) 502-6595 or OPP@ferc.gov.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)² and 385.211³ of the Commission's regulations under the NGA, any person⁴ may file a protest to the application. Protests must comply with the requirements specified in section

¹ 18 CFR 157.9.

² 18 CFR 157.10(a)(4).

³ 18 CFR 385.211.

⁴ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

385.2001⁵ of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before 5:00 p.m. Eastern Time on May 6, 2026.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP26–183–000 in your submission.

(1) 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;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. 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 "Comment on a Filing"; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP26–183–000).

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 courier: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, 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. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,⁶ 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 Procedure⁷ and the regulations under the NGA⁸ by the intervention deadline for the project, which is 5:00 p.m. Eastern Time on May 6, 2026. 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>.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP26–183–000 in your submission.

(1) You may file your motion to intervene 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 "Intervention." The eFiling feature includes a document-less intervention option; for more information, visit <https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf>; or

(2) You can file a paper copy of your motion to intervene, along with three

copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP26–183–000.

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 courier: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (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: John Phelan, Counsel & Chief Compliance Officer, Scout Energy Management LLC, 13800 Montfort Drive, Dallas, Texas 75240, or by email (with a link to the document) at John.Phelan@scoutep.com and Craig Gleaton, General Counsel, Jonah Energy Parent, LLC, 370 17th Street, Suite 2900, Denver, Colorado 80202, or by email (with a link to the document) at craig.gleaton@jonahenergy.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. Service can be via email with a link to the document.

All timely, unopposed⁹ motions to intervene are automatically granted by operation of Rule 214(c)(1).¹⁰ 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.¹¹ 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.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from OPP at (202) 502–6595 or on the FERC website at

⁹ The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

¹⁰ 18 CFR 385.214(c)(1).

¹¹ 18 CFR 385.214(b)(3) and (d).

⁶ 18 CFR 385.102(d).

⁷ 18 CFR 385.214.

⁸ 18 CFR 157.10.

⁵ 18 CFR 385.2001.

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.

Intervention Deadline: 5:00 p.m. Eastern Time on May 6, 2026.

(Authority: 18 CFR 2.1)

Dated: April 15, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–07657 Filed 4–17–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12613–004]

Tygart LLC; Notice of Effectiveness of Withdrawal of Extension of Time Request

On February 17, 2026, Tygart LLC (licensee) filed an extension of time request pursuant to Articles 301 and 410 of the license for the Tygart Hydroelectric Project No. 12613.¹ On March 27, 2026, the licensee filed a notice of withdrawal of the request. The unconstructed project is located at the U.S. Army Corps of Engineers’ (Corps) Tygart Dam on the Tygart River in the community of Grafton in Taylor County, West Virginia. The project occupies federal land administered by the Corps.

No motion in opposition to the notice of withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal. Pursuant to Rule 216(b) of the Commission’s Rules of Practice and Procedure,² the withdrawal of the extension of time request became effective on April 13, 2026,³ and this proceeding is hereby terminated.

(Authority: 18 CFR 2.1)

Dated: April 15, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–07653 Filed 4–17–26; 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: RP26–760–000.
Applicants: Kinder Morgan Louisiana Pipeline LLC.

Description: Compliance filing: pro forma—Texas Header Project to be effective 12/31/9998.

Filed Date: 4/14/26.

Accession Number: 20260414–5238.

Comment Date: 5 p.m. ET 4/27/26.

Docket Numbers: RP26–761–000.
Applicants: Millennium Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement No. 342515—ExxonMobil to be effective 4/15/2026.

Filed Date: 4/15/26.

Accession Number: 20260415–5076.

Comment Date: 5 p.m. ET 4/27/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission’s Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission’s eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Dated: April 15, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026–07639 Filed 4–17–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG26–216–000.

Applicants: Crockett Cogeneration, LLC.

Description: Crockett Cogeneration, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/15/26.

Accession Number: 20260415–5149.

Comment Date: 5 p.m. ET 5/6/26.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER26–2215–000.

Applicants: Duke Energy Florida, LLC, Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii): DEF—Real Power Loss Filing (2026) to be effective 5/1/2026.

Filed Date: 4/15/26.

Accession Number: 20260415–5165.

Comment Date: 5 p.m. ET 5/6/26.

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.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

¹ *Tygart LLC*, 155 FERC ¶ 62,076 (2016).

² 18 CFR 385.216(b) (2025).

³ See 18 CFR 385.2007 (2025).

Dated: April 15, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-07641 Filed 4-17-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC26-10-000]

Commission Information Collection Activities (FERC-547, FERC-550, FERC-914); Consolidated Comment Request; Extension; Correction

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Energy Regulatory Commission published in the **Federal Register** of April 14, 2026 a notice of information collection and

request for comments. This notice correctly stated that there are no proposed changes to the FERC-550 information collection. However, one row was inadvertently left out of the burden table.

FOR FURTHER INFORMATION CONTACT:

Kayla Williams, (202) 502-6468.

DataClearance@FERC.gov.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 14, 2026, in FR Doc. 2026-07213, on page 19127, correct the table FERC-550: Oil Pipeline Rates—Tariff Filings and Depreciation Studies to read:

FERC-550: OIL PIPELINE RATES—TARIFF FILINGS AND DEPRECIATION STUDIES

	Number of respondents	Annual number of responses per respondent	Total number of responses ¹	Average burden hrs. & cost (\$) per response	Total annual burden hours & total annual cost (\$)	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Oil Rates and Tariff Filings.	261	3	783	7 hrs.; \$721	5,481 hrs.; \$564,543	\$2,163
Depreciation Studies	15	1	15	40 hrs.; \$4,120	600 hrs.; \$61,800	\$4,120
Project ² Area Labor Wages.	7	1	7	15 hrs.; \$1,545	105 hrs.; \$10,815	\$1,545
Total	283	.....	798	.....	6,186 hrs.; \$637,158 .....	.....

¹ This figure is rounded.

² The 60-day FRN correctly stated that there are no proposed changes to the FERC-550 information collection. However, this row in the table was inadvertently left out of the burden table.

Dated: April 15, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026-07654 Filed 4-17-26; 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: EC26-69-000.

Applicants: AEP Indiana Michigan Transmission Company, Inc., Mammoth North LLC.

Description: Supplement to 03/04/2026, Joint Application for Authorization Under Section 203 of the Federal Power Act of AEP Indiana Michigan Transmission Company, Inc., et al.

Filed Date: 4/13/26.

Accession Number: 20260413-5329.

Comment Date: 5 p.m. ET 4/23/26.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG26-215-000.

Applicants: Grant Solar, LLC.

Description: Grant Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/15/26.

Accession Number: 20260415-5071.

Comment Date: 5 p.m. ET 5/6/26.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13-821-014; ER17-1351-002; ER23-178-002; ER14-140-002; ER12-2570-015.

Applicants: Panther Creek Power Operating, LLC, Panther Creek Power Operating, LLC, Scrubgrass Generating Company, L.P., Scrubgrass Generating Company, L.P., Scrubgrass Generating Company, L.P.

Description: Notice of Non-Material Change in Status of Scrubgrass Generating Company, L.P., et al.

Filed Date: 4/14/26.

Accession Number: 20260414-5266.

Comment Date: 5 p.m. ET 5/5/26.

Docket Numbers: ER19-1575-016; ER24-916-005; ER10-3050-017; ER14-2871-027; ER16-182-022; ER20-71-015; ER20-72-015; ER25-1966-003; ER17-47-020; ER22-1439-013; ER22-1440-013; ER22-1441-013; ER22-1442-011; ER25-1124-002; ER26-797-001; ER21-1369-012; ER21-1371-012; ER21-1373-013; ER21-1376-013; ER18-2241-015; ER24-2257-006; ER24-2258-006; ER23-1048-009; ER22-2419-009; ER22-2420-009; ER25-1967-002; ER19-1660-015; ER19-1662-015; ER20-75-015; ER10-2488-033; ER15-621-026; ER20-77-015; ER24-917-006; ER15-622-026; ER21-2782-012; ER23-2001-009; ER22-149-013; ER15-463-026; ER16-72-022; ER20-76-017; ER17-48-020; ER13-1586-028; ER23-562-009; ER21-1368-011; ER16-902-019; ER18-47-019; ER20-79-015; ER10-3053-017; ER18-2240-015.

Applicants: Yavi Energy, LLC, Whitewater Hill Wind Partners, LLC, Voyager Wind IV Expansion, LLC, Voyager Wind II, LLC, Voyager Wind I, LLC, Valley Center ESS, LLC, TGP Energy Management II, LLC, TGP

Energy Management, LLC, Terra-Gen Mojave Windfarms, LLC, Oasis Plains Wind, LLC, San Gorgonio Westwinds II—Windustries, LLC, San Gorgonio Westwinds II, LLC, Sagebrush Line, LLC, Sagebrush ESS II, LLC, Sagebrush ESS, LLC, Ridgetop Energy, LLC, Placerita ESS, LLC, Painted Hills Wind Holdings, LLC, Pacific Crest Power, LLC, Oasis Power Partners, LLC, Oasis Alta, LLC, Mojave 16/17/18 LLC, Mojave 3/4/5 LLC, Lockhart Solar PV IV, LLC, Lockhart Solar PV II, LLC, Lockhart Solar PV, LLC, Lockhart ESS, LLC, Lockhart CL ESS II, LLC, Lockhart CL ESS I, LLC, Garnet Wind, LLC, Sanborn Solar 1A, LLC, Edwards Solar 1A, LLC, Edwards Sanborn Storage II, LLC, Edwards Sanborn Storage I, LLC, EdSan 2 Solar Storage, LLC, EdSan 1C Solar, LLC, EdSan 1B Group 3, LLC, EdSan 1B Group 2, LLC, EdSan 1B Group 1 Sanborn, LLC, EdSan 1B Group 1 Edwards, LLC, DifWind Farms LTD VI, Desert Breeze Solar, LLC, Coachella Wind Holdings, LLC, Coachella Hills Wind, LLC, Cameron Ridge II, LLC, Cameron Ridge, LLC, Cabazon Wind Partners, LLC, Beaumont ESS, LLC, Alta Oak Realty, LLC.

Description: Notice of Non-Material Change in Status of Alta Oak Realty, LLC, et al.

Filed Date: 4/13/26.

Accession Number: 20260413–5331.

Comment Date: 5 p.m. ET 5/4/26.

Docket Numbers: ER26–2200–000.

Applicants: Mesa Wind Power LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 4/16/2026.

Filed Date: 4/14/26.

Accession Number: 20260414–5243.

Comment Date: 5 p.m. ET 5/5/26.

Docket Numbers: ER26–2201–000.

Applicants: North Hurlburt Wind, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 4/16/2026.

Filed Date: 4/14/26.

Accession Number: 20260414–5244.

Comment Date: 5 p.m. ET 5/5/26.

Docket Numbers: ER26–2202–000.

Applicants: Brookfield Power Piney & Deep Creek LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 4/16/2026.

Filed Date: 4/14/26.

Accession Number: 20260414–5245.

Comment Date: 5 p.m. ET 5/5/26.

Docket Numbers: ER26–2203–000.

Applicants: Rumford Falls Hydro LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 4/16/2026.

Filed Date: 4/14/26.

Accession Number: 20260414–5251.

Comment Date: 5 p.m. ET 5/5/26.

Docket Numbers: ER26–2204–000.

Applicants: SF Aggregator, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 4/16/2026.

Filed Date: 4/14/26.

Accession Number: 20260414–5253.

Comment Date: 5 p.m. ET 5/5/26.

Docket Numbers: ER26–2205–000.

Applicants: South Hurlburt Wind, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 4/16/2026.

Filed Date: 4/14/26.

Accession Number: 20260414–5254.

Comment Date: 5 p.m. ET 5/5/26.

Docket Numbers: ER26–2206–000.

Applicants: Palmer Solar LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 4/16/2026.

Filed Date: 4/15/26.

Accession Number: 20260415–5040.

Comment Date: 5 p.m. ET 5/6/26.

Docket Numbers: ER26–2207–000.

Applicants: CenterPoint Energy Houston Electric, LLC.

Description: § 205(d) Rate Filing: TFO Tariff Interim Rate Revision to Conform with PUCT to be effective 4/13/2026.

Filed Date: 4/15/26.

Accession Number: 20260415–5052.

Comment Date: 5 p.m. ET 5/6/26.

Docket Numbers: ER26–2208–000.

Applicants: Speedway Solar NC, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 4/16/2026.

Filed Date: 4/15/26.

Accession Number: 20260415–5086.

Comment Date: 5 p.m. ET 5/6/26.

Docket Numbers: ER26–2209–000.

Applicants: Stony Knoll Solar, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 4/16/2026.

Filed Date: 4/15/26.

Accession Number: 20260415–5089.

Comment Date: 5 p.m. ET 5/6/26.

Docket Numbers: ER26–2210–000.

Applicants: Broad River Solar, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 4/16/2026.

Filed Date: 4/15/26.

Accession Number: 20260415–5099.

Comment Date: 5 p.m. ET 5/6/26.

Docket Numbers: ER26–2211–000.

Applicants: Carolina Solar Power, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 4/16/2026.

Filed Date: 4/15/26.

Accession Number: 20260415–5105.

Comment Date: 5 p.m. ET 5/6/26.

Docket Numbers: ER26–2212–000.

Applicants: CPRE 1 Lessee, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 4/16/2026.

Filed Date: 4/15/26.

Accession Number: 20260415–5108.

Comment Date: 5 p.m. ET 5/6/26.

Docket Numbers: ER26–2213–000.

Applicants: Ameren Illinois

Company, Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Ameren Illinois Company submits tariff filing per 35.13(a)(2)(iii): 2026–04–15 _ SA 4739 Ameren Illinois-IMEA-Freeburg WCA to be effective 6/15/2026.

Filed Date: 4/15/26.

Accession Number: 20260415–5118.

Comment Date: 5 p.m. ET 5/6/26.

Docket Numbers: ER26–2214–000.

Applicants: ISO New England Inc., Versant Power.

Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): ISO–NE/Versant Power; Original Service Agreements to be effective 4/9/2026.

Filed Date: 4/15/26.

Accession Number: 20260415–5134.

Comment Date: 5 p.m. ET 5/6/26.

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.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Dated: April 15, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–07640 Filed 4–17–26; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY**[EPA-HQ-OPP-2025-4216; FRL-13288-01-OCSPP]****Pesticide Experimental Use Permit; Receipt of Application; Comment Request (February 2026)****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: This notice announces EPA's receipt of an application 92643-EUP-E from Google LLC requesting an experimental use permit (EUP) for the *Wolbachia pipientis* wPip strain contained in live adult *Aedes albopictus* males. The Agency has determined that the permit may be of regional and national significance. Therefore, because of the potential significance, EPA is seeking comments on this application.

DATES: Comments must be received on or before May 20, 2026.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2025-4216, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting on and visiting the docket, along with more information about dockets generally, are available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Each application summary in Unit II. specifies a contact division. The appropriate division contacts are identified as follows:

- BPPD (Biopesticides and Pollution Prevention Division) (Mail Code 7511M); Shannon Borges; main telephone number: (202) 566-1400; email address: BPPDFRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this action apply to me?*

This action is directed to the public in general. Although this action may be of particular interest to those people who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. What action is the Agency taking?

Under section 5 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

- *Experimental Use Permit Number:* 92643-EUP-E. *Docket ID Number:* EPA-HQ-OPP-2025-4216. *Submitter:* Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043. *Pesticide Chemical:* *Wolbachia pipientis* wPip strain contained in live adult *Ae. Albopictus* male mosquitoes for three years in New Jersey, and two years in California and Florida. In 2026, up to 16,000,000 Debug albo male mosquitoes are proposed to be released over an area of up to 800 acres, with a total active ingredient of up to 8,480 mg, in New Jersey. In 2027 and 2028, up to 16,000,000 Debug albo male mosquitoes are proposed to be released over an area

of up to 800 acres, with a total active ingredient of up to 8,480 mg per state, in New Jersey, California, and Florida. The purpose of this EUP is to gather efficacy data on the success of Debug albo males (mosquitoes) mating with wild-type *Aedes albopictus* females, which can lead to population suppression. *Date of Receipt:* October 27, 2025. *Contact:* BPPD.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

(Authority: 21 U.S.C. 346a.)

Dated: April 15, 2026.

Edward Messina,

Director, Office of Pesticide Programs.

[FR Doc. 2026-07625 Filed 4-17-26; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL MARITIME COMMISSION

[Docket No. 26-05]

Worldlog, LLC dba WCM Worldwide, Complainant v. United Cargo Management, Inc., Respondent; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (the "Commission") by Worldlog, LLC dba WCM Worldwide (the "Complainant") against United Cargo Management, Inc. (the "Respondent"). Complainant states that the Commission has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act of 1984, as amended, 46 U.S.C. 40101 *et seq.*, and personal jurisdiction over Respondent as a regulated and licensed ocean transportation intermediary and non-vessel-operating common carrier, as defined in 46 U.S.C. 40102(17) and (19).

Complainant is a corporation organized and existing under the laws of the state of Wyoming with its principal place of business in Charleston, South Carolina.

Complainant identifies Respondent as a corporation organized and existing under the laws of the state of California with its principal place of business in Norwalk, California.

Complainant alleges that Respondent violated 46 U.S.C. 41102(d), 41103, 41104(a)(4)(E) and 46 CFR 515.31(e). Complainant alleges these violations arose from Respondent's attempt to collect ocean freight charges from customers of Complainant, who had

already paid in full, as a form of retaliation; unlawful disclosure of confidential service contract information; purposeful filing of lawsuits and federal claims instead of seeking Commission dispute resolution or other mediation services; and other acts or omissions by Respondent.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at <https://www2.fmc.gov/readingroom/proceeding/26-05/>. This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by April 15, 2027, and the final decision of the Commission shall be issued by October 29, 2027.

(Authority: 46 U.S.C. 41301; 46 CFR 502.61(c).)

Served: April 15, 2026.

David Eng,
Secretary.

[FR Doc. 2026-07586 Filed 4-17-26; 8:45 am]

BILLING CODE 6730-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10242 and CMS-1771]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of

the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by May 20, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Emergency Ambulance Transports and Beneficiary Signature; *Use:* The statutory authority requiring a beneficiary's signature on a claim submitted by a provider is located

in section 1835(a) and in 1814(a) of the Social Security Act (the Act), for Part B and Part A services, respectively. The authority requiring a beneficiary's signature for supplier claims is implicit in sections 1842(b)(3)(B)(ii) and in 1848(g)(4) of the Act. Federal regulations at 42 CFR 424.32(a)(3) state that all claims must be signed by the beneficiary or on behalf of the Beneficiary (in accordance with 424.36). Section 424.36(a) states that the beneficiary's signature is required on a claim unless the beneficiary has died or the provisions of 424.36(b), (c), or (d) apply.

For emergency and nonemergency ambulance transport services, where the beneficiary is physically or mentally incapable of signing the claim (and the beneficiary's authorized representative is unavailable or unwilling to sign the claim), that it is impractical and infeasible to require an ambulance provider or supplier to later locate the beneficiary or the person authorized to sign on behalf of the beneficiary, before submitting the claim to Medicare for payment. Therefore, an exception was created to the beneficiary signature requirement with respect to emergency and nonemergency ambulance transport services, where the beneficiary is physically or mentally incapable of signing the claim, and if certain documentation requirements are met. Thus, we added subsection (6) to paragraph (b) of 42 CFR 424.36. The information required in this ICR is needed to help ensure that services were in fact rendered and were rendered as billed. *Form Number:* CMS-10242 (OMB control number: 0938-1049); *Frequency:* Occasionally; *Affected Public:* Private sector, Business or other for-profit, Not-for-profits institutions; *Number of Respondents:* 10,278; *Total Annual Responses:* 9,265,931; *Total Annual Hours:* 771,852. (For policy questions regarding this collection contact Frederick Grabau at 410-786-0206.)

2. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title:* Emergency and Foreign Hospital Services and Supporting Regulation in 42 CFR 424.103; *Use:* Section 1866 of the Social Security Act states that any provider of services shall be qualified to participate in the Medicare program and shall be eligible for payments under Medicare if it files an agreement with the Secretary to meet the conditions outlined in this section of the Act. Section 1814(d)(1) of the Social Security Act and 42 CFR 424.100, allows payment of Medicare benefits for a Medicare beneficiary to a

nonparticipating hospital that does not have an agreement in effect with the Centers for Medicare and Medicaid Services. These payments can be made if such services were emergency services and if CMS would be required to make the payment if the hospital had an agreement in effect and met the conditions of payment. This form is used in connection with claims for emergency hospital services provided by hospitals that do not have an agreement in effect under Section 1866 of the Social Security Act.

42 CFR 424.103(b) requires that before a non-participating hospital may be paid for emergency services rendered to a Medicare beneficiary, a statement must be submitted that is sufficiently comprehensive to support that an emergency existed. Form CMS-1771 contains a series of questions relating to the medical necessity of the emergency. The attending physician must attest that the hospitalization was required under the regulatory emergency definition (42 CFR 424.101 attached) and give clinical documentation to support the claim. A photocopy of the beneficiary's hospital records may be used in lieu of the CMS-1771 if the records contain all the information required by the form.; *Form Number:* CMS-1771 (OMB Control Number: 0938-0023); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 100; *Number of Responses:* 200; *Total Annual Hours:* 50. (For policy questions regarding this collection contact Shauntari Cheely at 410-786-1818.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026-07634 Filed 4-17-26; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10950]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to

comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by June 22, 2026.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. Electronically. You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. By *regular mail*. You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier: __/OMB Control Number: __, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in

each collection's supporting statement and associated materials (see **ADDRESSES**).

Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a OMB control number); *Title of Information Collection:* Submissions of Acute Hospital Care at Home (AHCAH) Waiver Submission and Data Collection; *Use:* This information collection request was approved under OMB control number of 0938-1384. The AHCAH information collection request is being separated from the 1135 waiver information collection request. The Acute Hospital Care at Home initiative has been codified in legislation, Consolidate Appropriations Act, 2025, and is no longer under the 1135 waiver authority. Any changes to this document would be based on the legislative authority and not based on an 1135 waiver.

Acute Hospital Care at Home is a waiver initiative established by CMS on November 23, 2020 in response to the unprecedented strain on hospital capacity due to the severe national increase in coronavirus disease 2019 (COVID-19) witnessed. This waiver, which is granted at the individual hospital/CMS Certification Number (CCN) level, waives § 482.23(b) and (b)(1) of the Hospital Conditions of Participation (CoPs) which require nursing services to be provided on premises 24 hours a day, 7 days a week and the immediate availability of a registered nurse for care of any patient. In exchange for this flexibility, hospitals will utilize models of at-home hospital care that have seen prior success in several leading hospital institutions and networks. This care and its results have been reported in leading academic

journals, including a major study funded by a Healthcare Innovation Award from the Center for Medicare and Medicaid Innovation (CMMI). This extensive research has shown that quality and safety are at least as high as that received by similar patients admitted to traditional brick and mortar hospitals.

This program clearly differentiates the delivery of acute hospital care at home from traditional home health services. Home health care provides important skilled nursing and other services, Acute Hospital Care at Home is for beneficiaries who require acute inpatient admission to a hospital and who require at least daily rounding by a physician and medical team monitoring their care needs on an ongoing basis. A minimum of two in-person visits will occur daily by either registered nurses or mobile integrated health paramedics, based on the patient's nursing plan and hospital policies. Hospitals may only treat patients with this waiver if they are admitted from their Emergency Department or if they are transferred from inpatient hospital beds. There is no payment change, and hospitals are not permitted to bill Medicare or its beneficiaries for any costs outside of a typical inpatient admission.

CMS is seeking to obtain continued OMB approval for information. All approved hospitals have submitted this information via an online portal at *CMS QualityNet* the previously mentioned website. To date, 433 hospitals individual hospitals/CCNs have submitted waiver requests and 396 of these hospitals have been approved. At this time, 65 hospitals have completed the online expedited waiver request, and 331 hospitals have completed the online detailed waiver request. When a hospital submits a waiver request, it completes one of two online forms found on the waiver landing page, depending on its level of experience with this type of care. Experienced hospitals, defined as treating at least 25 patients with acute hospital care at home previously, have an expedited submission that is based on a series of attestations. Additionally, all hospitals with an approved waiver are asked to submit data for patient admissions and discharges, escalations of care back to the brick-and-mortar hospital, and unexpected patient mortalities to CMS on a monthly (Tier 1) or weekly (Tier 2). This data is submitted voluntarily through the same online portal as the waiver submission and is not a requirement of ongoing participation in the Waiver. Of note, without further Congressional action, this waiver

submission process will end September 30, 2030. *Form Number:* CMS-10950 (OMB control number: 0938-NEW); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions and State, Local or Tribal Governments; *Number of Respondents:* 1,947; *Total Annual Responses:* 1,947; *Total Annual Hours:* 1,947. (For policy questions regarding this collection, contact Danielle Adams at 410-786-8818.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026-07583 Filed 4-17-26; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2025-D-6130]

Establishing Impurity Specifications for Antibiotics; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a draft guidance for industry entitled "Establishing Impurity Specifications for Antibiotics." The draft guidance provides recommendations regarding the establishment of specifications for organic impurities in antibiotics manufactured by fermentation and semi-synthesis. This draft guidance applies to antibiotic drugs subject to approval under new drug applications (NDAs) and abbreviated new drug applications (ANDAs) and associated type II drug substance drug master files (DMFs) referenced in antibiotic NDAs and ANDAs. This guidance also applies to nonprescription antibiotic drugs, often referred to as over-the-counter (OTC) monograph drugs. By providing these recommendations, FDA intends to clarify effective control strategies, support the development of high-quality antibiotic products, and promote consistency in quality standards.

DATES: Submit either electronic or written comments on the draft guidance by June 22, 2026, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions".

Instructions: All submissions received must include the Docket No. FDA-2025-D-6130 for "Establishing Impurity Specifications for Antibiotics." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states

“THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Ashley Boam, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4192, Silver Spring, MD 20993–0002, 240–402–6341.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Establishing Impurity Specifications for Antibiotics.” This draft guidance provides recommendations for

establishing specifications for organic impurities in antibiotics manufactured by fermentation and semi-synthesis. These recommendations can be used to establish consistent standards for impurity testing and ensure that batches of antibiotic drug products meet appropriate impurity specifications.

This draft guidance applies to antibiotic drugs subject to approval under NDAs and ANDAs submitted under section 505 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355), associated type II drug substance DMFs referenced in antibiotic NDAs and ANDAs, and nonprescription antibiotic drugs marketed pursuant to section 505G of the FD&C Act (21 U.S.C. 355h) (often referred to as OTC monograph drugs). INDs submitted under 21 CFR part 312 should follow the general principles outlined in the draft guidance.

The recommendations in the draft guidance are not intended to be applied retroactively (*i.e.*, to antibiotic drugs submitted in applications or their supplements, or antibiotic drugs marketed before finalization of this guidance). This is to prevent potential manufacturing discontinuances or interruptions of marketed antibiotic drugs that could lead to supply chain disruptions. However, applicants and manufacturers of marketed antibiotic drugs should consider updating impurity specifications in accordance with this draft guidance when making major changes, such as replacing a source of active ingredient(s), and to ensure the drugs are manufactured in compliance with Current Good Manufacturing Practice (CGMP) requirements.

The ICH guidances for industry *Q3A(R) Impurities in New Drug Substances* (June 2008) and *Q3B(R2) Impurities in New Drug Products* (August 2006) provide recommendations on thresholds for the identification, reporting, and qualification of impurities and degradation products in new drug substances and drug products using drug substances that are produced by chemical synthesis. However, current guidances do not provide recommendations for the control of impurities and degradation products in fermentation and semi-synthetic products, including certain antibiotics manufactured from these processes. Antibiotics manufactured by fermentation or semi-synthesis are typically more complex than those produced solely by chemical synthesis, often containing a mixture of the active ingredient and impurities. The active ingredient is generally not a single

molecular entity but rather a collection of structurally related, biologically active analogs that together define the active ingredient. To address this gap, the draft guidance provides recommendations on the identification, qualification, and control of impurities and degradation products in fermentation-based and semi-synthetic antibiotics. The principles described in ICH Q3A(R), ICH Q3B(R2), and ICH M7(R2) should apply to antibiotics manufactured by fermentation and semi-synthesis. Antibiotic drugs that have United States Pharmacopeia (USP) monographs must meet the requirements outlined in the respective USP monographs for the drug substance and the drug product (section 501(b) of the FD&C Act).

The draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Establishing Impurity Specifications for Antibiotics.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

As we develop final guidance on this topic, FDA will consider comments on costs or cost savings the guidance may generate, relevant for Executive Order 14192.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 210 and 211 pertaining to CGMP requirements have been approved under OMB control number 0910–0139. The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively. The collections of information pertaining to 21 CFR part 201 Subpart C pertaining to over-the-counter drug product labeling have been approved under OMB control number 0910–0340.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda->

guidance-documents, or <https://www.regulations.gov>.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–07629 Filed 4–17–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2025–N–6743]

Potential New Indication for Testosterone Replacement Therapy

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing that we have reviewed information in published literature that seems promising regarding the potential use of testosterone replacement therapy (TRT) in the treatment of low libido in men with decreased libido associated with idiopathic hypogonadism. We encourage holders of approved TRT new drug applications (NDAs) that are interested in seeking approval for this new indication to contact FDA for further information regarding submission of a supplemental NDA, including data needed to support an approval.

DATES: Holders of currently approved TRT NDAs interested in seeking approval for the treatment of low libido in men with decreased libido associated with idiopathic hypogonadism are encouraged to contact FDA (see **FOR FURTHER INFORMATION CONTACT**) by April 30, 2026, for further information regarding submission of a supplemental NDA, including data needed to support the new indication.

FOR FURTHER INFORMATION CONTACT: Dorsa Jalali, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5333, 240–402–0543, dorsa.jalali@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Testosterone is the principal hormone secreted by the testes and is the main androgenic steroid in males. Endogenous androgens like testosterone are necessary and responsible for the normal growth and development of the male sex organs and for the development and maintenance of

secondary sex characteristics. Approved TRT drug products have been used for decades in the United States for certain conditions associated with a deficiency or absence of endogenous testosterone. In general, the goal of TRT is to reliably and safely restore concentrations of testosterone and its major metabolites (e.g., dihydrotestosterone, estradiol) to normal levels in men with low or absent testosterone levels from structural or genetic causes. FDA-approved TRTs include drug products that vary by dosage forms, strengths, and dosing regimens. These TRTs are currently indicated for testosterone replacement therapy in adult males for conditions associated with a deficiency or absence of endogenous testosterone, specifically primary hypogonadism (congenital or acquired) and hypogonadotropic hypogonadism (congenital or acquired). The approved TRTs also bear a limitation of use in the labeling to note that safety and efficacy of TRT in men with “age-related hypogonadism” have not been established.¹

II. Potential New Indication for TRT

On December 10, 2025, FDA convened an expert panel, “Expert Panel on Testosterone Replacement Therapy for Men” (recording available at <https://www.fda.gov/patients/fda-expert-panels/fda-expert-panel-testosterone-replacement-therapy-men-12102025>), to discuss TRT, including the use of testosterone in men for signs and symptoms associated with idiopathic hypogonadism (i.e., low testosterone levels from inadequate testicular stimulation or function without a known underlying cause).² The expert panel members discussed their individual views and available information on a range of topics related to the risks and benefits of testosterone therapy, including a potential broadening of the current approved indication for testosterone products to include treatment of men with symptomatic hypogonadism without known structural or genetic etiologies.

FDA has conducted a preliminary review of the published literature on possible use of TRT to treat men with symptomatic idiopathic hypogonadism. In evaluating symptomatic idiopathic hypogonadism, FDA reviewed articles

meeting the following criteria: (1) the studies involved prospective, controlled trials; and (2) the articles contained information about the study protocol, endpoints, statistical methods, sample size, and blinding procedures. Our preliminary review of the literature suggests that TRT may be safe and effective in treating low libido in men with decreased libido associated with idiopathic hypogonadism. The published literature we reviewed regarding this potential indication for TRT is listed in the REFERENCES section.

We encourage holders of currently approved TRT NDAs interested in seeking approval for the treatment of low libido in men with decreased libido associated with idiopathic hypogonadism to contact FDA (see **FOR FURTHER INFORMATION CONTACT**) by April 30, 2026, for further information regarding submission of a supplemental NDA, including data needed to support the new indication.³ Approval of any new indication will be based on rigorous scientific evidence and comprehensive risk-benefit analysis, consistent with applicable law.

III. References

The following references are on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; these are not available electronically at <https://www.regulations.gov> as these references are copyright protected. Some may be available at the website addresses listed. Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

1. Pencina KM, Travison TG, Cunningham GR, Lincoff AM, Nissen SE, Khera M, et al., 2024, “Effect of Testosterone Replacement Therapy on Sexual Function and Hypogonadal Symptoms in Men with Hypogonadism,” *J Clin Endocrinol Metab*, 109(2):569–580. Available at <https://doi.org/10.1210/>

¹ See, e.g., FDA-approved labeling for ANDROGEL (NDA 021015), ANDRODERM (NDA 020489), AVEED (NDA 022219), and JATENZO (NDA 206089) available at <https://www.accessdata.fda.gov/scripts/CDER/daf/>.

² In conjunction with the meeting of the expert panel, FDA announced a request for information regarding the scientific, regulatory, and practical considerations that shape TRT use (see 90 FR 57474, Dec. 11, 2025). FDA is in the process of reviewing the comments received.

³ Drug products approved by FDA in supplemental NDAs (including new indications) may be protected by patents issued by the U.S. Patent and Trademark Office and/or by periods of exclusivity. Patent protections and exclusivities may have implications for the timing of approval of subsequent NDAs submitted pursuant to section 505(b)(2) of Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(b)(2)) and abbreviated new drug applications (ANDAs), including supplemental 505(b)(2) NDAs and ANDAs. See, e.g., sections 505(c)(3), 505(j)(5)(B), 505(j)(5)(F), 505A, and 527 of the FD&C Act (21 U.S.C. 355(c)(3), 355(j)(5)(B), 355(j)(5)(F), 355A, and 360cc); see also 21 CFR 314.107, 314.108, 316.31, and 316.34.

clinem/dgad484.

2. Snyder PJ, Bhasin S, Cunningham GR, Matsumoto AM, Stephens-Shields AJ, Cauley JA, et al., 2016, "Effects of Testosterone Treatment in Older Men," *N Engl J Med*, 374(7):611–624. Available at <https://doi.org/10.1056/nejmoa1506119>.

(Authority: 21 U.S.C. 355.)

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–07615 Filed 4–16–26; 11:15 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2025–D–7121]

Compliance Policy Regarding Premarket and Other Requirements for Certain NIOSH Approved Air-Purifying Respirators; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled "Compliance Policy Regarding Premarket and Other Requirements for Certain NIOSH Approved Air-Purifying Respirators." This draft guidance document provides a proposed compliance policy for and information about respirators approved by the Centers for Disease Control and Prevention (CDC) National Institute for Occupational Safety and Health (NIOSH) in accordance with 42 CFR part 84, specifically: surgical N95 respirators and N95 filtering facepiece respirators (FFRs) classified under 21 CFR 878.4040; other NIOSH approved, non-surgical respirators including powered air-purifying respirators (PAPRs), non-powered, air-purifying particulate FFRs, and reusable respirators (e.g., elastomeric half and full facepiece respirators); and FFRs for use by the general public in public health medical emergencies classified under 21 CFR 880.6260. These devices are collectively referred to in the guidance and this notice as "certain FFRs and reusable respirators." This guidance, once finalized, is intended to facilitate more efficient and effective use of resources, consistent with the least burdensome policies for devices. This draft guidance is not final nor is it for implementation at this time.

DATES: Submit either electronic or written comments on the draft guidance by June 22, 2026 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2025–D–7121 for "Compliance Policy Regarding Premarket and Other Requirements for Certain NIOSH Approved Air-Purifying Respirators." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or between 9 a.m. and 4 p.m., Monday through Friday, at the Dockets Management

Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

- **Confidential Submissions:** To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled "Enforcement Policy for Premarket and Other Requirements for Certain NIOSH Approved Respirators" to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive

label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT:
Erica Takai, Center for Devices and Radiological Health, Food and Drug Administration, 301–796–6353.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has a long history of coordinating with NIOSH to help ensure that respirators used for medical purposes are safe, effective, and available. All the devices that are within scope of this guidance document are also subject to approval by NIOSH in accordance with 42 CFR part 84.

Since 1988, surgical N95 respirators that are intended to be worn by operating room personnel during surgical procedures to protect both the surgical patient and the operating room personnel from transfer of microorganisms, body fluids, and particulate material generally have been classified as class II devices under 21 CFR 878.4040. Likewise, N95 FFRs used in healthcare settings during other procedures, including dental, isolation, and other medical procedures, to protect both the patient and healthcare personnel, are also generally classified as class II devices under 21 CFR 878.4040. In November 2017, FDA entered into a Memorandum of Understanding (MOU) with NIOSH, which outlines an agreement between the agencies conditioned on certain surgical N95 respirators and N95 FFRs becoming exempt from premarket notification requirements under section 510(k) of the FD&C Act. The MOU became effective on May 17, 2018, when FDA issued a final order exempting from 510(k) requirements certain surgical N95 respirators and N95 FFRs (product code MSH), subject to certain conditions and limitations.

FDA considers other types of non-surgical respirators, including: PAPRs, non-powered air-purifying particulate FFRs (*e.g.*, N95, N99 FFRs), and reusable respirators (*e.g.*, elastomeric half and full facepiece respirators), that are NIOSH Approved and intended to prevent wearer exposure to pathogenic biological airborne particulates and used in healthcare settings, to be

postamendments devices. A postamendments device for which FDA has not issued a classification order (or reclassification order under section 513(f)(3) of the FD&C Act) is referred to as a “not-classified device,” and is one for which the Agency has not yet reviewed a marketing application or for which the Agency has not made a final decision on such a marketing application. In 2020, FDA addressed its policy regarding not-classified, NIOSH Approved FFRs and reusable respirators when it took a number of actions to help address the COVID–19 public health emergency, including issuing emergency use authorizations (EUA) for such devices with a medical purpose. On March 2, 2020, FDA issued an EUA authorizing NIOSH Approved FFRs to be distributed to healthcare personnel for use in healthcare settings intended to prevent wearer exposure to pathogenic biological airborne particulates. On March 11, 2020, FDA clarified that such respirators are devices because they are intended for a medical use, *i.e.*, to mitigate further transmission of COVID–19.

In 2007, FDA issued a final rule that classified FFRs for use by the general public in public health emergencies under 21 CFR 880.6260 as class II devices. In issuing the classification regulation for this type of device, FDA also issued a special control requiring that, among other things, this device type be certified by NIOSH as a non-powered air-purifying particulate respirator with a minimum filtration efficiency classification of N95.

FDA is proposing the compliance policy described in the draft guidance for certain FFRs and reusable respirators based on NIOSH’s regulatory oversight of these devices, including the performance characteristics of these devices, and FDA’s review of its postmarket data. These devices may provide a public health benefit in accordance with current CDC respiratory virus prevention recommendations. This guidance, once finalized, is intended to facilitate more efficient and effective use of resources, consistent with the least burdensome policies for devices.

This draft guidance is being issued consistent with FDA’s good guidance

practices regulation (21 CFR 10.115). This draft guidance, once finalized, will represent the current thinking of FDA on “Compliance Policy Regarding Premarket and Other Requirements for Certain NIOSH Approved Air-Purifying Respirators.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. As we develop final guidance on this topic, FDA will consider comments on costs or cost savings the guidance may generate, relevant for Executive Order 14192.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products>. This guidance document is also available at <https://www.regulations.gov>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>. Persons unable to download an electronic copy of “Compliance Policy Regarding Premarket and Other Requirements for Certain NIOSH Approved Air-Purifying Respirators” may send an email request to CDRH-Guidance@fda.hhs.gov to receive an electronic copy of the document. Please use the document number GUI00007063 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in the following table have been approved by OMB:

21 CFR part; guidance; or FDA form	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
800, 801, and 830	Medical Device Labeling Regulations; Unique Device Identification.	0910–0485
803	Medical Device Reporting	0910–0437
806	Medical Devices; Reports of Corrections and Removals	0910–0359
807, subparts A through D	Medical Device Registration and Listing	0910–0625
814, subparts A through E	Premarket approval	0910–0231

21 CFR part; guidance; or FDA form	Topic	OMB control No.
860, subpart D	De Novo classification process	0910–0844
“Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program”.	Q-submissions and Early Payor Feedback Request Programs for Medical Devices.	0910–0756
820	Current Good Manufacturing Practice (CGMP); Quality Management Systems (QMSR) Regulation.	0910–0073
“Emergency Use Authorization of Medical Products and Related Authorities” and section 564 of the FD&C Act.	Emergency Use Authorization	0910–0595

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–07613 Filed 4–17–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Rural Health Network Development Planning Program Performance Improvement and Measurement System

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA’s ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than May 20, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the HRSA Information Collection Clearance Officer, at

paperwork@hrsa.gov or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Rural Health Network Development Planning Program Performance Improvement and Measurement System, OMB No. 0915–0384—Revision.

Abstract: HRSA administers the Rural Health Network Development Planning Program (Network Planning Program), which is authorized under 42 U.S.C. 254c(f), 330A(f) of the Public Health Service Act. The purpose of the Network Planning Program is to promote the planning and development of integrated health care networks to address the following legislative aims: (1) achieve efficiencies; (2) expand access to, coordinate, and improve the quality of basic health care services and associated health outcomes; and (3) strengthen the rural health care system as a whole. The Network Planning Program supports 1 year of planning and brings together key parts of a rural health care delivery system, particularly those entities that may not have collaborated in the past, to establish and/or improve local capacity to strengthen rural community health interventions and enhance care coordination. HRSA currently collects information about the Network Planning Program grants using an OMB-approved set of performance measures and seeks to revise that approved collection. The proposed changes are a result of keeping this instrument relevant and responsive to the Network Planning Program’s needs and to improve clarity and ease of reporting for respondents.

A 60-day notice published in the **Federal Register** on February 9, 2026, vol. 91, No. 26; pp. 5773–5774. There were no public comments.

Need and Proposed Use of the Information: HRSA developed performance measures to provide data on the Network Planning Program and to enable HRSA to provide aggregate program data required under the Government Performance and Results Act of 1993. Data from this information collection will help support program compliance, inform rural needs, guide the delivery of technical assistance, and

shape federal program decisions. The measures cover the principal topic areas of interest to HRSA, such as Capacity/Organizational Information and Sustainability. All measures will evaluate HRSA’s progress toward achieving its Network Planning Program goals.

The proposed collection will reduce the total number of measures from 24 to 15. The following sections will be removed: Network Infrastructure, Network Collaboration, and Network Assessment. In the proposed collection, grantees instead complete two sections titled “Capacity/Organizational Information” and “Sustainability.” The “Capacity/Organizational Information” section will include 10 measures, and HRSA will modify the current “Sustainability” section by reducing the number of measures from 10 to 5 measures.

Although the proposed total number of measures has been reduced, there is a proposed increase in the estimated total burden hours compared to the previous ICR package. There are several contributing factors to the increase in estimated total burden. The increase in burden is to account for a new set of awardees who will be new to this data collection. The new set of awardees represent a group of organizations who are funded in the 1-year Network Planning Program. These organizations vary in data collection and reporting capacity as well as vary in the number of member organizations it must coordinate with to report this data to HRSA. The amount of time it takes to build processes to coordinate and collect data from network partners will vary. Larger networks with multiple partners across different organizations are expected to report higher burdens due to the wait time in between requests. Networks who already have established working relationships with its member organizations may already have existing processes in place to effectively collect data for this program.

Likely Respondents: The respondents for these measures are Rural Health Network Development Planning Program award recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose

of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to

transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Rural Health Network Development Planning Program Performance Measures	25	1	25	11.25	281.25
Total	25	1	25	11.25	281.25

Maria G. Button,
Director, Executive Secretariat.
[FR Doc. 2026-07647 Filed 4-17-26; 8:45 am]
BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS-0955-0019]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: 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 June 22, 2026.

ADDRESSES: When commenting, please reference the document identifier/OMB control number OS-0955-0019 and title of collection, “National Survey of Health Information Exchange Organizations (HIO)”. You may send your comments electronically to Wei Chang, wei.chang@hhs.gov.

FOR FURTHER INFORMATION CONTACT: To obtain copies of supporting material for the proposed collection(s) summarized in this notice, please include the document identifier OS-0955-0019 and title of collection “National Survey of Health Information Exchange Organizations (HIO)” for reference, and address inquiries to Wei Chang, wei.chang@hhs.gov, or call 202-706-8913.

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 Health Information Exchange Organizations (HIO).

Type of Collection: Revision of a previously approved collection.

OMB No.: 0955-0019.

Abstract: Electronic health information exchange (HIE) was one of three goals specified by Congress in the 2009 Health Information Technology for Economic and Clinical Health (HITECH) Act to ensure that the \$30 billion federal investment in certified electronic health records (EHRs) resulted in higher-quality, lower-cost care. Subsequent legislation and regulations have continued to prioritize the sharing of data electronically across EHRs and other health information systems. Within the Department of Health and Human Services, the Office of the National Coordinator for Health IT (hereafter ONC) is responsible for coordinating across the federal government, industry, and the health care community to achieve nationwide interoperability of electronic health information exchange. Health information exchange organizations (HIOs) play a pivotal role facilitating health information exchange across disparate providers, labs, pharmacies, public health departments, and others. This information collection request will gather data from HIOs across the nation through the administration of a survey

of HIOs to generate the most current national statistics and associated actionable insights to inform policy efforts. The timely collection of national data from our survey will assess current capabilities of HIOs to support effective electronic information sharing within the U.S. health care system and further aims to achieve nationwide interoperability.

Since prior to HITECH there has been ongoing assessment of trends in the capabilities of HIOs to support clinical exchange through nationwide surveys of HIOs. These prior surveys and studies have collected data on organizational structure, financial viability, geographic coverage, scope of services, implementation and use of standards, perceptions of information blocking, support for public health exchange, and participation in networks and the Technical Exchange Framework and Common Agreement (TEFCA). Continuing the ongoing data collection will be critical to construct a current and comprehensive picture of HIOs’ role in facilitating exchange and ensuring rapid access to important health care data and information when it matters most, including vital data to address public health emergencies.

The survey will collect data on HIO capabilities to support electronic health information exchange, their maturity, and challenges they face. There are five key areas that require assessment: (1) adoption of technical standards; (2) perceptions related to information blocking; (3) network-to-network connectivity and TEFCA; (4) public health data exchange; and (5) organizational demographics, including technical capabilities offered by HIOs and the challenges they face in supporting electronic health information exchange.

The survey is being revised (previously approved in 2022 and 2024;

OMB Control No: 0955–0019) to reflect progress made and ongoing efforts in areas including public health, TEFCa, and information blocking to ensure alignment with current priorities such as improving public health interoperability and Make Health Tech Great Again. These updates were developed in consultation with subject matter experts (SMEs) to improve the

relevance, clarity, and usefulness of the data collected in all five key areas of the survey. For example, certain questions with low response rates and have lower relevance to current priorities have been removed or reorganized. Some question and response wording have also been updated to ensure consistency with current policy efforts. For example, in the TEFCa section, the list of Qualified

Health Information Networks (QHINs) have been updated to reflect the current list. These changes are intended to reduce respondent burden and improve overall data quality while maintaining continuity with prior surveys where appropriate.

This is a 3-year request for OMB approval.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response (hours)	Total burden hours
	U.S. based public and private HIOs	100	1	0.75	75
Total .....	.....	.....	.....	.....	75

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Catherine Howard,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2026–07642 Filed 4–17–26; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting website (<https://videocast.nih.gov/watch/ed58a6b7-015a-11f1-9f14-124f0a52e769>). Registration is not required to access the videocast.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: May 19–20, 2026.

Closed: May 19, 2026, 4:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Address: Porter Neuroscience Research Center, Building 35A, Rooms 620–640, 35 Convent Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Open: May 20, 2026, 9:00 a.m. to 12:30 p.m.

Agenda: Report of the Director, NIDCR and concept clearances.

Address: Porter Neuroscience Research Center, Building 35A, Rooms 620–640, 35 Convent Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Sanoj Suneja, Ph.D., Acting Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, 31 Center Drive, Bethesda, MD 20892, 301–402–7710, sunejas@mail.nih.gov.

The meeting identified below has been scheduled in the event the Council is unable to complete all agenda items identified for the May 19, 2026, meeting. Information on the agenda items and/or the necessity to hold the meeting listed below will be posted on the Institute/Center homepage (link identified below).

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: July 9, 2026.

Closed: July 9, 2026, 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications not completed at the May meeting.

Address: National Institutes of Health, National Institute of Dental and Craniofacial Research, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Sanoj Suneja, Ph.D., Acting Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, 31 Center Drive, Bethesda, MD 20892, 301–402–7710, sunejas@mail.nih.gov.

Information is also available on the Institute's/Center's home page: <http://www.nidcr.nih.gov/about>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 15, 2026,

Rosalind M. Niamke,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–07631 Filed 4–17–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Partially Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<https://www.niehs.nih.gov/news/webcasts>).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: June 24, 2026.

Open: 9:00 a.m. to 12:45 p.m.

Agenda: Call to Order, Review of Confidentiality and Conflict of Interest, Consideration of previous Meeting Minutes, and Report of the Directors.

Address: NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 19970.

Meeting Format: Virtual.

Open: 1:30 p.m. to 3:45 p.m.

Agenda: Microplastics Research and Resource Coordination Core Center; SPARK-EHS: Supporting Programs to Advance Research Knowledge in Environmental Health Sciences; and Health and Extreme Weather Research Coordination and Data Center(s).

Address: NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 19970.

Meeting Format: Virtual.

Closed: 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate consideration of Intramural BSC Reports, Review of Confidentiality and Conflict of Interest, and Consideration of Grant Applications.

Address: NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 19970.

Meeting Format: Virtual.

Contact Person: David M. Balshaw, Ph.D., BA Director and Acting Chief, Scientific

Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-27, Research Triangle Park, NC 27709-2233, 984-287-3234, balshaw@niehs.nih.gov.

Registration is not required to attend the open portion of this 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.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of an organization may submit a letter of intent, a brief description of the organization represented and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 15, 2026.

Denise M. Santeufemio,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-07607 Filed 4-17-26; 8:45 am]

BILLING CODE 4167-05-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; RFA-DK-23-014: NIDDK Catalyst Award (DP1).

Date: May 19–20, 2026.

Time: 10:00 a.m. to 6:30 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: Ryan G Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301-594-4721, ryan.morris@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Diagnostics, Surveillance, Microbiology, and Immunology of Infectious Diseases.

Date: May 20, 2026.

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: Shinako Takada, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301-827-5997, shinako.takada@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Training Grants: Heart, Lung, and Blood.

Date: May 20, 2026.

Time: 10:00 a.m. to 12:00 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: Cynthia D Anderson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Bethesda, MD 20892, cynthia.anderson@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mitochondrial and Metabolic Mechanisms in Neurological Disease.

Date: May 21, 2026.

Time: 10:00 a.m. to 5:00 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: Bo-Shiun Chen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, bo-shiun.chen@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Clinical Trial Topics in Allergy and Bacterial Infection.

Date: May 21, 2026.

Time: 1:00 p.m. to 3:30 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: Lee G. Klinkenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-1706, lee.klinkenberg@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Contracts: Patient Safety Monitoring in International Laboratories (pSMILE).

Date: May 21, 2026.

Time: 1:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Annie Walker-Abbey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 627-3390, aabbey@mail.nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Cell Structure and Function 1 Study Section.

Date: June 3, 2026.

Time: 10:00 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: Jessica Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301.402.3717, jessica.smith6@nih.gov.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Data Management and Analysis Study Section.

Date: June 4-5, 2026.

Time: 9:00 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: Shivakumar V Chittari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 408-9098, chittari.shivakumar@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR-21-321: Cancer Center Support Grant.

Date: June 9, 2026.

Time: 10:00 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: Eun Ah Cho, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, (301) 496-3591, EunAh.Cho@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: April 15, 2026.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-07608 Filed 4-17-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Diabetes Mellitus Interagency Coordinating Committee Meeting

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on June 24th, 2026. The topic for this meeting will be “Innovative Research Partnerships in Diabetic Retinal Disease: Insights and Opportunities.” The meeting is open to the public.

DATES: The meeting will be held on June 24, 2026, from 12:00 p.m. to 3:00 p.m. EDT.

ADDRESSES: This meeting will be held via the Teams online video conferencing platform. For details, and to register, please go to the virtual event’s page: [https://events.gcc.teams.microsoft.com/event/1ea07235-9153-4af6-9982-](https://events.gcc.teams.microsoft.com/event/1ea07235-9153-4af6-9982-d481eadbdb3@14b77578-9773-42d5-8507-251ca2dc2b06)

[d481eadbdb3@14b77578-9773-42d5-8507-251ca2dc2b06](https://events.gcc.teams.microsoft.com/event/1ea07235-9153-4af6-9982-d481eadbdb3@14b77578-9773-42d5-8507-251ca2dc2b06).

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, including a draft agenda, which will be posted when available, see the DMICC website, <https://www.niddk.nih.gov/about-niddk/advisory-coordinating-committees/diabetes-mellitus-interagency-coordinating-committee-dmicc?dkrd=lgdmn0022>, or contact Dr. William Cefalu, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Democracy 2, Room 6037, Bethesda, MD 20892, telephone: 301-435-1011; email: dmicc@mail.nih.gov.

SUPPLEMENTARY INFORMATION: In accordance with 42 U.S.C.285c-3, the DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) and comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The June 24, 2026, DMICC meeting will focus on “Innovative Research Partnerships in Diabetic Retinal Disease: Insights and Opportunities.”

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their 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. Because of time constraints for the

meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notifications about future DMICC meetings should register for the listserv when registering on the meeting's event page: <https://events.gcc.teams.microsoft.com/event/1ea07235-9153-4af6-9982-d4818eadbdb3@14b77578-9773-42d5-8507-251ca2dc2b06>.

Dated: April 15, 2026.

William T. Cefalu,

Director, Division of Diabetes, Endocrinology, and Metabolic Diseases, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2026-07581 Filed 4-17-26; 8:45 am]

BILLING CODE 4167-05-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-23-145: NIGMS ESI-MIRA R35.

Date: May 7, 2026.

Time: 10:00 a.m. to 1:00 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: Sudha Veeraraghavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, Bethesda, MD 20892, (301) 827-5263, sudha.veeraraghavan@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biomedical Informatics, Modeling and Data Science.

Date: May 13, 2026.

Time: 9:00 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: Alexander O.

Komendantov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 451-3397, alexander.komendantov@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Musculoskeletal Rehabilitation Sciences.

Date: May 14, 2026.

Time: 9:00 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: Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, Bethesda, MD 20892, (301) 237-9931, ansaria@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cellular and Molecular Aspects of the Blood-Brain Barrier and Neurovascular System and Therapeutic Strategies.

Date: May 14, 2026.

Time: 10:00 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: Jessica Bellinger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, (301) 827-4466, bellingerjd@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Endocrine and Metabolic Systems.

Date: May 14, 2026.

Time: 10:00 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: Elena Sanovich, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 594-8886, sanoviche@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Short-Term Institutional Research Training Grant Review.

Date: May 14, 2026.

Time: 10:00 a.m. to 12:00 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: Srihari Seshadri, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Dr. (RK2), Bethesda, MD 20817, (301) 594-4738, srihari.seshadri@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Bacterial Virulence.

Date: May 14, 2026.

Time: 11:00 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: Louis A. Rosenthal, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 669-5070, rosenthalla@niaid.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mentored Career Development Awards: Epidemiology and Population Sciences Panel B.

Date: May 14, 2026.

Time: 11:00 a.m. to 5:00 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: Devon Rene Oskvig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402-6965, devon.oskvig@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; NARCH Planning Grants.

Date: May 14, 2026.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Susan Gillmor, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 762-3076, susan.gillmor@nih.gov.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group Maximizing Investigators' Research Award A Study Section.

Date: May 18-19, 2026.

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: Mollie Kim Manier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-0510, mollie.manier@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel; Early Phase Clinical Trials (Pharma/Device and Blueprint MedTech Translator).

Date: May 19, 2026.

Time: 9:00 a.m. to 5:00 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: Victor Henriquez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, (301) 435-0813, victor.henriquez@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: April 14, 2026.

Rosalind M. Niamke,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-07580 Filed 4-17-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the NIH Clinical Center Research Hospital Board.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below.

Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: <https://videocast.nih.gov/>.

Name of Committee: NIH Clinical Center Research Hospital Board.

Date: June 12, 2026.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: NIH and Clinical Center (CC) Leadership Announcements, CC Acting Chief Executive Officer (CEO), Update of Recent Activities and Organizational Priorities, and Other Business of the Clinical Center Research Hospital Board (CCRHB).

Address: National Institutes of Health, Building 31, Conference Room 6C02 A & B, 9000 Rockville Pike, Bethesda, MD 20892 (In-Person and Virtual).

Meeting Format: In-person and Virtual Meeting.

Contact Persons: Patricia Piringner, RN, MSN (C), National Institutes of Health Clinical Center, 10 Center Drive, Bethesda, MD 20892, ppiringner@cc.nih.gov, (301) 402-2435, (202) 460-7542 (direct).

Natascha Pointer, Management Analyst, Executive Assistant to Dr. Gilman, Office of the Chief Executive Officer, National Institutes of Health Clinical Center, 10 Center Drive, Bethesda, MD 20892, npointer@cc.nih.gov, (301) 496-4114, (301) 402-2434 (direct).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at <https://security.nih.gov/visitors/Pages/visitor-campus-access.aspx> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the CCRHB website: <https://www.ccrhb.od.nih.gov/> where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS).

Dated: April 14, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-07576 Filed 4-17-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, must notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: May 20, 2026.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: Report by the Acting Director, NINDS; Report by the Director, Division of Extramural Activities; and Administrative and Program Developments; Small Business Program Update; and Overview of the HEAL program; State of Intramural Activities.

Meeting is virtual and will be recorded and viewable after the meeting from this link:

<https://videocast.nih.gov>.

Place: National Institutes of Health, 6001 Executive Boulevard, Room 1131, Rockville, Maryland 20852 (Virtual Meeting).

Contact Person: Andrea Meredith Ph.D., Director, Extramural Activities, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., 5th Floor, MSC 9531, Bethesda, MD 20892, (301) 496-9248, andrea.meredith@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice at least 10 days in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: www.ninds.nih.gov, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: April 14, 2026.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-07578 Filed 4-17-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Center for Advancing Translational Sciences Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: <https://videocast.nih.gov/>.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Advisory Council.

Date: May 21–22, 2026.

Closed: May 21, 2026, 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Center for Advancing Translational Sciences, National Institutes of Health, NCI Shady Grove, Room 1E32/1E34, 9609 Medical Center Drive, Rockville, MD 20892, Virtual Meeting.

Open: May 22, 2026, 1:00 p.m. to 5:00 p.m.

Agenda: Report of Center Director, Program Updates, and Concept Clearance.

Address: National Center for Advancing Translational Sciences, National Institutes of Health, NCI Shady Grove, Room 1E32/1E34, Rockville, MD 20892, Virtual Meeting.

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, Room 1E454, Rockville, MD 20892, (301) 435–0809, anna.ramseyewing@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: April 14, 2026.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–07579 Filed 4–17–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below. Individuals who plan to participate and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: June 30, 2026.

Open: June 30, 2026, 12:00 p.m. to 12:30 p.m.

Agenda: To discuss upcoming Concept Clearance Initiatives and other business of the Council. The meeting will be available via NIH Videocast. <https://videocast.nih.gov/>.

Closed: June 30, 2026, 12:30–5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health 6001 Executive Boulevard, Room 1131, Rockville, Maryland 20852 (Virtual Meeting).

Contact Person: Andrea Meredith, Ph.D., Director, Extramural Activities, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., 5th Floor, MSC 9531, Bethesda, MD 20892, (301) 496–9248, andrea.meredith@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice at least 10 days in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: www.ninds.nih.gov, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research

Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: April 14, 2026.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–07577 Filed 4–17–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0114]

Agency Information Collection Activities: Extension, Without Change, of a Currently Approved Collection: Application for Civil Surgeon Designation

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until June 22, 2026.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0114 in the body of the letter, the agency name and Docket ID USCIS–2013–0002. Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS–2013–0002.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, John R. Pfirrmann-Powell, Acting Deputy Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact

information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering USCIS-2013-0002 in the search box. Comments must be submitted in English, or an English translation must be provided. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Civil Surgeon Designation.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-910; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. This information collection is required to determine whether a physician meets the statutory and regulatory requirement for civil surgeon designation. For example, all documents are reviewed to determine whether the physician has a currently valid medical license and whether the physician has had any action taken against him or her by the medical licensing authority of the U.S. state(s) or U.S. territories in which he or she practices. If the Application for Civil Surgeon Designation (Form I-910) is approved, the physician is included in USCIS's public Civil Surgeon locator and is authorized to complete Form I-693 (OMB Control Number 1615-0033) for an applicant's adjustment of status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of annual respondents for the information collection I-910 is 470 and the estimated hour burden per response is 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual hour burden associated with this collection is 940 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$24,205.

Dated: April 16, 2026.

John R. Pfirrmann-Powell,

Acting Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2026-07669 Filed 4-17-26; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0156]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Request for a Certificate of Non-Existence

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until June 22, 2026.

ADDRESSES: All submissions received must include the OMB Control Number 1615-0156 in the body of the letter, the agency name and Docket ID USCIS-2021-0021. Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS-2021-0021.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, John R. Pfirrmann-Powell, Acting Deputy Chief, telephone number (240) 721-3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering USCIS–2021–0021 in the search box. Comments must be submitted in English, or an English translation must be provided. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for a Certificate of Non-Existence.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1566; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* **Primary:** Individuals or households. USCIS will use the information collected on Form G–1566 to determine whether any immigration records about the subject of record listed on the form exist. If no records about the subject of record exist, USCIS will provide a Certificate of Non-Existence (CNE). If USCIS finds records related to the subject of record, a CNE will not be issued, but the requestor will be notified that records were found.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of annual respondents for the information collection G–1566 (paper) is 1,000 and the estimated hour burden per response is 0.49 hours; and the estimated total number of annual respondents for the information collection G–1566 (online) is 1,000 and the estimated hour burden per response is 0.42 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual hour burden associated with this collection is 912 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$61,000.

Dated: April 8, 2026.

John R. Pfirrmann-Powell,

Acting Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2026–07662 Filed 4–17–26; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

**[2560102DM; DS6CS00000;
DLSN00000.000000; DX6CS25]; OMB
Control Number 1092–NEW]**

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Office of the Solicitor Internship/Externship Application Process

AGENCY: Office of the Solicitor, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of the Solicitor (SOL), are proposing a new information collection in use without OMB approval.

DATES: Interested persons are invited to submit comments on or before May 20, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to Ariana Rigsby, 1849 C Street NW, MS 6551, Washington, DC 20240; or by email to hr-sol@sol.doi.gov. Please reference OMB Control Number 1092–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR), contact Ariana Rigsby by email at hr-sol@sol.doi.gov, or by telephone at (202) 740–0269. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 6, 2024, (89 FR 16009). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper

performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Abstract: The following information is collected: applicant's resume with two professional or academic references, a completed Request for Consideration form (to designate the locations/offices for which the applicant would like to be considered for an internship), a cover letter addressed to "To Whom it May Concern," a copy of the applicant's most recent law school transcript (official or unofficial), and a writing sample of no more than three (3) pages. The information is collected for the purpose of applying to SOL's Legal Internship/Externship Program. SOL uses the information collected to verify the applicant's eligibility, interest in the program, and the location/office they wish to be considered for an internship.

Title of Collection: Office of the Solicitor, Legal Internship/Externship Program.

OMB Control Number: 1092–NEW.
Form Number: None.

Type of Review: New, in use without approval.

Respondents/Affected Public: Individuals (law school students).

Total Estimated Number of Annual Respondents: 200.

Total Estimated Number of Annual Responses: 200.

Estimated Completion Time per Response: 2 Hours.

Total Estimated Number of Annual Burden Hours: 400 Hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Nonhour

Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey M. Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2026–07652 Filed 4–17–26; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A2407–014–004–065516, #O2509–014–004–125222]

Notice of 2026 Coastal Plain Oil and Gas Lease Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management's (BLM) Alaska State Office will hold an oil and gas lease sale bid opening for tracts in the Coastal Plain of the Arctic National Wildlife Refuge.

DATES: The oil and gas lease sale bid opening will be at 10 a.m. (AKDT) on June 5, 2026. The BLM must receive all sealed bids by 4 p.m. (AKDT), on June 3, 2026. The Detailed Statement of Sale for the 2026 Coastal Plain Oil and Gas Lease Sale will be available to the public immediately after publication of this notice.

ADDRESSES: Sealed bids must be received at the BLM-Alaska State Office, ATTN: Wayne Svejnoha (AK932); 222 West 7th Avenue, #13; Anchorage, AK 99513–7504. The Detailed Statement of Sale is available from the BLM Alaska website at <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/alaska>.

FOR FURTHER INFORMATION CONTACT:

Wayne Svejnoha, Acting Deputy State Director Resources, phone 907–271–4407 or email, wsvejnoh@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Svejnoha. Individuals

outside the United States should use the relay services within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The 2026 Coastal Plain Oil and Gas Lease Sale will include tracts and acreage (no less than 400,000 acres) that are available for leasing under the 2025 Record of Decision (ROD) for the Coastal Plain. This action advances priorities in Executive Order 14153 and Secretary's Order 3422—*Unleashing Alaska's Extraordinary Resource Potential*—and implements direction in Public Law 115–97, the Tax Cuts and Jobs Act of 2017; Public Law 119–21, the One Big Beautiful Bill Act; and P.L. 119–52, providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Bureau of Land Management relating to Coastal Plain Oil and Gas Leasing Program Record of Decision. Section 50104 of Public Law 119–21, requires four lease sales of at least 400,000 acres each in the Coastal Plain over the next ten years with an initial lease sale no later than July 4, 2026.

The opening and reading of the bids for the 2026 lease sale will be available for online public viewing via video livestreaming at <http://www.blm.gov/live>.

The Detailed Statement of Sale includes a description of the areas the BLM is offering for lease, as well as the lease terms, conditions, special stipulations, required operating procedures, and directions for how to submit bids. If you plan to submit a bid(s), please note that all bids must be sealed in accordance with the provisions identified in the Detailed Statement of Sale.

The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid.

Authority: Public Law 115–97 (The Tax Cuts and Jobs Act); Public Law 119–21 (The One Big Beautiful Bill Act).

Kevin J. Pendergast,

State Director, Alaska.

[FR Doc. 2026–07667 Filed 4–17–26; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–771 and 731–TA–1755 (Final)]

Oleoresin Paprika From India; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–771 and 731–TA–1755 (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 oleoresin paprika from India, provided for in subheadings 3203.00.80 and 3301.90.10 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (“Commerce”) to be subsidized and sold at less-than-fair-value.

DATES: April 2, 2026.

FOR FURTHER INFORMATION CONTACT:

Jesse Sanchez ((202) 205–2402) or Stamen Borisson ((202) 205–3125), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as the coloring additive oleoresin paprika. Oleoresin paprika is a viscous, highly colored liquid in various shades of red or orange made from the extract of Capsicum peppers. Covered merchandise includes all oleoresin paprika, regardless of pepper variety, with an American Spice Trade Association (ASTA) value of at least 500 or a color unit (CU) value of

at least 20,000 as determined by spectrophotometric measurement. The Chemical Abstracts Service (CAS) Registry numbers for oleoresin paprika are 68917–78–2 and 84625–29–6; the Center for Food Safety and Applied Nutrition (CFSA) number is 977006–45–3; the Flavoring Extract Manufacturers’ Association (FEMA) number is 2834; and the E number is E160c. Subject oleoresin paprika may also be referred to by other product names, including, but not limited to, paprika oleoresin, oleoresin of paprika, paprika extract, extract of paprika, paprika oil, or paprika essential oil.¹

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations 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 India of oleoresin paprika, and that such products are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on June 25, 2025, by Rezolex, Ltd. Co., Las Cruces, New Mexico.

For further information concerning the conduct of this phase of the investigations, 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 investigations 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 these investigations 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 investigations 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 investigations.

¹ For the complete scope of these investigations, please see 91 FR 5427 (February 6, 2026) and 91 FR 16636 (April 2, 2026).

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 these investigations available to authorized applicants under the APO issued in the investigations, 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 investigations. A party granted access to BPI in the preliminary phase of the investigations 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 these investigations will be placed in the nonpublic record on August 4, 2026, 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 these investigations beginning at 9:30 a.m. on August 18, 2026. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 12, 2026. 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 August 17, 2026. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than noon on August 17, 2026. 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 August 11, 2026. 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 August 25, 2026. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before August 25, 2026. On September 11, 2026, 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 September 15, 2026, 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 investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are 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: April 15, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–07611 Filed 4–17–26; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Blockchain Security Standards Council, Inc.

Notice is hereby given that, on February 20, 2026, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Blockchain Security Standards Council, Inc. (“BSSC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Mastercard, O'Fallon, MO; Coinbase, San Francisco, CA; Fireblocks, New York, NY; and Kraken, San Francisco, CA, have been added as parties to this venture.

Also, Payward, Inc., San Francisco, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and BSSC intends to file additional written notifications disclosing all changes in membership.

On July 9, 2024, BSSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal**

Register pursuant to section 6(b) of the Act on September 26, 2024 (89 FR 78902).

The last notification was filed with the Department on April 2, 2025. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 21, 2025 (90 FR 16703).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2026–07658 Filed 4–17–26; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Workforce Information Grants to States (WIGS)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 20, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This information collection for the Workforce Information Grants to States (WIGS) ensures the U.S. Department of Labor (DOL) Secretary meets WIOA requirements, and the states complete grant deliverables such as state economic analyses or special workforce information/economic studies, and the annual performance report. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 3, 2026 (91 FR 4951).

Comments are invited on: (1) whether the collection of information is

necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-ETA.

Title of Collection: Workforce Information Grants to States (WIGS).
OMB Control Number: 1205-0417.

Affected Public: State Local and Tribal Governments.

Total Estimated Number of Respondents: 54.

Total Estimated Number of Responses: 162.

Total Estimated Annual Time Burden: 7,746 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2026-07606 Filed 4-17-26; 8:45 am]

BILLING CODE 4510-FN-P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATE: The Members of the National Council on Disability (NCD) will hold a virtual Council meeting on Thursday, May 7, 2026, 12:30–3:00 p.m. Eastern Daylight Time (EDT).

PLACE: This meeting will occur via Zoom for Government videoconference. Details are available on NCD's event page at <https://www.ncd.gov/meeting/2026-05-07-may-7-2026-council-meeting/>.

MATTERS TO BE CONSIDERED: NCD's virtual quarterly meeting will include report outs from the Acting Chairman, followed by the Council Members regarding engagements with the community since the last meeting; the Executive Committee; staff updates on policy, legislation, and media; and the current draft of the 2026 Progress Report. Following those updates, Council Members will offer project proposals for FY27 research endeavors and vote for their top three, culminating in the agency's new slate of projects for the next fiscal year before adjournment.

Agenda: The times provided below are approximations for when each agenda item is anticipated to be discussed (all Eastern Daylight Time):

Thursday, May 7, 2025

12:30–12:40 p.m.—Welcome and Call to Order; Roll Call

12:40–12:50 p.m.—Chairman's Report
12:50–1:15 p.m.—Council Member Reports

1:15–1:25 p.m.—Executive Committee Report

1:25–1:35 p.m.—Policy Update

1:35–1:45 p.m.—Break

1:45–1:55 p.m.—Legislative and Media Updates

1:55–2:05 p.m.—2026 Progress Report Update

2:05–2:15 p.m.—Council Question and Answer on Progress Report

2:15–3:00 p.m.—Presentation and Discussion of FY27 Policy Project Proposals

3:00 p.m.—Adjourn

CONTACT PERSON FOR MORE INFORMATION: Nicholas Sabula, Public Affairs Specialist, NCD, 1331 F Street NW, Suite 850, Washington, DC 20004; 202-272-2004 (V), or nsabula@ncd.gov.

Accommodations: ASL Interpreters will be provided in-room and included during the live streamed meeting, and CART has been arranged for this meeting and will be embedded into the Zoom platform as well as available via streamtext link. The web link to access CART Streamtext: <https://www.streamtext.net/player?event=NCD>.

If you require additional accommodations, please notify Stacey Brown by sending an email to sbrown@ncd.gov as soon as possible and no later than 24 hours prior to the meeting.

Due to last-minute confirmations or cancellations, NCD may substitute items without advance public notice.

Dated: April 16, 2026.

Anne C. Sommers McIntosh,

Director of Legislative Affairs and Outreach.

[FR Doc. 2026-07673 Filed 4-16-26; 4:15 pm]

BILLING CODE 8421-02-P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2024-298; MC2026-207 and K2026-206]

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:* April 22, 2026.

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:

Table of Contents

- I. Introduction
- II. Public Proceeding(s)
- III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

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).

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).*: CP2024–298; *Filing Title*: Request of the United States Postal Service Concerning Modification One to International Priority Airmail, Commercial ePacket, Priority Mail Express International & Priority Mail International Contract 4, Which Includes an Extension of That Agreement; *Filing Acceptance Date*: April 14, 2026; *Filing Authority*: 39 CFR

3041.505 and 3041.515; *Public Representative*: Jennaca Upperman; *Comments Due*: April 22, 2026.

2. *Docket No(s).*: MC2026–207 and K2026–206; *Filing Title*: USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 19 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: April 14, 2026; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: April 22, 2026.

III. Summary Proceeding(s)

None. See Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Danielle LeFlore,
Legal Assistant.

[FR Doc. 2026–07573 Filed 4–17–26; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105242; File No. SR–NasdaqTX–2026–013]

Self-Regulatory Organizations; Nasdaq Texas, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Review of Professional Orders

April 15, 2026.

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 April 1, 2026, Nasdaq Texas, LLC (“Nasdaq Texas” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the quarterly review of Professional³ orders.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 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). All Professional

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaqtx/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 amend the quarterly review of Professional orders. Today, orders for any Public Customer⁴ that average more than 390 orders per day during any month of a calendar quarter must be represented as Professional orders for the next calendar quarter.⁵ In order to properly represent orders entered on the Exchange, Participants⁶ are required currently to review their Public Customers' activity and, on at least a quarterly basis, designate orders as Public Customer orders or Professional orders.⁷

orders shall be appropriately marked by Participants. The manner in which a Professional order is calculated is specified in Options 1, Section 1(a)(48)(i).

⁴ 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 1(a)(49). *See* Options 1, Section 1(a)(48).

⁵ The requirement to review Public Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Public Customer Orders or Professional Orders is not in the current rule text, however it was described in the adopting proposal. *See* Securities Exchange Act Release No. 78199 (June 30, 2016), 81 FR 44373 (July 7, 2016) (July 7, 2016) (SR–BX–2016–035) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Professional Designation) (“SR–BX–2016–035”). Nasdaq Texas was formerly Nasdaq BX, Inc. The instant proposal seeks to codify the timing for review of Public Customers' activity.

⁶ The term “Options Participant” or “Participant” mean a firm, or organization that is registered with the Exchange pursuant to Options 2A of these Rules for purposes of participating in options trading on NTX Options as a “NTX Options Order Entry Firm” or “NTX Options Market Maker.” *See* Options 1, Section 1(a)(40).

⁷ *See* 81 FR 44373 at 44374.

Specifically, Participants are required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter.⁸ While Participants are required to designate accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Public Customer Orders but that has averaged more than 390 orders per day during a month, the Exchange must notify the Participant and the Participant is required to change the manner in which it is representing the customer's orders within five days.⁹

Proposal

At this time, the Exchange proposes to shorten the quarterly review and designation to a monthly review. The Exchange proposes to state at Options 1, Section 1(a)(48)(ii) that orders for any customer that had an average of more than 390 orders per day during any calendar month must be represented as Professional orders for the next calendar month.

As noted, currently, each Participant is required to monitor Public Customer orders to determine if the Public Customer has averaged more than 390 orders per day during a month. Determining whether a Public Customer has executed more than 390 orders per day during a month requires computing a daily average. As such, Participants should be performing the workflow necessary to designate orders on a daily basis. Therefore, the proposal does not amend the current workflow, rather, the proposal amends the timeframe to change the manner in which the customer's order is being represented from five days after the end of each calendar quarter to five days after the end of each calendar month.

The Exchange does not believe that this amendment is a significant departure from the current rule, nor does it impose any burden on any Participant because each broker-dealer is required currently to perform the necessary calculation daily to arrive at the requisite average. Further, in addition to the calculation, broker-dealers are subject to know-your-customer and suitability requirements under FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) and would need to consider whether a customer meets the Professional designation for purposes of determining best execution and making appropriate recommendations. The Exchange notes

that the trading behavior of a Public Customer can be distinguished from that of a Professional which is the purpose of the separate designations. Finally, some Participants currently designate a Public Customer that has averaged more than 390 orders per day during a month as a Professional on a more expedited basis, not waiting until five days after the quarter.

The Exchange believes that a calendar month is a sufficient time period to determine whether the activity of a customer meets the criteria for a Professional order. The Exchange believes that the shortened time period will ensure that the spirit of the designation of Professional order is met in that Participants will make any appropriate changes to the way in which they are representing orders in a 30-day timeframe as opposed to a 90-day timeframe, thereby ensuring the designation is applied in a more expeditious manner.

The Exchange continues to believe that identifying Professional orders based upon the average number of orders entered in qualified accounts is an appropriate and objective approach to reasonably distinguish such persons and entities from retail investors or market participants.

Technical Amendment

The Exchange proposes to reserve Options 3B, Options 3C and Options 4D and add a reserved section to Options 9, Section 26. Other Nasdaq affiliated exchanges have a rule or proposed rules in those corresponding sections of the Rulebook. The reserved sections are intended to harmonize the structure of the Exchange's rules to those of other Nasdaq affiliated exchanges. Further, the Exchange proposes a non-substantive amendment to Options 2, Section 5(d)(1)(D) to correct a citation.

Implementation

The Exchange proposes implementing this rule change on July 1, 2026, except for the technical amendments which should become operative 30 days after the date of the filing. The Exchange will issue an Options Trader Alert to provide notice to Participants of the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to promote just and equitable

principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange's proposal to shorten the quarterly look-back to a monthly look-back is consistent with the Act because it will ensure that the spirit of the designation of Professional order continues to be met, only on a more expedited basis—removing a potential delay of two months before affecting a change in the designation. The Exchange believes that this amendment will remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting the consistent application of its rules and shortening the timeframe to change the designation for all Participants while continuing to provide a sufficient time period to determine whether the activity of a customer meets the criteria for a Professional order. Further, the Exchange believes that the shortened time period will continue to promote consistency in the treatment of orders as Professional orders while also preventing members with high volume from receiving benefits reserved for Public Customer orders.

As noted, currently, each Participant is required to monitor Public Customer orders to determine if the Public Customer has averaged more than 390 orders per day during a month. Determining whether a Public Customer has executed more than 390 orders per day during a month requires computing a daily average. As such, Participants should be performing the workflow necessary to designate orders on a daily basis. Therefore, the proposal does not amend the current workflow, rather, the proposal amends the timeframe to change the manner in which the customer's order is being represented from five days after the end of each calendar quarter to five days after the end of each calendar month.

The Exchange does not believe that this amendment is a significant departure from the current rule, nor does it impose any burden on any Participant because each broker-dealer is required currently to perform the necessary calculation daily to arrive at the requisite average. Further, in addition to the calculation, broker-dealers are subject to know-your-customer and suitability requirements under FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) and would need to consider whether a customer meets the Professional designation for purposes of determining best execution and making appropriate

⁸ See *id.*

⁹ See *id.*

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

recommendations. Finally, some Participants currently designate a Public Customer that has averaged more than 390 orders per day during a month as a Professional on a more expedited basis, not waiting until five days after the quarter.

The Exchange notes that the trading behavior of a Public Customer can be distinguished from that of a Professional which is the purpose of the separate designations. The Exchange continues to believe that identifying Professional orders based upon the average number of orders entered in qualified accounts is an appropriately objective approach to reasonably distinguish such persons and entities from retail investors or market participants. Priority is one of the marketplace advantages provided to Public Customer orders on the Exchange. Public Customer orders are given execution priority over non-Customer orders and quotations of market makers at the same price. Another marketplace advantage afforded to Public Customer orders on the Exchange is that members are generally not assessed transaction fees or are assessed lower fees for the execution of Public Customer orders. The purpose of these marketplace advantages is to attract retail order flow to the Exchange by leveling the playing field for retail investors over market Professionals. This proposal will continue to provide Public Customer accounts with marketplace advantages and distinguish those accounts non-Professional retail investors from the Professionals accounts. The Exchange notes that some non-broker-dealer individuals and entities have access to information and technology that enables them to Professionally trade listed options in the same manner as a broker or dealer in securities.

Technical Amendment

Reserving Options 3B, Options 3C, Options 4D, Options 9, Section 26 and correcting a citation at Options 2, Section 5(d)(1)(D) are non-substantive amendments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange does not believe that the proposed rule change will impose any burden on intra-market competition because, today, each Participant is required to monitor Public Customer orders to determine if the Public Customer has averaged more

than 390 orders per day during a month. Determining whether a Public Customer has executed more than 390 orders per day during a month requires computing a daily average. As such, Participants should be performing the workflow necessary to designate orders on a daily basis. Therefore, the proposal does not amend the current workflow, rather, the proposal amends the timeframe to change the manner in which the customer's order is being represented from five days after the end of each calendar quarter to five days after the end of each calendar month.

The Exchange does not believe that this amendment is a significant departure from the current rule, nor does it impose any burden on any Participant because each broker-dealer is required currently to perform the necessary calculation daily to arrive at the requisite average. Further, in addition to the calculation, broker-dealers are subject to know-your-customer and suitability requirements under FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) and would need to consider whether a customer meets the Professional designation for purposes of determining best execution and making appropriate recommendations. Finally, some Participants currently designate a Public Customer that has averaged more than 390 orders per day during a month as a Professional on a more expedited basis, not waiting until five days after the quarter.

The Exchange notes that the trading behavior of a Public Customer can be distinguished from that of a Professional which is the purpose of the separate designations.

Further, the designation of Professional orders would not result in any different treatment of such orders for purposes of compliance with the Exchange's Rules. Public Customers have been granted certain priority over other non-broker-dealer individuals and entities that have access to information and technology that enables them to Professionally trade listed options in the same manner as a broker or dealer in securities. Further, the Public Customer designation allows the Exchange to attract order flow or create more competitive markets.

Also, the Exchange does not believe that the proposed rule change will impose any burden on inter-market competition because other exchanges are expected to adopt similar rules.

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 Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

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-NasdaqTX-2026-013 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.

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 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–NasdaqTX–2026–013. 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–NasdaqTX–2026–013 and should be submitted on or before May 11, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026–07591 Filed 4–17–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105244; File No. SR–NASDAQ–2026–031]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Fees for Connectivity Services

April 15, 2026.

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 April 10, 2026, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s fees for connectivity services, as described further below.

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 purpose of the proposed rule change is to amend Rule Options 7, Section 13 to increase the Exchange’s fees relating to its Testing Facilities³ by 10%.⁴ Rule Options 7, Section 13 provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 13 provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 10% to require that subscribers to the Testing Facility shall pay a fee of \$1,100 per hand-off, per month for connection to

³ The Exchange operates a test environment in Carteret, New Jersey. References to the “Testing Facility” refers to this test environment. See Rule Options 7, Section 13.

⁴ The Exchange in 2024 filed a proposed rule change to amend, among other rules, Rule Equity 7 (“Pricing Schedule”), to increase certain fees for its Testing Facilities by 10 percent (10%) See Securities Exchange Act Release No. 101690 (Nov. 21, 2024), 89 FR 93731 (Nov. 27, 2024) (SR–NASDAQ–2024–067) (“2024 Proposal”). The Exchange now proposes a corresponding increase to the Testing Facility fees under Options 7, consistent with the basis for and rationale supporting the 2024 Proposal as it regards the Rule Equity 7 adjustments. As proposed, the proposal would thus align the Testing Facility fees under the Exchange’s Options 7 Rule with those for the same services under its Equity Rules 7 as adjusted in the 2024 Proposal. The Exchange is proposing no other changes to its rules.

the Testing Facility and a one-time installation fee of \$1,100 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services to remain competitive with its peers. Over the years, customer demand for more sophisticated, higher-throughput, lower-latency, and higher-power connectivity solutions has increased. The Exchange continues to invest in maintaining, improving, and enhancing its connectivity products, services, and facilities for the benefit and often at the behest of its customers. Nevertheless, the Exchange has not increased the Testing Facility fees included in this proposal since before 2017. In this proposal, the Exchange proposes to increase such Testing Facility fees by 10%, consistent with the adjustments made to analogous services in the 2024 Proposal.⁵

As discussed below, the Exchange proposes to adjust its fees by an industry- and product-specific inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at current fee levels impacts the Exchange’s ability to enhance its offerings and the interests of market participants and investors.

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (“PPI”), which is a tailored measure of inflation.⁶ As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (“CPI”), that measure price change from the purchaser’s perspective.⁷ About 10,000 PPIs for individual products and groups of products are tracked and released each month.⁸ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69

⁵ See *supra* note 4 and accompanying text (discussing the 2024 Proposal in part and noting that this proposal would align the Testing Facility fees under the Exchange’s Options 7 Rule with those for the corresponding services under its Equity Rule 7 as adjusted in the 2024 Proposal).

⁶ See <https://fred.stlouisfed.org/series/PCU518210518210>.

⁷ See <https://www.bls.gov/ppi/overview.htm>.

⁸ See *Id.*

¹⁴ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI ("Data PPI"), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics ("BLS") as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System.⁹ According to the BLS "[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract."¹⁰

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed rule change to modify the fee for its connectivity products because the Exchange uses its "own computer systems" and "proprietary software," *i.e.*, its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers' transactions in U.S. equity securities on the Exchange's proprietary trading platform. In other words, the Exchange is in the business of data processing and related services.

For purposes of this proposed rule change, the Exchange examined the Data PPI value for the period from January 2017 through February 2026, the most recent month for which data is available at the time of this filing.¹¹ The Data PPI had a starting value of 109 in January 2017 and an ending value of 123.670 in February 2026, representing an increase of approximately 13.59% over this period.

This indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 13.59% during this period. Based on that percentage change, the Exchange proposes to make a one-time fee increase of 10%, which reflects only a portion of the cumulative inflation experienced since the most recent adjustments to these fees on or about 2017.¹²

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 3.09% increase year over year since Data PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to January 2026 was 0.70%, with a cumulative increase of 20.32% over this 24-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 81% over the same period.¹³

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed fee increases.¹⁴ As the Exchange notes above, the Exchange has relied on Data PPI, as well as its

investments into and enhanced performance of the Exchange to support the reasonableness of proposed fees for a substantively identical service or product under Rule Equity 7.¹⁵

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the capacity and speed of Exchange systems increase the performance of the services and products.

The Proposed Rule Change Is Reasonable

As noted above, the Exchange has not increased any of the fees included in this proposal since 2017 or earlier. However, in the years following the most recent fee increases, the Exchange has made significant investments in upgrades to its connectivity products, services, and facilities, enhancing the quality of its services. Between 2017 and 2026, the period under consideration in this proposal, the inflation rate was 3.25% per year, on average, producing a cumulative inflation rate of 33.32%.¹⁸ Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 13.59%. The exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees for the subject service. The proposed fee changes represent a modest increase from the current fees. As discussed above, the Exchange is limiting its proposed fee increases to 10% of the current fees, which as

¹¹ See 2024 Proposal, *supra* note 4.

¹² See 2024 Proposal, *supra* note 4. The proposed adjustments would thus align the fees for the Testing Facility under Rule Options 7 with fees for the corresponding Testing Facility service under Equity Rule 7 as adjusted pursuant to the 2024 Proposal.

¹³ See <https://www.usinflationcalculator.com/>.

¹⁴ See *supra* discussion of connectivity product and facility improvements. Additionally, other exchanges have filed for increases in certain fees, based in part on comparisons to inflation. See, e.g., Securities Exchange Act Release Nos. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR–CboeBYX–2024–012); and 34–100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR–BOX–2024–16); Securities Exchange Act Release No. 34–100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR–NYSEARCA–2024–79). See also *supra* note 4 and accompanying text.

¹⁵ See 2024 Proposal, *supra* note 4.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

¹⁸ See <https://www.officialdata.org/us/inflation/2017?amount=1>.

⁹ NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

¹⁰ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

discussed above reflects only a portion of the cumulative inflation experienced since the most recent adjustments to these fees on or about 2017. The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. Furthermore, the Exchange continues to invest in maintaining and enhancing its connectivity products for the benefit and often at the behest of its customers and global investors.¹⁹ The goal of the enhancements discussed above, among other things, is to provide faster, higher-capacity, and more modern connectivity products and services. Accordingly, the Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its connectivity products and services.

Moreover, as discussed above, the Exchange in 2024 filed a proposed rule change to amend, among other rules, Rule Equity 7 ("Pricing Schedule"), to increase certain fees for its Testing Facilities by 10%.²⁰ In this proposal, the Exchange is merely proposing a corresponding increase to the analogous Testing Facility fees under Options 7, consistent with the basis for and rationale supporting the analogous Rule Equity 7 adjustments in the 2024 Proposal. The Exchange is proposing no other changes to its rules.

The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory

The Exchange believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply to all market participants that choose to purchase connectivity products and services from the Exchange. Any participant that chooses to purchase the Exchange's connectivity products and services would be subject to the same fee schedule, regardless of what type of business they operate or the use they plan to make use of the products and services. Additionally, the fee increase would be applied uniformly to market participants without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities. Finally, the Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees would be assessed uniformly across all market participants, in the same manner they

are today, that voluntarily purchase the Exchange's connectivity products and services, which would remain available for purchase by all market participants.

Moreover, as discussed above, the Exchange is merely proposing a 10 percent increase to the Testing Facility fees under Options 7, consistent with basis for and rationale supporting the fee increase adopted in the 2024 Proposal for the analogous Testing Facility under Rule Equity 7. The Exchange is proposing no other changes to its rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the fee schedule would continue to apply to all purchasers of the Exchange's connectivity products and services in the same manner as it does today, albeit at inflation-adjusted rates for certain fees, and customers may choose whether to purchase these products and services at all. The Exchange also believes that the level of the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition.

Intermarket Competition

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In determining the proposed fees, the Exchange relied on an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing its connectivity products, services, and facilities. Thus, the Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase certain fees for connectivity products and services to recoup the Exchange's investment in maintaining and enhancing such products, services, and its facilities would not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2026-031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2026-031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the 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

¹⁹ See 2024 Proposal, *supra* note 4 (describing such continued maintenance enhancements).

²⁰ See 2024 Proposal, *supra* note 4.

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2026–031 and should be submitted on or before May 11, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–07593 Filed 4–17–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105249; File No. SR–FICC–2025–025]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Partial Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment Nos. 1 and 2, To Amend and Restate the Second Amended and Restated Cross-Margining Agreement Between FICC and CME and Amend Related GSD Rules

April 15, 2026.

I. Introduction

On December 12, 2025, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR–FICC–2025–025, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 19b–4 thereunder,² seeking to enter into a proposed Third Amended and Restated Cross-Margining Agreement (the “Third A&R Agreement”) with the Chicago Mercantile Exchange Inc. (“CME”), and collectively with FICC, the “Clearing Organizations”) and incorporate the Third A&R Agreement into the FICC Government Securities Division (“GSD”) Rulebook (“Rules”), along with related changes to the GSD Rules. The Third A&R Agreement would extend the availability of cross-margining to positions cleared and carried for customers by a dually registered broker-dealer and futures commission merchant that is a common member of FICC and CME (“Eligible BD–FCM”). On December 19, 2025, FICC filed Partial Amendment No. 1 to the proposed rule change to make certain changes to the narrative description of

the filing and exhibits provided by FICC.³

The proposed rule change was published for public comment in the **Federal Register** on December 29, 2025.⁴ On January 26, 2026, pursuant to Section 19(b)(2) of the Exchange Act,⁵ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁶

On March 4, 2026, FICC filed Partial Amendment No. 2 to the proposed rule change.⁷ The proposed rule change, as modified by Amendment Nos. 1 and 2, is herein referred to as the “Proposed Rule Change.” On March 18, 2026, the Commission instituted proceedings, pursuant to Section 19(b)(2)(B) of the

³ Partial Amendment No. 1 makes clarifications and corrections to the narrative description of the proposed rule change and Exhibit 5A of the filing. Specifically, the Amendment corrects the narrative description of a proposed change to the GSD Rules to accurately reflect the change, as it appears in Exhibit 5A. The Amendment also modifies Exhibit 5A to correct a typographical error and mismarked rule text as compared to the currently effective GSD Rules. See Notice of Filing, *infra* note 4, 90 FR at 60791.

⁴ Securities Exchange Act Release No. 104485 (Dec. 22, 2025), 90 FR 60791 (Dec. 29, 2025) (File No. SR–FICC–2025–025) (“Notice of Filing”). On December 12, 2025, FICC also filed the proposed rule change as an advance notice with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (“Clearing Supervision Act”), and Rule 19b–4(n)(1)(i) under the Exchange Act, which was published in the **Federal Register** on December 29, 2025. Securities Exchange Act Release No. 104486 (Dec. 22, 2025), 90 FR 60766 (Dec. 29, 2025) (File No. SR–FICC–2025–801) (“Advance Notice”). On April 10, 2026, the Commission published a notice of no objection to the Advance Notice. Securities Exchange Act Release No. 105197 (Apr. 10, 2026).

⁵ 15 U.S.C. 78s(b)(2).

⁶ Securities Exchange Act Release No. 104690 (Jan. 26, 2026), 91 FR 3944 (Jan. 29, 2026) (File No. SR–FICC–2025–025).

⁷ Partial Amendment No. 2 modifies the proposed changes to the GSD Rules to include an amendment to GSD Rule 26 (Transfers of Indirect Participant Activity), for consistency with certain conditions of the proposed exemptive order published by the Commodity Futures Trading Commission (the “CFTC”), to add that FICC would not interfere with the acceptance by an Eligible BD–FCM of transfers of transactions recorded in a Cross-Margining Customer Account and associated Cross-Margining Customer Margin when (i) the Eligible BD–FCM is required to effectuate such transfer pursuant to CFTC Regulation 1.17(a)(4), or (ii) the Eligible BD–FCM is a “debtor” as defined in CFTC Regulation 190.01 and the transfer has been approved by the CFTC. Additionally, Partial Amendment No. 2 modifies the proposed changes to the GSD Rules to include conforming changes to the description of “Sponsored GC CIL Omnibus Account Required Fund Deposit” in the Margin Component Schedule to add references to Cross-Margining Customer and Cross-Margining Customer Account and align the treatment of Segregated Indirect Participants and Segregated Indirect Participants Accounts, on the one hand, and Cross-Margining Customers and Cross-Margining Customer Accounts, on the other.

Exchange Act,⁸ to determine whether to approve or disapprove the Proposed Rule Change.⁹

The Commission has received comments regarding the substance of the changes proposed in the Proposed Rule Change.¹⁰

The Commission is publishing this notice to solicit comments on Partial Amendment No. 2 from interested persons, and, for the reasons discussed below, the Commission is approving the Proposed Rule Change on an accelerated basis.

II. Background

FICC’s GSD provides trade comparison, netting, risk management, settlement, and central counterparty (“CCP”) services for the U.S. Government securities market.¹¹ As a CCP, FICC novates the transactions submitted to it by its members, which means it interposes itself as the buyer to every seller and seller to every buyer for the financial transactions it clears. As such, FICC is exposed to the risk that one or more of its members may fail to make a payment or to deliver securities.

A key tool that FICC uses to manage its credit exposures to its members is the daily collection of margin from each member. A member’s margin is designed to mitigate potential losses associated with liquidation of the member’s portfolio in the event of that member’s default. The aggregated amount of all GSD members’ margin constitutes the Clearing Fund, which FICC would be able to access should a defaulted member’s own margin be insufficient to satisfy losses to FICC caused by the liquidation of that member’s portfolio. Each member’s margin consists of a number of applicable components, including a value-at-risk charge designed to capture the potential market price risk associated with the securities in a member’s portfolio.

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ Securities Exchange Act Release No. 105041 (Mar. 18, 2026), 91 FR 13912 (Mar. 23, 2026) (File No. SR–FICC–2025–025). FICC advised the Commission that it waived the rebuttal period with respect to the order instituting proceedings.

¹⁰ Comments on the Proposed Rule Change are available at <https://www.sec.gov/rules-regulations/public-comments/sr-ficc-2025-025>. Comments on the Advance Notice are available at <https://www.sec.gov/rules-regulations/public-comments/sr-ficc-2025-801>. Because the proposals contained in the Proposed Rule Change and the Advance Notice are the same, the Commission considers all comments received on the proposal, regardless of whether the comments are submitted with respect to the Advance Notice or the Proposed Rule Change.

¹¹ FICC’s Mortgage-Backed Securities Division provides similar services for mortgage-backed securities. For purposes of this notice, “FICC” refers to GSD.

²² 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

Margin requirements are typically designed, in part, to recognize the potential relationship between products in a member's portfolio (e.g., some products may naturally gain value when others lose value). Members may, however, hold assets or enter into transactions that reduce risk, but are not visible to the CCP. For example, a market participant might purchase a debt security, and at the same time, contract to sell the same security in the future. The risk to the market participant is a combination of these two offsetting transactions as opposed to the risk of each added together because it is unlikely that both positions would lose value at the same time under normal market conditions.

A. Existing Cross-Margining Agreement Between FICC and CME

To recognize potential offsets in the risk presented by related products, FICC has a cross-margining arrangement with CME, which acts as a CCP for futures related to the debt instruments that FICC clears.¹² In 2023, FICC and CME entered into the Amended and Restated Cross-Margining Agreement that allowed FICC and CME to consider the net risk of a participant's eligible positions at each Clearing Organization when setting margin requirements for such positions.¹³ In 2025, FICC and CME entered into the Second Amended and Restated Cross-Margining Agreement (the "Second A&R Agreement" or the "Existing Agreement"), which made certain technical changes to account for requirements under amended Rule 17ad-22 to hold margin for transactions in U.S. Treasury securities that a Netting Member submits to FICC on behalf of an indirect participant separately and independently from margin for the Netting Member's proprietary positions.¹⁴

¹² CME provides central counterparty services for futures, options on futures, and swaps. See Financial Stability Oversight Council 2024 Annual Report, available at <https://home.treasury.gov/system/files/261/FSOC2024AnnualReport.pdf> (last visited Mar. 17, 2026).

¹³ See Securities Exchange Act Release No. 98327 (Sept. 8, 2023), 88 FR 63185 (Sept. 14, 2023) (File No. SR-FICC-2023-010) ("Order Approving Amended and Restated Cross-Margining Agreement").

¹⁴ See Securities Exchange Act Release No. 103399 (July 8, 2025), 90 FR 31043 (July 11, 2025) (File No. SR-FICC-2025-014) ("Order Approving Existing Agreement"). The Existing Agreement, available at https://www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_cme_crossmargin_agreement.pdf, is incorporated by reference in the GSD Rules, available at www.dtcc.com/legal/rules-and-procedures.aspx. Unless otherwise specified, capitalized terms not defined herein shall have the meanings ascribed to them in the GSD Rules, which includes the Existing Agreement.

Pursuant to the terms of the Existing Agreement (i.e., the "Proprietary Cross-Margining Arrangement"), a joint clearing member of both Clearing Organizations (a "Joint Clearing Member") may designate any of its accounts at FICC (except its Sponsoring Member Omnibus Account) to be cross-margining with a cross-margining account on the books of CME (each such account, a "Cross-Margining Account").¹⁵ In addition, a Joint Clearing Member may include in a Cross-Margining Account both its proprietary positions and those of an affiliate, as long as the affiliate is not a customer under certain Commission rules and its account on the records of the Joint Clearing Member is a "proprietary account" within the meaning of 17 CFR 1.3 (an "Eligible Affiliate").¹⁶ The Existing Agreement identifies, among other things, the methodology to determine offsets between cleared products and how the Clearing Organizations would handle a defaulting Joint Clearing Member.¹⁷ FICC states that any resulting margin reductions create capital efficiencies for the Cross-Margining Participants and their Eligible Affiliates and incentivize them to maintain or carry portfolios that present lower overall risk.¹⁸

Under the Existing Agreement, both FICC and CME provide a guaranty to each other to make prompt payment when due (whether at maturity, by declaration, by demand or otherwise), and at any and all times thereafter, of all indebtedness and other obligations of every kind and nature of each Cross-Margining Participant or its affiliate, arising from or related to the Eligible Positions or the liquidation, transfer, or management of the Eligible Positions, including but limited to, the amounts determined under any suspension or liquidation under Section 7 of the Existing Agreement (as discussed further below in II.4).

III. Description of the Proposed Rule Change

A. Proposed Third Amended and Restated Cross-Margining Agreement

FICC is proposing to replace the Second A&R Agreement with the proposed Third A&R Agreement, to extend the availability of cross-margining to positions cleared and

carried for customers other than an Eligible Affiliate ("Cross-Margining Customers") by certain Joint Clearing Members, as discussed further below. FICC states that such amendments would promote the maintenance of more balanced portfolios that present lower risk and facilitate the access of indirect participants to central clearing, in accordance with Rule 17ad-22 under the Exchange Act.¹⁹

In addition to this Proposed Rule Change and Advance Notice, FICC and CME have also submitted to the Commission and the CFTC petitions for exemptive relief from certain provisions of the Commodity Exchange Act and Exchange Act that would enable FICC and CME to make cross-margining available to Cross-Margining Customers.²⁰ The Commission and CFTC published these applications with requests for comment.²¹

The amendments to the Existing Agreement would address certain areas, as described further below.²²

¹⁹ *Id.* at 60793.

²⁰ See Securities Exchange Act Release No. 104748 (Jan. 30, 2026), 91 FR 4994 (Feb. 3, 2026) (File No. S7-2026-03) (the "SEC Notice of Application for Exemptive Relief"); CFTC, *Proposal to Provide Exemptive Relief to Facilitate Cross-Margining of Customer Positions Cleared at Chicago Mercantile Exchange, Inc. and Fixed Income Clearing Corporation*, 90 FR 58525 (Dec. 17, 2025) (the "CFTC Notice", and together with the SEC Notice of Application for Exemptive Relief, the "Notices regarding Proposed Exemptive Relief," and the proposed Commission and CFTC orders as described in the Petitions, the "Proposed Orders"). As stated in the SEC Petition, the Clearing Organizations request that the Commission provide exemptive relief to Eligible BD-FCMs from Section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder to permit Eligible BD-FCMs to hold U.S. Treasury securities transactions that have been novated to FICC and associated margin in a "futures account," as defined in CFTC Regulation 1.3, that also contains futures positions and associated margin and subject to the CEA and related CFTC Regulations, rather than in a securities account subject to the Exchange Act and the rules thereunder. As stated in the CFTC Petition, the Clearing Organizations seek exemptive relief from Section 4d of CEA, which requires futures customer funds to be segregated and prohibits the commingling of futures customer funds and futures customer positions with any other positions and funds. The exemptive relief would allow Eligible BD-FCMs to hold securities positions and associated funds together with the futures customer positions and funds held by the Eligible BD-FCM in their futures customer accounts, and allow Eligible BD-FCMs to deposit at FICC, and permit FICC to hold, customer funds and margin associated with futures positions. The exemptive relief sought by the Petitions would allow for the implementation of the customer cross-margining as proposed in this Proposed Rule Change.

²¹ See *supra* note 20.

²² For a more detailed description of the changes, see Notice of Filing, *supra* note 4, 90 FR at 60793-99, and the revised Third A&R Agreement, filed as Exhibit 5b, available at <https://www.sec.gov/files/rules/sro/ficc/2025/34-104486-ex5b.pdf>.

¹⁵ See Recital C of the Existing Agreement, *supra* note 14.

¹⁶ See Section 1 (defining "Cross-Margining Account" and "Proprietary Account") of the Existing Agreement, *supra* note 14.

¹⁷ See Sections 4 and 7 of the Existing Agreement, *supra* note 14.

¹⁸ See Notice of Filing, *supra* note 4, 90 FR at 60792.

1. Eligibility Criteria and Participation Requirements

The Third A&R Agreement would identify the eligibility criteria and participation requirements for a Joint Clearing Member and its Cross-Margining Customer to participate in customer cross-margining. FICC states that these criteria and participation requirements are designed to ensure that each participating Cross-Margining Customer and its Joint Clearing Member satisfy certain conditions in the Proposed Orders.²³

The Third A&R Agreement would require that a Joint Clearing Member be an Eligible BD-FCM. It would also require that each Cross-Margining Customer be a “futures customer” within the meaning of CFTC Regulation 1.3²⁴ and a “Sponsored Member” or “Eligible Firm Customer” as defined under the GSD Rules. In addition, it would require that the Eligible BD-FCM hold the Cross-Margining Customer’s Customer Positions (as defined below) at FICC and hold the associated money, securities and property, together with such customer’s Customer Positions at CME and the associated “futures customer funds” in a “futures account,” such terms as defined in CFTC Regulation 1.3, in accordance with any conditions set forth in the Orders and applicable law.

As discussed further below, a Joint Clearing Member would be required to enter into a participant agreement with the Clearing Organizations, with such agreement included as an Appendix to the Third A&R Agreement.²⁵ In addition, a Joint Clearing Member would be required to enter into an agreement with each Cross-Margining Customer containing certain terms, including that the Cross-Margining Customer agrees to subordinate its claims under the Securities Investor Protection Act of 1970 (“SIPA”) and subchapter III of Chapter 7 of the U.S. Bankruptcy Code in relation to its cross-margined positions and associated margin (the “Subordination Agreement”).²⁶ The customer agreement would also be set forth in the Third A&R Agreement as an Appendix.

The Third A&R Agreement would define “Customer” as an indirect clearing participant that meets the definition of futures customer set out in CFTC Regulation 1.3 and is a “Sponsored Member” or “Executing Firm Customer” as defined under the

GSD Rules. The Third A&R Agreement would also redefine “Non-Customer” and provide that Eligible Affiliates would continue to be able to access cross-margining under the Proprietary Cross-Margining Arrangement so long as they constitute “Non-Customers.”

A Cross-Margining Customer’s participation in the Customer Cross-Margining Arrangement would be intermediated through the Eligible BD-FCM, and Section 2(a) of the Third A&R Agreement would specify that the Clearing Organizations would have no obligation to deal directly with a Cross-Margining Customer, and that a Cross-Margining Customer would have no right to assert a claim against a Clearing Organization with respect to, nor would a Clearing Organization be liable to a Cross-Margining Customer for, any obligations of a Clearing Organization in connection with the Cross-Margining Customer’s participation in the Customer Cross-Margining Arrangement pursuant to the Third A&R Agreement. FICC states that these terms are consistent with those applicable to Eligible Firm Customers under the GSD Rules, as well as those applicable to customers under CME’s rules.²⁷

2. Customer Cross-Margining Accounts

The Third A&R Agreement would include provisions to enable Eligible BD-FCMs to establish “Customer Cross-Margining Accounts” for purposes of recording Eligible Positions at the Clearing Organizations (such Eligible Positions in a Customer Cross-Margining Account, “Customer Positions”), separate from the accounts established by Eligible BD-FCMs at the Clearing Organizations for the purposes of recording positions subject to the Proprietary Cross-Margining Arrangement (“Proprietary Positions” in “Proprietary Cross-Margining Accounts”²⁸). A Customer Cross-Margining Account would be defined as, for FICC, an Indirect Participants Account (as defined in the GSD Rules) at FICC maintained for Cross-Margining Customers and identified in FICC’s books and records as being subject to the Third A&R Agreement (which, as

discussed below, would be the “Cross-Margining Customer Account” under the GSD Rules) and, for CME, as an account carried on the books and records of CME for an Eligible BD-FCM, which contains only the positions, transactions, and margin of that Eligible BD-FCM’s Cross-Margining Customers. An Eligible BD-FCM would be required to designate each Cross-Margining Account it opens at the Clearing Organizations as either a Customer Cross-Margining Account or a Proprietary Cross-Margining Account.

3. Margin Methodology

The Third A&R Agreement would describe the methodology for calculating potential reductions to the margin requirements for Customer Positions. FICC states that it would apply the same margin reduction methodology to Customer Positions as it applies to Proprietary Positions, with margin reductions calculated on a customer-by-customer basis for each cross-margining customer.²⁹ FICC states that it would collect and hold Cross-Margining Customer Margin in a substantially similar manner to how it collects and holds “Segregated Customer Margin” (as defined under the GSD Rules), with certain adjustments to ensure consistency with the requirements of the [Orders] and the general requirements and conventions applicable to futures.³⁰ Specifically, FICC and CME would calculate the margin savings that would result from viewing the “Combined Portfolio” of CME-cleared Customer Positions and FICC-cleared Customer Positions as a single portfolio rather than as separate standalone portfolios. The Clearing Organizations would then compare the respective margin reduction percentages, and each would then reduce the margin required for the Combined Portfolio by the lower percentage (subject to a cap of 80%). For Customer Positions, this process would occur on a Cross-Margining Customer-by-Cross-Margining Customer basis. FICC states that this customer-by-customer approach is consistent both with how futures contracts are required to be margined under the CFTC rules and how FICC margins Segregated Indirect Participant Positions.³¹

²³ See Notice of Filing, *supra* note 4, 90 FR at 60793.

²⁴ 17 CFR 1.3.

²⁵ See *infra* section III.A.5.

²⁶ See *infra* section III.A.6.

²⁷ See Notice of Filing, *supra* note 4, 90 FR at 60794 (citing GSD Rules, Rule 2, Section 4; Rule 8, Section 6(c)–(e); CME Rulebook, Rule 803).

²⁸ A Proprietary Cross-Margining Account would be defined as, with respect to FICC, a Proprietary Account at FICC (as defined in the GSD Rules) or an Indirect Participants Account at FICC that is maintained for Non-Customers and identified in FICC’s books and records as being subject to the Third A&R Agreement, and, with respect to CME, an account carried on the books and records of CME for an Eligible BD-FCM, which contains only the positions, transactions, and margin of the “proprietary accounts” (as defined in CFTC Regulation 1.3) of the Eligible BD-FCM.

²⁹ See Notice of Filing, *supra* note 4, 90 FR at 60795.

³⁰ *Id.* See also GSD Rule 4, Section 1a (describing the treatment of Segregated Customer Margin), *supra* note 14.

³¹ See Notice of Filing, *supra* note 4, 90 FR at 60795 (citing 17 CFR 39.13(g)(8)(i); GSD Rules, Rule 4, Section 1b(b)).

4. Default Management

The Third A&R Agreement would address how the Clearing Organizations would manage a default of a Joint-Clearing Member carrying Customer Positions for Cross-Margining Customers. FICC states the Third A&R Agreement would follow substantially the same approach to handling Customer Positions carried by a Defaulting Member as applies to Proprietary Positions.³² Specifically, the Clearing Organizations would attempt in good faith to jointly transfer, liquidate, or close-out the Proprietary Positions or Customer Positions, which may include a joint liquidating auction so that hedged positions can be closed-out simultaneously or, in the case of a transfer of Customer Positions, so that the positions of each Cross-Margining Customer in a Combined Portfolio can, if feasible, be transferred to the same clearing firm. In addition, if one Clearing Organization determines that such joint action is not feasible or advisable for any Liquidation Portfolio, then either Clearing Organization could buy-out the Proprietary Positions or Customer Positions in such Liquidation Portfolio at the other Clearing Organization in accordance with the existing terms of the Third A&R agreement related to buy-outs. Lastly, if one Clearing Organization determines that neither the joint transfer, liquidation, or close-out option nor the buy-out option is legally permissible or possible as to a particular Liquidation Portfolio, or if such methods would result in substantially greater losses to each Clearing Organization than in the case of a separate liquidation by each Clearing Organization, the Clearing Organizations could conduct separate liquidations in accordance with the existing terms related to such separate liquidations.³³

Under the Third A&R Agreement, Customer Positions and Proprietary Positions and associated margin would form part of separate “Liquidation Portfolios” and therefore would not be netted against one another in calculating Net Gain or Net Loss (or VM Net Gain or VM Net Loss). FICC states that, by

virtue of these changes, the Clearing Organizations would not be able to apply Customer Positions or associated margin to the obligations arising under a Defaulting Member’s Proprietary Positions.³⁴ The Third A&R Agreement would also clarify that the Clearing Organizations may “port” Customer Positions to another clearing member in a default scenario.

5. Customer Cross-Margining Clearing Member Agreement

The Third A&R Agreement would require Eligible BD–FCMs to enter into the Customer Cross-Margining Clearing Member Agreement in order to participate in the Cross-Margining Arrangement, as set forth in Appendix C to the Third A&R Agreement, which would clarify the rights and obligations of the Clearing Organizations, the Eligible BD–FCM, and the Cross-Margining Customers.³⁵

FICC states that the Customer Cross-Margining Clearing Member Agreement is modeled on the Proprietary Clearing Member Agreement in Appendix A of the Existing Agreement, with the three first paragraphs being substantially identical.³⁶ Additionally, several other provisions align with the Proprietary Clearing Member Agreement, including those regarding the disclosure of Clearing Data, calculation of margin reduction, transfer of rights in Net Gains, governing law, choice-of-jurisdiction, execution, and representations (except those concerning the proprietary nature of the positions and Eligible Affiliates).

The Customer Cross-Margining Clearing Member Agreement would further provide that:³⁷

- The Eligible BD–FCM makes application to establish in its name Customer Cross-Margining Accounts at CME and FICC, in addition to any Proprietary Cross-Margining Account, for transactions and positions carried by the Eligible BD–FCM for Cross-Margining Customers who have signed a Customer Agreement (as defined below) and not commence clearing transactions until such has been executed.

- The Eligible BD–FCM indemnifies and holds harmless the Clearing Organizations from any claim resulting from the carrying of positions in a Customer Cross-Margining Account that

belong to any person other than a Cross-Margining Customer.

- The Eligible BD–FCM unconditionally promises immediate payment of any obligations to a Clearing Organization in respect of a Cross-Margining Customer’s positions, agrees that each Cross-Margining Customer is bound by the GSD Rules and CME’s rules and by the provisions of the Customer Cross-Margining Clearing Member Agreement and the Third A&R Agreement, and represents and warrants that it has full power and authority to bind each of its Cross-Margining Customers to these terms.

- The Eligible BD–FCM pledges and grants to each Clearing Organization a first priority continuing security interest in all of the positions or other property held by either Clearing Organization, as security for its and its Cross-Margining Customers’ obligations to the Clearing Organizations arising from its Customer Cross-Margining Accounts, with certain additional assurances aligning with those in the Proprietary Clearing Member Agreement (along with the addition of a clause for facilitating the perfection of CME’s security interest in the Cross-Margining Customer Margin and ensuring it is treated as “customer property” under Part 190 of the CFTC’s regulations).

- The Eligible BD–FCM may terminate the Customer Cross-Margining Clearing Member Agreement upon two business day’s written notice to FICC and CME, with such termination being effective upon written acknowledgement by both FICC and CME and provided that all positions have been closed-out or transferred and all Stand-alone Margin Requirement in respect of any such transferred positions³⁸ and all obligations of the Eligible BD–FCM to the Clearing Organizations in respect of the Customer Cross-Margining Accounts have been fully satisfied.

- Either Clearing Organization may terminate the Eligible BD–FCM’s participation at any time upon written notice to the other Clearing Organization and Eligible BD–FCM, and in connection to termination, may require the Eligible BD–FCM to close-out or transfer all positions in the affected Customer Cross-Margining Accounts, with termination being effective provided that all obligations of

³² *Id.* at 60796.

³³ FICC states that the Clearing Organizations do not foresee particular circumstances that could lead to separate liquidations being applicable, and that, to the contrary, the Clearing Organizations believe it is highly unlikely that they would engage in separate liquidations. FICC further states that the Clearing Organizations believe it is prudent to have a separate liquidation option so that there is a clear methodology in the very unlikely event that some unforeseen circumstance causes it not to be possible or legally permissible to conduct a joint liquidation or buy-out or for such methods to result in substantially greater costs. *Id.* at 60796.

³⁴ *Id.*

³⁵ *Id.* at 60797; see also Appendix C “Customer Cross-Margining Program” of the revised Third A&R Agreement, *supra* note 22.

³⁶ See Notice of Filing, *supra* note 4, 90 FR at 60797.

³⁷ *Id.* at 60797–8.

³⁸ Stand-Alone Margin Requirement is defined as the Margin requirement that each Clearing Organization would calculate with respect to a particular cross-margining account without regard to the cross-margining arrangement (and, for FICC, without regard to any netting across positions of multiple Executing Firm Customers in the same Agent Clearing Member Omnibus Account).

the Eligible BD-FCM in respect of the affected Customer Cross-Margining Accounts have been fully satisfied.

- The Customer Cross-Margining Clearing Member Agreement would become effective upon the later of execution of the agreement, or all necessary regulatory approvals from the Commission and the CFTC.

6. Customer Agreement

The Third A&R Agreement would require that, in order to participate in the Cross-Margining Arrangement, Cross-Margining Customers enter into an agreement with the Eligible BD-FCM ("Customer Agreement") that includes certain terms as set forth in Appendix C to the Third A&R Agreement.³⁹ FICC states that the Customer Agreement would include the terms of the Subordination Agreement, under which the Cross-Margining Customer agrees to certain treatment of its customer positions and property in a liquidation of the Clearing Member.⁴⁰

The Customer Agreement would also require Cross-Margining Customers to acknowledge and agree that:

- All money, securities, and property that the Cross-Margining Customer deposits with the Eligible BD-FCM to margin, guarantee, or secure Customer Positions will be held in a "futures account" as defined in CFTC Regulation 1.3 and subject to CEA Section 4d(a) and (b).
- Customer Positions and associated margin may be commingled with the positions and property of other customers of the Eligible BD-FCM and may be used by the Eligible BD-FCM to carry positions on behalf of the Cross-Margining Customer or other futures customers of the Eligible BD-FCM.
- Property held in connection with Customer Positions will be treated in a

manner consistent with the CFTC Order and Section 4d of the CEA.

- In the event that a Clearing Organization suspends or ceases to act for a Clearing Member, it would be the Clearing Organizations' sole discretion to determine whether to transfer, liquidate, or settle Customer Positions in the relevant Customer Cross-Margining Account.
- Participation in the Customer Cross-Margining Arrangement is subject to the terms of (i) the Third A&R Agreement, (ii) the Customer Cross-Margining Clearing Member Agreement, and (iii) the GSD Rules and the rules of CME.
- If CME determines at any time that any Eligible Positions of the Cross-Margining Customer cleared through the Customer Cross-Margining Account at CME are non-risk reducing, CME may either restrict the Cross-Margining Customer from adding positions or require the Cross-Margining Customer to move or liquidate Eligible Positions in the Customer Cross-Margining Account at CME.

The Customer Agreement would also require the Cross-Margining Customer to pledge and grant as security for its obligations in respect of its Customer Positions, a continuing security interest to the Eligible BD-FCM against all positions in each Customer Cross-Margining Account and associated margin and proceeds. The Customer Agreement would also require the Cross-Margining Customer to agree that the Eligible BD-FCM may enter into agreements with the Clearing Organizations on the Cross-Margining Customer's behalf as set forth in the Customer Cross-Margining Clearing Member Agreement.

7. Conforming Changes and Clarifying Edits

The Third A&R Agreement would make changes, including new recitals to describe the purpose of the Third A&R Agreement and redefine the prior versions of the agreement, and non-substantive revisions and movements of defined terms, to conform to the addition of the Customer Cross-Margining Arrangement and related provisions. The Third A&R Agreement would revise Section 3(b) to provide that it does not apply to Proprietary Positions of a Joint Clearing Member or to Customer Positions, and Section 7(i) to clarify that the requirement for a Defaulting Member to reimburse a Clearing Organization in the event that the Clearing Organization is obligated to make a guaranty payment to the other Clearing Organization in respect of an obligation of such Defaulting Member

applies in respect of the obligations of any Cross-Margining Customer.

The Third A&R Agreement would also include clarifying edits not specifically related to the Customer Cross-Margining Arrangement, including the provision stating FICC's and CME's right to terminate participation of a Cross-Margining Participant, a new provision regarding acceptable collateral to satisfy the Cross-Margin Requirement, and the titles of Appendices to specify that they are for use in connection with the Proprietary Cross-Margining Arrangement.

B. Proposed Changes to the GSD Rules

Along with the Third A&R Agreement, FICC is also proposing related changes to the GSD Rules to effectuate and conform with the Customer Cross-Margining Arrangement, as well as the adoption of new defined terms to effectuate these changes. The proposed rule changes include: (i) a new type of account for customer cross-margining and (ii) margin methodology and treatment for customer cross-margining.

1. Cross-Margining Customer Account

FICC would create a new position Account type, the "Cross-Margining Customer Account," in which Customer Positions would be recorded. The Cross-Margining Customer Account would constitute an "Indirect Participants Account." A Netting Member that is an Eligible BD-FCM and approved participant in the Customer Cross-Margining Arrangement would be permitted to designate an Indirect Participants Account (other than a Segregated Indirect Participants Account) as a Cross-Margining Customer Account. Any such designation would constitute a representation to FICC by the Netting Member that the Netting Member has complied with all regulatory requirements applicable to it in connection with its participation in the Customer Cross-Margining Arrangement, including the conditions in the Proposed Orders, and this representation would be deemed repeated each time the Netting Member deposits Cross-Margining Customer Margin.

2. Margin Methodology and Treatment for Customer Cross-Margining

FICC would also adopt rule changes to set forth how it would calculate, collect, and hold Cross-Margining Customer Margin. Such changes would include:

- FICC would credit all Cross-Margining Customer Margin collected

³⁹ See Notice of Filing, *supra* note 4, 90 FR at 60798–99; see also Appendix C Exhibit I "Customer Required Terms Annex or Agreement" of the revised Third A&R Agreement, *supra* note 22.

⁴⁰ Specifically, the Customer would have to agree agrees to the terms of the Subordination Agreement, under which the Cross-Margining Customer agrees that all of its Customer Positions and Customer Property (including any margin at FICC) (i) will not receive customer treatment under the Exchange Act or SIPA or be treated as "customer property" as defined in 11 U.S.C. 741 in a liquidation of Clearing Member, and (ii) will be subject to any applicable protections under Subchapter IV of Chapter 7 of the U.S. Bankruptcy Code and rules and regulations thereunder including Part 190 of the CFTC's Regulations ("Part 190"), and that the Cross-Margining Customer's claims to "customer property" as defined in SIPA or 11 U.S.C. 741 against the Eligible BD-FCM with respect to its Customer Positions and Customer Property (including any margin held at FICC) will be subordinated to the claims of all other customers, as the term "customer" is defined in 11 U.S.C. 741 or SIPA. See Notice of Filing, *supra* note 4, 90 FR at 60799.

from an Eligible BD-FCM to a securities account on its books and records in the name of the Eligible BD-FCM for the benefit of its customers (a “Cross-Margining Customer Margin Custody Account”). FICC would also agree to treat all assets credited to the Cross-Margining Customer Margin Custody Account as “financial assets” credited to a “securities account” for which FICC is the “securities intermediary,” as such terms are used in Article 8 of the Uniform Commercial Code as in effect in the State of New York (“NYUCC”). FICC states that these provisions are designed to ensure that the Cross-Margining Customer Margin would not form part of FICC’s estate in the event FICC became subject to insolvency proceedings and allow CME to perfect its security interest in the Cross-Margining Customer Margin to protect CME in the event of a Cross-Margining Participant default.⁴¹

- FICC would hold Cross-Margining Customer Margin in (i) an account of FICC at a FDIC insured bank that is segregated from any other account of FICC and used exclusively to hold Cross-Margining Customer Margin, and (ii) an account at the FRBNY that is segregated from any other FICC account and used exclusively to hold Segregated Customer Margin and Cross-Margining Customer Margin. In accordance with the [Orders], any such account (other than one at the FRBNY) would need to be subject to a written notice consistent with the Orders.

- The same requirements applicable to Segregated Customer Margin with respect to the form and composition of eligible collateral, the minimum amounts of cash and Eligible Clearing Fund Treasury Securities, substitution and withdrawal, and treatment of excess margin would be applicable to Cross-Margining Customer Margin, except that (i) a Netting Member’s rights or FICC’s obligation with respect to any excess Cross-Margining Customer Margin would be subject to the Third A&R Agreement and the Customer Cross-Margining Clearing Member Agreement, and (ii) FICC would be permitted to retain the excess Cross-Margining Customer Margin deposited by a Netting Member with respect to a Cross-Margining Customer when the Netting Member has any outstanding payment or margin obligation arising from any Customer Positions, including those of another Cross-Margining Customer.

- FICC would calculate the margin requirement in respect of each Cross-Margining Customer Account (the

“Cross-Margining Customer Margin Requirement”) on a gross (*i.e.*, Cross-Margining Customer-by-Cross-Margining Customer) basis, as though each Cross-Margining Customer were a separate Netting Member. However, such margin requirement would be subject to any margin reduction pursuant to the Third A&R Agreement (which, as discussed above, would be determined using the same margin reduction methodology under Proprietary Cross-Margining Arrangement).

FICC is also proposing to provide that Cross-Margining Customer Margin would be pledged to FICC to secure all obligations of the Netting Member and its Cross-Margining Customers arising under Customer Positions. FICC proposes to remove the existing Section 10(e) of Rule 3A, which currently prohibits Sponsored Members from participating in the Cross-Margining Arrangement.

3. Additional Changes

The Third A&R Agreement would make clarifying and conforming edits to the GSD Rules, including (i) adding references to Cross-Margining Customer, Cross-Margining Customer Margin, Cross-Margining Customer Account, and Cross-Margining Customer Margin Requirements to relevant provisions that refer to indirect participants, initial margin collected by FICC, position accounts maintained by FICC, and FICC’s initial margin requirements; (ii) removing the existing prohibition under Section 10(e) of Rule 3A on Sponsored Members from participating in the Cross-Margining Arrangement; (iii) expanding Rule 43, which sets forth certain terms related to the Proprietary Cross-Margining Arrangement, to encompass the Customer Cross-Margining Arrangement; and (iv) removing references to the Market Professionals cross-margining arrangement, which is no longer offered by FICC.

IV. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act⁴² directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After careful review of the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the

rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act⁴³ and Rule 17ad-22(e)(4), (e)(6)(i), and (e)(18)(iv)(C) thereunder.⁴⁴

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest.⁴⁵ The Commission believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act for the reasons stated below.

FICC’s proposal would provide that, for customer cross margining, FICC would calculate the margin requirement applicable to Customer Positions on a gross customer-by-customer basis, with margin reductions for Eligible Positions at CME that present offsetting risk. FICC would use the same margin methodology as it uses for Segregated Indirect Participant Positions and then determine potential margin reductions using the same methodology as is used for proprietary cross-margining,⁴⁶ with each customer treated separately. As the Commission previously stated when considering the margin methodology used for Segregated Indirect Participants, this approach should “better isolate the risk profiles of individual indirect participants from Netting Members, which should help FICC better understand and monitor each individual participant’s risk exposures.”⁴⁷ This methodology should ensure that margin requirements are calibrated based on the risk of each Cross-Margining Customer’s portfolio, thereby working to ensure that allowing customer cross-margining does not increase FICC’s or CME’s risk exposure in relation to the Cross-Margining Arrangement. Allowing FICC to

⁴³ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁴ 17 CFR 240.17Ad-22(e)(4), (e)(6)(i), and (e)(18)(iv)(C).

⁴⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁶ See Order Approving Amended and Restated Cross-Margining Agreement, *supra* note 13, 88 FR at 63185 (approving proposed rule change that, among other things, replaced the methodology for calculating the margin reductions available to FICC’s members).

⁴⁷ See Securities Exchange Act Release No. 101695 (Nov. 21, 2024), 89 FR 93763, 93776 (Nov. 27, 2024) (SR-FICC-2024-007).

⁴¹ See Notice of Filing, *supra* note 4, 90 FR at 60799.

⁴² 15 U.S.C. 78s(b)(2)(C).

continue to assess the margin required to cover risks arising from each participant's activities should support FICC's ability to meet its settlement obligations in the event of a member or indirect participant default, and, therefore, mitigate potential losses arising out of a member default that would exceed FICC's prefunded resources and result in a disruption of FICC's operation of its critical clearance and settlement services. Thus, by managing its risk exposures in relation to the Customer Cross-Margining Arrangement, the Proposed Rule Change should support FICC's ability to provide prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.⁴⁸

The Third A&R Agreement also would require an Eligible BD-FCM to enter into a Customer Cross-Margining Clearing Member Agreement with FICC and CME, under which the Eligible BD-FCM would pledge to FICC, on behalf of itself and each Cross-Margining Customer, the positions and margin subject to the Customer Cross-Margining Arrangement at both FICC and CME. This pledge, coupled with the cross-guaranty between FICC and CME set forth in the Third A&R Agreement,⁴⁹ would help to ensure that FICC is able to look to the full portfolio of Customer Positions and associated margin at FICC and CME to satisfy any obligations arising under the Customer Positions. Additionally, the Third A&R Agreement identifies how FICC and CME would address the default of a Joint Clearing Member. Specifically, it would favor joint liquidation by the Clearing Organizations and also contemplate alternative default management scenarios in which a joint liquidation is not feasible, allowing for the most efficient risk management and closeout of positions. These provisions should work together to help limit non-defaulting members' exposure to mutualized losses since FICC would access the mutualized Clearing Fund should a defaulted member's own margin be insufficient to satisfy losses to FICC caused by the liquidation of that member's portfolio. By limiting FICC's risks related to a default of a member and limiting the exposure of FICC's non-defaulting members to mutualized losses, the Proposed Rule Change should help FICC assure the safeguarding of securities and funds which are in its custody or control,

consistent with Section 17A(b)(3)(F) of the Act.⁵⁰

Commenters generally supported the Proposed Rule Change.⁵¹ For example, one commenter stated that the rules "will appropriately tailor margin requirements with actual portfolio risk[.]" with "[t]he resulting reduction in duplicative margin [making] clearing more efficient and offset[ing] some of the additional financial resource requirements that the industry will face upon implementation of the" requirements of Rule 17ad-22(e)(18), adopted in 2023.⁵² Another commenter also stated that it was critical that the Commission "issue a non-objection so that FICC can implement the rule changes expeditiously, and well in advance of the Treasury clearing mandate implementation deadlines," adding that timely implementation is essential so that clearing organizations and market participants can complete account setup, documentation, legal arrangements, end-to-end testing, and operationalize client cross-margining before mandatory clearing requirements take effect."⁵³

One commenter further stated that the Commission, FICC, and CME should actively review the appropriateness of margin levels and maximum offsets to ensure that margin is at all times sufficient.⁵⁴ The commenter stated that it is critical that FICC and CME have in place plans to avoid market shocks from urgent changes to margin levels.⁵⁵ The

⁵⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁵¹ See, e.g., Letter from Allison Lurton, General Counsel and Chief Legal Officer, Futures Industry Association (Jan. 20, 2026) ("strongly support[ing] the [customer cross-margining arrangement] and urging the [Commission] to approve it") ("FIA Letter"); Letter from Katherine Tew Darras, General Counsel, International Swaps and Derivatives Association (Jan. 20, 2026) ("strongly support[ing] the proposed expansion of cross-margining to customer accounts") ("ISDA Letter"). Commenters also discussed the bank capital requirements that apply to cross-product netting and potential changes that would better facilitate cross-margining, although they both supported approval of the Proposed Rule Change despite these comments. See FIA Letter at 3 and generally at 3-4 (stating that the current bank capital requirements make the customer cross-margining arrangement "largely impractical for BD-FCMs that are part of a banking organization . . . because [they] do not appropriately recognize the risk-reducing effects of cross-product netting arrangements"); see also ISDA Letter, at 2 (referencing "adjustments to bank capital regulation to recognize corresponding cross-product netting"). The Commission understands that the efficiencies gained through the Cross-Margining Arrangement may be affected by existing rules and regulations, as these commenters have explained. However, bank capital requirements are outside the Commission's jurisdiction and the scope of the Proposed Rule Change.

⁵² ISDA Letter, at 1-2.

⁵³ *Id.* at 2

⁵⁴ FIA Letter at 4.

⁵⁵ *Id.*

commenter identified this comment as "encourag[ing] CME and FICC to monitor and amend margin methodology as appropriate," but "reiterated its strong support for the" proposal.⁵⁶

The Commission agrees that a CCA should monitor the performance of its margin methodology. Under Rule 17ad-22(e)(6), a CCA is required to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover, if the CCA provides CCP services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, among other things, is monitored by management on an ongoing basis and is regularly reviewed, tested, and verified by conducting backtests of its margin model at least once each day using standard predetermined parameters and assumptions and conducting a sensitivity analysis of its margin model and a review of its parameters and assumptions for backtesting on at least a monthly basis, and more frequently than monthly during periods of time when the products cleared or markets served display high volatility or become less liquid, or when the size or concentration of positions held by the CCA's participants increases or decreases significantly.⁵⁷ These requirements would apply to the margin methodology used for the cross-margining arrangement, and, therefore, should ensure that FICC monitors the performance of the margin methodology.

Some commenters supported the proposal, but identified certain issues to be addressed.⁵⁸

First, these commenters advocated for further transparency around margin methodologies at both FICC and CME.⁵⁹

⁵⁶ *Id.*

⁵⁷ 17 CFR 240.17ad-22(e)(6)(iv)(A-C).

⁵⁸ Letter from Jennifer W. Han, Chief Legal Officer and Head of Global Regulatory Affairs, Managed Funds Association ("MFA") (Jan. 27, 2026) (supporting the proposal, subject to certain comments) ("MFA Letter"); Letter from Jifi Krol, Deputy CEO, Global Head of Government Affairs, Alternative Investment Management Association ("AIMA") (Jan. 20, 2026) (generally supporting the proposal, while identifying two issues that should be addressed) ("AIMA Letter").

⁵⁹ Specifically, MFA encouraged FICC and CME to provide "comprehensive transparency regarding margin practices, including detailed breakdowns of calculations, netting arrangements, and the availability of excess collateral," and it stated that this transparency is critical for the smooth operation of the cross-margining arrangement. MFA also stated that transparency will help ensure that the clearing member and its customer can calculate and anticipate margin needs effectively, including intraday margin obligations, and set aside the appropriate amount of margin. See MFA Letter at

⁴⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁹ See Section 8 (Guaranty of FICC to CME) and Section 9 (Guaranty of CME to FICC) of the revised Third A&R Agreement, *supra* note 22.

As the Commission has discussed previously, the Commission agrees that transparency is important with respect to a CCA's margin methodology,⁶⁰ which would include with respect to cross-margining. A CCA is a self-regulatory organization ("SRO") under the Exchange Act, subject to the provisions of Section 19(b) of the Exchange Act which requires public comment on any rule changes that an SRO seeks to adopt,⁶¹ and CCAs are subject to certain rules that impose requirements related to transparency and disclosure to participants.

A CCA's margin methodology constitutes a material aspect of its operations, meaning that it is part of a CCA's stated policies, practices, or interpretations under Exchange Act Rule 19b-4.⁶² As such, a CCA's margin methodology is subject to the filing obligations applicable to SROs under Section 19(b) of the Exchange Act regarding any proposed rule or proposed change to its rules.⁶³ The proposed rule filing process provides transparency into an SRO's proposed changes, through notice and comment. An SRO is obligated to file its proposed rule changes in a manner consistent with the requirements in Form 19b-4, which is intended to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder.⁶⁴ The Commission then publishes all proposed rule changes for comment.

In this way, the rule filing process promotes transparency to market participants and the public by ensuring

notice is provided regarding a CCA's new initiatives or changes to governance, operations, and risk management.⁶⁵ With respect to a CCA's margin methodology, the rule filing process should provide transparency about how and when a CCA would calculate margin, including on an intraday basis, which is consistent with the requirements sought by the commenter.

Moreover, a CCA is obligated to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures.⁶⁶ As the Commission previously has stated, such public disclosures generally should include a discussion of a CCA's margin methodology, and they should, in turn, allow a market participant to understand how a CCA calculates margin, including any margin add-ons and cross-margin arrangements with other clearing agencies.⁶⁷ The Commission's rules regarding margin do not prescribe particular items to be made public, such as the specific items identified by the commenters.⁶⁸

Finally, the Commission understands that FICC makes available a public calculator that provides market participants with the ability to calculate potential margin obligations on a simulated portfolio, for given positions and market value, using its Value at Risk methodology.⁶⁹ The Commission further understands that this calculator reflects positions subject to cross-

margin.⁷⁰ Although not a substitute for a market participant's ability to understand a CCA's margin methodology on its own, such a public calculator is a helpful tool for determining how a CCA's margin methodology operates, particularly if the calculator is able to provide information related to applicable cross-margin arrangements.⁷¹ The existing obligations of FICC as a CCA and the availability of information and a public calculator to better understand FICC's margin methodology should help address the commenter's concern and should provide transparency regarding FICC's margin methodology and the cross-margining arrangement. Notwithstanding the commenters' advocating for specific additional transparency, this ability for participants to understand and anticipate margin requirements is consistent with promoting prompt and accurate clearance and settlement and safeguarding funds and securities, and it also should continue to protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.⁷²

In addition, these commenters commented on suspension or termination of customers under the cross-margining arrangement. One such commenter encouraged FICC and CME to provide clarity regarding what conditions under which a customer's ability to cross-margin would be suspended, or its cross-margining arrangement terminated, such as upon the occurrence of an operational error or some other unexpected event, whether on the part of FICC/CME or the customer.⁷³ The commenter stated that it would be extremely disruptive if FICC and CME were to revert back to independent margin calculations with little notice to the customer because it could lead to large margin calls that bear little to no relation to the actual risk of the combined customer positions.⁷⁴ The commenter therefore recommended that the customer cross-margining arrangements should not be suspended or terminated without sufficient notice.⁷⁵ Similarly, another commenter stated that there needed to be adequate protections in place that prohibit either

2-3. Similarly, AIMA noted the importance of "transparent, repeatable and well-governed margin methodologies . . . particularly in a market as large, liquid and important as the U.S. Treasury market and for those customers that avail themselves of this new cross-margining opportunity." AIMA stressed that customers and BD-FCMS must have "clear visibility into the drivers of initial margin outcomes and the conditions under which cross-margining benefits may expand or contract." AIMA supported publicly available documentation of: (i) the risk factors and correlation assumptions underlying cross-product offsets; (ii) the stress scenarios and lookback windows used in determining margin requirements; (iii) the processes for model calibration, backtesting and performance monitoring; and (iv) the governance framework for changes to margin models or offset parameters." AIMA Letter at 2.

⁶⁰ Covered Clearing Agency Resilience and Recovery and Orderly Wind-down Plans, Securities Exchange Act Release No. 101446 (Oct. 25, 2024), 89 FR 91000, 91006-08 (Nov. 18, 2024) ("Resilience and Recovery Adopting Release").

⁶¹ *Id.* at 91006.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 91007.

⁶⁵ *Id.*

⁶⁶ *Id.* (citing 17 CFR 240.17ad-22(e)(23)).

⁶⁷ *Id.* at 91007-08.

⁶⁸ However, as part of the SRO rule filing process, most of the specific areas identified by the commenters have been addressed in FICC proposed rule changes because of their role in FICC's margin methodology. See, e.g., Securities Exchange Act Release No. 81485 (Aug. 25, 2017), 82 FR 41433 (Aug. 31, 2017) (SR-FICC-2017-014) (approving FICC's Model Risk Management Framework that, among other things, describes procedures for model validation, approval, and performance monitoring, including reviews of risk-based models used to calculate margin requirements and relevant parameters/threshold indicators, sensitivity analysis, and backtesting results, and governance for model changes); Securities Exchange Act Release No. 97342 (Apr. 21, 2023), 88 FR 25721 (Apr. 27, 2023) (SR-FICC-2023-003) (approving modification of the description of the stressed period used to calculate the VaR Charge, i.e., the lookback period, describing what the stressed period would be in addition to a 10 year period, and describing the information that FICC would use when determining whether to modify that period pursuant to FICC's Model Risk Management Framework).

⁶⁹ Resilience and Recovery Adopting Release, *supra* note 60, 89 FR at 91008.

⁷⁰ CME-FICC Cross-Margining Arrangement, Question 8 (June 2025), available at <https://www.dtcc.com/ustclearing/https://media/Files/Downloads/Microsites/Treasury-Clearing/CME-FICC-Cross-Margining-FAQs.pdf>.

⁷¹ Resilience and Recovery Adopting Release, *supra* note 60, 89 FR at 91008.

⁷² 15 U.S.C. 78q-1(b)(3)(F).

⁷³ MFA Letter at 3.

⁷⁴ *Id.*

⁷⁵ *Id.*

FICC, CME, or an Eligible BD–FCM from unilaterally suspending or terminating a customer’s cross-margining access.⁷⁶ The commenter stated that the Commission should require FICC, CME, and Eligible BD–FCMs to provide customers with clear, objective, and transparent criteria that govern when cross-margining access may be suspended or terminated, including prohibiting discriminatory or commercially motivated suspensions or terminations that are unrelated to bona fide risk concerns, and that prior written notice should also be required before suspension or termination.⁷⁷

With respect to the BD–FCM, the contractual arrangements between an Eligible BD–FCM and its customer would govern the relationship, separate from the provisions of FICC’s Rules.⁷⁸ Market participants should generally have the flexibility to determine the negotiable aspects of their relationships in their bilateral agreements, including with respect to termination and suspension.⁷⁹

With respect to FICC and CME, Section 7 of the Third A&R Agreement describes the actions that FICC or CME may take with respect to suspension and liquidation of a Cross-Margining Participant, and FICC’s Rules address when it may terminate, suspend, or otherwise cease to act for or limit the activities of a Cross-Margining Participant.⁸⁰ These criteria are publicly disclosed to market participants and

available for consideration when determining whether to enter into a Customer Cross-Margining Agreement.⁸¹

Section 2 of the Third A&R Agreement provides that, in addition to Section 7’s provisions on suspension and liquidation, either FICC or CME may terminate the participation of a particular Cross-Margining Participant, with respect to some or all Cross-Margining Accounts of the Cross-Margining Participant, upon two business days prior written notice to the other Clearing Organization, but that no such termination shall be effective with respect to (i) any Reimbursement Obligation or Guaranty with respect to that Cross-Margining Participant or its Cross-Margining Affiliate that is incurred prior to the effectiveness of any such termination, or (ii) Section 7 of the Third A&R Agreement until the Stand-Alone Margin Requirement with respect to each Cross-Margining Account subject to such termination has been fully satisfied.⁸² Further, the Clearing Organizations may require Member to close or transfer all positions in the Affected Customer Cross-Margining Accounts in accordance with the Rules, and the Agreement shall then terminate with respect to Affected Customer Cross-Margining Accounts provided that the Stand-alone Margin Requirement in respect of the transferred positions and all obligations of Member to the Clearing Organizations in respect of Affected Customer Cross-Margining Accounts have been fully satisfied.⁸³ These provisions should provide clarity as to how Eligible Positions would be handled in the event of a termination.

Notwithstanding the lack of the particular termination provisions sought by the commenters, the agreement identifies the circumstances in which the agreement may be terminated, what notice would be required to the Cross-Margining Participant, and how the positions would be treated, including the ability to port a customer’s positions to another Cross-Margining Participant. These provisions provide clarity about the termination process for FICC and CME in the Third A&R Agreement, is consistent with promoting prompt and accurate clearance and settlement and safeguarding funds and securities, consistent with Section 17A(b)(3)(F) of the Act.⁸⁴ Moreover, these provisions should help cross-margining participants to understand and

anticipate such circumstances, as well as allow customers to engage with their intermediary/Eligible BD–FCM to address issues of importance in their own contractual arrangements, which should help protecting investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.⁸⁵

The commenter also stated that FICC and CME should establish a fallback mechanism short of a complete termination of the arrangement for circumstances in which margin is not able to be calculated pursuant to the cross-margining arrangement.⁸⁶ FICC and CME have stated that they maintain reasonable processes to address circumstances in which there are systems delays or disruptions in the cross-margining calculation process, such as those arising from position or pricing file timelines.⁸⁷ Further, FICC and CME have stated that they do not guaranty that a margin reduction will be applied in all circumstances, but that, depending on the circumstances, there are alternative measures that would be taken to work to address the issue so that cross-margining benefits can be received.⁸⁸ As a general matter, FICC, as a CCA, is required to establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover, if the CCA provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses procedures (and, with respect to price data, sound valuation models) for addressing circumstances in which price data or other substantive inputs are not readily available or reliable, to ensure that the CCA can continue to meet its regulatory obligations.⁸⁹

Accordingly, and for the reasons stated above, the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.⁹⁰

B. Consistency With Rule 17ad–22(e)(4)(i) Under the Exchange Act

Rule 17ad–22(e)(4)(i) requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor,

⁷⁶ AIMA Letter at 2.

⁷⁷ *Id.*

⁷⁸ Indeed, in certain types of access to customer cross-margining, the customer may not have any contractual relationship with FICC (*i.e.*, if the Cross-Margining Participant is an Agent Clearing Member for the customer, as an Executing Firm Customer). *See, e.g.*, GSD Rule 2, section 3(b) (defining “Executing Firm Customer”), *supra* note 14.

⁷⁹ In addition, under the Customer Cross-Margining Clearing Member Agreement, which, as discussed above, is a required document to participate and is an appendix to the Third A&R Agreement, a Cross-Margining Participant must provide two Business Days’ written notice to FICC and CME in order to terminate the Customer Cross-Margining Clearing Member Agreement, and any such termination shall be effective upon written acknowledgement by both FICC and CME provided that (i) all positions in the Customer Cross-Margining Accounts have been closed or transferred to other accounts in accordance with the Rules, and (ii) all Stand-alone Margin Requirements in respect of any such transferred positions and all obligations of Member to the Clearing Organizations in respect of the Customer Cross-Margining Accounts have been fully satisfied. *See supra* Section III.A.5; *see also* Appendix C “Customer Cross-Margining Program” of the revised Third A&R Agreement, *supra* note 22.

⁸⁰ *See* GSD Rule 21, Section 1 (setting out the bases for restricting or suspending access to services), Section 4 (identifying the action that may be taken by GSD) and Section 22A (describing the procedures when FICC determines to cease to act for a member), *supra* note 14.

⁸¹ *See generally*, GSD Rule 43 and the Existing Agreement, *supra* note 14.

⁸² *See* Section 2(f) of the revised Third A&R Agreement, *supra* note 22.

⁸³ *Id.*

⁸⁴ 15 U.S.C. 78q–1(b)(3)(F).

⁸⁵ 15 U.S.C. 78q–1(b)(3)(F).

⁸⁶ MFA Letter at 3.

⁸⁷ CME–FICC Cross-Margining Arrangement, Question 9 (June 2025), available at <https://www.dtcc.com/ustclearing/https://media/Files/Downloads/Microsites/Treasury-Clearing/CME-FICC-Cross-Margining-FAQs.pdf>.

⁸⁸ *Id.* Such alternatives might include applying the prior day’s margin calculation, or a previous cross-margin reduction percentage of the offsetting risk exposure when position files are not available.

⁸⁹ 17 CFR 240.17ad–22(e)(6)(iv)(B).

⁹⁰ 15 U.S.C. 78q–1(b)(3)(F).

and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.⁹¹

The proposed changes should ensure that FICC continues to effectively measure and manage its credit exposure to participants by maintaining sufficient financial resources to cover its exposure thereto with a high degree of confidence. This is because, under the Customer Cross-Margining Arrangement, FICC would calculate the margin requirement applicable to Customer Positions on a gross (*i.e.*, Cross-Margining Customer-by-Cross-Margining Customer) basis, with margin reductions for offsetting positions calculated using a methodology that the Commission recently approved.⁹² Examining the similar customer-by-customer gross margining arrangements adopted by FICC for Segregated Indirect Participants, the Commission found that such arrangements would “better isolate the risk profiles of individual indirect participants from Netting Members, which should help FICC better understand and monitor each individual participant’s risk exposures.”⁹³

In addition, the Proposed Rule Change would require each Eligible BD-FCM for whom FICC maintains one or more Cross-Margining Customer Account(s) to deposit to FICC cash or eligible securities to meet the Cross-Margining Customer Margin Requirement that is calibrated to the risks of each Cross-Margining Customer’s portfolio. Such Eligible BD-FCM would also be required to enter into a Customer Cross-Margining Clearing Member Agreement with FICC and CME, pursuant to which the Eligible BD-FCM would pledge to FICC, on behalf of itself and each Cross-Margining Customer, the positions and margin subject to the Customer Cross-Margining Arrangement at both FICC and CME. This pledge, coupled with the payment guarantees between FICC and CME set forth in the Third A&R Agreement, would ensure that FICC and CME are able to look to the full portfolio of Customer Positions and associated margin at FICC and CME in order to satisfy any obligations arising under customer positions.

Accordingly, the Proposed Rule Change is consistent with Rule 17ad-22(e)(4)(i) under the Exchange Act.⁹⁴

C. Consistency With Rule 17ad-22(e)(6)(i) Under the Exchange Act

Rule 17ad-22(e)(6)(i) requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market, and, if the CCA provides central counterparty services for U.S. Treasury securities, calculates, collects, and holds margin amounts from a direct participant for its proprietary positions in Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access the CCA’s payment, clearing, or settlement facilities.⁹⁵

As discussion in Parts III.A.3, above, FICC and CME would utilize their existing margin methodologies, consistent with how the Clearing Organizations calculate margin under the existing Proprietary Cross-Margining Arrangement. The Commission approved this methodology and overall approach in 2023, including with respect to Rule 17ad-22(e)(6)(i),⁹⁶ and it remains appropriate and consistent with Rule 17ad-22(e)(6)(i) for customer cross-margining as it would produce margin levels commensurate with the risks and particular attributes of the Eligible Positions.

In addition, as discussed in Part III.B.2 above, FICC-cleared Customer Positions of a Cross-Margining Customer would be recorded in a Cross-Margining Customer Account, which account would be a separate Type of Account for purposes of the GSD Rules. Because of this, under the GSD Rules,⁹⁷ the margin applicable to Customer Positions would be calculated separately and independently of the margin for any positions recorded in a different Type of

Account, including any Proprietary Account of the Cross-Margining Participant. The Third A&R Agreement would also provide for Customer Cross-Margining Margin to be collected and held in substantially a similar manner to Segregated Customer Margin. The Commission recently approved FICC’s arrangements for Segregated Customer Margin, finding in particular that they “should ensure that a Netting Member’s proprietary transactions are not netted with indirect participant transactions for margin calculations and that margin for indirect participant transactions is collected and held separately and independently from margin for a Netting Member’s proprietary transactions.”⁹⁸

Accordingly, the Proposed Rule Change is consistent with Rule 17ad-22(e)(6)(i) under the Exchange Act.⁹⁹

D. Consistency With Rule 17ad-22(e)(18)(iv)(C) Under the Exchange Act

Rule 17ad-22(e)(18)(iv)(C) requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which, when the CCA provides central counterparty services for transactions in U.S. Treasury securities, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants, which policies and procedures the board of directors of such CCA reviews annually.¹⁰⁰

Expansion of the current cross-margining arrangement between FICC and CME to the customer level should facilitate access to clearance and settlement in the U.S. Treasury market by better aligning the margin requirements applicable to such indirect participants’ positions with the risk those positions present. The Commission agrees that the reduced margin requirements resulting from allowing the cross-margining of Customer Positions should incentivize Cross-Margining Customers to post their own margin, reducing costs and freeing up capacity for Eligible BD-FCMs to provide clearing services, which could provide the opportunity to increase the volume of transactions they clear or to reduce the prices at which they provide services.

One commenter stated that, to fully benefit from cross-margining, customers must be able to consolidate the clearing

⁹¹ 17 CFR 240.17ad-22(e)(4)(i).

⁹² See *supra* note 47, 89 FR at 93763.

⁹³ *Id.* at 93776.

⁹⁴ 17 CFR 240.17ad-22(e)(4)(i).

⁹⁵ 17 CFR 240.17ad-22(e)(6)(i).

⁹⁶ See Order Approving Amended and Restated Cross-Margining Agreement, *supra* note 13, 88 FR at 63188.

⁹⁷ The GSD Rules provide for certain Types of Accounts (*e.g.*, Segregated Indirect Participants Account or a Dealer Account), and a Netting Member’s margin requirement is the sum of the margin amounts calculated for each Type of Account. See GSD Rule 1 (defining “Type of Account”) and Rule 4, Section 2 (stating that a Netting Member’s Required Fund is the sum of amounts calculated for each type of Account, other than Segregated Indirect Participants Accounts), *supra* note 14.

⁹⁸ See *supra* note 47, 89 FR at 93776.

⁹⁹ 17 CFR 240.17ad-22(e)(6)(i).

¹⁰⁰ 17 CFR 240.17ad-22(e)(18)(iv)(C).

of their portfolios in one or a small number of clearing members, which requires a “viable done-away clearing model.”¹⁰¹ The commenter stated that FICC’s rules currently do not require a direct participant offering customer clearing to accept transactions executed by the customer with third-party executing firms (*i.e.*, done-away transactions), and stated that the Commission and FICC should “do more” to ensure that customers may centralize the clearing of their in-scope portfolio in one or a small number of direct clearing members.¹⁰² Although it recognizes the importance of done-away clearing, the Commission has not prescribed any particular cross-margining arrangement or access model,¹⁰³ nor has it required that customers be able to consolidate their clearing with a limited number of direct clearing members through some specified manner. Rule 17ad–22(e)(18)(iv)(C) does not require FICC and CME to provide a particular done-away clearing model, and FICC has not proposed such a model in this Proposed Rule Change. Accordingly, the proposed changes, without such additional requirements, are consistent with Rule 17ad–22(e)(18)(iv)(C) under the Exchange Act.¹⁰⁴

V. 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–FICC–2025–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.
- All submissions should refer to file number SR–FICC–2025–025. 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 FICC and on DTCC’s website (www.dtcc.com/legal/sec-rule-filings). 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–FICC–2025–025 and should be submitted on or before May 11, 2026.

VI. Accelerated Approval of the Proposed Rule Change, as Modified by Amendments Nos. 1 and 2

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,¹⁰⁵ to approve the Proposed Rule Change prior to the thirtieth day after the date of publication of Partial Amendment No. 2 in the **Federal Register**. As noted above, Partial Amendment No. 2 updated the proposed changes to the GSD Rules in the Exhibit 5A to the Proposed Rule Change, to include a provision conforming with certain conditions of the Proposed Orders and to add missing terms in the Margin Component Schedule to conform with the proposed changes.¹⁰⁶ Amendment No. 2 does not change the purpose of or basis for the Proposed Rule Change, but instead, makes conforming and clarifying changes to Exhibit 5A to align with the proposed changes as originally published. The Commission has had the opportunity to consider Partial Amendment No. 2 as part of its analysis of the Proposed Rule Change. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,¹⁰⁷ to approve the Proposed Rule Change, as modified by Partial Amendment Nos. 1 and 2, prior to the thirtieth day after the date of publication of notice of Amendment No. 2 in the **Federal Register**.

VII. Conclusion

It is therefore noticed, pursuant to Section 19(b)(2) of the Act¹⁰⁸ that proposed rule change SR–FICC–2025–025, as modified by Partial

Amendments Nos. 1 and 2, be, and hereby is, *approved* on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–07635 Filed 4–17–26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105248; File No. S7–2026–03]

Order Under Section 36 of the Securities Exchange Act of 1934 (the “Exchange Act”) Granting Conditional Exemptive Relief from Section 15(c)(3) of and Rule 15c3–3 Under the Exchange Act for Cross-Margining of Cleared U.S. Treasury Securities and Related Futures

April 15, 2026.

I. Introduction

A. Overview of Exemptive Order

The Securities and Exchange Commission (“Commission” or the “SEC”) is granting exemptive relief, subject to the conditions discussed below, pursuant to Section 36¹ of the Exchange Act to broker-dealers registered under Section 15(b) of the Exchange Act² that are dually-registered as futures commission merchants (“FCMs”) pursuant to Section 4f(a)(1) of the Commodity Exchange Act (“CEA”) ³ (“BD–FCMs”) from compliance with Section 15(c)(3) of the Exchange Act⁴ and Rule 15c3–3⁵ thereunder in connection with a program to cross-margin U.S. Treasury securities cleared by a clearing agency that is registered under Section 17A of the Exchange Act⁶ (“clearing agency”) and related futures contracts cleared by a derivatives clearing organization registered under Section 5b of the CEA⁷ (“DCO”) for purposes of calculating clearing agency

¹⁰⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78mm. Section 36(a)(1) of the Exchange Act gives the Commission the authority to exempt any person, security or transaction or any class or classes of persons, securities or transactions, conditionally or unconditionally, from any Exchange Act provision by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.

² 15 U.S.C. 78o(b).

³ 7 U.S.C. 6f(a)(1).

⁴ 15 U.S.C. 78o(c)(3).

⁵ 17 CFR 240.15c3–3.

⁶ 15 U.S.C. 78q–l.

⁷ 7 U.S.C. 7a–1.

¹⁰¹ MFA Letter at 4.

¹⁰² *Id.* at 4.

¹⁰³ Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities, Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714, 2757 (Jan. 16, 2024).

¹⁰⁴ 17 CFR 240.17ad–22(e)(18)(iv)(C).

¹⁰⁵ 15 U.S.C. 78s(b)(2)(C)(iii).

¹⁰⁶ *See supra* note 7.

¹⁰⁷ 15 U.S.C. 78s(b)(2)(C)(iii).

¹⁰⁸ 15 U.S.C. 78s(b)(2).

and DCO initial margin requirements. The cross-margin program would be available to customers of a BD-FCM that also is a joint clearing member of a clearing agency that clears U.S. Treasury securities positions and a member of a DCO that clears related futures contracts ("Eligible BD-FCMs").

Under the conditional exemptive relief, an Eligible BD-FCM would be permitted to hold eligible U.S. Treasury securities positions and the customer assets used to margin, secure, or guarantee such positions under the cross margin program in a futures account as defined in Commodity Futures Trading Commission ("CFTC") Rule 1.3⁸ from the period of novation of a trade through settlement of such trade.

B. Background

On December 13, 2023, the Commission adopted rules under the Exchange Act to amend the standards applicable to certain clearing agencies to enhance risk management practices for central counterparties in the U.S. Treasury market and facilitate additional clearing of U.S. Treasury securities.⁹ In the Treasury Clearing Adopting Release, several commenters discussed facilitating cross-margining of indirect participants' (i.e., customers' or end users') transactions in U.S. Treasury securities with those in U.S. Treasury futures as a method to lower costs of trading and thereby incentivize additional clearing.¹⁰ In response to these comments, the Commission agreed that cross-margining can be beneficial to market participants.¹¹

Cross-margining arrangements allow joint members of two clearing organizations to have their initial margin requirements reduced by accounting for risk offsets between positions held at each clearing organization. To recognize potential offsets in the risk presented by related products, some clearing organizations have entered into proprietary (i.e., noncustomer) cross-margining arrangements with other clearing organizations that cleared related products.¹² Since the adoption of the

Treasury Clearing Adopting Release, market participants have continued to support the implementation of similar cross-margining arrangements for customer positions in cleared U.S. Treasury securities and related futures positions at the clearinghouse/DCO level.¹³ Further, other groups also have recommended that the Commission permit clearinghouse/DCO level cross-margining for customers for certain U.S. Treasury securities transactions cleared at a clearing agency and related futures cleared at a DCO, and that the cross-margining occur in a futures account.¹⁴

C. FICC and CME's Application for Exemptive Relief

FICC and CME currently have in place a proprietary cross-margining arrangement that allows a broker-dealer that is an Eligible BD-FCM, acting for itself or for certain non-customer affiliates, or a pair of affiliated clearing members, to have initial margin requirements for certain proprietary (i.e., noncustomer) FICC-cleared eligible securities positions and certain CME-cleared eligible futures positions calculated in a way that recognizes the risk offsets across those positions.¹⁵

Margining Agreement between FICC and CME, Exchange Act Release No. 98327 (Sept. 8, 2023) [File No. SR-FICC-2023-010] (approving amendments to an ongoing proprietary cross-margining arrangement between the Fixed Income Clearing Corporation ("FICC") and the Chicago Mercantile Exchange ("CME"), a DCO which clears futures related to the U.S. Treasury securities that FICC clears).

¹³ See Letter from SIFMA, SIFMA's Asset Management Group, Managed Funds Association, Futures Industry Association ("FIA"), FIA Principal Traders Group, International Swaps and Derivatives Association, Alternative Investment Management Association, and The Institute of International Bankers (Jan. 24, 2025), available at, e.g., <https://www.sifma.org/wp-content/uploads/2025/01/SIFMA-Extension-Request-US-Treasury-Clearing-Mandate-FINAL-Clean.pdf> (requesting an extension of the compliance dates in the Treasury Clearing Adopting Release and stating that additional time is needed to consider how to resolve critical issues (including cross-margining of repos and futures) related to the implementation of the rules).

¹⁴ See CFTC Global Markets Advisory Committee Advances Key Recommendations, CFTC Release No. 8860-24 (Feb. 8, 2024), available at: <https://www.cftc.gov/PressRoom/PressReleases/8860-24> (recommending making the benefits of cross-margining available to a broader range of sophisticated customers, including those customers that will be subject to the clearing requirements under the Treasury Clearing Adopting Release, as well as to all customers that voluntarily elect to clear Treasury transactions and will post margin). See also Treasury Market Practices Group, *Consultative White Paper: Non-Centrally Cleared Bilateral Repo and Indirect Clearing in the U.S. Treasury Market: Focus on Margining Practices* (Feb. 26, 2025) (recommending that customers, rather than clearing members, post the margin required by a clearing organization in respect of cleared U.S. Treasury repurchase transactions).

¹⁵ See Application, *infra* note 16, at pp. 5-6. Eligible BD-FCMs participate in the proprietary

Customers who clear positions at CME and FICC through a joint clearing member are not eligible to have their positions cross-margined under the current proprietary cross-margin arrangement. To implement a customer cross-margin program, FICC and CME, on behalf of their Eligible BD-FCMs, filed an application for exemptive relief from section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder under section 36 of the Exchange Act on December 11, 2025.¹⁶ In connection with the proposed customer cross-margin program, FICC and CME also have submitted rule filings and exemptive applications with the Commission and CFTC, as applicable.¹⁷ The Commission approved FICC's rule filing by delegated authority on April 15, 2026 and the CFTC issued an exemptive order on the same date.¹⁸

cross-margin program, and would participate in the proposed customer cross-margin program, in their capacity as netting members as defined in FICC's Government Securities Division Rulebook. See Application at p.1.

¹⁶ See Notice of an Application of the Fixed Income Clearing Corporation and Chicago Mercantile Exchange Inc. for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934 in Connection With the Cross-Margining of U.S. Treasury Securities and Related Futures, Exchange Act Release No. 104748 (Jan. 30, 2026), 91 FR 4994 (Feb. 3, 2026) ("Notice of an Application"). The application for exemptive relief ("Application") is attached as an Appendix to the Notice of an Application, available at: <https://www.sec.gov/files/rules/other/2026/34-104748.pdf>.

¹⁷ See FICC, Notice of Filing of Proposed Rule Change to Amend and Restate the Second Amended and Restated Cross-Margining Agreement Between FICC and CME and Amend Related GSD Rules, Exchange Act Release No. 104485 (Dec. 22, 2025), 90 FR 60791 (Dec. 29, 2025) [File No. SR-FICC-2025-025]. FICC also filed this proposed rule change as an Advance Notice [File No. SR-FICC-2025-801] with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b-4(n)(1)(i) under the Exchange Act, 17 CFR 240.19b-4(n)(1)(i). See also CFTC, Proposal to Provide Exemptive Relief to Facilitate Cross-Margining of Customer Positions Cleared at Chicago Mercantile Exchange, Inc. and Fixed Income Clearing Corporation, 90 FR 58525 (Dec. 17, 2025); Notification to the CFTC Regarding the Third Amended and Restated Cross-Margining Agreement and Service Level Agreement between CME and FICC, CME Submission No. 25-410. (Sept. 25, 2025).

¹⁸ Notice of Filing of Partial Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment Nos. 1 and 2, to Amend and Restate the Second Amended and Restated Cross-Margining Agreement between FICC and CME and Amend Related GSD Rules; Exchange Act Release No. 105249 (Apr. 15, 2026) [File No. SR-FICC-2025-025] ("FICC Approval Order"); CFTC, Order Providing Exemptive Relief to Facilitate Cross-Margining of Customer Positions Cleared at CME and FICC ("CFTC Order"). The CFTC Order and FICC Approval Order published elsewhere in this issue of the **Federal Register**. See also Notice of Filing of Partial Amendment No. 2 and Notice of

⁸ See 17 CFR 1.3 (defining a "futures account" to mean "an account that is maintained in accordance with the segregation requirements of sections 4d(a) and 4d(b) of the [Commodity Exchange] Act and the rules thereunder.").

⁹ See *Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities*, Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) ("Treasury Clearing Adopting Release").

¹⁰ See Treasury Clearing Adopting Release, 89 FR at 2750.

¹¹ *Id.* at 2751.

¹² See e.g., Order Granting Approval of Proposed Rule Change to Amend and Restate the Cross-

Rule 15c3–3 under the Exchange Act,¹⁹ the broker-dealer customer protection rule, requires broker-dealers that hold customer cash and securities to treat these assets in a manner that facilitates their prompt return to the customers if the broker-dealer fails financially. The goal of Rule 15c3–3 is to place a broker-dealer in a position where it is able to wind down in an orderly self-liquidation without the need of financial assistance provided by the Securities Investor Protection Corporation (“SIPC”) through a formal proceeding under the Securities Investor Protection Act of 1970 (“SIPA”), or through proceedings under subchapter III of Chapter 7 of the U.S. Bankruptcy Code (*i.e.*, the stockbroker liquidation provisions).²⁰

Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from certain provisions of the Exchange Act or certain rules or regulations thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.²¹

On January 30, 2026, the Commission issued a Notice of an Application seeking comment on the Application. The Notice of an Application was published in the **Federal Register** on February 3, 2026 to provide interested persons the opportunity to comment.²² In the Notice of an Application, the Commission requested comment on

whether it should consider broadening the exemptive relief requested by FICC and CME to be available to any clearing agency and DCO and their joint clearing members with a cross-margining program that meets the conditions of an exemptive order.²³ The Commission also requested comment on how the conditions proposed by FICC and CME in the Application could be modified if the Commission broadened the exemptive order.²⁴ Further, the Commission requested comment on whether it should consider requiring FICC or CME to provide Eligible BD–FCMs and their eligible customers with the ability to select a securities account as an alternative to a CFTC futures account as a condition to granting exemptive relief.²⁵ The Commission did not receive any comments on the Notice of an Application.²⁶

II. Discussion of Exemptive Relief

Given the above described customer protection requirements under section 15(c)(3) of the Exchange Act and Rule 15c3–3 thereunder, absent relief by the Commission, participants would not be permitted to participate in a program to cross-margin customer positions in U.S. Treasury securities cleared by a clearing agency and related futures contracts cleared by a DCO in a futures account.

Cross-margining of cleared U.S. Treasury securities transactions (subject to the Commission’s regulations) and related futures (subject to CFTC regulations) for purposes of calculating clearing agency and DCO initial margin requirements can offer many benefits to investors and the markets, including promoting greater efficiencies in clearing with respect to offsetting positions and aligning overall margin requirements more closely with the overall risk of the portfolio a customer holds through an Eligible BD–FCM. Cross-margining also may reduce initial margin requirements of a cross-margin customer’s positions and the associated margin costs. In turn, the reduced overall risk resulting from such risk offsets in cross-margining would limit an Eligible BD–FCM’s exposure to its customers.

At the same time, facilitating cross-margining at the clearing agency/DCO level for customer cleared U.S. Treasury securities and related futures requires the Commission to address applicable customer protection requirements and promote appropriate customer

disclosure with respect to the treatment of margin posted to a clearing agency and held in a futures account under a customer cross-margin program from the period of novation of a trade through settlement. In addition, the Commission also must address certain differences in the requirements of the Exchange Act and CEA.

Accordingly, after careful consideration of the request before the Commission, and the relevant statutory provisions, the Commission is issuing conditional exemptive relief, as discussed below, to facilitate the cross-margining of cleared U.S. Treasury securities and related futures for customers of Eligible BD–FCMs subject to the conditions set out in this order.

A. Scope of Exemptive Relief

This exemptive relief will apply to any Eligible BD–FCM that meets the conditions of this order. In addition to receiving the Application from FICC and CME for exemptive relief from section 15(c)(3) of the Exchange Act and Rule 15c3–3 thereunder to expand their current proprietary cross-margin program to customers, since the issuance of the Treasury Clearing Adopting Release, the Commission has approved applications for two additional U.S. Treasury clearing agencies (in addition to FICC). As a result, the Commission has approved applications and proposed rule changes for three U.S. Treasury clearing agencies (including FICC) to implement certain requirements of the Treasury Clearing Adopting Release.²⁷

Due to the registration of multiple U.S. Treasury clearing agencies since the adoption of the Treasury Clearing Adopting Release, the Commission is providing exemptive relief broader than that requested to include any Eligible BD–FCM meeting the conditions of this order. This approach also is consistent with other prior Commission approvals for cross-margining and portfolio margining, including the portfolio

No Objection to Advance Notice, as Modified by Partial Amendment Nos. 1 and 2, to Amend and Restate the Second Amended and Restated Cross-Margining Agreement between FICC and CME and Amend Related GSD Rules; Exchange Act Release No. 105197 (Apr. 10, 2026); 91 FR 19221 (Apr. 14, 2026) [File No. SR–FICC–2025–801].

¹⁹ Section 15(c)(3)(A) of the Exchange Act provides, in pertinent part, that no broker-dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (with exceptions for certain securities) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of broker-dealers including, but not limited to, the acceptance of custody and use of customers’ securities and the carrying and use of customers’ deposits or credit balances. 15 U.S.C. 78o(c)(3)(A).

²⁰ See 15 U.S.C. 78aaa *et. seq.*; see also *Daily Computation of Customer and Broker-Dealer Reserve Requirements under the Broker-Dealer Customer Protection Rule*, Exchange Act Release No. 102022 (Dec. 20, 2024), 90 FR 2790, 2791 (Jan. 13, 2025).

²¹ 15 U.S.C. 78mm(a)(1).

²² The comment period ended March 5, 2026. See Notice of an Application, 91 FR at 4997.

²³ See Notice of an Application, 91 FR at 4997.

²⁴ See Notice of an Application, 91 FR at 4997.

²⁵ See Notice of an Application, 91 FR at 4996.

²⁶ See Notice of an Application [File No. S7–2026–03].

²⁷ See CME Securities Clearing, Inc.; *Order Granting an Application for Registration as a Clearing Agency Under Section 17A of the Securities Exchange Act of 1934*, Exchange Act Release No. 104281 (Dec. 1, 2025), 90 FR 55926 (Dec. 4, 2025); ICE Clear Credit LLC; *Order Granting an Application for Registration as a Clearing Agency Under Section 17A of the Securities Exchange Act of 1934*, Exchange Act Release No. 104762 (Jan. 30, 2026), 91 FR 5528 (Feb. 6, 2026). See also FICC, *Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, to Modify the GSD Rules (i) Regarding the Separate Calculation, Collection and Holding of Margin for Proprietary Transactions and That for Indirect Participant Transactions, and (ii) to Address the Conditions of Note H to Rule 15c3–3a*, Exchange Act Release No. 101695 (Nov. 21, 2024), 89 FR 93763 (Nov. 27, 2024) [File No. SR–FICC–2024–007].

margin of cleared swaps and security-based swaps that are credit default swaps in a segregated account established and maintained in accordance with section 4d(f) of the CEA or a cleared swaps proprietary account.²⁸

Broadening the exemptive relief also will allow Eligible BD-FCMs to participate in, and allow other clearing agencies and DCOs to implement, customer cross-margin programs without separately having to apply for exemptive relief from the Commission, for themselves or their BD-FCM members. This approach will streamline the process of implementing a customer cross-margin program without undermining the customer protection because Eligible BD-FCMs must comply with the conditions of this order. In addition, clearing agencies and DCOs must file proposed changes with the Commission and CFTC, as applicable, to amend their rulebooks in order to implement a customer cross-margin program. Further, Eligible BD-FCMs, clearing agencies and DCOs would need to obtain any other applicable relief from the CFTC. Finally, the Commission will continue to coordinate with the CFTC regarding the implementation of any customer cross-margin programs involving cleared U.S. Treasury securities and related futures, such as the FICC and CME customer cross-margin program.²⁹

Pursuant to this relief, an Eligible BD-FCM will be exempt from section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder solely with respect to Eligible Customer Positions that are Eligible Securities Positions³⁰ and

²⁸ See *Order Granting Conditional Exemptions under the Securities Exchange Act of 1934 in Connection with the Portfolio Margining of Cleared Swaps and Security-based Swaps that are Credit Default Swaps*, Exchange Act Release No. 93501 (Nov. 1, 2021), 86 FR 61357 (Nov. 5, 2021) (“2021 CDS Portfolio Margin Order”).

²⁹ See *supra* note 18.

³⁰ The term “Eligible Customer Positions” for purposes of this order means positions held for customers that are: (1) U.S. Treasury securities cleared through a clearing agency that clears, settles, and novates transactions in U.S. Treasury securities, and/or (2) related futures contracts cleared by a DCO. Eligible Customer Positions cleared through a clearing agency are referred to herein as “Eligible Securities Positions” and those cleared at a DCO are referred to herein as “Eligible Futures Positions.” The term “Eligible Customer Positions” is designed to ensure that eligible positions in the customer cross-margin program are limited to certain U.S. Treasury securities cleared through a clearing agency and related futures cleared through a DCO. In addition, because Eligible Securities Positions are limited to certain Treasury security positions that have been novated to a clearing agency, neither a securities transaction that has not been novated to the clearing agency, securities delivered under a novated Treasury securities transaction that has settled, nor cash

customer assets used to margin, secure, or guarantee such positions or which accrue as a result of such trades or contracts (such customer assets herein referred to as “Associated Margin” for purposes of this order) carried in a futures account, for and on behalf of customers under an arrangement to cross-margin Eligible Customer Positions from novation through settlement³¹ (a “Customer Cross-Margin Program”) administered jointly by a clearing agency and a DCO, subject to certain conditions. This exemptive relief will facilitate the clearing of U.S. Treasury securities by recognizing risk offsets in the calculation of initial margin requirements at the clearing agency for positions in U.S. Treasury securities and at a DCO for positions in related futures contracts.

The following discussion describes conditions of the order. As discussed further below, conditions that were specifically tailored to FICC and CME in the Application have been broadened so that they will apply to any Eligible BD-FCM that complies with the conditions of this order.³²

B. Discussion of Conditions

The first condition requires that all Eligible Securities Positions and Associated Margin under a Customer Cross-Margin Program shall be carried by an Eligible BD-FCM in a futures account as defined in CFTC Rule 1.3 for and on behalf of the cross-margining customers and shall be deemed to have been received by the Eligible BD-FCM and be accounted for and treated and dealt with as belonging to the cross-margining customers of the Eligible BD-FCM consistent with section 4d(a)(2) of the CEA and the CFTC’s regulations thereunder. By requiring that Eligible Securities Positions and Associated Margin be carried in a futures account, this condition is designed to limit customer eligibility to participate in an Eligible BD-FCM’s Customer Cross-Margin Program to customers that are

proceeds of such a transaction would constitute Eligible Securities Positions subject to this order.

³¹ More specifically, Eligible Securities Positions and Associated Margin would only be maintained in such futures account while they are being cleared by the clearing agency. Once an Eligible Securities Position becomes subject to final settlement, the Eligible Securities Position and the Associated Margin received in connection with such settlement (and any returned margin for the Eligible Securities Position from the clearing agency) would once again be subject to Rule 15c3-3 under the Exchange Act and any such other requirements as generally apply to Associated Margin.

³² For example, the FICC and CME proposed conditions to require the same margin methodology and eligible positions as permitted in the proprietary cross-margin program have been generalized in this order. See Application.

eligible for the full protections of the CFTC’s Part 190 bankruptcy distribution rules in the event of an Eligible BD-FCM insolvency.³³ The Commission modified this condition from the proposed condition in the Application to add references to CFTC Rule 1.3 and CFTC regulations to further clarify that Eligible Securities Positions and Associated Margin would need to be held in a futures account that meets the definition of that term under CFTC regulations. Finally, requiring that Eligible Securities Positions and Associated Margin be carried in a futures account also will limit participants in a Customer Cross-Margin Program to futures customers that have Eligible Futures Positions and Eligible Securities Positions.

The second condition requires the Eligible BD-FCM and its eligible customer both agree in writing to participate in the Customer Cross-Margin Program in order to apply cross-margining to the Eligible Customer Positions. This condition is designed to ensure that participation in a Customer Cross-Margin Program is voluntary and at the election of both the eligible customer and Eligible BD-FCM so that cross-margining is not applied to Eligible Customer Positions without both the consent of the eligible customer and the approval of the Eligible BD-FCM. The Commission has modified this condition from the Application to require that the condition be in writing. Although an Eligible BD-FCM and its customer will typically satisfy this condition by executing a written customer agreement, the inclusion of the requirement that the agreement be in writing is designed to clearly delineate each party’s obligations. This requirement also will provide documentation of the agreement and will aid an Eligible BD-FCM in demonstrating compliance with the condition.

The third condition requires that the Eligible BD-FCM must enter into a written non-conforming subordination agreement³⁴ with each eligible customer prior to the customer’s participation in cross-margining under the Customer Cross-Margin Program, pursuant to which the customer must specifically agree and acknowledge that: (i) the customer’s Eligible Securities Positions and Associated Margin will not receive customer treatment under

³³ See 17 CFR 1.3 (defining “futures customer”); see also 17 CFR 190.01 (defining “public customer”).

³⁴ A non-conforming subordination agreement generally would not meet all the requirements of Appendix D to Rule 15c3-1 (Satisfactory Subordination Agreements). 17 CFR 240.15c3-1d.

the Exchange Act or SIPA or be treated as “customer property” as defined in 11 U.S.C. 741 in a liquidation of the Eligible BD–FCM; (ii) such Eligible Securities Positions and Associated Margin will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and rules and regulations thereunder, and (iii) claims to “customer property” as defined in SIPA or 11 U.S.C. 741 against the Eligible BD–FCM with respect to its Eligible Securities Positions and Associated Margin held at the clearing agency will be subordinated to the claims of all other customers, as the term “customer” is defined in SIPA or 11 U.S.C. 741.

This condition is designed to assure that customers participating in the Customer Cross-Margin Program would, in the event of an Eligible BD–FCM’s insolvency, be subject to subchapter IV (commodity broker liquidation) of Chapter 7 of the U.S. Bankruptcy Code, and the CFTC’s Part 190 Regulations thereunder. This condition would thereby provide clarity for these customers to benefit from the protections applicable under CFTC rules, the CEA and U.S. Bankruptcy Code for assets held in a futures account. Assets held in a futures account would be afforded the protections of the rules of the CFTC governing the treatment of customer margin held by an Eligible BD–FCM as well as the protections of the CEA and commodity broker liquidation provisions. Together with the disclosure condition discussed below, this condition should also help to ensure that eligible customers understand at the outset which customer protections would apply with respect to Eligible Securities Positions and Associated Margin held in a futures account.³⁵

The fourth condition requires that the Eligible BD–FCM must furnish to each eligible customer prior to the customer’s participation in cross-margining under the Customer Cross-Margin Program, a disclosure document containing: (i) a statement indicating that the customer’s Eligible Securities Position and Associated Margin will be held in a futures account, and that the protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and the rules and regulations thereunder will apply to such money, securities, and property while held in the futures

account; and (ii) a statement that the broker-dealer segregation requirements of section 15(c)(3) of the Exchange Act and the rules thereunder, and any customer protections under SIPA and the stockbroker liquidation provisions, will not apply to such Eligible Securities Positions and Associated Margin under the Customer Cross-Margin Program while held in the futures account.

This condition is designed to provide customers, prior to the customer’s participation in cross-margining under the Customer Cross-Margin Program, with important disclosures regarding the legal framework that will govern their transactions in U.S. Treasury securities from novation of a trade to a clearing agency through settlement. As discussed above, the disclosure requirements are essential to highlight to customers who agree to participate in the Customer Cross-Margin Program that the futures account that will hold their Eligible Securities Positions and Associated Margin will be governed by the segregation requirements under a regime with different protections (*i.e.*, the Bankruptcy Code), and that any protections under SIPA will not be available to them while the Eligible Securities Positions and Associated Margin are held in the futures account. Finally, the Commission has modified the language from the proposed condition in the Application to require that the disclosure document be provided to the customer prior to the customer’s participation in the Customer Cross-Margin Program, and to emphasize in the disclosures what protections will and will not apply to Eligible Securities Positions and Associated Margin “while held in a futures account.” This modification will align the timing of the disclosure with the language in the third condition regarding the non-conforming subordination agreement, and ensure that the Eligible BD–FCM provides customers with the required disclosures before customers have any Eligible Securities Position and Associated Margin placed in a futures account.

The fifth condition requires that each clearing agency and DCO must calculate initial margin requirements for Eligible Customer Positions on a gross basis (*i.e.*, customer-by-customer)³⁶ using the same margin reduction methodology. The determination of initial margin on a gross basis is intended to ensure that only Eligible Customer Positions within

each individual cross-margin customer’s combined portfolio are offset against one another.

The sixth condition requires the Eligible BD–FCM to collect from each of its cross-margining customers, at a minimum, the aggregate amount of initial margin required by each clearing agency and DCO in respect of the cross-margining customer’s Eligible Customer Positions. This condition is designed to help assure that the Eligible BD–FCMs are requiring minimum margin that measures and accounts for the risk across a customer’s Eligible Customer Positions. This condition also ensures that the Eligible BD–FCMs hold sufficient customer collateral to cover the required margin amounts at each clearing agency and DCO. Furthermore, collecting the aggregate amount of initial margin on a gross basis would increase the financial resources available to the clearing agency and DCO in the event of a customer default.

The seventh condition requires that the Eligible BD–FCM be in compliance with applicable laws and regulations relating to risk management, capital, and liquidity, and be in compliance with applicable clearing agency and DCO rules and CFTC requirements (including segregation and related books and records provisions) for futures accounts in connection with the Customer Cross-Margin Program. The purpose of this condition is to help ensure that the exemption under this order is available only when the applicable regulatory requirements are appropriately followed.³⁷

The eighth condition states that the clearing agency and DCO must have amended their rulebooks as may be necessary to implement a Customer Cross-Margin Program and the conditions of this order.³⁸ This condition is intended to ensure that a clearing agency and DCO have rules in place to implement a Customer Cross-Margin Program that complies with the conditions of this order. For a clearing agency, the Commission would need to approve any proposed rule changes regarding, among other things, eligible

³⁵ The conditions for the non-conforming subordination agreement and the disclosure requirements below are consistent with the non-conforming subordination agreements and disclosure requirements in the 2021 CDS Portfolio Margining Order. *See* 2021 CDS Portfolio Margin Order.

³⁶ This is in contrast to initial margin calculated on a “net basis” where different customer positions are netted together as one combined portfolio to calculate initial margin requirements.

³⁷ For purposes of this condition, Eligible BD–FCMs would be exempt from Section 15(c)(3) and Rule 15c3–3 thereunder solely with respect to any Eligible Securities Positions and Associated Margin carried in a futures account as defined in CFTC Rule 1.3 under a Customer Cross-Margin Program meeting all other conditions of this order.

³⁸ The Commission modified this condition from the proposed condition in the Application to require that the clearing agency and DCO must have amended, rather than “shall amend,” their rulebooks, to express that the rule amendments that satisfy the conditions of this order must be in place prior to permitting customers to participate in a Customer Cross-Margin Program.

positions, any applicable cross-margin agreements, margin methodologies (including margin reduction methodologies), account structure, and the framework of a Customer Cross-Margin program³⁹ through a rule filing under section 19(b) of the Exchange Act.⁴⁰ Finally, given the broadening of this order as discussed in section II.A. above, this condition also will provide market participants with the opportunity for notice and comment under section 19(b) of the Exchange Act regarding the proposed framework for any new Customer Cross-Margin Program that a clearing agency may propose to implement in the future.

The ninth condition requires the clearing agency, DCO, and Eligible BD-FCMs, as applicable, to have obtained any other regulatory relief or approvals from the Commission or CFTC, as applicable, needed to permit the eligible customers of an Eligible BD-FCM to participate in a Customer Cross-Margin Program under the conditions of this order.⁴¹ The purpose of this condition is to help assure that the exemption from section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder would apply only in circumstances where the protections of a regulatory framework under the CEA and the CFTC's rules, or under the Exchange Act and Commission rules apply and effectively can be applied to the cross-margining customer of an Eligible BD-FCM.

For the reasons discussed above, the Commission finds it appropriate in the public interest and consistent with the protection of investors to exempt Eligible BD-FCMs from compliance with section 15(c)(3) of the Exchange

Act and Rule 15c3-3 thereunder in connection with a program to cross-margin customer positions in U.S. Treasury securities cleared by a clearing agency and related futures contracts cleared by a DCO in a futures account for purposes of recognizing risk offsets in calculating clearing agency and DCO initial margin requirements from the period of novation through settlement of a trade.

III. Conclusion

Accordingly, *it is hereby ordered*, pursuant to section 36(a) of the Exchange Act, that any broker-dealer that is an Eligible BD-FCM will be exempt from section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder solely with respect to any Eligible Customer Positions that are Eligible Securities Positions and any Associated Margin carried in a futures account as defined in CFTC Rule 1.3, for and on behalf of customers under a Customer Cross-Margin Program subject to the following conditions:

(1) All Eligible Securities Positions and Associated Margin under a Customer Cross-Margin Program shall be carried by an Eligible BD-FCM in a futures account as defined in CFTC Rule 1.3 for and on behalf of the cross-margining customers and shall be deemed to have been received by the Eligible BD-FCM and be accounted for and treated and dealt with as belonging to the cross-margining customers of the Eligible BD-FCM consistent with section 4d(a)(2) of the CEA and the CFTC's regulations thereunder.

(2) The Eligible BD-FCM and its eligible customer both agree in writing to participate in the Customer Cross-Margin Program in order to apply cross-margining to the Eligible Customer Positions.

(3) The Eligible BD-FCM must enter into a written non-conforming subordination agreement with each eligible customer prior to the customer's participation in cross-margining under the Customer Cross-Margin Program, pursuant to which the customer must specifically agree and acknowledge that:

(i) The customer's Eligible Securities Positions and Associated Margin will not receive customer treatment under the Exchange Act or SIPA or be treated as "customer property" as defined in 11 U.S.C. 741 in a liquidation of the Eligible BD-FCM;

(ii) Such Eligible Securities Positions and Associated Margin will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and rules and regulations thereunder; and

(iii) Claims to "customer property" as defined in SIPA or 11 U.S.C. 741 against the Eligible BD-FCM with respect to its Eligible Securities Positions and Associated Margin held at the clearing agency will be subordinated to the claims of all other customers, as the term "customer" is defined in SIPA or 11 U.S.C. 741.

(4) The Eligible BD-FCM must furnish to each eligible customer prior to the customer's participation in cross-margining under the Customer Cross-Margin Program, a disclosure document containing:

(i) A statement indicating that the customer's Eligible Securities Position and Associated Margin will be held in a futures account, and that the protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and the rules and regulations thereunder will apply with respect to such money, securities, and property while held in the futures account; and

(ii) A statement that the broker-dealer segregation requirements of section 15(c)(3) of the Exchange Act and the rules thereunder, and any customer protections under SIPA and the stockbroker liquidation provisions, will not apply to such Eligible Securities Positions and Associated Margin under the Customer Cross-Margin Program while held in the futures account.

(5) Each clearing agency and DCO must calculate initial margin requirements for Eligible Customer Positions on a gross basis (*i.e.*, customer-by-customer) using the same margin reduction methodology.

(6) The Eligible BD-FCM must collect from each of its cross-margining customers, at a minimum, the aggregate amount of initial margin required by each clearing agency and DCO in respect of the cross-margining customer's Eligible Customer Positions.

(7) The Eligible BD-FCM must be in compliance with applicable laws and regulations relating to risk management, capital, and liquidity, and must be in compliance with applicable clearing agency and DCO rules and CFTC requirements (including segregation and related books and records provisions) for futures accounts in connection with the Customer Cross-Margin Program.

(8) The clearing agency and DCO must have amended their rulebooks as may be necessary to implement a Customer Cross-Margin Program and the conditions of this order.

(9) The clearing agency, DCO, and each Eligible BD-FCM must have obtained any other regulatory relief or approvals from the CFTC or Commission, as applicable, needed to

³⁹ For instance, CME and FICC proposed using the same eligible positions and margin reduction methods for their Customer Cross-Margin Program as those applied in their existing proprietary cross-margin program, as amended from time to time, as a proposed condition in the Application. See Application at p.22. Because the Commission is broadening the scope of this order as discussed above, the proposed conditions in the Application related to eligible positions and the margin reduction methodology specific to FICC are not included as conditions in this order and instead were approved by the Commission through a proposed rule change. See *supra* note 18.

⁴⁰ Under Section 19(b) of the Exchange Act, self-regulatory organizations ("SROs") generally must file proposed rule changes with the Commission for notice, public comment, and Commission approval, prior to implementation. 15 U.S.C. 78s(b). Section 19(b)(1) of the Exchange Act requires each securities SRO to file with the SEC "any proposed rule or any proposed change in, addition to, or deletion from the rules of . . . [a] self-regulatory organization." 15 U.S.C. 78s(b)(1). The CFTC also has rule filing requirements under section 5c(c) of the CEA (7 U.S.C. 7a-2(c)) and part 40 of the CFTC's regulations (17 CFR part 40).

⁴¹ This condition was not in the Application. However, it is consistent with a previous Commission exemptive order. See 2021 CDS Portfolio Margin Order.

permit eligible customers of Eligible BD–FCMs to participate in a Customer Cross-Margin Program under the conditions of this order.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–07636 Filed 4–17–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0799]

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension: Rule 17Ad–27

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (SEC or “Commission”) is soliciting comments on the proposed collection of information provided for in Rule 17Ad–27 as applied to entities that provide matching services that are exempt from registration as a clearing agency.¹

As part of the final set of rules to achieve a further shortening of the standard settlement cycle for securities transactions from two business days after the transaction date to one business day following the transaction date, Rule 17Ad–27 requires exempt entities that perform matching services to facilitate the settlement of securities transactions (referred to as a “central matching service provider” or “CMSP”) to establish, implement, maintain and enforce policies and procedures reasonably designed to facilitate straight-through processing for transactions involving broker-dealers and their customers.² CMSPs electronically facilitate communication among a broker-dealer, an institutional

investor or its investment adviser, and the institutional investor’s custodian to reach agreement on the details of a securities trade. CMSPs emerged as a result of efforts by market participants to develop a more efficient and automated matching process that are an important resource for advancing the straight-through processing of the settlement of institutional trades. Currently, one CMSP operates under the exemption from registration as a clearing agency to perform matching services.³

Rule 17Ad–27 also requires a CMSP to submit every twelve months to the Commission a report that describes the following:

- A summary of its policies and procedures reasonably designed to facilitate straight-through processing, current as of the last day of the twelve-month period covered by the report;
- A qualitative description of its progress in facilitating straight-through processing during the twelve-month period covered by the report;
- A quantitative presentation of data that includes: (i) the total number of trades submitted to the clearing agency for processing; (ii) the total number of allocations submitted to the clearing agency; (iii) the total number of confirmations submitted to the clearing agency, as well as the total number of confirmations cancelled by a user; (iv) the percentage of confirmations submitted to the clearing agency that are affirmed on trade date, specifying to the extent practicable the relevant timeframe in which the affirmation is processed on trade date; (v) the percentage of allocations and confirmations submitted to the clearing agency that are matched and automatically confirmed through the clearing agency’s services; and (vi) metrics concerning the use of manual and automated processes by the clearing agency’s users with respect to its services that may be used to assess progress in facilitating straight-through processing; and
- A qualitative description of the actions it intends to take to facilitate straight-through processing during the twelve-month period that follows the period covered by the report.⁴

In addition, data sets provided pursuant to Rule 17Ad–27 must be: (i) organized on a month-by-month basis, beginning with January of each year, for the twelve months covered by the

report; (ii) separated, where applicable, between the use of central matching and electronic trade confirmation services offered by the clearing agency; (iii) separated, as appropriate, by asset class; (iv) separated by type of user; and (v) presented on an anonymized and aggregated basis.⁵

Ongoing burdens imposed by Rule 17Ad–27 on a respondent CMSP are as follows: (i) ongoing monitoring and compliance activities with respect to the written policies and procedures required by the proposed rule; and (ii) ongoing documentation activities with respect to the required annual report. The Commission estimates that the ongoing activities required by Rule 17Ad–27 imposes an aggregate annual burden on a respondent CMSP of 37 hours, and 37 hours total for the industry.⁶

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the SEC, including whether the information will have practical utility; (b) the accuracy of the SEC’s estimate of the burden imposed by the proposed collection of information, including the validity of the methodology and the 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 respondents, including through the use of automated, electronic collection techniques or other forms of information technology.

Please direct your written comments on this 60-Day Collection Notice to Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg via email to PaperworkReductionAct@sec.gov by June 22, 2026. There will be a second opportunity to comment on this SEC request following the **Federal Register** publishing a 30-Day Submission Notice.

⁵ *Id.* at (b)(4).

⁶ This figure was calculated as follows: (Compliance Attorney for 24 hours + Computer Operations Manager for 10 hours) = 34 hours. The Commission estimates that the Inline XBRL requirement would require respondent CMSPs to incur three additional ongoing burden hours to apply and review Inline XBRL tags, as follows: (Compliance Attorney for 3 hours) = 3 hours. Taken together, the total ongoing burden is 37 hours (34 hours + 3 hours = 37 hours).

¹ See 15 U.S.C. 78c(a)(23)(A) (defining a “clearing agency” as, among other things: [A]ny person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities.)

² See 17 CFR 240.17Ad–27; Exchange Act Release No. 96930 (Feb. 15, 2023) 88 FR 13872 (Mar. 6, 2023) (“Rule 17Ad–27 Adopting Release”); see also Exchange Act Release No. 94196 (Feb. 9, 2022), 87 FR 10436 (Feb. 24, 2022) (“Rule 17Ad–27 Proposing Release”).

³ See Exchange Act Release No. 34–44188 (Apr. 17, 2001), 66 FR 20494 (Apr. 23, 2001) (providing an exemption from registration as a clearing agency to DTCC ITP Matching US LLC, formerly known as Global Joint Ventures Matching Services US, LLC).

⁴ Rule 17Ad–28(b)(3), 17 CFR 240.17Ad–27(b)(3).

Dated: April 16, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-07646 Filed 4-17-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105246; File No. SR-NasdaqTX-2026-016]

Self-Regulatory Organizations; Nasdaq Texas, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Fees for Certain Connectivity Services

April 15, 2026.

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 April 10, 2026, Nasdaq Texas, LLC (“Nasdaq Texas” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s fees for connectivity services, as described further below. The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaqtx/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 purpose of the proposed rule change is to amend Rule Options 7, Section 9 to increase the Exchange’s fees relating to its Testing Facilities³ by 10%.⁴ Rule Options 7, Section 9 provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 9 provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 10% to require that subscribers to the Testing Facility shall pay a fee of \$1,100 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,100 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services to remain competitive with its peers. Over the years, customer demand for more sophisticated, higher-throughput, lower-latency, and higher-power connectivity solutions has increased. The Exchange continues to invest in maintaining, improving, and enhancing its connectivity products, services, and facilities for the benefit and often at the behest of its customers. Nevertheless, the Exchange has not increased the Testing Facility fees included in this proposal since before 2017. In this proposal, the Exchange proposes to increase such Testing Facility fees by 10%, consistent with the adjustments made to analogous services in the 2024 Proposal.⁵

³ The Exchange operates a test environment in Carteret, New Jersey. References to the “Testing Facility” refers to this test environment. See Rule Options 7, Section 9.

⁴ The Exchange in 2024 filed a proposed rule change to amend, among other rules, Rule Equity 7 (“Pricing Schedule”), to increase certain fees for its Testing Facilities by 10 percent (10%) See Securities Exchange Act Release No. 101689 (Nov. 21, 2024), 89 FR 93678 (Nov. 27, 2024) (SR-BX-2024-049) (“2024 Proposal”). The Exchange now proposes a corresponding increase to the Testing Facility fees under Options 7, consistent with the basis for and rationale supporting the 2024 Proposal as it regards the Rule Equity 7 adjustments. As proposed, the proposal would thus align the Testing Facility fees under the Exchange’s Options 7 Rule with those for the same services under its Equity Rules 7 as adjusted in the 2024 Proposal. The Exchange is proposing no other changes to its rules.

⁵ See *supra* note 4 and accompanying text (discussing the 2024 Proposal in part and noting that this proposal would align the Testing Facility

As discussed below, the Exchange proposes to adjust its fees by an industry- and product-specific inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at current fee levels impacts the Exchange’s ability to enhance its offerings and the interests of market participants and investors.

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (“PPI”), which is a tailored measure of inflation.⁶ As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (“CPI”), that measure price change from the purchaser’s perspective.⁷ About 10,000 PPIs for individual products and groups of products are tracked and released each month.⁸ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector’s output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI (“Data PPI”), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (“BLS”) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System.⁹ According to the BLS “[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense,

fees under the Exchange’s Options 7 Rule with those for the corresponding services under its Equity Rule 7 as adjusted in the 2024 Proposal).

⁶ See <https://fred.stlouisfed.org/series/PCU518210518210>.

⁷ See <https://www.bls.gov/ppi/overview.htm>.

⁸ See *Id.*

⁹ NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract."¹⁰

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed rule change to modify the fee for its connectivity products because the Exchange uses its "own computer systems" and "proprietary software," *i.e.*, its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers' transactions in U.S. equity securities on the Exchange's proprietary trading platform. In other words, the Exchange is in the business of data processing and related services.

For purposes of this proposed rule change, the Exchange examined the Data PPI value for the period from January 2017 through February 2026, the most recent month for which data is available at the time of this filing.¹¹ The Data PPI had a starting value of 109 in January 2017 and an ending value of 123.670 in February 2026, representing an increase of approximately 13.59% over this period.

This indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 13.59% during this period. Based on that percentage change, the Exchange proposes to make a one-time fee increase of 10%, which reflects only a portion of the cumulative inflation experienced since the most recent adjustments to these fees on or about 2017.¹²

¹⁰ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

¹¹ See 2024 Proposal, *supra* note 4.

¹² See 2024 Proposal, *supra* note 4. The proposed adjustments would thus align the fees for the

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 3.09% increase year over year since Data PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to January 2026 was 0.70%, with a cumulative increase of 20.32% over this 24-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 81% over the same period.¹³

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed fee increases.¹⁴ As the Exchange notes above, the Exchange has relied on Data PPI, as well as its investments into and enhanced performance of the Exchange to support the reasonableness of proposed fees for a substantively identical service or product under Rule Equity 7.¹⁵

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and products, as fees for the services and products in question have been static in

Testing Facility under Rule Options 7 with fees for the corresponding Testing Facility service under Equity Rule 7 as adjusted pursuant to the 2024 Proposal.

¹³ See <https://www.usinflationcalculator.com/>.

¹⁴ See *supra* discussion of connectivity product and facility improvements. Additionally, other exchanges have filed for increases in certain fees, based in part on comparisons to inflation. See, *e.g.*, Securities Exchange Act Release Nos. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR–ChoeBYX–2024–012); and 34–100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR–BOX–2024–16); Securities Exchange Act Release No. 34–100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR–NYSEARCA–2024–79). See also *supra* note 4 and accompanying text.

¹⁵ See 2024 Proposal, *supra* note 4.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the capacity and speed of Exchange systems increase the performance of the services and products.

The Proposed Rule Change Is Reasonable

As noted above, the Exchange has not increased any of the fees included in this proposal since 2017 or earlier. However, in the years following the most recent fee increases, the Exchange has made significant investments in upgrades to its connectivity products, services, and facilities, enhancing the quality of its services. Between 2017 and 2026, the period under consideration in this proposal, the inflation rate was 3.25% per year, on average, producing a cumulative inflation rate of 33.32%.¹⁸ Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 13.59%. The exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees for the subject service. The proposed fee changes represent a modest increase from the current fees. As discussed above, the Exchange is limiting its proposed fee increases to 10% of the current fees, which as discussed above reflects only a portion of the cumulative inflation experienced since the most recent adjustments to these fees on or about 2017. The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. Furthermore, the Exchange continues to invest in maintaining and enhancing its connectivity products for the benefit and often at the behest of its customers and global investors.¹⁹ The goal of the enhancements discussed above, among other things, is to provide faster, higher-capacity, and more modern connectivity products and services. Accordingly, the Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its connectivity products and services.

Moreover, as discussed above, the Exchange in 2024 filed a proposed rule

¹⁸ See <https://www.officialdata.org/us/inflation/2017?amount=1>.

¹⁹ See 2024 Proposal, *supra* note 4 (describing such continued maintenance enhancements).

change to amend, among other rules, Rule Equity 7 (“Pricing Schedule”), to increase certain fees for its Testing Facilities by 10%.²⁰ In this proposal, the Exchange is merely proposing a corresponding increase to the analogous Testing Facility fees under Options 7, consistent with the basis for and rationale supporting the analogous Rule Equity 7 adjustments in the 2024 Proposal. The Exchange is proposing no other changes to its rules.

The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory

The Exchange believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply to all market participants that choose to purchase connectivity products and services from the Exchange. Any participant that chooses to purchase the Exchange’s connectivity products and services would be subject to the same fee schedule, regardless of what type of business they operate or the use they plan to make use of the products and services. Additionally, the fee increase would be applied uniformly to market participants without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities. Finally, the Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees would be assessed uniformly across all market participants, in the same manner they are today, that voluntarily purchase the Exchange’s connectivity products and services, which would remain available for purchase by all market participants.

Moreover, as discussed above, the Exchange is merely proposing a 10 percent increase to the Testing Facility fees under Options 7, consistent with basis for and rationale supporting the fee increase adopted in the 2024 Proposal for the analogous Testing Facility under Rule Equity 7. The Exchange is proposing no other changes to its rules.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage

compared to other market participants. As noted above, the fee schedule would continue to apply to all purchasers of the Exchange’s connectivity products and services in the same manner as it does today, albeit at inflation-adjusted rates for certain fees, and customers may choose whether to purchase these products and services at all. The Exchange also believes that the level of the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition.

Intermarket Competition

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In determining the proposed fees, the Exchange relied on an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange’s investment in maintaining and enhancing its connectivity products, services, and facilities. Thus, the Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase certain fees for connectivity products and services to recoup the Exchange’s investment in maintaining and enhancing such products, services, and its facilities would not impose a burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–NasdaqTX–2026–016 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–NasdaqTX–2026–016. 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–NasdaqTX–2026–016 and should be submitted on or before May 11, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–07595 Filed 4–17–26; 8:45 am]

BILLING CODE 8011–01–P

²⁰ See 2024 Proposal, *supra* note 4.

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²² 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105247; File No. SR–CBOE–2026–032]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Its Rules Related to Binary Options

April 15, 2026.

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 April 2, 2026, Cboe Exchange, Inc. (“Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Rules related to binary options. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission’s website (<https://www.sec.gov/rules/sro.shtml>), the Exchange’s website (https://www.cboe.com/us/options/regulation/rule_filings/bzx/), 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 amend its Rules related to binary options. Binary

options are based on the same framework as traditional, standardized options traded on the Exchange, except the payout of a binary option is an amount contingent upon the occurrence of the option being in- or at-the-money rather than the degree to which the option is in-the-money. As a result, payout at expiration of a binary option is an all-or-nothing occurrence. Current Rule 4.16 permits the Exchange to list binary options on broad-based indexes.³ Current Rule 4.16(b) defines a binary option as a European-style option contract having an exercise settlement amount⁴ that is established at the creation of the option. Under current Rules, binary options are paid out if the settlement value⁵ of the underlying broad-based index equals, exceeds, or is less than the exercise price, depending on the type of option (*i.e.*, call or put). A call binary option is an option contract that returns an exercise settlement amount if the settlement value of the underlying broad-based

³ Pursuant to current Rule 4.16(a), Rule 4.16 applies to binary options only, and all Rules apply to the trading of binary options, except as otherwise provided or the context otherwise requires.

⁴ The exercise settlement amount for a binary option is the amount of cash that a holder will receive upon exercise of the contract. The exercise settlement amount is a set amount equal to the exercise settlement value multiplied by the contract multiplier. The exercise settlement value will be an amount determined by the Exchange on a class-by-class basis and shall be equal to \$10 or \$1,000 or a value between those values, unless otherwise adjusted per Rule 4.6. See current Rule 4.16(b) (definition of “exercise settlement amount”). Pursuant to current Rule 4.16(f), binary option contracts are subject to adjustment only in accordance with and to the extent specified in the By-Laws and Rules of The Options Clearing Corporation (“OCC”). The contract multiplier is the multiple applied to the exercise settlement value to arrive at the total exercise settlement amount per contract, which is established on a class-by-class basis and shall be at least one. See current Rule 4.16(b) (definition of “contract multiplier”). The Exchange intends to amend the minimum exercise settlement value to be \$1 (rather than \$10) in a separate rule filing.

⁵ The settlement value for a binary option is the value of the underlying broad-based index that is used to determine whether a binary option is in, at, or out of the money. For binary options on a broad-based index on which traditional options on the same broad-based index are A.M.-settled, the “settlement value” is the reported opening level of such index as derived from the prices of the underlying securities on such day and as reported by the Reporting Authority for the index. For binary options on a broad-based index on which traditional options on the same broad-based index are P.M.-settled, the “settlement value” is the reported closing level of such index as derived from the prices of the underlying securities on such day and as reported by the Reporting Authority for the index. See current Rule 4.16(b) (definition of “settlement value”). Binary options that are “at-the-money,” “in-the-money,” or “out-of-the-money” are a function of the settlement value of the underlying broad-based index in relation to the type of binary option (*i.e.*, put or call) and the exercise price. See current Rule 4.16(e).

index is at or above the exercise price⁶ at expiration (*i.e.*, in- or at-the-money), while a put binary option is an option contract that returns an exercise settlement amount if the settlement value of the underlying broad-based index is below the exercise price at expiration (*i.e.*, in-the-money).⁷ The Exchange designates binary options as to expiration date, exercise price, exercise settlement amount, contract multiplier, and underlying broad-based index.⁸

Currently, the Exchange may from time to time approve for listing and trading on the Exchange binary option contracts on a broad-based index that has been selected in accordance with Rule 4.10 and the Interpretations and Policies thereunder.⁹ The Exchange may add new series of options of the same class as provided for in Rule 4.13 and the Interpretations and Policies thereunder. Additional series of the same binary option class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market or to meet customer demand (the opening of a new series of binary options on the Exchange will not affect any other series of options of the same class previously opened).¹⁰ After a particular binary option class has been approved for listing and trading on the Exchange, the Exchange from time to time may open for trading series of options on that class. In order to afford investors maximum flexibility, binary option series may expire from one day up to 36 months from the time they are listed.¹¹ Binary options will be quoted based on the existing strike intervals utilized for traditional, non-binary index options¹² with minimum price variations, established by class, to be no less than \$0.01.¹³

The proposed rule change moves the Rule provisions regarding binary

⁶ With respect to a binary option, the exercise price is the value to which the settlement value of the underlying broad-based index is compared to determine whether the holder of a binary option is entitled to have the option be paid out. See current Rule 4.16(b) (definition of “exercise price”).

⁷ See current Rule 4.16(b) (definitions of “call binary option” and “put binary option”).

⁸ See Rule 4.16(c)(2).

⁹ See current Rule 4.16(c)(1). Binary options are a separate class from other options overlying the same broad-based index. The maintenance listing standards with respect to options on broad-based indexes set forth in Rule 4.10 and the Interpretations and Policies thereunder apply to binary options on broad-based indexes as well. See Rule 4.16(d).

¹⁰ See current Rule 4.16(c)(4).

¹¹ See current Rule 4.16(c)(3).

¹² See Rule 4.13, including Interpretation and Policy .01.

¹³ See Rule 5.4(c)(1).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

options from current Rule 4.16 to new Chapter 4, Section H, which section will relate specifically to binary options. Specifically, the proposed rule change:¹⁴

- moves current Rule 4.16(a) to the introductory language for proposed Section H;
- moves the defined terms in current Rule 4.16(b) to proposed Rule 4.70;
- moves the provisions from current Rule 4.16(c)(1) and (d) regarding the listing and maintenance criteria for binary options to Rule 4.71(a);
- moves the provision regarding binary options being a separate class from the traditional options with the same underlying from current Rule 4.16(c)(1) to Rule 4.71(b);
- moves the provision regarding the designated terms of binary options from current Rule 4.16(c)(2) to the introductory language of proposed Rule 4.72;¹⁵
- moves the provision regarding settlement of binary options from current Rule 4.16(c)(2) to proposed Rule 4.72(a);
- moves the provision regarding permissible expirations of binary options from current Rule 4.16(c)(3) to proposed Rule 4.72(b);
- moves the provision regarding additional series of binary options from current Rule 4.16(c)(4) to proposed Rule 4.72(c);
- moves the provision regarding the determination of the settlement value from current Rule 4.16(e) to proposed Rule 4.73;
- moves the provision regarding adjustment of binary options from current Rule 4.16(f) to proposed Rule 4.74; and
- moves the provision regarding the availability of Flexible Exchange (“FLEX”) options for binary options from current Rule 4.16(g) to proposed Rule 4.21(c).

While there is no current definition of the term “market capitalization ratio” in the Rules, that term is effectively defined in current Rule 8.36(b) as the

ratio of the market capitalization of a broad-based index underlying a binary to the market capitalization of the S&P 500 Index. The proposed rule change creates a defined term of “market capitalization ratio” in proposed Rule 4.70, which means the ratio of the market capitalization of an index to the market capitalization of the S&P 500 Index. This is equivalent to the meaning of that term in the current Rules but expanded to apply to any index rather than just broad-based index, as the proposed Rules regarding all binary options reference that term.

In addition to the relocation of and nonsubstantive changes to the provisions of current Rule 4.16 regarding binary options as described above, the proposed rule change amends the current Rules regarding the availability of binary options to (1) expand the scope of binary options to any index (rather than just broad-based indexes); and (2) permit A.M.-settlement and P.M.-settlement for all binary options.

First, the proposed rule change would make binary options available on all indexes that are otherwise eligible for traditional, non-binary options trading on the Exchange. Currently, the Exchange may list binary options only on broad-based index options. Proposed Rule 4.71(a) provides that the Exchange may from time to time approve for listing and trading on the Exchange binary option contracts on an index that satisfies the initial listing criteria in Rule 4.10 and the Interpretations and Policies thereunder. The maintenance listing criteria in Rule 4.10 and the Interpretations and Policies thereunder apply to binary index options. In other words, the Exchange may list binary options on any index on which the Exchange may list traditional (*i.e.*, non-binary) options pursuant to Rule 4.10.¹⁶ Based on available competitive products (as further discussed below) and demand from investors, the Exchange believes the proposed expansion of

binary option classes will provide more investors with access to a securities exchange-listed product with the simplified, limited risk structure of binary options.

Second, the Exchange proposes to amend the Rules regarding permissible settlements of binary options. Pursuant to proposed Rule 4.72(a), the Exchange may designate binary options as A.M.-settled or P.M.-settled. Current Rule 4.16(c)(2) provides that binary options on broad-based index options for which traditional (*i.e.*, non-binary) options on the same broad-based index are A.M.-settled will be A.M.-settled, and binary options on broad-based indexes for which traditional options on the same broad-based index are P.M.-settled will be P.M.-settled. Currently, nearly all of the traditional index (broad-based and narrow-based) options the Exchange lists for trading can be both A.M.-settled and P.M.-settled.¹⁷ Therefore, current Rule 4.16 would permit the Exchange to list A.M.-settled and P.M.-settled binary options overlying most indexes on which the Exchange lists non-binary options. Permitting both A.M.- and P.M.-settlement for binary index options for all indexes will afford investors further flexibility (coupled with the flexibility of permissible expirations, as noted above) with respect to their investment strategies, regardless of the index option market in which investors participate. Additionally, the Exchange believes it is appropriate to be able to list A.M.- and P.M.-settled binary index to provide investors with the same flexibility currently available for alternative products (as further discussed below).

¹⁷ See Rule 4.13(a)(4), (e), and Interpretation and Policy .13. Currently, the Exchange lists the following index options: S&P 500 Index options (“SPX options”), Mini-S&P 500 Index options (“XSP options”), S&P 500 Scored and Screened Index (“SPESG options”), Mini-S&P 500 Equal Weight Index Options (“SPEQX options”), Cboe Volatility Index Options (“VIX options”), Dow Jones Industrial Average options (“DJX options”), S&P 100 Index options (“OEX options”), Russell 2000 Index options (“RUT options”), Mini-Russell 2000 Index options (“MRUT options”), Cboe Bitcoin U.S. ETF Index options (“CBTX options”), Cboe Mini Bitcoin U.S. ETF Index options (“MBTX options”), and the Cboe Magnificent 10 Index options (“MGTN options”). All of these index options may have A.M.-settled series and P.M.-settled series except OEX options (P.M.-settled only), VIX options (A.M.-settled only), and DJX options (A.M.-settled only, although the Exchange recently proposed to permit P.M.-settlement for DJX options, *see* Securities Exchange Act Release No. 104644 (January 21, 2026), 91 FR 3284 (January 26, 2026) (SR-CBOE-2026-005)).

¹⁴ In addition to substantive changes to current Rule 4.16 described below, the proposed rule change made nonsubstantive changes to simplify the current provisions (including eliminate redundancies) and make the provisions more plain English.

¹⁵ The Exchange deleted from current Rule 4.16(c)(2) the provision stating only binary option contracts approved by the Exchange and currently open for trading on the Exchange may be purchased or sold on the Exchange, as that is a general, true of all options approved for listing on the Exchange.

¹⁶ Pursuant to proposed Rule 4.21(c) (as is the case today for binary index options on broad-based indexes pursuant to current Rule 4.16(g)), binary options on indexes that are eligible for trading on the Exchange will be eligible for trading as FLEX options (as provided for in Chapter 4, Section C), even if the Exchange does not list and trade non-FLEX binary options or non-FLEX traditional options on such index. For purposes of Rule 4.21, the applicable exercise settlement value is designed by the parties to the contract, the parties may not designate an exercise style other than European-style, and the term “index multiplier” refers to the contract multiplier.

In connection with the proposed rule change described above to permit P.M.-settlement for all binary index options, the Exchange proposes to amend Rule 5.1(b)(2)(C) to provide that on their last trading day, RTH for P.M.-settled binary index options may be effected on the Exchange between 9:30 a.m. and 4:00 p.m.¹⁸ (as opposed to the 9:30 a.m. to 4:15 p.m. RTH for non-expiring binary index options). The primary listing markets for the component securities comprising the indexes underlying options listed on the Exchange close trading in those securities at 4:00 p.m. The primary listing exchanges for the component securities disseminate closing prices for the component securities, which are used to calculate the exercise settlement value of these indexes. The Exchange believes that, under normal trading circumstances, the primary listing markets have sufficient bandwidth to prevent any data queuing that may cause any trades that are executed prior to the closing time from being reported after 4:00 p.m. If trading in expiring P.M.-settled binary index options continued an additional fifteen minutes until 4:15 p.m. on their last trading day, these expiring options would be trading after the exercise settlement value for those expiring options was calculated. Therefore, in order to mitigate potential investor confusion and the potential for increased costs to investors as a result of potential pricing divergence at the end of the trading day, the Exchange

believes it is appropriate to cease trading in the expiring P.M.-settled binary index options at 4:00 p.m., which is currently the case for P.M.-settled non-binary index options. The Exchange does not believe the proposed rule change will impact volatility on the underlying cash market comprising the indexes at the close on expiration days, as it already closes trading on the last trading day for expiring P.M.-settled non-binary index options overlying the same indexes at 4:00 p.m. The Exchange does not believe this has had an adverse impact on fair and orderly markets on expiration days for the underlying securities comprising the corresponding indexes.

The Exchange also proposes to amend the position limits for binary options in Rule 8.36. Current Rule 8.36 provides that the position limit for binary options on a broad-based index will be 15,000 contracts (or 15,000 times the ratio of 10,000 to the exercise settlement amount) if traditional (*i.e.*, non-binary) options on the same broad-based index have no position limit pursuant to Rule 8.31. For binary options on a broad-based index for which traditional options on the same broad-based index do have a position limit pursuant to Rule 8.31, the position limit for the binary option is:

- 10,000 contracts if the market capitalization ratio for the index is greater than or equal to 0.50;
- 5,000 contracts if the market capitalization ratio is less than 0.50 but greater than or equal to 0.25; or

- 2,500 contracts if the market capitalization ratio is less than 0.25 but greater than or equal to 0.10.¹⁹

For binary options that have an exercise settlement amount that is not equal to \$10,000, the position limit is the ratio of 10,000 to the exercise settlement amount multiplied by the applicable amount set forth above.

The proposed rule change expands the fixed and formulaic limits to all indexes that may underlie binary options as proposed and applies the proposed position limits on an expiration basis.²⁰ Specifically, the proposed rule change amends Rule 8.36(a) to provide that the position limit for binary options for which the traditional options on the same index have no position limit pursuant to Rules 8.30 through 8.33, as applicable,²¹ is the number of contracts equal to 15,000 times the ratio of 10,000 to the exercise settlement amount per expiration.²² The proposed rule change amends Rule 8.36(b) to provide that for binary options for which traditional options on the same index have a position limit pursuant to Rules 8.30 through 8.33, as applicable, the position limit is the number of contracts equal to the ratio of 10,000 to the exercise settlement amount multiplied by the number of contracts set forth in the table below (based on the market capitalization ratio of the underlying index) per expiration:²³

Market capitalization ratio of underlying	Number of contracts
Greater than or equal to 0.50	10,000
Less than 0.50 but greater than or equal to 0.25	5,000
Less than 0.25 but greater than or equal to 0.10	2,500
Less than 0.10 but greater than or equal to 0.005	1,500
Less than 0.005 but greater than or equal to 0.0025	1,000
Less than 0.0025	500

For reference, the table below sets forth the approximate market

capitalizations that would equate to the above ratios based on a market

capitalization of the S&P 500 Index of \$62.5 trillion as of February 20, 2026:

Market capitalization ratio of underlying	Range of underlying market capitalizations	Number of contracts
Greater than or equal to 0.50	Greater than or equal to \$31.3 trillion	10,000
Less than 0.50 but greater than or equal to 0.25	Less than \$31.3 trillion but greater than or equal to \$15.6 trillion.	5,000

¹⁸ All times set forth in this rule filing are Eastern Time.

¹⁹ The rule provides that the Exchange would need to seek approval from the Securities and Exchange Commission (the "Commission") prior to establishing position limits for binary options on broad-based indexes that have a market capitalization ratio that is less than 0.10.

²⁰ The proposed rule change also makes nonsubstantive changes to simplify the rule language.

²¹ Rules 8.31 through 8.33 provide position limits for the various categories of indexes options the Exchange may list for trading.

²² For example, if the binary option exercise settlement amount is \$10,000, then the position limit is 15,000 contracts per expiration; if the binary option exercise settlement amount is \$1,000, then the position limit is 150,000 contracts per expiration; and if the binary option exercise settlement amount is \$12,000, then the position limit is 12,500 contracts per expiration.

²³ The proposed rule change does not include a provision regarding the need to seek Commission approval prior to establishing position limits for binary options on broad-based indexes that have a Market Capitalization Ratio less than 0.10, as the proposed rule change seeks to establish position limits for all such indexes, rendering such a provision moot.

Market capitalization ratio of underlying	Range of underlying market capitalizations	Number of contracts
Less than 0.25 but greater than or equal to 0.10	Less than \$15.6 trillion but greater than or equal to \$6.3 trillion	2,500
Less than 0.10 but greater than or equal to 0.005	Less than \$6.3 trillion but greater than or equal to \$312.5 billion.	1,500
Less than 0.005 but greater than or equal to 0.0025	Less than \$312.5 billion but greater than or equal to \$156.3 billion.	1,000
Less than 0.0025	Less than \$156.3 billion	500

Pursuant to current Rule 8.36(c), positions in binary options on the same broad-based index with different exercise settlement amounts will be aggregated with each other but, pursuant to current Rule 8.36(d), will not be aggregated with non-binary option contracts on the same broad-based index.²⁴ The proposed rule change amends these provisions to apply to all binary options on all indexes.

Current Rule 8.36(f) provides that binary options are not subject to the hedge exemption to the standard position limits in Rule 8.30 and instead exempt certain qualified hedge exemption strategies and positions from the position limits established in Rule 8.36(a) and (b). The proposed rule change amends Rule 8.36(f) to provide that notwithstanding Rules 8.36(a) and (b), position limits for the hedged positions and strategies defined below are equal to five times the position limit established under proposed Rule 8.36(a) and (b)(5) (if the market capitalization ratio of the underlying index is greater than or equal to 0.005) or three times the position limit established under proposed Rule 8.36(b)(5) (if the market capitalization ratio of the underlying index is less than 0.005). The following strategies and positions would qualify for these increased position limits (which are the strategies and positions exempt from position limits for binary options established in current Rule 8.36):

- a binary option position “hedged” or “covered” by an appropriate amount of cash to meet the settlement obligation (e.g., \$1,000 for a binary option with an exercise settlement amount of \$1,000);
- a binary option position “hedged” or “covered” by a sufficient amount of a related or similar security to meet the settlement obligation; and

- a binary option position “hedged” or “covered” by a traditional option covering the same underlying index (which includes, among other strategies, a vertical spread with strikes reasonably close²⁵ to the binary option strike) sufficient to meet the settlement obligation.

Pursuant to Rule 8.42(h), binary options are not subject to exercise limits. This is currently the case for binary index options on broad-based indexes and will be the case for binary index options on non-broad-based indexes. Binary options, as discussed above, are European-style and are automatically exercised at expiration if the settlement value of the underlying index is equal to or greater than the exercise price of a call binary option or less than the exercise price in the case of a put binary option.²⁶

With respect to reports related to position limits, proposed Rule 8.43(f) provides that in computing reportable binary options under Rule 8.43, as is the case today for binary index options on broad-based indexes:

- (1) positions in binary options on the same index that have different exercise settlement amounts are aggregated;
- (2) positions in binary options are not aggregated with non-binary option contracts on the same or similar underlying security or index;
- (3) positions in binary index options are not aggregated with non-binary option contracts on an underlying security or securities included within the underlying index; and
- (4) positions in binary options on one index are not aggregated with binary options on any other index.

All binary options as proposed will not be subject to Rule 8.46(b) and Interpretation and Policy .01 regarding certain restrictions on options transactions and exercises. Rule 8.46(b) applies only to American-style options (as noted above, binary options are European-style), and Rule 8.46, Interpretation and Policy .01 applies

only to options that are settled by delivery of an underlying security (as noted above, binary options are settled by delivery of a settlement value in cash).

The margin requirements in Rule 10.3(m) (currently applicable to binary index options on broad-based indexes) will apply to all binary options. Specifically, for a margin account, except as provided below, no binary option carried for a customer may be considered of any value for purposes of computing the margin required in the account of such customer. The initial and maintenance margin required on any binary option carried long in a customer's account is 100% of the purchase price of such binary option (*i.e.*, the premium). The initial and maintenance margin required on any binary option carried short in a customer's account is the exercise settlement amount. With respect to spreads, no margin is required on a binary call option (put option) carried short in a customer's account that is offset by a long binary call option (put option) for the same underlying security or instrument that expires at the same time and has an exercise price that is less than (greater than) the exercise price of the short call (put). The long call (put) must be paid for in full. With respect to straddles and combinations, when a binary call option is carried short in a customer's account and there is also carried a short binary put option for the same underlying security or instrument that expires at the same time and has an exercise price that is less than or equal to the exercise price of the short call, the initial and maintenance margin required is the exercise settlement amount applicable to one contract.

For a cash account, a binary option carried short in a customer's account is deemed a covered position, and eligible for the cash account, provided any one of the following either is held in the account at the time the option is written or is received into the account promptly thereafter:

- (1) cash or cash equivalents equal to 100% of the exercise settlement amount; or

²⁴ Additionally, binary options on broad-based indexes will not be aggregated with non-binary option contracts on an underlying stock or stocks (the Exchanges makes a nonsubstantive change to make this security or securities to be consistent with the first sentence of the subparagraph) included within such broad-based index or with binary index options on any other broad-based index. See current Rule 8.36(d) (proposed Rule 8.36(c)).

²⁵ The Exchange will determine strikes that are “reasonably close” in the same manner it currently does pursuant to Rule 4.13.

²⁶ See Rule 6.20(g). Because binary options are automatically exercised, Rule 6.21 regarding exercise notices does not apply to binary options.

(2) a long binary option of the same type (put or call) for the same underlying security or instrument that is paid for in full and expires at the same time, and has an exercise price that is less than the exercise price of the short in the case of a call or greater than the exercise price of the short in the case of a put; or

(3) an escrow agreement. The escrow agreement must certify that the bank holds for the account of the customer as security for the agreement (i) cash, (ii) cash equivalents, (iii) one or more qualified equity securities, or (iv) a combination thereof having an aggregate market value of not less than 100% of the exercise settlement amount and that the bank will promptly pay the TPH organization the exercise settlement amount in the event the account is assigned an exercise notice.

The Exchange believes these proposed levels are appropriate because risk exposure is limited with binary options and the proposed customer initial and maintenance margin is equal to the maximum risk exposure.²⁷

Except as otherwise described above, all binary options will be listed and traded on the Exchange in a substantially similar manner as binary options are permitted to be listed and traded under current Rules. The Rules that apply to the listing and trading of non-binary options on the Exchange, including those related to priority and execution, Market-Makers (including Market-Maker obligations), obvious error,²⁸ trading halt procedures, and clearing, will apply to the listing and trading of binary options. The Exchange has analyzed its capacity and represents that it believes the Exchange has the necessary systems capacity to handle any potential additional message traffic associated with the listing of binary

options on indexes (including non-broad-based indexes). The Options Price Reporting Authority (“OPRA”) also informed the Exchange it believes it has the necessary systems capacity to handle the additional traffic associated with the listing of new options that would result from this proposed rule change. The Exchange does not believe Trading Permit Holders (“TPHs”) will experience any capacity issues as a result of this proposal and represents that it will monitor the trading volume associated with binary options and the effect (if any) of binary options on market fragmentation and the capacity of the Exchange’s automated system.

Today, the Exchange has an adequate surveillance program in place for options. The Exchange intends to apply the same program procedures to binary options the Exchange applies to its other options products (which overly the same indexes on which the proposed rule change would permit the Exchange to list binary options). Additionally, the Exchange is a member of the Intermarket Surveillance Group (“ISG”) under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. In addition, the Exchange has a Regulatory Services Agreement with the Financial Industry Regulatory Authority (“FINRA”) for certain market surveillance, investigation and examinations functions. Pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate amongst themselves and FINRA responsibilities to conduct certain options-related market surveillance that are common to rules of all options exchanges.²⁹ The Exchange believes its existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed binary

options. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of binary options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.³⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³¹ 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)³² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide investors with a securities exchange-listed investment choice for additional classes, and with additional settlements (A.M.- and P.M.-settlement for all binary index options). The proposed binary options are listed options with a simpler, all-or-none payout structure and limited risk profile compared to traditional listed options.³³ Thus, the Exchange believes the proposed rule change will permit investors to manage

²⁷ Pursuant to Rule 10.9, the Exchange has the ability to impose higher margin requirements than those described above in respect to any binary option position when it deems such higher margin requirements to be advisable. Because binary options must be fully funded pursuant to Rule 10.3(m), Rule 6.22 regarding delivery and payment does not apply to binary options.

²⁸ The Exchange notes Rule 6.5, Interpretation and Policy .04 states that for purposes of the obvious error provisions in Rule 6.5(c), the adjusted price (including any applicable adjustment under subparagraph (c)(4)(A) for non-customer transactions) may not exceed the applicable exercise settlement amount for the binary option. The proposed rule change amends the term “exercise settlement amount” to “exercise settlement value,” as that is the appropriate price comparison for the transaction price (which is generally considered prior to application of the contract multiplier). The exercise settlement value is similar the value of settlement prior to application of the contract multiplier. This is a technical change to reflect the intended purpose of this provision.

²⁹ Section 19(g)(1) of the Securities Exchange Act of 1934 (the “Act”), among other things, requires every self-regulatory organization (“SRO”) registered as a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO’s own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members. See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO (“common members”). Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

³² *Id.*

³³ The Commission has previously recognized the benefits of listing and trading binary options on a securities exchange. See Securities Exchange Act Release No. 57850 (May 22, 2008), 73 FR 31169, 31172 (May 30, 2008) (SR-CBOE-2006-105) (“Binary BBI Option Approval”) (“The Commission believes that binary options on broad-based indexes will provide investors with a potentially useful investment choice. The proposal will extend to these options the benefits of a listed exchange market, which include a centralized forum for price discovery, pre- and post-trade transparency, standardized contract specifications, and the guarantee of the OCC.”).

their risk exposures and carry out their investment objectives on a securities exchange with more flexibility and broader applicability. The Exchange also believes the proposed rule change will promote competition, as it will meet demands of investors that currently may trade products structured in substantively the same manner as the proposed binary options in other markets (as further discussed below).

The Exchange believes expanding the universe of binary options to non-broad-based indexes will benefit investors, particularly retail investors and other investors who prefer simplicity, as a complementary offering to current exchange-traded options. Buyers and sellers of traditional, non-binary options listed on the Exchange do not know the return on those options at the time of the transaction, as the return cannot be determined until near the option's expiration given movements in the underlying. For example, suppose an investor buys a traditional index call option with an exercise price of 100. If the index value at expiration is 105, the investor gets a payout of \$5 (times the multiplier for that option). If the index value at expiration is 110, the investor gets a payout of \$10 (times the multiplier for that option). Therefore, the payout of a traditional index option is dependent on how in-the-money the option is at expiration, which is unknown until the time of expiration.

On the contrary, binary options offer a set payout if the underlying closes at, below, or above the exercise price (depending on the type of binary option). Buyers and sellers of binary options know the expected return at the time of purchase if the underlying performs as expected, as the return is a fixed, "all-or-none" amount. Using the example above, suppose an investor buys a binary index call option with an exercise price of 100 and an exercise settlement value) of \$10. If the index value at expiration is 105, the investor receives a payout of \$10 (times the multiplier for that option). In fact, if the index value at expiration is any value of 100 or greater, the investor receives that same payout. In addition, because the return on the binary option is a set amount, a buyer of a binary option need not determine the absolute magnitude of the underlying's value movement relative to the exercise price, as is the case with traditional, non-binary options. Instead, the buyer of a binary option needs only to determine whether the underlying value is expected to be above, at, or below the exercise price (as applicable).

The Exchange believes expanding the availability of binary options will

further protect investors because of the reduced risk of the seller compared to the seller of a traditional option. While sellers of traditional options have unlimited risk (as the payout amount increases the further in-the-money the option is at expiration), the maximum obligation for the seller of a binary option is known when the contract is written, which is the fixed payout amount. The structure of binary options offers investors pre- and post-trade transparency with respect to the risk associated with their binary options trades. Binary options on non-broad-based indexes will ultimately provide the same benefits to investors as binary options on broad-based indexes.

The Exchange also believes the proposed rule change to expand available underlying indexes for binary options and permit listing of both A.M.- and P.M.-settled binary options will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.³⁴ The proposed rule change will permit the Exchange to list binary options overlying securities indexes with similar terms on a national securities exchange as alternatives to products that are structured in substantially the same manner as binary options currently available in the OTC market and on other platforms. The Exchange understands investors have traded binary options similar to the proposed binary options in OTC markets for many years but may prefer to trade such options in a listed environment to receive the benefits of trading listing options. These benefits include: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes the proposed rule change may encourage liquidity to shift from the OTC market onto the Exchange, which the Exchange believes would increase market transparency as well as enhance the process of price discovery conducted on the Exchange through increased order flow. The proposed rule change is

³⁴ Index options listed pursuant to generic listing criteria in Rule 4.10 are eligible for A.M.-settlement, and thus pursuant to the current Rule, all binary options overlying indexes that satisfy that criteria would be eligible for A.M.-settlement. As noted above, nearly all index options are currently eligible for P.M.-settlement, so the proposed rule change provides for P.M.-settled binary options for only two additional index options that the Exchange currently lists for trading.

intended to provide a market for binary options as a standardized product without the credit risk of an individual issuer. By providing a listed and standardized market for more classes of binary options, the Exchange seeks to attract investors who desire the simplicity of a binary option with the certainty and safeguards of a regulated and standardized marketplace. Additionally, unlike an OTC binary option, counter-party credit risk for Exchange-listed binary options is significantly reduced through the issuance and guarantee of the contracts by OCC. Further, as an exchange-traded option, binary options will have the advantage of liquidity provided by Market-Makers, which the Exchange believes may lead to tighter spreads than those in the OTC market. The Exchange also believes that standardization will enable more interested parties to become market participants.

In addition to the OTC market, various market platforms that are not registered as national securities exchanges currently offer products structured in substantively the same manner as binary options the Exchange may list pursuant to current Rules and as proposed. These platforms offer binary option products overlying securities indexes, which may be settled at varying points of the day (not just at the open and close of the trading day). However, as these venues are not national securities exchanges, they do not offer investors the benefits of centralized liquidity, market transparency, or securities regulations intended to protect investors. The Exchange believes listing competitive products on a securities exchange may create a centralized and standardized marketplace for these products, which promotes price discovery and transparency, within a regulatory framework designed to protect investors in securities. In other words, the Exchange believes its proposal offers a more transparent platform than the OTC market and other market platforms offer and would contribute to leveling the playing field with these alternative markets.

Additionally, the proposed rule change is consistent with the requirements of the Act because binary options on securities indexes are securities under the Act. The Act defines "security" as, among other things, a "put, call, straddle, option, or privilege on any security . . . or group or index of securities (including any interest therein or based on the value

thereof).”³⁵ Binary options on securities indexes, like non-binary options on securities indexes, are puts and calls. The value of a binary option is based on the value of the underlying index. As securities, pursuant to Section 9(b)(1) of the Act, a person may effect any transaction in connection with a binary option only in accordance with Commission rules and regulations.³⁶ Therefore, the Exchange believes transactions in binary options on and securities indexes must occur on a national securities exchange, subject to Commission jurisdiction and oversight.

As discussed above, the Exchange has current Rules that permit the listing of binary options on broad-based index options, which Rules were approved previously by the Commission as being consistent with the Act. This further indicates that binary options are securities under the Act, subject to Commission jurisdiction and oversight.³⁷ When approving the Exchange’s prior proposed rule change regarding the listing and trading of binary options on broad-based security indexes, the Commission described the terms of these options, including listings standards, position limits, and margin, and found them to be consistent with the Act.³⁸ In connection with the Commission’s approval of trading binary options on the Exchange, OCC adopted rules pursuant to which it could clear binary options.³⁹ When approving OCC’s proposed rule change related to the clearing of binary options, the Commission noted it met the requirements of Section 17A(b)(3)(F) of the Act⁴⁰ because it would permit OCC

to clear and settle binary options that had been approved to be listed and traded on Cboe, which would promote the “prompt and accurate clearance and settlement of such *securities transactions*.”⁴¹ The Commission also approved updates to the Options Disclosure Document (“ODD”) in advance of the listing of binary options on Cboe, as required by the Act.⁴² Rule 9b–1 under the Act requires a broker-dealer to furnish a customer a copy of the ODD prior to accepting an order from that customer for an option that is subject to the ODD.⁴³ Rule 9b–1 defines standardized options as options contracts traded on national securities exchanges that relate to options classes the terms of which are limited to specific expiration dates and exercise prices, as well as other securities as the Commission may, by order designate.⁴⁴ The Commission’s order approving the ability of the Exchange to list binary options overlying certain securities signified that binary options are standardized options under the Act.⁴⁵ As binary index options, as currently available and as proposed, are standardized options to be traded on a national securities exchange, the Exchange believes the proposed rule change will benefit investors, as broker-dealers must provide the ODD to customers, which describes the characteristics and risks associated with trading binary options.

Additionally, the Exchange believes the proposed position limits are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and thus to protect investors. The proposed position limits for binary options on non-broad-based indexes are the same as those for binary options on broad-based indexes under current Rules (subject to the per expiration change described below) for all indexes. As these position limits are already in the Rules (and thus previously approved by the Commission) and applicable to binary index options, the Exchange believes the proposed rule change reasonably balances the promotion of a free and open market for these securities with minimization of incentives for market manipulation. The Exchange believes it is appropriate to apply the

same position limits currently applicable to binary options on broad-based indexes to binary options on all indexes because the position limits are tied to the market capitalization of the underlying index. Specifically, applying the same position limit to all binary index options for which traditional options on the same index have no position limit is appropriate because, for options on such indexes, the Commission has found that concerns regarding market manipulation or disruption in the underlying market are significantly reduced due to the capitalization and thus liquidity of the markets of the constituents of those indexes.⁴⁶ With respect to binary index options for which traditional options do have position limits, applying the same position limit to all binary index options (including non-broad-based index options) is appropriate because the proposed rule applies a position limit based on the market capitalization of the underlying index, with lower position limits corresponding to lower market capitalizations. The susceptibility of an index to manipulation or undue price influence is directly related to the depth and liquidity of the markets for the component securities that comprise it, regardless of the number of component securities.⁴⁷ An index representing a larger aggregate market capitalization reflects a deep, liquid pool of underlying securities, the collective

³⁵ See 15 U.S.C. 78c(a)(10). The Exchange notes options on securities indexes (and thus binary options on securities indexes) are not swaps. See *Statement on Tokenized Securities*, Commission Divisions of Corporation Finance, Investment Management, and Trading and Markets (January 28, 2026), available at https://www.sec.gov/newsroom/speeches-statements/corp-fin-statement-tokenized-securities-012826?utm_medium=email&utm_source=govdelivery (“... any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act [of 1933] and the Exchange Act, is excluded from the definition of swap. When assessing whether a financial instrument formatted as a crypto asset satisfies one of these exclusions, the economic reality of the instrument rather than the name given to the instrument determines whether it is excluded.”) (cites excluded).

³⁶ See 15 U.S.C. 78i(b).

³⁷ See Binary BBI Option Approval.

³⁸ See *id.* at 31171–31172.

³⁹ See Securities Exchange Act Release No. 56875 (November 30, 2007), 72 FR 69274 (December 7, 2007) (SR–OCC–2007–08) (which OCC rules explicitly related to clearing binary options within the definition of a “security” as determined by the Commission).

⁴⁰ 15 U.S.C. 78q–1(b)(3)(F).

⁴¹ *Id.* at 69276 (emphasis added).

⁴² See Securities Exchange Act Release No. 58043 (June 26, 2008), 73 FR 38260 (July 3, 2008) (SR–ODD–2008–02).

⁴³ See 17 CFR 240.9b–1(b).

⁴⁴ See 17 CFR 240.9b–1(a)(4).

⁴⁵ When describing the benefits of binary options, the Commission described them as having “standardized contract specifications.” See Binary BBI Option Approval at 31171.

⁴⁶ See, e.g., See Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911, 4913 (February 1, 1999) (SR–CBOE–98–23) (order approving elimination of position limits for SPX options). At present, no traditional option on a non-broad-based index option has no position limits, so the proposed rule change has no practical effect.

⁴⁷ Index listing criteria impose various requirements on the component securities related to market capitalization and liquidity, which further reduces the risk that the markets for these index options or the components of the underlying indexes would be impacted by additional derivatives. For example, with respect to narrow-based indexes, pursuant to Rule 4.10(b): (1) the market capitalization for the lowest-weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index must be at least \$50 million, and the market capitalization of all other components must be at least \$75 million; (2) the trading volume in each component must be at least 1,000,000 shares for each of the last six months (from October 2024 through March 2025, the lowest monthly trading volume for a component was over 1.5 million shares), except that for each of the lowest-weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume must be at least 500,000 shares for each of the last six months; and (3) no single component security may represent more than 25% of the weight of the index, and the five highest-weighted component securities in the index may not in the aggregate account for more than 50% (60% for an index consisting of fewer than 25 component securities) of the weight of the index.

pricing of which is substantially more difficult to influence through trading in the options market. By scaling position limits to market capitalization (which directly measures the economic depth of an index), the proposed rule change applies position limits appropriately sized to the actual manipulation risk presented by the specific index. While in general a non-broad-based index may have a lower market capitalization (and thus should have a lower position limit for options on that index) because it has fewer components, it is certainly possible for such an index to have a similar market capitalization to that of a broad-based index and thus have reduced susceptibility to manipulation in the same manner as a broad-based index with similar market capitalization. The proposed rule change would, in such a situation, would apply a position limit to the overlying options appropriate for such an index rather than an unnecessarily lower position limit to the options solely because of the classification of the index.

The Exchange also believes the proposed rule change to apply position limits to binary options on a per expiration basis will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and thus protect investors due to the unique risk profile of binary options that distinguish them from traditional (*i.e.*, non-binary). Unlike traditional index options, for which associated risk is distributed across a range of strikes and expirations because investors may offset or hedge positions across expirations, binary options are fixed-payout, all-or-nothing contracts whose value is entirely dependent on the value of the underlying index at a single point in time. Therefore, risk concentrates at the expiration date itself since each expiration series represents an independent and self-contained risk event. This makes the expiration date the most economically meaningful unit for measuring and constraining accumulated exposure of binary options. Limiting positions in binary options across expirations (as is done for traditional options) would not address the actual risk associated with the settlement event specific to a binary option. As a result, the Exchange believes an individual expiration is the most economically meaningful time to limit positions in binary options, as obtaining positions in binary options for one expiration generally have no impact

on the value of binary options for another expiration.⁴⁸

Further, the Exchange believes subjecting hedged binary option positions and strategies to higher position limits is consistent with the Act because such positions and strategies create offsetting exposure. As a result, a customer no longer has a directional interest in the underlying, reducing the manipulation risk associated with those positions that position limits are designed to address. Given the investor benefits gained from hedged positions, the Exchange believes applying higher position limits to these positions sufficiently protects against the reduced potential for manipulation while not artificially restricting bona fide activity intended to manage risk exposure.

Position limits are designed to limit the number of options contracts overlying a security or index traded on the exchange that an investor, acting alone or in concert with others directly or indirectly, may control. These limits are intended to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security or index underlying the options. Position limits must balance concerns regarding mitigating potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes. Position limits do not limit the total number of options that may be held, but rather they limit the number of positions a single customer may hold or exercise at one time. "Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise."⁴⁹ Position limit rules are intended "to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position."⁵⁰ The Exchange believes the proposed position limits applied on a per expiration basis reasonably and appropriately balance the liquidity provisioning in the market against the prevention of manipulation without unnecessarily constraining investment

activity.⁵¹ The Exchange believes these proposed limits are effectively designed to prevent an individual customer or entity from establishing options positions that could be used to manipulate the market of the underlying.⁵²

The Exchange also believes the proposed margin requirements for binary index options (which are the current margin requirements for binary options on broad-based indexes) are reasonable and will protect investors, because they limit investors' risk exposure given that the initial and maintenance margin requirements are equal to the maximum risk exposure.⁵³ As noted above, the Exchange may determine to impose higher margin requirements than those proposed in respect of any binary option position when it deems such higher margin requirements are appropriate.⁵⁴

Ultimately, the Exchange believes the proposed rule change will provide investors with greater trading tools and opportunities and flexibility, resulting in investors having additional means to carry out their investment objectives and manage their risk exposures with the benefits of being listed and traded on a national securities exchange. The Exchange believes the proposed rule change will offer market participants a simplified, transparent, and limited risk investment choice overlying securities indexes, which may be more aligned with their specific timing needs and investment and hedging strategies and risk tolerances. The Exchange believes it benefits the investing public to continue to enhance its listed product offerings to respond to continuously changing needs of investors and to a continuously changing competitive environment.

A robust and competitive market requires exchanges to respond to investors' evolving needs by regularly improving their offerings. When Congress charged the Commission with supervising the development of a "national market system" for securities, Congress stated its intent that the "national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed."⁵⁵ Consistent with this purpose, Congress and the Commission have repeatedly stated their preference

⁵¹ The proposed application of higher position limits to hedged positions and strategies contributes to this balanced design.

⁵² See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

⁵³ See Rule 10.3(m).

⁵⁴ See Rule 10.9.

⁵⁵ See H.R. Rep. No. 94-229, at 92 (1975) (Conf. Rep.).

⁴⁸ This is consistent with the lack of exercise limits for binary options.

⁴⁹ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

⁵⁰ See *id.*

for competition, rather than regulatory intervention to determine products and services in the securities markets.⁵⁶ This consistent and considered judgment of Congress and the Commission is correct, particularly in light of evidence of robust competition in the options trading industry. The fact that an exchange proposed something new is a reason to be receptive, not skeptical—innovation is the life-blood of a vibrant competitive market—and that is particularly so given the continued internalization of the securities markets, as exchanges continue to implement new products and services to compete not only in the United States but throughout the world. Options exchanges continuously adopt new and different products and trading services in response to industry demands in order to attract order flow and to increase their trading volume. This competition has led to a growth in investment choices, which ultimately benefits the marketplace and the public. The Exchange believes the proposed rule change will help further competition by providing market participants with yet another investment option for options listed on a national securities exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe 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 the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because binary options will be available to all market participants who wish to trade such options on the same terms and in the same manner (including with

respect to the payout terms and amount). All market participants will be subject to the same margin and position limits, as well as other rules applicable to binary options, as described in this proposed rule change. To qualify for listing as a binary option, an underlying index must meet the same initial and maintenance listing criteria it must meet to underlie a traditional, non-binary option. Except as set forth in the proposed rule change, binary options will trade in the same manner as other options on the Exchange.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the Rules of at least one other options exchange permit the listing of similar products.⁵⁷ Additionally, as noted above, substantively similar products to binary index options, as currently available under the Rules and as proposed, are available in the OTC market and various other markets. Such products are based on the values of securities indexes (as the proposed binary options are), including at the opening and closing of trading (*i.e.*, A.M.- and P.M.-settled) and other times throughout the day. The proposed rule change will permit the Exchange to list binary options on the same underlying indexes as these markets, and do so with certain similar terms (two permissible settlements) as the binary options listed on those markets. Ultimately, the proposal is designed to increase competition for order flow in binary options.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar products. The Exchange believes the proposed rule change will provide investors with a comparable alternative to the OTC market and other venues. The Exchange believes it may be a more attractive alternative to the OTC market and these other venues, as market participants will benefit from being able to trade these options in an exchange environment, which provides, among other things: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened counterparty creditworthiness due to the role of OCC as issuer and guarantor of all listed options. As a result, the Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition, as it will allow the Exchange to offer a securities

exchange-listed alternative to the products currently available in these other markets.

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 written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2026-032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CBOE-2026-032. 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

⁵⁶ See S. Rep. No. 94-75, 94th Cong., 1st Sess. 8 (1975) ("The objective [in enacting the 1975 amendments to the Exchange Act] would be to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services."); Order Approving Proposed Rule Change Relating to NYSE Arca Data, Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) ("The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the [self-regulatory organizations] and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system."); and Regulation NMS, 70 FR at 37499 (observing that NMS regulation "has been remarkably successful in promoting market competition in [the] forms that are most important to investors and listed companies").

⁵⁷ See NYSE American Options Rules, Section 17.

publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2026-032 and should be submitted on or before May 11, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105240; File No. SR-NASDAQ-2026-026]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Review of Professional Orders

April 15, 2026.

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 April 1, 2026, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend The Nasdaq Options Market LLC’s (“NOM”) quarterly review of Professional³ orders.

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 amend the quarterly review of Professional orders. Today, orders for any Public Customer⁴ that average more than 390 orders per day during any month of a calendar quarter must be represented as Professional orders for the next calendar quarter.⁵ In order to properly represent orders entered on the Exchange, Participants⁶ are required currently to review their Public Customers’ activity and, on at least a quarterly basis, designate orders as Public Customer orders or Professional orders.⁷ Specifically, Participants are required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter.⁸ While Participants are required to designate accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for

which orders are being represented as Public Customer Orders but that has averaged more than 390 orders per day during a month, the Exchange must notify the Participant and the Participant is required to change the manner in which it is representing the customer’s orders within five days.⁹

Proposal

At this time, the Exchange proposes to shorten the quarterly review and designation to a monthly review. The Exchange proposes to state at Options 1, Section 1(a)(47)(ii) that orders for any customer that had an average of more than 390 orders per day during any calendar month must be represented as Professional orders for the next calendar month.

As noted, currently, each Participant is required to monitor Public Customer orders to determine if the Public Customer has averaged more than 390 orders per day during a month. Determining whether a Public Customer has executed more than 390 orders per day during a month requires computing a daily average. As such, Participants should be performing the workflow necessary to designate orders on a daily basis. Therefore, the proposal does not amend the current workflow, rather, the proposal amends the timeframe to change the manner in which the customer’s order is being represented from five days after the end of each calendar quarter to five days after the end of each calendar month.

The Exchange does not believe that this amendment is a significant departure from the current rule, nor does it impose any burden on any Participant because each broker-dealer is required currently to perform the necessary calculation daily to arrive at the requisite average. Further, in addition to the calculation, broker-dealers are subject to know-your-customer and suitability requirements under FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) and would need to consider whether a customer meets the Professional designation for purposes of determining best execution and making appropriate recommendations. The Exchange notes that the trading behavior of a Public Customer can be distinguished from that of a Professional which is the purpose of the separate designations. Finally, some Participants currently designate a Public Customer that has averaged more than 390 orders per day during a month as a Professional on a more expedited basis, not waiting until five days after the quarter.

⁴ 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 1(a)(47). See Options 1, Section 1(a)(48).

⁵ The requirement to review Public Customers’ activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Public Customer Orders or Professional orders is not in the current rule text, however it was described in the adopting proposal. See Securities Exchange Act Release No. 78200 (June 30, 2016), 81 FR 44349 (July 7, 2016) (July 7, 2016) (SR-NASDAQ-2016-091) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Professionals Order Counting). (“SR-NASDAQ-2016-091”). The instant proposal seeks to codify the timing for review of Public Customers’ activity.

⁶ The term “Options Participant” or “Participant” mean a firm, or organization that is registered with the Exchange pursuant to Options 2A of these Rules for purposes of participating in options trading on NOM as a “Nasdaq Options Order Entry Firm” or “Nasdaq Options Market Maker.” See Options 1, Section 1(a)(39).

⁷ See 81 FR 44349 at 44349.

⁸ See *id.*

⁹ See *id.*

⁵⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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). All Professional orders shall be appropriately marked by Participants. The manner in which a Professional order is calculated is specified in Options 1, Section 1(a)(47)(i).

The Exchange believes that a calendar month is a sufficient time period to determine whether the activity of a customer meets the criteria for a Professional order. The Exchange believes that the shortened time period will ensure that the spirit of the designation of Professional order is met in that Participants will make any appropriate changes to the way in which they are representing orders in a 30-day timeframe as opposed to a 90-day timeframe, thereby ensuring the designation is applied in a more expeditious manner.

The Exchange continues to believe that identifying Professional orders based upon the average number of orders entered in qualified accounts is an appropriate and objective approach to reasonably distinguish such persons and entities from retail investors or market participants.

Technical Amendment

The Exchange proposes add reserved sections to Options 3B, Options 3C, Options 4D and Options 9, Section 26. Other Nasdaq affiliated exchanges have a rule or proposed rules in those corresponding sections. The reserved sections are intended to harmonize the structure of NOM's rules to those of other Nasdaq affiliated exchanges. The Exchange proposes that these amendments be operative 30 days from the date of filing.

Implementation

The Exchange proposes implementing this rule change on July 1, 2026, except for the technical amendments which should become operative 30 days after the date of the filing. The Exchange will issue an Options Trader Alert to provide notice to Participants of the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange's proposal to shorten the quarterly look-back to a monthly look-back is consistent with the Act because it will ensure that the spirit of the designation of Professional order

continues to be met, only on a more expedited basis—removing a potential delay of two months before affecting a change in the designation. The Exchange believes that this amendment will remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting the consistent application of its rules and shortening the timeframe to change the designation for all Participants while continuing to provide a sufficient time period to determine whether the activity of a customer meets the criteria for a Professional order. Further, the Exchange believes that the shortened time period will continue to promote consistency in the treatment of orders as Professional orders while also preventing members with high volume from receiving benefits reserved for Public Customer orders.

As noted, currently, each Participant is required to monitor Public Customer orders to determine if the Public Customer has averaged more than 390 orders per day during a month. Determining whether a Public Customer has executed more than 390 orders per day during a month requires computing a daily average. As such, Participants should be performing the workflow necessary to designate orders on a daily basis. Therefore, the proposal does not amend the current workflow, rather, the proposal amends the timeframe to change the manner in which the customer's order is being represented from five days after the end of each calendar quarter to five days after the end of each calendar month.

The Exchange does not believe that this amendment is a significant departure from the current rule, nor does it impose any burden on any Participant because each broker-dealer is required currently to perform the necessary calculation daily to arrive at the requisite average. Further, in addition to the calculation, broker-dealers are subject to know-your-customer and suitability requirements under FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) and would need to consider whether a customer meets the Professional designation for purposes of determining best execution and making appropriate recommendations. Finally, some Participants currently designate a Public Customer that has averaged more than 390 orders per day during a month as a Professional on a more expedited basis, not waiting until five days after the quarter.

The Exchange notes that the trading behavior of a Public Customer can be distinguished from that of a Professional which is the purpose of the separate

designations. The Exchange continues to believe that identifying Professional orders based upon the average number of orders entered in qualified accounts is an appropriately objective approach to reasonably distinguish such persons and entities from retail investors or market participants. Priority is one of the marketplace advantages provided to Public Customer orders on the Exchange. Public Customer orders are given execution priority over non-Customer orders and quotations of market makers at the same price. Another marketplace advantage afforded to Public Customer orders on the Exchange is that members are generally not assessed transaction fees or are assessed lower fees for the execution of Public Customer orders. The purpose of these marketplace advantages is to attract retail order flow to the Exchange by leveling the playing field for retail investors over market Professionals. This proposal will continue to provide Public Customer accounts with marketplace advantages and distinguish those accounts non-Professional retail investors from the Professionals accounts. The Exchange notes that some non-broker-dealer individuals and entities have access to information and technology that enables them to Professionally trade listed options in the same manner as a broker or dealer in securities.

Technical Amendment

Reserving Options 3B, Options 3C, Options 4D and Options 9, Section 26 are non-substantive amendments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange does not believe that the proposed rule change will impose any burden on intra-market competition because, today, each Participant is required to monitor Public Customer orders to determine if the Public Customer has averaged more than 390 orders per day during a month. Determining whether a Public Customer has executed more than 390 orders per day during a month requires computing a daily average. As such, Participants should be performing the workflow necessary to designate orders on a daily basis. Therefore, the proposal does not amend the current workflow, rather, the proposal amends the timeframe to change the manner in which the customer's order is being represented from five days after the end of each

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

calendar quarter to five days after the end of each calendar month.

The Exchange does not believe that this amendment is a significant departure from the current rule, nor does it impose any burden on any Participant because each broker-dealer is required currently to perform the necessary calculation daily to arrive at the requisite average. Further, in addition to the calculation, broker-dealers are subject to know-your-customer and suitability requirements under FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) and would need to consider whether a customer meets the Professional designation for purposes of determining best execution and making appropriate recommendations. Finally, some Participants currently designate a Public Customer that has averaged more than 390 orders per day during a month as a Professional on a more expedited basis, not waiting until five days after the quarter.

The Exchange notes that the trading behavior of a Public Customer can be distinguished from that of a Professional which is the purpose of the separate designations.

Further, the designation of Professional orders would not result in any different treatment of such orders for purposes of compliance with the Exchange's Rules. Public Customers have been granted certain priority over other non-broker-dealer individuals and entities that have access to information and technology that enables them to Professionally trade listed options in the same manner as a broker or dealer in securities. Further, the Public Customer designation allows the Exchange to attract order flow or create more competitive markets.

Also, the Exchange does not believe that the proposed rule change will impose any burden on inter-market competition because other exchanges are expected to adopt similar rules.

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 Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2026-026 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-2026-026. 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

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 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.

protection. All submissions should refer to file number SR-NASDAQ-2026-026 and should be submitted on or before May 11, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-07589 Filed 4-17-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105250; File No. SR-CboeBZX-2026-026]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Franklin Ethereum ETF

April 15, 2026.

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 April 6, 2026, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. ("BZX" or the "Exchange") is filing with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to amend the Franklin Ethereum ETF (the "Fund"), shares ("Fund Shares") of which have been approved by the Commission to list and trade on the Exchange pursuant to BZX Rule 14.11(e)(4) under an approval order, to permit the Fund to list and trade under the generic listing standards of that rule.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/equities/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has previously approved the listing and trading of shares for the Fund under Rule 14.11(e)(4),³ and the Fund currently lists and trades on the Exchange. The Exchange now proposes to transition this Fund to operate under the recently Commission-approved generic listing standards for Commodity-Based Trust Shares pursuant to Rule 14.11(e)(4) ("Amended Rule 14.11(e)(4)").⁴ The Fund will meet the requirements of Amended Rule 14.11(e)(4) and will be required to comply with the continued listing requirements set forth in such Rule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ 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)⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would provide for the transition of the Fund from being listed pursuant to the Ethereum ETP Approval Order to Amended Rule 14.11(e)(4) instead. The proposed change would allow the Fund Shares to continue listing and trading on the Exchange and permit the Fund to operate in reliance on the generic listing standards in Amended Rule 14.11(e)(4) instead of the terms of the Ethereum ETP Approval Order, thereby facilitating the continued listing and trading of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. The Fund will meet the requirements of Amended Rule 14.11(e)(4) and will be required to comply with the continued listing standards set forth in Amended Rule 14.11(e)(4).

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 purpose of the Act. As discussed above, the proposed change is intended to facilitate the continued listing and trading of the Fund on the Exchange, thereby promoting competition among exchange-traded products to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6)⁹ thereunder. 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; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder.

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 protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to promptly list and trade the Fund Shares under Amended Rule 14.11(e)(4), thereby providing for the continued listing and trading of the Fund Shares, and does not introduce any novel regulatory issues. Accordingly, the Commission designates the proposed rule change to be operative upon filing.¹⁴

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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³ See Securities Exchange Act No. 100224 (May 23, 2024) 89 FR 46937 (May 30, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products) (the "Ethereum ETP Approval Order").

⁴ See Securities Exchange Act No. 103995 (September 17, 2025) 90 FR 45414 (September 22, 2025) (SR-CboeBZX-2025-104) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To Adopt Generic Listing Standards for Commodity-Based Trust Shares).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ *Id.*

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-2026-026 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-2026-026. 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-2026-026 and should be submitted on or before May 11, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105245; File No. SR-PHLX-2026-23]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Fees for Certain Connectivity Services

April 15, 2026.

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 April 10, 2026, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees for connectivity services, as described further below. 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 purpose of the proposed rule change is to amend Rule Options 7, Section 9 to increase the Exchange's fees

relating to its Testing Facilities³ by 10%.⁴ Rule Options 7, Section 9 provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 9 provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 10% to require that subscribers to the Testing Facility shall pay a fee of \$1,100 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,100 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services to remain competitive with its peers. Over the years, customer demand for more sophisticated, higher-throughput, lower-latency, and higher-power connectivity solutions has increased. The Exchange continues to invest in maintaining, improving, and enhancing its connectivity products, services, and facilities for the benefit and often at the behest of its customers. Nevertheless, the Exchange has not increased the Testing Facility fees included in this proposal since before 2017. In this proposal, the Exchange proposes to increase such Testing Facility fees by 10%, consistent with the adjustments made to analogous services in the 2024 Proposal.⁵

As discussed below, the Exchange proposes to adjust its fees by an industry- and product-specific inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees.

³ The Exchange operates a test environment in Carteret, New Jersey. References to the "Testing Facility" refers to this test environment. See Rule Options 7, Section 9.E.

⁴ The Exchange in 2024 filed a proposed rule change to amend, among other rules, Rule Equity 7 ("Pricing Schedule"), to increase certain fees for its Testing Facilities by 10 percent (10%). See Securities Exchange Act Release No. 101691 (Nov. 21, 2024), 89 FR 93697 (Nov. 27, 2024) (SR-PHLX-2024-57) ("2024 Proposal"). The Exchange now proposes a corresponding increase to the Testing Facility fees under Options 7, consistent with the basis for and rationale supporting the 2024 Proposal as it regards the Rule Equity 7 adjustments. As proposed, the proposal would thus align the Testing Facility fees under the Exchange's Options 7 Rule with those for the same services under its Equity Rules 7 as adjusted in the 2024 Proposal. The Exchange is proposing no other changes to its rules.

⁵ See *supra* note 4 and accompanying text (discussing the 2024 Proposal in part and noting that this proposal would align the Testing Facility fees under the Exchange's Options 7 Rule with those for the corresponding services under its Equity Rule 7 as adjusted in the 2024 Proposal).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁵ 17 CFR 200.30-3(a)(12) and (59).

Continuing to operate at current fee levels impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index ("PPI"), which is a tailored measure of inflation.⁶ As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index ("CPI"), that measure price change from the purchaser's perspective.⁷ About 10,000 PPIs for individual products and groups of products are tracked and released each month.⁸ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI ("Data PPI"), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics ("BLS") as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS-518210 in the North American Industry Classification System.⁹ According to the BLS "[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-

keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract."¹⁰

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed rule change to modify the fee for its connectivity products because the Exchange uses its "own computer systems" and "proprietary software," *i.e.*, its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers' transactions in U.S. equity securities on the Exchange's proprietary trading platform. In other words, the Exchange is in the business of data processing and related services.

For purposes of this proposed rule change, the Exchange examined the Data PPI value for the period from January 2017 through February 2026, the most recent month for which data is available at the time of this filing.¹¹ The Data PPI had a starting value of 109 in January 2017 and an ending value of 123.670 in February 2026, representing an increase of approximately 13.59% over this period. This indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 13.59% during this period. Based on that percentage change, the Exchange proposes to make a one-time fee increase of 10%, which reflects only a portion of the cumulative inflation experienced since the most recent adjustments to these fees on or about 2017.¹² The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 3.09%

increase year over year since Data PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to January 2026 was 0.70%, with a cumulative increase of 20.32% over this 24-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 81% over the same period.¹³

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed fee increases.¹⁴ As the Exchange notes above, the Exchange has relied on Data PPI, as well as its investments into and enhanced performance of the Exchange to support the reasonableness of proposed fees for a substantively identical service or product under Rule Equity 7.¹⁵

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the capacity and speed of Exchange systems increase the performance of the services and products.

¹³ See <https://www.usinflationcalculator.com/>.

¹⁴ See *supra* discussion of connectivity product and facility improvements. Additionally, other exchanges have filed for increases in certain fees, based in part on comparisons to inflation. See, e.g., Securities Exchange Act Release Nos. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-CboeBYX-2024-012); and 34-100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR-BOX-2024-16); Securities Exchange Act Release No. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79). See also *supra* note 4 and accompanying text.

¹⁵ See 2024 Proposal, *supra* note 4.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

⁶ See <https://fred.stlouisfed.org/series/PCU518210518210>.

⁷ See <https://www.bls.gov/ppi/overview.htm>.

⁸ See *Id.*

⁹ NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

¹⁰ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

¹¹ See 2024 Proposal, *supra* note 4.

¹² See 2024 Proposal, *supra* note 4. The proposed adjustments would thus align the fees for the Testing Facility under Rule Options 7 with fees for the corresponding Testing Facility service under Equity Rule 7 as adjusted pursuant to the 2024 Proposal.

The Proposed Rule Change Is Reasonable

As noted above, the Exchange has not increased any of the fees included in this proposal since 2017 or earlier. However, in the years following the most recent fee increases, the Exchange has made significant investments in upgrades to its connectivity products, services, and facilities, enhancing the quality of its services. Between 2017 and 2026, the period under consideration in this proposal, the inflation rate was 3.25% per year, on average, producing a cumulative inflation rate of 33.32%.¹⁸ Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 13.59%. The exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees for the subject service. The proposed fee changes represent a modest increase from the current fees. As discussed above, the Exchange is limiting its proposed fee increases to 10% of the current fees, which as discussed above reflects only a portion of the cumulative inflation experienced since the most recent adjustments to these fees on or about 2017. The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. Furthermore, the Exchange continues to invest in maintaining and enhancing its connectivity products for the benefit and often at the behest of its customers and global investors.¹⁹ The goal of the enhancements discussed above, among other things, is to provide faster, higher-capacity, and more modern connectivity products and services. Accordingly, the Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its connectivity products and services.

Moreover, as discussed above, the Exchange in 2024 filed a proposed rule change to amend, among other rules, Rule Equity 7 ("Pricing Schedule"), to increase certain fees for its Testing Facilities by 10%.²⁰ In this proposal, the Exchange is merely proposing a corresponding increase to the analogous Testing Facility fees under Options 7,

consistent with the basis for and rationale supporting the analogous Rule Equity 7 adjustments in the 2024 Proposal. The Exchange is proposing no other changes to its rules.

The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory

The Exchange believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply to all market participants that choose to purchase connectivity products and services from the Exchange. Any participant that chooses to purchase the Exchange's connectivity products and services would be subject to the same fee schedule, regardless of what type of business they operate or the use they plan to make use of the products and services. Additionally, the fee increase would be applied uniformly to market participants without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities. Finally, the Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees would be assessed uniformly across all market participants, in the same manner they are today, that voluntarily purchase the Exchange's connectivity products and services, which would remain available for purchase by all market participants.

Moreover, as discussed above, the Exchange is merely proposing a 10 percent increase to the Testing Facility fees under Options 7, consistent with basis for and rationale supporting the fee increase adopted in the 2024 Proposal for the analogous Testing Facility under Rule Equity 7. The Exchange is proposing no other changes to its rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the fee schedule would continue to apply to all purchasers of the Exchange's connectivity products and services in the same manner as it does today, albeit at inflation-adjusted rates for certain fees, and customers may choose whether to purchase these products and services at all. The

Exchange also believes that the level of the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition.

Intermarket Competition

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In determining the proposed fees, the Exchange relied on an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing its connectivity products, services, and facilities. Thus, the Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase certain fees for connectivity products and services to recoup the Exchange's investment in maintaining and enhancing such products, services, and its facilities would not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ See <https://www.officialdata.org/us/inflation/2017?amount=1>.

¹⁹ See 2024 Proposal, *supra* note 4 (describing such continued maintenance enhancements).

²⁰ See 2024 Proposal, *supra* note 4.

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-2026-23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-PHLX-2026-23. 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-2026-23 and should be submitted on or before May 11, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-07594 Filed 4-17-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105243; File No. SR-LTSE-2025-31]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Complimentary Products and Services Offered by the Exchange

April 15, 2026.

I. Introduction

On December 31, 2025, Long-Term Stock Exchange, Inc. ("LTSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section

19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 14.602 (Products and Services Offered to Companies) to update, reorganize, and adopt new complimentary products and services that the Exchange offers Companies³ through its affiliate, LTSE Services, Inc. ("LTSE Services"). The proposed rule change was published for comment in the **Federal Register** on January 16, 2026.⁴ On February 26, 2026, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule change.⁶ On April 8, 2026, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.⁷ The Commission has received no comment letters on the proposed rule change. This order provides notice of the filing of Amendment No. 1 to the proposed rule change, and grants approval of the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change, as Modified by Amendment No. 1

Pursuant to Rule 14.602, the Exchange offers the following complimentary products and services ("Complimentary Services"), which each Company may elect whether or not to receive: (1) promotional services offered in connection with listing, including Company-specific web pages on the Exchange's website, press releases, articles, videos, and podcasts, and invitations to participate in listing ceremonies; (2) periodic Capital Market

Reports that provide tailored investor and capital markets as well as sector-specific insights and analytics for each listed Companies; (3) periodic updates to listed Company-specific web pages on the Exchange's website on an ongoing basis; and (4) Capital Markets Solutions, which consists of (a) the Investor Alignment Solution focused on Environmental, Social and Governance ("ESG") analysis and strategy to help identify and access long-term and ESG performance-focused investors and (b) the Long-Term Investor Platform ("LTIP"), a software platform providing shareholder intelligence and utilization for long-term growth.⁸

The Exchange proposes to amend Rule 14.602 to update, reorganize, and adopt new complimentary products and services available to Companies through LTSE Services. As part of these amendments, the Exchange proposes to create a new category of "Market Intelligence products and services," which will include: (i) the existing Capital Markets Reports, retained in their current form;⁹ and (ii) a Market Intelligence Reports offering, consisting of a new investor-holding analysis together with the existing ESG focused analysis.¹⁰ The Exchange proposes to remove the requirement that Companies request within 90 days of listing access to the currently offered Capital Market Solutions reports to permit both newly listed and currently listed Companies to request the newly proposed Market Intelligence Report(s) at any time, subject to the defined five-year availability period.¹¹

The Exchange also proposes to: (i) remove references to the LTIP from the Rule 14.602, as it will no longer be offered;¹² (ii) renumber "Company-specific web page updates" within the rule;¹³ and (iii) adopt an Investor Access Program,¹⁴ which will provide Companies with a complimentary

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ "Company" means the issuer of a security listed or applying to list on the Exchange. For purposes of Chapter 14 of the LTSE Rules, the term "Company" includes an issuer that is not incorporated, such as, for example, a limited partnership. See Exchange Rule 14.002(a)(5).

⁴ See Securities Exchange Act Release No. 104587 (Jan. 13, 2026), 91 FR 2216 ("Notice").

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 104898, 91 FR 10424 (Mar. 3, 2026). The Commission designated April 16, 2026, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁷ In Amendment No. 1 to the proposed rule change, the Exchange: (i) reflected changes made in LTSE-2026-09, which extended the time complimentary services may be provided from 4 years to 5 years; (ii) provided additional description and support for certain aspects of the proposal; and (iii) made minor technical changes to improve the clarity and readability of the proposed rule change. Amendment No. 1 is available on the Commission's website at <https://www.sec.gov/rules-regulations/public-comments/sr-ltse-2025-31>.

⁸ See Amendment No. 1, *supra* note 7, at 4-5.

⁹ See Notice, *supra* note 4, at 2217. The Exchange represents that the Capital Market Reports will continue to have an approximate retail value of \$5,000 per year. See Amendment No. 1, *supra* note 7, at 6.

¹⁰ See Notice, *supra* note 4, at 2217. The Exchange represents that the proposed Market Intelligence Reports will have an approximate retail value of \$150,000 per year. See Amendment No. 1, *supra* note 7, at 6.

¹¹ See Amendment No. 1, *supra* note 7, at 6.

¹² See Notice, *supra* note 4, at 2217. The Exchange represents that the LTIP is not currently used by any Companies, and no issuer has expressed an interest in using it. *Id.*

¹³ *Id.* The Exchange represents that the Company-specific web page updates will continue to have an approximate retail value of \$5,000 per year. *Id.*

¹⁴ *Id.* The Exchange represents that the Investor Access Program will have an approximate value of \$150,000 per year. *Id.*

²² 17 CFR 200.30-3(a)(12).

virtual engagement program designed to facilitate direct interaction between listed issuers and investors.¹⁵

Lastly, the Exchange proposes to reorganize Rule 14.602 to improve readability so market participants can easily understand the scope and organization of each offering.¹⁶ Specifically, the Exchange proposes that subsection (b) will set forth the principal categories of offerings,¹⁷ while a newly designated subsection (c) will set forth that the duration of select offerings is a five-year term, and a new subsection (d) titled 'Election of Services' will be added to align with the updated organization of the rule and improve clarity for Companies and market participants.¹⁸

The Exchange proposes to implement the revised Rule on a prospective basis. The Exchange expects to begin offering the newly adopted Market Intelligence Report(s) and the Investor Access Program within two quarters of receiving approval.¹⁹ For Companies currently receiving Capital Markets Solutions under the existing rule, the Exchange proposes to transition those Companies to the revised Market Intelligence Report(s) without interruption in service.²⁰ The five-year availability period for such Companies will continue to be measured from the date the Company initially commenced receiving the applicable reports, consistent with the amended rule.²¹ For the Investor Access Program, the Exchange will notify newly and

currently listed Companies of the availability of the program following approval and will make participation available on an elective basis. Companies may elect to participate at any time, and the applicable five-year period will be measured from the date of first use.²² The Exchange does not anticipate any disruption to existing services during the transition.²³

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, as modified by Amendment No. 1, and finds that it is consistent with the requirements of Section 6 of the Act.²⁴ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4)²⁵ and 6(b)(5) of the Act²⁶ in particular, in that the proposed rule is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission finds that the proposed rule change is consistent with Section 6(b)(8) of the Act²⁷ in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange states that the modifications to its Complimentary Services represent "a reasonable and appropriate competitive response to similar issuer-support programs provided by other national securities exchanges" and that "[b]y expanding, modernizing and reorganizing its complimentary issuer-services program, the Exchange seeks to remain competitive as a listing venue and to attract and retain Companies by ensuring that they have access to services comparable to those available on other exchanges."²⁸ The Exchange proposes to update and reorganize Exchange Rule 14.602 to more clearly describe the Complimentary Services it provides to Companies, the duration for which these services will be provided at no charge, and to expand the scope of available services. Specifically, the Exchange proposes to add Market

Intelligence Reports²⁹ and the Investor Access Program³⁰ to its suite of Complimentary Services. The Exchange also proposes to eliminate the LTIP as an offered service.³¹ The Exchange further proposes to remove the requirement that newly listed companies elect to receive access to Capital Market Solutions within 90 days of listing.³² Instead, Companies would be permitted to elect to receive Market Intelligence Reports and participate in the Investor Access Program at any time. As proposed, all Complimentary Services will be offered to both newly listed and currently listed companies for the same period of time. In addition, the Exchange has represented that offering the proposed complimentary products and services will have no adverse impact on the Exchange's regulatory function, and the Exchange will continue to allocate sufficient resources to, and fully perform, all of its regulatory obligations.³³

Describing in the Exchange's rules the products and services available to listed companies, their associated values, and the length of time for which issuers are entitled to receive such services adds greater transparency to the Exchange's rules and will ensure that individual listed companies are not given specially negotiated packages of products or services to list, or remain listed, which would raise unfair discrimination issues under the Act.³⁴ Furthermore, all Companies will receive the same Complimentary Services for the same duration. For these reasons, the Commission believes that the package of Complimentary Services is equitably allocated among issuers consistent with Section 6(b)(4) of the Act,³⁵ does not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act, and does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.³⁶

¹⁵ *Id.* The Exchange represents that the Investor Access Program will allow for LTSE Services to engage and fund a third-party provider to identify investors and facilitate introductions for Companies, with LTSE Services having no role beyond contracting for and paying for such services. See Amendment No. 1, *supra* note 7, at 7–8. The Exchange also states that the structure and purpose of its proposed Investor Access Program are generally consistent with similar programs and services offered by other national securities exchanges. For example, both NYSE and Nasdaq provide issuer-focused investor-engagement programs designed to facilitate meeting with institutional investors. See Notice, *supra* note 4, at 2217–18. The Exchange further represents that, to the extent introductions to potential investors are facilitated, such activities will be conducted by a third-party provider that is a registered broker-dealer, as applicable. See Amendment No. 1, *supra* note 7, at n.12.

¹⁶ See Amendment No. 1, *supra* note 7, at 9.

¹⁷ In particular, the Exchange explains that the description of the Company-specific web page updates offering will be moved to new section (b)(3). This offering will not be modified and will continue to have an approximate retail value of \$5,000 per year. See Notice, *supra* note 4, at 2217.

¹⁸ See Notice, *supra* note 4, at 2218.

¹⁹ See Amendment No. 1, *supra* note 7, at 10.

²⁰ *Id.*

²¹ *Id.* at 10–11. The Exchange represents that because the LTIP is not currently utilized by any Company, its removal will not require any operational transition. *Id.* at 11.

²² *Id.* at 11.

²³ *Id.*

²⁴ 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78f(b)(4).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ 15 U.S.C. 78f(b)(8).

²⁸ See Notice *supra* note 4, at 2218.

²⁹ See *supra* note 10 and accompanying text.

³⁰ See *supra* notes 14–15 and accompanying text.

³¹ See *supra* note 12 and accompanying text.

³² See *supra* note 11 and accompanying text.

³³ See Notice, *supra* note 4, at 2219.

³⁴ The Commission views complimentary products and services provided by exchanges to listed companies as a discount on the ultimate listing fees paid by such companies. See, e.g., Securities Exchange Act Release Nos. 91054 (February 3, 2021), 86 FR 8812 (February 9, 2021) (order approving SR-LTSE-2020-22); 81872 (October 13, 2017), 82 FR 48733 (October 19, 2017) (order approving SR-IEX-2017-20); 65127 (August 12, 2011), 76 FR 51449 (August 18, 2011) (order approving SR-NYSE-2011-20); and 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (order approving SR-NASDAQ-2011-122).

³⁵ 15 U.S.C. 78f(b)(4).

³⁶ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-LTSE-2025-31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-LTSE-2025-31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the 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-LTSE-2025-31 and should be submitted on or before May 11, 2026.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. Amendment No. 1 sets forth additional support and clarifying detail regarding the proposal. These changes (1) reflect changes made in LTSE-2026-09, which extended the time complimentary services may be provided from 4 years to 5 years; (2) provide additional description and support for certain aspects of the proposal; and (3) make other technical

and non-substantive changes for clarity and readability. Amendment No. 1 does not alter any substantive provisions of the remaining parts of the proposed rule change from what is set forth in the Notice, which was subject to public comment.

The Commission finds that Amendment No. 1 does not raise any novel regulatory issues that have not previously been subject to public comment and is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediment to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁷ that the proposed rule change (SR-LTSE-2025-31), as modified by Amendment No. 1, be and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-07592 Filed 4-17-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, April 23, 2026.

PLACE: The meeting will be held via remote means and at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an

³⁷ *Id.*

³⁸ 17 CFR 200.30-3(a)(12).

announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

(Authority: 5 U.S.C. 552b.)

Dated: April 16, 2026.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2026-07650 Filed 4-16-26; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105239; File No. SR-CBOE-2026-034]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Definition of "Exercise Settlement Amount" Applicable to Binary Options

April 15, 2026

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 April 9, 2026, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend the definition of "exercise settlement amount" applicable to binary options. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/options/regulation/rule_filings/bzx/), 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 amend its Rules related to binary options.³ Binary options are based on the same framework as traditional, standardized options traded on the Exchange, except the payout of a binary option is an amount contingent upon the occurrence of the option being in- or at-the-money rather than the degree to which the option is in-the-money. As a result, payout at expiration of a binary option is an all-or-nothing occurrence. Current Rule 4.16 permits the Exchange to list binary options on broad-based indexes.⁴ Rule 4.16(b) defines a binary option as a European-style option contract having an exercise settlement amount that is established at the creation of the option.

³ The Exchange does not currently list binary options but intends to begin listing binary options in upcoming months.

⁴ Pursuant to Rule 4.16(a), Rule 4.16 applies to binary options only, and all Rules apply to the trading of binary options, except as otherwise provided or the context otherwise requires.

The exercise settlement amount for a binary option is the amount of cash that a holder will receive upon exercise of the contract. The exercise settlement amount is a set amount equal to the exercise settlement value multiplied by the contract multiplier. The exercise settlement value will be an amount determined by the Exchange on a class-by-class basis and shall be equal to \$10 or \$1,000 or a value between those values, unless otherwise adjusted per Rule 4.6.⁵ The contract multiplier is the multiple applied to the exercise settlement value to arrive at the total exercise settlement amount per contract, which is established on a class-by-class basis and shall be at least one.⁶ Binary options are paid out if the settlement value⁷ of the underlying broad-based index equals, exceeds, or is less than the exercise price, depending on the type of option (*i.e.*, call or put). A call binary option is an option contract that returns an exercise settlement amount if the settlement value of the underlying broad-based index is at or above the exercise price⁸ at expiration (*i.e.*, in- or at-the-money), while a put binary option is an option contract that returns an exercise settlement amount if the settlement value of the underlying broad-based index is below the exercise price at expiration (*i.e.*, in-the-money).⁹ The Exchange designates binary options as to expiration date, exercise price, exercise settlement amount, contract

⁵ Pursuant to Rule 4.16(f), binary option contracts are subject to adjustment only in accordance with and to the extent specified in the By-Laws and Rules of The Options Clearing Corporation ("OCC").

⁶ See Rule 4.16(b) (definition of "contract multiplier").

⁷ The settlement value for a binary option is the value of the underlying broad-based index that is used to determine whether a binary option is in, at, or out of the money. For binary options on a broad-based index on which traditional options on the same broad-based index are A.M.-settled, the "settlement value" is the reported opening level of such index as derived from the prices of the underlying securities on such day and as reported by the Reporting Authority for the index. For binary options on a broad-based index on which traditional options on the same broad-based index are P.M.-settled, the "settlement value" is the reported closing level of such index as derived from the prices of the underlying securities on such day and as reported by the Reporting Authority for the index. See current Rule 4.16(b) (definition of "settlement value"). Binary options that are "at-the-money," "in-the-money," or "out-of-the-money" are a function of the settlement value of the underlying broad-based index in relation to the type of binary option (*i.e.*, put or call) and the exercise price. See current Rule 4.16(e).

⁸ With respect to a binary option, the exercise price is the value to which the settlement value of the underlying broad-based index is compared to determine whether the holder of a binary option is entitled to have the option be paid out. See Rule 4.16(b) (definition of "exercise price").

⁹ See Rule 4.16(b) (definitions of "call binary option" and "put binary option").

multiplier, and underlying broad-based index.¹⁰

As noted above, current Rule 4.16(b) permits the exercise settlement value for a binary option to be an amount determined by the Exchange on a class-by-class basis equal to between \$10 and \$1,000. Given the exercise settlement amount for a binary option equals the exercise settlement value multiplied by the contract multiplier (which must be at least 1), the current minimum permissible exercise settlement amount for a binary option is therefore \$10 (if the multiplier for a binary option was 1 and the Exchange determined the exercise settlement value to be \$10). The Exchange proposes to reduce the minimum exercise settlement value for a binary option to be \$1, making the minimum permissible exercise settlement amount for a binary option to be \$1 (if the multiplier for a binary option was 1 and the Exchange determined the exercise settlement value to be \$1). As the standard multiplier for traditional options is 100, the proposed rule change would permit the Exchange to list a binary option with the typical multiplier of 100 to have an exercise settlement amount of \$100 (*i.e.*, 100 multiplier and exercise settlement value of \$1).

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.¹¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² 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)¹³ requirement that the rules of an exchange not be designed

¹⁰ See Rule 4.16(c)(2).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ *Id.*

to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it expands the range of permissible payout amounts for binary options, notably for binary options with the standard multiplier for traditional options is 100. Currently, if the Exchange listed a binary option with a 100 multiplier, the lowest permissible exercise settlement amount would be \$1,000 (*i.e.*, 100 multiplier times \$10 exercise settlement value). The proposed rule change would permit the Exchange to apply a standard 100 multiplier to a binary option so the exercise settlement amount could be as low as \$100. The Exchange believes it would benefit investors to slightly increase the range of permissible exercise settlement values (and thus exercise settlement amounts) for binary options with a 100 multiplier given investors' familiarity with that multiplier.¹⁴ The proposed rule change would merely reduce the permissible lowest possible exercise settlement amount for a binary option from \$10 to \$1, which is a minor change in a range that currently has no maximum, as the Rules apply no maximum multiplier. Additionally, as the purpose of the proposed rule change is to permit a \$100 exercise settlement amount for binary options with the standard 100 multiplier, the Exchange notes current Rules of the Exchange already permit an exercise settlement amount of \$100 (*e.g.*, a binary option could have a multiplier of 1 and an exercise settlement value of \$100, or a multiplier of 10 and an exercise settlement value of \$10.). The proposed rule change merely permits the Exchange to determine such an exercise settlement amount using a more common multiplier with which investors are generally more familiar. As is the case for any binary option, the exercise settlement amount will be known to investors in advance, and they can determine whether to trade a binary option with that exercise settlement amount.

¹⁴ Investors are familiar with options with a multiplier of 100 because that is the multiplier for all equity and index options listed on the Exchange (except for nanos). See Product Specifications, available at <https://www.cboe.com/tradable-products/product-list>.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because any exercise settlement value amount determined by the Exchange for a binary option will apply to all Trading Permit Holders in the same manner (as the exercise settlement amount based on that exercise settlement value paid to any holder of that binary option upon exercise of the contract will be the same amount). The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition because the rules of other exchanges currently permit an exercise settlement amount of \$100 for binary options with multipliers of 100,¹⁵ and the proposed rule change will permit the Exchange to list binary options with the same multiplier and exercise settlement amount. Further, other exchanges that permit the listing of binary options on indexes may amend their rules to permit the same exercise settlement value if they choose.¹⁶

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 written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-

¹⁵ See NYSE American, LLC ("NYSE American") Section 17, Rule 900 (definitions of "Finish High" and "Finish Low", which provide that an options contract returns \$100 if it is in-the-money). While this rule applies to binary options on equities and the Exchange's Rules apply to binary options on indexes, binary equity options function in substantially the same manner as binary index options and result in a payout of a settlement amount if the option is in-the-money, and the Exchange believes it is appropriate to permit the Exchange to designate similar payout amounts for binary options with the same common multiplier of 100 despite the difference in the underlying.

¹⁶ The Exchange notes this payout amount is the same as the payout amount for products structured in substantively the same manner as binary options that are listed on other market platforms not registered as national securities exchanges.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

4(f)(6)¹⁸ thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6)²⁰ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2026-034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CBOE-2026-034. 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

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2026-034 and should be submitted on or before May 11, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-07588 Filed 4-17-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105241; File No. SR-Phlx-2026-19]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Review of Professional Orders

April 15, 2026.

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 April 1, 2026, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the quarterly review of Professional³ orders.

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 amend the quarterly review of Professional orders. Today, orders for any Public Customer⁴ that average more than 390 orders per day during any month of a calendar quarter must be represented as Professional orders for the next calendar quarter.⁵ In order to properly represent orders entered on the Exchange, member organizations⁶ are required currently to review their Public Customers’ activity and, on at least a quarterly basis, designate orders as Public Customer orders or Professional orders.⁷ Specifically, member organizations are required to conduct a

⁴ 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 1(b)(45). See Options 1, Section 1(b)(46).

⁵ The requirement to review Public Customers’ activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Public Customer Orders or Professional Orders is not in the current rule text, however it was described in the adopting proposal. See Securities Exchange Act Release No. 77054 (February 4, 2016), 81 FR 7166 (February 10, 2016) (SR-Phlx-2016-10) (Notice of Filing of Proposed Rule Change Relating to Professional Customer Definition) (“SR-Phlx-2016-10”). The instant proposal seeks to codify the timing for review of Public Customers’ activity.

⁶ 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 General 1, Section 1(a)(17).

⁷ See 81 FR 7166 at 7167.

quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter.⁸ While member organizations are required to designate accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Public Customer Orders but that has averaged more than 390 orders per day during a month, the Exchange must notify the member organization and the member organization is required to change the manner in which it is representing the customer’s orders within five days.⁹

Proposal

At this time, the Exchange proposes to shorten the quarterly review and designation to a monthly review. The Exchange proposes to state at Options 1, Section 1(b)(45)(ii) that orders for any customer that had an average of more than 390 orders per day during any calendar month must be represented as Professional orders for the next calendar month.

As noted, currently, each member organization is required to monitor Public Customer orders to determine if the Public Customer has averaged more than 390 orders per day during a month. Determining whether a Public Customer has executed more than 390 orders per day during a month requires computing a daily average. As such, member organizations should be performing the workflow necessary to designate orders on a daily basis. Therefore, the proposal does not amend the current workflow, rather, the proposal amends the timeframe to change the manner in which the customer’s order is being represented from five days after the end of each calendar quarter to five days after the end of each calendar month.

The Exchange does not believe that this amendment is a significant departure from the current rule, nor does it impose any burden on any member organization because each broker-dealer is required currently to perform the necessary calculation daily to arrive at the requisite average. Further, in addition to the calculation, broker-dealers are subject to know-your-customer and suitability requirements under FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) and would need to consider whether a customer meets the Professional designation for purposes of determining best execution and making appropriate recommendations. The Exchange notes

⁸ See *id.*

⁹ See *id.*

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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 Options 1, Section 1(b)(45). The manner in which a Professional order is calculated is specified in Options 1, Section 1(b)(45)(i).

that the trading behavior of a Public Customer can be distinguished from that of a Professional which is the purpose of the separate designations. Finally, some member organizations currently designate a Public Customer that has averaged more than 390 orders per day during a month as a Professional on a more expedited basis, not waiting until five days after the quarter.

The Exchange believes that a calendar month is a sufficient time period to determine whether the activity of a customer meets the criteria for a Professional order. The Exchange believes that the shortened time period will ensure that the spirit of the designation of Professional order is met in that member organizations will make any appropriate changes to the way in which they are representing orders in a 30-day timeframe as opposed to a 90-day timeframe, thereby ensuring the designation is applied in a more expeditious manner.

The Exchange continues to believe that identifying Professional Orders based upon the average number of orders entered in qualified accounts is an appropriate and objective approach to reasonably distinguish such persons and entities from retail investors or market participants.

Technical Amendment

The Exchange proposes to reserve Options 3B and Options 3C. Another Nasdaq affiliated exchange has proposed rules in those corresponding sections. The reserved section is intended to harmonize the structure of Phlx's rules to those of other Nasdaq affiliated exchanges. The Exchange proposes that this amendment be operative 30 days from the date of filing. The Exchange also proposes to update the name of the "Diamonds Trust" in Options 9, Section 13(a) to "SPDR® Dow Jones® Industrial Average ETF Trust."

Implementation

The Exchange proposes implementing this rule change on July 1, 2026, except for the technical amendments which should become operative 30 days after the date of the filing. The Exchange will issue an Options Trader Alert to provide notice to member organizations of the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is

designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange's proposal to shorten the quarterly look-back to a monthly look-back is consistent with the Act because it will ensure that the spirit of the designation of Professional order continues to be met, only on a more expedited basis—removing a potential delay of two months before affecting a change in the designation. The Exchange believes that this amendment will remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting the consistent application of its rules and shortening the timeframe to change the designation for all member organizations while continuing to provide a sufficient time period to determine whether the activity of a customer meets the criteria for a Professional order. Further, the Exchange believes that the shortened time period will continue to promote consistency in the treatment of orders as Professional orders while also preventing members with high volume from receiving benefits reserved for Public Customer orders.

As noted, currently, each member organization is required to monitor Public Customer orders to determine if the Public Customer has averaged more than 390 orders per day during a month. Determining whether a Public Customer has executed more than 390 orders per day during a month requires computing a daily average. As such, member organizations should be performing the workflow necessary to designate orders on a daily basis. Therefore, the proposal does not amend the current workflow, rather, the proposal amends the timeframe to change the manner in which the customer's order is being represented from five days after the end of each calendar quarter to five days after the end of each calendar month.

The Exchange does not believe that this amendment is a significant departure from the current rule, nor does it impose any burden on any member organization because each broker-dealer is required currently to perform the necessary calculation daily to arrive at the requisite average. Further, in addition to the calculation, broker-dealers are subject to know-your-customer and suitability requirements under FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) and would need to consider whether a customer meets the Professional

designation for purposes of determining best execution and making appropriate recommendations. Finally, some member organizations currently designate a Public Customer that has averaged more than 390 orders per day during a month as a Professional on a more expedited basis, not waiting until five days after the quarter.

The Exchange notes that the trading behavior of a Public Customer can be distinguished from that of a Professional which is the purpose of the separate designations. The Exchange continues to believe that identifying Professional orders based upon the average number of orders entered in qualified accounts is an appropriately objective approach to reasonably distinguish such persons and entities from retail investors or market participants. Priority is one of the marketplace advantages provided to Public Customer orders on the Exchange. Public Customer orders are given execution priority over non-Customer orders and quotations of market makers at the same price. Another marketplace advantage afforded to Public Customer orders on the Exchange is that members are generally not assessed transaction fees or are assessed lower fees for the execution of Public Customer orders. The purpose of these marketplace advantages is to attract retail order flow to the Exchange by leveling the playing field for retail investors over market Professionals. This proposal will continue to provide Public Customer accounts with marketplace advantages and distinguish those accounts non-Professional retail investors from the Professionals accounts. The Exchange notes that some non-broker-dealer individuals and entities have access to information and technology that enables them to Professionally trade listed options in the same manner as a broker or dealer in securities.

Technical Amendment

Reserving Options 3B, Options 3C and updating the name of the "Diamonds Trust" are non-substantive amendments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange does not believe that the proposed rule change will impose any burden on intra-market competition because, today, each member organization is required to monitor Public Customer orders to

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

determine if the Public Customer has averaged more than 390 orders per day during a month. Determining whether a Public Customer has executed more than 390 orders per day during a month requires computing a daily average. As such, member organizations should be performing the workflow necessary to designate orders on a daily basis. Therefore, the proposal does not amend the current workflow, rather, the proposal amends the timeframe to change the manner in which the customer's order is being represented from five days after the end of each calendar quarter to five days after the end of each calendar month.

The Exchange does not believe that this amendment is a significant departure from the current rule, nor does it impose any burden on any member organization because each broker-dealer is required currently to perform the necessary calculation daily to arrive at the requisite average. Further, in addition to the calculation, broker-dealers are subject to know-your-customer and suitability requirements under FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) and would need to consider whether a customer meets the Professional designation for purposes of determining best execution and making appropriate recommendations. Finally, some member organizations currently designate a Public Customer that has averaged more than 390 orders per day during a month as a Professional on a more expedited basis, not waiting until five days after the quarter.

The Exchange notes that the trading behavior of a Public Customer can be distinguished from that of a Professional which is the purpose of the separate designations.

Further, the designation of Professional orders would not result in any different treatment of such orders for purposes of compliance with the Exchange's Rules. Public Customers have been granted certain priority over other non-broker-dealer individuals and entities that have access to information and technology that enables them to Professionally trade listed options in the same manner as a broker or dealer in securities. Further, the Public Customer designation allows the Exchange to attract order flow or create more competitive markets.

Also, the Exchange does not believe that the proposed rule change will impose any burden on inter-market competition because other exchanges are expected to adopt similar rules.

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 Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

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-2026-19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-Phlx-2026-19. This file

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 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.

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-2026-19 and should be submitted on or before May 11, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-07590 Filed 4-17-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 36091; File No. 812-15992]

Flat Rock Global, LLC, et al.

April 15, 2026.

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: Flat Rock Global, LLC, Flat Rock Opportunity Fund, Flat Rock Core Income Fund, Flat Rock Enhanced Income Fund.

FILING DATES: The application was filed on February 17, 2026.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will

¹⁴ 17 CFR 200.30-3(a)(12).

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. The email should include the file number referenced above. Hearing requests should be received by the Commission by 5:30 p.m., Eastern time on May 11, 2026, 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: Robert K. Grunewald, Chief Executive Officer, Flat Rock Global, LLC, *robert@flatrockglobal.com* with copies to: Owen J. Pinkerton, Esq., Anne Oberndorf, Esq., and Krisztina Nadasdy, Esq., Eversheds Sutherland (US) LLP, *owenpinkerton@eversheds-sutherland.com*, *anneoberndorf@eversheds-sutherland.com*, and *krisztinanadasdy@eversheds-sutherland.com*.

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, or Adam Large, Senior Special 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' application, filed February 17, 2026, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/search-filings>. 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.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026–07599 Filed 4–17–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 36090; 812–15953]

The RBB Fund Trust and Opal Capital LLC

April 15, 2026.

AGENCY: Securities and Exchange Commission (“Commission” or “SEC”).

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from Section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6–07(2)(a), (b), and (c) of Regulation S–X (“Disclosure Requirements”).

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

APPLICANTS: The RBB Fund Trust and Opal Capital LLC.

FILING DATES: The application was filed on December 11, 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. The email should include the file number referenced above. Hearing requests should be received by the Commission by 5:30 p.m., Eastern time on May 11, 2026, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicants:

Aisha J. Hunt, Esq., Kelley Hunt, PLLC, *aisha@kelleyhunt.law*, with a copy to Jillian L. Bosmann, Esq., Faegre Drinker Biddle & Reath LLP, *jillian.bosmann@faegredrinker.com*.

FOR FURTHER INFORMATION CONTACT:

Trace Rakestraw, Senior Special 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' application, dated December 11, 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 <https://www.sec.gov/search-filings>. 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.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026–07598 Filed 4–17–26; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 08080160]

Wasatch Venture Fund III, LLC; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under Section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company license number 08080160 issued to Wasatch Venture Fund III, LLC, said license is hereby declared null and void.

Paul Salgado,

*Director, Investment Portfolio Management,
United States Small Business Administration.*

[FR Doc. 2026–07630 Filed 4–17–26; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21505 and #21506; ALASKA Disaster Number AK-20018]

Administrative Disaster Declaration of a Rural Area for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of an Administrative disaster declaration of a rural area for the state of Alaska dated April 15, 2026.

Incident: Severe Storms, Flooding and Remnants of Typhoon Halong.

DATES: Issued on April 15, 2026.

Incident Period: October 8, 2025 through October 13, 2025.

Physical Loan Application Deadline Date: June 15, 2026.

Economic Injury (EIDL) Loan Application Deadline Date: January 15, 2027.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Jennifer Talarico, Office of Disaster Recovery and Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the Administrator's disaster declaration of a rural area applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or in person at locally announced locations. For further assistance please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

The following areas have been determined to be adversely affected by the disaster:

Primary Area: Bering Strait Regional Educational Attendance Area.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	6.000
Homeowners without Credit Available Elsewhere	3.000
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000

	Percent
Private Non-Profit Organizations with Credit Available Elsewhere	3.625
Private Non-Profit Organizations without Credit Available Elsewhere	3.625
<i>For Economic Injury:</i>	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 215056 and for economic injury is 215060.

The state which received an SBA Administrative rural declaration is Alaska.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2026-07632 Filed 4-17-26; 8:45 am]

BILLING CODE 8026-09-P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2025-0037]

Privacy Act of 1974; System of Records

AGENCY: Social Security Administration (SSA).

ACTION: Rescindment of a system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, we are issuing public notice of our intent to discontinue an existing system of records notice entitled, Hearing Office Tracking System of Claimant Cases (60-0010), last published on January 11, 2006.

DATES: This rescindment is applicable upon its publication in today's **Federal Register**. We invite public comment on this rescindment. In accordance with the Privacy Act of 1974, we are providing the public a 30-day period in which to submit comments. Therefore, please submit any comments by May 20, 2026.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Head of Privacy and Disclosure Policy, Law and Policy, SSA, Room G-401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, or

through the Federal e-Rulemaking Portal at <https://www.regulations.gov>. Please reference docket number SSA-2025-0037. All comments we receive will be available for public inspection at the above address and we will post them to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Tristin Dorsey, Government Information Specialist, Privacy Implementation Division, Privacy and Disclosure Policy, Law and Policy, SSA, Room G-401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, telephone: (410) 965-1727, email: OGC.OPD.SORN@ssa.gov.

SUPPLEMENTARY INFORMATION: SSA is discontinuing the system of records 60-0010, entitled Hearing Office Tracking System of Claimant Cases, which was created to track hearing office workload information. The records will be combined and managed through an existing system of records currently titled, Hearings and Appeals Case Control System (60-0009), last published in full at 91 FR 754 (January 8, 2026). SSA will rely upon the Hearings and Appeals Case Control System to track and manage hearing office workload information, from the receipt of a request for hearing until the final hearing level disposition (decision or dismissal).

SYSTEM NAME AND NUMBER:

Hearing Office Tracking System of Claimant Cases, 60-0010

HISTORY:

71 FR 1806 (January 11, 2006), Hearing Office Tracking System of Claimant Cases.

72 FR 69273 (December 10, 2007), Hearing Office Tracking System of Claimant Cases.

83 FR 54969 (November 1, 2018), Hearing Office Tracking System of Claimant Cases.

Matthew Ramsey,

Head of Privacy and Disclosure Policy, Law and Policy.

[FR Doc. 2026-07603 Filed 4-17-26; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice: 12997]

United States Passports Moving to Single-Sized Passport Book

ACTION: Notice.

SUMMARY: The U.S. Department of State currently issues two passport book sizes—a 26-page book and a 50-page book. A determination was made to shift

the U.S. passport book to a single-sized, 38-page passport book, with the release of the next redesign.

DATES: Submit comments by June 22, 2026.

ADDRESSES: You may submit comments by the following method: Comment on this notice by going to www.Regulations.gov. You can search for the document by entering "Docket Number: "DOS-2026-0496" in the Search field. Then click the "Comment Now" button and complete the comment form.

FOR FURTHER INFORMATION CONTACT:

Amber Long, Bureau of Consular Affairs, Passport Services, Modernization and Systems Liaison, tel.: (202) 485-6520, email: AskPPTInternationalAffairs@state.gov.

SUPPLEMENTARY INFORMATION: Currently, the Next Generation Passport (NGP) is available in 26-page and 50-page book sizes. Previously, the legacy ePassport was available in a 28-page and 52-page book. The U.S passport Series B is being redesigned for an anticipated rollout in 2028, and this will include a shift to a single-sized book with 38 pages. All passport book types will change with the exception of the Emergency Passport, which will remain a 12-page book.

In 2024, a feasibility study was conducted on the impacts of moving to a single sized passport book. The results of the study determined a 38-page book would increase efficiencies and reduce waste within the production of the passport at the Government Publishing Office (GPO) and within the issuance process at the U.S. Department of State. On average, 92 percent of customers applying for a passport book request the 26-page book. Of the 8 percent of customers receiving the 50-page book, most do so due to a policy practice to issue 50-page books to special-issuance and overseas applicants. In other words, while some frequent international travelers, U.S. citizens residing abroad, and special-issuance passport holders will need to renew more frequently once the 50-page option becomes unavailable, the Department expects those applicants to make up a small percentage of all passport applicants. Switching to a single-sized, 38-page book will allow more visa pages for the majority of applicants. Planned enhancements to the Department's Online Passport Renewal (OPR) platform that will allow overseas applicants to renew their passports online are also expected to introduce new efficiencies for those customers and may mitigate this burden.

The Department seeks input from stakeholders on the potential burdens of eliminating the 50-page book as an option. The Department appreciates and values all feedback and will give due consideration to the comments received. However, at this time, the Department does not plan to respond to the comments in the **Federal Register**.

Matthew D. Pierce,

Deputy Assistant Secretary, Passport Services, Bureau of Consular Affairs, U.S. Department of State.

[FR Doc. 2026-07670 Filed 4-17-26; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Operating Limitations at Chicago O'Hare International Airport, Order Establishing Scheduling Limits

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

ACTION: Order establishing scheduling limits at Chicago O'Hare International Airport.

I. Introduction

Following delay reduction meetings conducted under 49 U.S.C. 41722, this Order establishes a temporary limit on the number of scheduled operations at Chicago O'Hare International Airport (ORD). It allocates those operations based on Summer 2025 (*i.e.*, March 30, 2025, through October 25, 2025) approved schedules under standard International Air Transportation Association (IATA) Level 2 schedule facilitation guidelines. Unapproved air carrier schedules published at ORD well after the conclusion of the standard Level 2 facilitation process and proximate to the beginning of the Summer 2026 scheduling season ("Summer 2026", *i.e.*, March 29, 2026, through October 24, 2026) will exceed the airport's capacity throughout Summer 2026 based on current factors such as airport construction and competitive scheduling dynamics occurring between the two largest carriers at the airport. Therefore, the Federal Aviation Administration (FAA) has determined that 2,708 operations per day is the level that will maximize capacity at the airfield in the Summer of 2026 without resulting in delays that are worse than those experienced in the Summer of 2025.

By establishing this scheduling limit, this Order will achieve significant public benefits in Summer 2026 by

improving airspace and airfield safety and efficiency, reducing surface movement in the constrained taxiway environment, mitigating the substantial inconvenience to the traveling public caused by excessive flight delays at the airport, and will meet a serious transportation need by preventing widespread operational disruption at ORD and throughout the National Airspace System (NAS) during Summer 2026. This Order takes effect on May 17, 2026, and expires on October 24, 2026. As discussed further below, the FAA believes that significant progress on airfield construction through the Summer 2026 season will reduce the likelihood of the need for the scheduling limit beyond the end of the season.

II. Background

Authority

In this matter, using authority provided in 49 U.S.C. 41722, the Secretary of Transportation requested that the Administrator convene meetings involving air carriers serving ORD to reduce overscheduling and flight delays during hours of peak operation in Summer 2026. Consistent with the statutory standards, the Secretary determined that the meetings were necessary to meet a serious transportation need or achieve an important public benefit, and the Administrator conducted the meetings.

The U.S. Government has exclusive sovereignty over the airspace of the United States,¹ and the Department of Transportation, including the FAA, has broad authorities to address safety, efficiency, economic, and competitive issues affecting the airline industry. As part of these broad authorities, the Administrator may assign by regulation or order the use of the airspace as necessary to ensure the safety of aircraft and the efficient use of the airspace.² The Administrator may modify or revoke an assignment when required by the public interest.³ The Administrator considers as being in the public interest, among other things, controlling the use of the navigable airspace and regulating operations in that airspace in the

¹ 49 U.S.C. 40103.

² 49 U.S.C. 40103(b)(1), as previously codified in 49 U.S.C. App. § 307(a). Title 49 was recodified by Public Law 103-222, 108 Stat. 745 (1994). The textual revisions were not intended to result in substantive changes to the law. The recodification stated that the words in § 307(a) "under such terms, conditions, and limitations as he may deem" were omitted as surplus. H. Rpt. 103-180 (103d Cong., 1st Sess. 1993) at 262.

³ *Id.*

interests of safety and efficiency.⁴ In carrying out his responsibilities under the Federal Aviation Act, the Secretary considers as being in the public interest, among other things: maintaining the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable concentration; placing maximum reliance on competitive market forces and on actual and potential competition; and preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation.⁵

ORD Level 2 Designation

On September 22, 2008, FAA designated ORD as a Level 2 schedule-facilitated airport under the International Air Transportation Association (IATA) Worldwide Slot Guidelines (WSG), effective at the start of the Summer 2009 scheduling season.⁶ FAA determined that the Level 2 designation was appropriate for ORD in advance of the termination of the provisions of Title 14 of the Code of Federal Regulations (CFR), Part 93, Subpart B—Congestion and Delay Reduction applicable to ORD set for October 31, 2008.⁷ This subpart prescribed rules and procedures for the scheduled operations and the assignment, transfer, sale, lease, and withdrawal of Arrival Authorizations at ORD. These rules were sunset with respect to ORD in light of the O'Hare Modernization Plan. The planned opening of a new runway that would increase capacity at the airport was set for shortly after the sunset date.⁸ At the time, FAA believed that it was unnecessary to continue those requirements provided in 14 CFR part 93 for scheduled operations because the new runway was intended to increase capacity at the airport. However, as the airport adjusted to the new capacity and as the O'Hare Modernization Plan continued to progress, FAA concluded that the Level 2 designation was necessary to facilitate the scheduling of operations so that the airport did not suffer from periods of overscheduling.⁹

On May 1, 2019, FAA temporarily suspended ORD's Level 2 runway designation for the Winter 2019/2020 scheduling season while reviewing if

the Level 2 designation was “provid[ing] substantive benefits to the traveling public by reducing potential runway congestion and delay.”¹⁰ The FAA's suspension of Level 2 schedule facilitation only impacted runway and did not change the airport's Level 2 Terminal designation.¹¹ Carriers still had to work with the terminal facilitator on schedule review consistent with prior seasons.¹² The suspension only impacted the Winter 2019/2020 scheduling season. On September 27, 2019, FAA announced that it concluded its review of Level 2 airports and Level 2 schedule facilitation at ORD as a Level 2 airport would resume at the start of the Summer 2020 scheduling season. To date, ORD remains a Level 2 airport.

FAA does not allocate slots, apply historic precedence, or impose minimum usage requirements under Level 2 at ORD. Level 2 schedule facilitation depends upon close and continuous discussions and voluntary agreement between carriers and FAA to reduce congestion. At Level 2 airports, FAA provides priority consideration for flights approved by FAA and operated by the carrier in those approved times in the prior scheduling season when FAA reviews proposed flights for facilitation in the next corresponding scheduling season. Only those flights that were operated as approved in the prior scheduling season generally receive priority for the next corresponding scheduling season. However, FAA notes that the usual Level 2 processes include flexibility for the facilitator to prioritize planned flights that are canceled in advance or on the day of the scheduled operation due to operational impacts beyond the control of the carrier.¹³

Summer 2025 Performance and Planned Summer 2026 Schedule

Daily scheduled operations for the Summer 2025 scheduling season peaked at approximately 2,680 total daily operations. In Summer 2025, ORD

managed a total of 495,874 operations (source: Cirium). Overall, the average on-time performance rate was approximately 75% (source: Cirium).¹⁴ Of the 247,929 departures at ORD during Summer 2025, only 56% of departures and experienced no delay (source: Cirium). Of the 247,945 arrivals at the airport during Summer 2025, only 58% experienced no delay (source: Cirium).

The reduced performance in 2025 was largely influenced by extensive construction projects at ORD. These included tollway construction along the western airport boundary, rehabilitation work on Taxiways A & B resulting in partial closures, and various taxiway closures paired with new routing to accommodate concrete work west of the main terminal area as part of the Terminal Area Plan (TAP). Additionally, Phase 2 of Taxiway LL construction, which involved the reconstruction of Taxiway N to accommodate Taxiway LL, further complicated operations.

Looking ahead to Summer 2026, many of these construction projects will continue. Tollway construction along the western boundary will persist, along with ongoing rehabilitation and partial closure of Taxiway A. TAP-related construction and continued work on Taxiway N will also proceed. Given these continued disruptions, the FAA anticipates similar operational challenges as those experienced in 2025.

Reducing the schedule at ORD for Summer 2026 is a strategic decision to mitigate expected performance issues. Proactively adjusting the daily scheduled operations will enhance on-time performance and minimize delays, thereby improving the overall efficiency and reliability of airport operations during this period of continued extensive construction.

On October 3, 2025, FAA issued the Schedule Submission Notice for Summer 2026. Consistent with the Worldwide Airport Slot Guidelines (WASG), FAA processed the ORD submissions in a timely fashion.¹⁵ After the initial slot allocation list (SAL) was issued to carriers by FAA in November

¹⁴ “On-time” in this instance means within 15 minutes of the scheduled arrival or departure time.

¹⁵ The currently effective version of the WASG is edition 4, effective August 1, 2025. However, despite several updates to the guidelines, the FAA generally applies its predecessor, the Worldwide Slot Guidelines (WSG), edition 9, to the extent there is no conflict with U.S. law or regulation. The WASG is published jointly by Airports Council International-World, IATA, and the Worldwide Airport Coordinators Group (WWACG). To avoid confusion, the guidelines will be referred to generally as “WASG” throughout this document unless specifically referring to the WSG.

⁴ 49 U.S.C. 40101(d)(4).

⁵ 49 U.S.C. 40101(a)(4), (a)(6) and (a)(9).

⁶ Notice of Submission Deadline for Schedule Information for O'Hare International, John F. Kennedy International, and Newark Liberty International Airport for the Summer 2009 Scheduling Season, 73 FR 54659 (September 22, 2008).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Notice of Submission Deadline for Schedule Information for John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, and San Francisco International Airport for the Winter 2019/2020 Scheduling Season; Suspension of Level 2 at Chicago O'Hare International Airport, 84 FR 18630 (May 1, 2019).

¹¹ *Id.*

¹² *Id.*

¹³ Construction-Related Scheduling Relief Concerning Operations at Newark Liberty International Airport, Chicago O'Hare International Airport, Los Angeles International Airport, San Francisco International Airport, and Ronald Reagan Washington National Airport, March 1, 2025 Through June 15, 2025, and September 1, 2025 Through December 31, 2025, 89 FR 91544 (November 11, 2024).

2025, FAA continued to field requests for additional operations from carriers.

As noted in the March 3, 2026, Notice, currently published schedules exceed 3,080 daily operations on peak days (source: Cirium). The published schedule for a peak day in Summer 2026 represented a 14.9% increase from a peak day in Summer 2025. This proposed increase is significant and would stress the runway, terminal, and air traffic control systems at the airport in light of present operating conditions.

The Department of Transportation (DOT) and FAA determined that the increase in operations at ORD evident from published schedules will exceed the airport's capacity throughout the Summer 2026 scheduling season. In order to address DOT's and FAA's concerns that ORD had become overscheduled for the Summer 2026 scheduling season, the FAA Administrator, in coordination with the Secretary of Transportation, asked air carriers to participate in a scheduling reduction meeting to find a resolution to the overscheduling.

Scheduling Reduction Meetings

Understanding that the Summer 2026 scheduling season was to start on March 29, 2026, as conditions were evolving, FAA expeditiously convened a scheduling reduction meeting with U.S. domestic air carrier participants and representatives from the Chicago Department of Aviation (CDA). Representatives of the Department of Justice Antitrust Division monitored the joint and individual meeting sessions of the scheduling reduction meeting. The in-person sessions between air carriers and FAA and DOT were transcribed.

The initial session occurred on March 4, 2026. These discussions were based on targeted reductions proposed in the Notice dated March 3, 2026, with a daily cap target of 2,800 operations, with 100 arrivals and departures respectively per hour. This initial proposal reflected what would essentially be a freeze at then-current peak operations at ORD. However, through the course of the proceedings, FAA proposed lowering the targeted operational limit as FAA grew concerned that ongoing airfield construction impacts would impede the ability of the airport to handle additional capacity over the peak Summer 2025 level (*i.e.*, approximately 2,600 daily operations).

During the proceedings, FAA also proposed using the Summer 2025 scheduling season as the baseline to fairly allocate the reductions among the major air carrier operators at the airport in such a way as not to unduly affect the

competitive balance at the airport. FAA recessed the March 4, 2026, proceedings without an agreement from air carriers on reductions for Summer 2026.

After reviewing stakeholder input from the first round of meetings, written submissions to the docket, and operational data for ORD, on March 18, 2026, the FAA published a Notice announcing a second round of scheduling reduction meetings that would begin on March 19, 2026.¹⁶ In that Notice, FAA published a daily cap target of 2,608 operations, equivalent to the peak operations of Summer 2025. The Notice also stated that, "[c]onsistent with IATA Level 2 guidance that prioritizes services operated in the previous equivalent season, the Department and FAA will use the final Summer 2025 schedules as the baseline for determining the appropriate reductions to be borne by each party for the Summer 2026 season."¹⁷ This is the same baseline FAA had previously notified carriers in October 2025 would be used to determine scheduling priorities for Summer 2026.¹⁸

On March 19, 2026, FAA initiated the second round of scheduling reduction meetings focused on achieving a lower reduction rate. Participants at the second session included several U.S. domestic air carriers and the CDA.

FAA solicited comments from the public until March 26, 2026. FAA concluded the scheduling reduction process on April 16, 2026.

III. Comments Regarding Competition, Reduction Allocations, and Operational Cap at ORD

FAA received seven comments in total on both notices. Commenters include CDA, Airports Council International (ACI-NA), Spirit Airlines (Spirit), United Airlines (United), Mr. Steven Endres, and two anonymous commenters.

CDA stated that the airfield is continuously improving and that the impact of construction will be "markedly lessened in quantity, duration, and complexity" in Summer 2026 compared to Summer 2025. CDA provided detailed status updates on taxiway projects that significantly impacted operations last summer and ORDNext. ORDNext will expand the

airport's linear frontage leading to an increase of 28 new narrowbody-equivalent gates and create three new concourse structures increasing the number of gates by the mid 2030's. CDA also objected to FAA lowering runway capacity below demonstrated manageable capacity. Further, CDA advocated for these operating limitations to be temporary and only last for the Summer 2026 scheduling season, if not sooner. CDA suggested that the operating limitations should sunset on September 1, 2026, aligned with the opening of the third taxiway into the Southport. Next, CDA stated that it supports the development of a working group between FAA, CDA, and other stakeholders to discuss traffic management solutions and address problems as they arise. Lastly, CDA recommended that FAA more efficiently manage ORD's runways and increase staffing and technology resources at ORD. CDA urged FAA to consider an optimization of Land and Hold Short Operations (LAHSO). ORD's runway configuration was designed with the intent of using LAHSO as a primary operating procedure on Runways 27C, 27L, 28C, and 28R in west flow operations and Runways 9C, 9R, 10C for east flow operations. CDA stated that it is ready to entertain revisions to the current LAHSO system such as moving markings and revising signage.

FAA commends the CDA for planning and executing a number of improvement projects at ORD over the years, preserving ORD's status as one of the most significant airfields in the United States. ORD's location and facilities mean that its stability and efficiency underpin the success of the entire NAS. FAA shares the CDA's priority of ensuring ORD is a safe and efficient airport. FAA finds that the limits implemented under this Order reflect a level that maintains safety and improves the on-time performance of the airport, while recognizing CDA's perspective that construction impacts for Summer 2026 will be temporary and limited. The benefits of increased on-time performance at ORD will ripple throughout the NAS and improve the overall performance of the system. FAA shares ORD's goal of limiting the duration of this Order and the operating limitations within. DOT and FAA both share the vision that this is a temporary measure needed to decongest the airport and aim to have these limitations in place for the Summer 2026 scheduling season. FAA is willing to partner with CDA and air carriers that operate at ORD to solve ongoing issues. FAA agrees with CDA that creating a working group

¹⁶ 91 FR 13098, 13099 (March 18, 2026).

¹⁷ *Id.*

¹⁸ Notice of Submission Deadline for Schedule Information for Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, and San Francisco International Airport for the Summer 2026 Scheduling Season. October 3, 2025. <https://www.faa.gov/media/106116>.

or committee, specifically related to surface movement, to study the current airport design would be beneficial. This group could propose improvements that would not only enhance operational efficiency but could also prevent the need for reduction efforts like this in the future. With respect to optimizing LAHSO, moving markings, and revising signage, FAA is interested in collaborating with CDA to explore how best to optimize LAHSO and make adjustments to markings and signage to improve flow. FAA finds that each of these initiatives may improve efficiency at the airport to such a degree that it could provide relief from these reductions and permit more operations at ORD, so long as such an increase preserves safety and promotes efficiency. Lastly, FAA is committed to improving staffing at ORD and throughout the NAS through the implementation of the Brand New Air Traffic Control System. Further, for the first time in more than six years, FAA has more than 11,000 certified professional controllers on staff, with more than 4,000 trainees in the pipeline. This comprehensive update is already underway and will provide much needed technological assistance to air traffic controllers and operators. However, unlike most other airports in the NAS, FAA's ATC resource investment and upgrades must be applied to ORD's three air traffic control towers ("ATCT"). This adds significant complications to both staffing efficiency and deploying FAA's new automation tools as such tools are traditionally designed for a single ATCT configuration.

ACI-NA stated that it is proud to work alongside DOT and FAA to ensure the safe, secure, and efficient movement of goods and passengers through the U.S. and the world. ACI-NA supports the direct engagement between FAA, DOT, and CDA to discuss the operating limitations at issue. ACI-NA also asks that FAA and other federal partners continue to staff airport facilities to match the investment the airport operators have put into optimizing ORD. Further, ACI-NA asks FAA to provide data to support this scheduling reduction effort similar to the runway capacity analysis reports discussed in the WASG. FAA currently provides capacity and delay analyses through the deputy director of systems operations ("DDSO") offices and that information is shared with the operations community via the National Customer Forum ("NCF") and joint DDSO and airport authority meetings.

As discussed above, FAA is continuing to improve the air traffic

controller training program throughout the NAS and has streamlined components of the onboarding process to increase the availability of air traffic controllers.

Spirit stated that reductions should be directed towards the two dominant carriers at ORD. Spirit also suggested that FAA consider that it has already reduced its operations at ORD by approximately 50% relative to its Summer 2024 peak. Lastly, Spirit requests that FAA approach these reductions with carrier-specific targets like the Newark Liberty International Airport (EWR) delay reduction process.

FAA appreciates Spirit's comment, including proposed methods of addressing this issue, and acknowledges that Spirit reduced its operations at ORD. FAA and DOT agree that consumers should have low-cost options available. The allocation method is outlined in Section IV. To that end, any impact on Spirit's operations at ORD will be communicated directly with the carrier. However, by using Summer 2025 as the baseline, this order is intended to largely preserve the status quo with regard to the competitive environment at ORD.

In its comments, United expressed serious concerns with the FAA's proposed cap and its apportionment of reductions at ORD for the Summer 2026 season. United's comments focus on what it perceives as significant developments that should limit the FAA's authority to address safety and efficiency of operations at ORD and the broader national airspace. United expanded discussions that took place during the scheduling reduction meetings concerning gate allocation. United also believes that FAA arbitrarily and capriciously established the operating limitations and that the use of the final Summer 2025 schedules is an inappropriate baseline. United marked significant portions of its comment as confidential due to the inclusion of proprietary or trade secret information. FAA has placed United's comments in the docket with appropriate redactions.

Foremost, United raised concerns that FAA's decision to select the final Summer 2025 scheduling season as the "baseline" does not factor in the recent results of the gate redetermination process completed in October 2025. FAA understands that the underlying issue stems from a process included in a contract between CDA and the various air carriers, the 2018 Airline Use and Lease Agreement ("AULA"). FAA's role in these proceedings is to address the overscheduling of ORD's Summer 2026 capacity and develop a solution that

will decongest ORD and improve efficiency, not determine or alter gate use. Contrary to United's contention, DOT did not threaten, in passing or otherwise, to prohibit redeterminations by CDA. As United asserts, FAA and DOT do not have the statutory authority to unilaterally nullify an element of the AULA; FAA and DOT are not seeking to do so. Should the parties to the AULA believe that FAA operating limitations will hinder, restrict, or otherwise impact its ability to perform elements of the contract, that would be a matter to be resolved between the individual parties to the lease agreement. Likewise, the statutory authorities being exercised here by FAA to manage the safe and efficient use of the airspace under 49 U.S.C. 40103 and 41722 cannot be hindered or restricted by a contract to which FAA is not party to or terms that the Department has not agreed to.

United also mentions in its comment that FAA did not include the word "gate" in the meeting notices. That is intentional. United stated in its own comment that FAA does not allocate gates. United and FAA are in alignment that FAA does not manage gate allocation or facilitation. As stated in the October 2025 schedule submission notice, "In the United States, the FAA is responsible for facilitation and coordination of runway access for takeoffs and landings at Level 2 and Level 3 airports; however, the airport authority or its designee is responsible for facilitation and coordination of terminal/gate/airport facility access. The process with the individual airports for terminal access and other airport services is separate from, and in addition to, the FAA schedule review based on runway capacity."¹⁹

Additionally, United disagrees with FAA's selection of the Summer 2025 final schedule as the "baseline" for allocation of the reduction targets and proposed several alternatives. As evidenced by United's suggestions, there are several possible ways to set a baseline. FAA finds that the approach it has selected is the most reasonable path forward given the situation driving the need for FAA's intervention at ORD—unreasonable schedule submissions from carriers for the Summer 2026 scheduling season submitted after the standard Level 2 seasonal facilitation process. Level 2 facilitation is grounded

¹⁹ Notice of Submission Deadline for Schedule Information for Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, and San Francisco International Airport for the Summer 2026 Scheduling Season, October 3, 2025. <https://www.faa.gov/media/106116>.

on using the previous corresponding season's operations as the operational baseline for the next corresponding season. Using prospective Summer 2026 as the baseline also risks incentivizing the inefficient scheduling practices that FAA seeks to avoid. If carriers know FAA is likely to use the current season schedule alone as the baseline for scheduling reduction proceedings, and not account for actual operations, carriers may be motivated to submit unrealistic schedules at Level 2 airports to improve their negotiating posture. This practice would undoubtedly trigger the need for FAA to call a scheduling reduction meeting in the future to reduce schedules to a practical level. Therefore, it is appropriate for FAA to use the Summer 2025 baseline to ground these proceedings.

United also proposed that FAA could use the Summer 2025 schedule but adjust each air carrier's proportional share of the scheduling reductions to account for the gate allocation changes. How gates are allocated at ORD is a contractual matter between air carriers and CDA and is not relevant to the actions FAA is taking in this proceeding under its statutory authorities to manage airspace and ground congestion and the seasonal scheduling notice published in this matter.

United's final proposal was for FAA to use the approved Summer 2026 SAL²⁰ to determine the relative proportion of reductions by air carrier. In November 2025, FAA acknowledged and approved initial submissions from air carriers as part of the normal Level 2 schedule facilitation process for Summer 2026. However, that does not mean that FAA has not continued to evaluate the impact of those schedules after the allocation date in light of current operating conditions, or that the Administrator's ability to implement operating limitations is diminished once a schedule has been acknowledged or approved. The Summer 2026 SAL was provided based on runway capacity as the limiting coordination parameter. FAA has since determined that, owing to airfield construction and other factors, surface constraints at ORD are the limiting factor and represent a lower total airport capacity than the runway system, alone. In addition, carriers, particularly United, have continued to add additional flights close to the beginning of the Summer 2026 season.

As United knows, air carriers may continue to submit requests for new operations beyond the SAL deadline. It is typical for FAA to acknowledge

receipt, but it did not express approval, of submissions received after the SAL deadline in normal circumstances. Here, FAA continued to assess the impact of additional submissions received in addition to the already increased schedules submitted for Summer 2026. As a result, FAA and DOT determined a scheduling reduction was necessary to halt Summer 2026 overscheduling.

DOT explained in the scheduling reduction sessions that the decision to move to the final Summer 2025 schedules also returns to a time when the schedules were not heavily influenced by air carrier attempts to increase market share.²¹ American and United have each announced expansion plans at ORD that potentially could lead to significant Summer 2026 delays due to ongoing construction limiting the airfield's ability to handle the expected amount of traffic. United Airlines has proposed and published the most significant, increase to its schedule year over year, accompanied by a campaign of public statements expressing a desire to grow and avoid a scenario in which American Airlines would grow at the "expense" of United.²²

United references the 2004 ORD and 2025 EWR scheduling reduction meetings as examples of when the FAA elected to use the planned season as the baseline for the reductions. Both of these instances are distinguishable from the present situation at ORD, as discussed below.

2004 ORD Operating Limitations Order

In 2003, Congress provided FAA with the authority to call scheduling reduction meetings through the 2003 reauthorization law, Vision 100. At the time ORD was also part of a broader Congressional initiative to phase out the high-density traffic airport rules at certain airports.²³ This meant that the limitations once in place at ORD were lifted and air carriers added a significant number of flights and schedule changes

such that the peak hours of the day became congested. During the initial years of ORD's deregulation, the delays steadily increased until FAA was provided a tool by Congress to address the overscheduling, the scheduling reduction meeting.

In early 2004, American and United jointly agreed to a 5% voluntary reduction between limited hours in lieu of a scheduling reduction meeting. FAA retained the right to call a meeting at a later date if this did not alleviate congestion but issued an order consistent with agreement made by the two carriers.²⁴ This agreement did not resolve the problem and eventually FAA called a meeting later in the Summer which resulted in the Order implementing an additional 2.5% reduction to impacted carriers.²⁵ This is distinguishable from the matter at hand because this was one of the first instances of the scheduling reduction tool and the eventual meeting took place far later in the summer when it would not have been practicable to use another time period as a baseline. The meeting was initiated to address real-time performance issues.

2025 EWR Operating Limitations Order

Like the 2004 ORD scheduling reduction meeting, the 2025 EWR scheduling reduction meeting was called to address significant ATC staffing issues compounded by substantial construction projects and telecommunication system outages. The 2025 EWR meeting also was called later in the season than the matter at hand and was meant to address issues impacting the scheduled operations in-progress necessitating the reduction, rather than prospective schedules.

FAA is trying to prevent extensive operational delays and cancellations similar to those experienced at EWR last summer and measurably improve performance at ORD compared to last year. FAA believes that implementing these operational limitations will improve ORD's efficiency, leading to a better experience for the traveling public.

FAA has determined that ORD could handle the level of operations specified in the operating limitations issued to carriers by evaluating past performance data and in response to information received by CDA. Additionally, scheduling limits set peaks and valleys of demand throughout the day that would support operational recovery between the peaks.

²¹ "We're going to add as many flights as are required to keep our gate count the same in Chicago."—Scott Kirby, Chairman and CEO, United Airlines. Rajesh Kumar Singh, *United Draws 'Line in the Sand' in Escalating Chicago O'Hare Fight with American Airlines*, Reuters (Jan. 21, 2026), <https://www.reuters.com/business/united-draws-line-sand-escalating-chicago-ohare-fight-with-american-airlines-2026-01-21/>.

²² See <https://skift.com/2017/02/15/chicago-is-becoming-the-center-of-the-growing-conflict-between-united-and-american/>; <https://viewfromthewing.com/united-ceo-scott-kirby-says-american-airlines-may-be-forced-out-of-chicago-ohare-hub-as-his-schedule-surges-to-600-flights-a-day/>; <https://onemileatatime.com/news/united-airlines-chicago-smack-talk/>.

²³ Order Limiting Scheduled Operations at O'Hare International Airport, Order 18–8–04, p.8, (August 19, 2004).

²⁴ *Id.*

²⁵ *Id.*

²⁰ *I.e.*, schedules approved by FAA as of November 6, 2026.

Using the WASG as a guidepost, but not a requirement, FAA agrees that Level 2 airports do not receive historic precedence and series of slots do not apply at Level 2 airports, but the WASG does recommend that the facilitator give priority to approved services that plan to operate unchanged from the previous equivalent season. That is what FAA seeks to do here.

United debates the relevancy of the factoring in the schedule submission notice at all, despite contending that FAA deviates or does not adhere to the WASG at times.²⁶ FAA agrees with United that they are guidelines. However, FAA aligns with them in the spirit of international comity and because of the practicality of having a shared set of general guidelines for air carriers and facilitators to use system-wide. FAA follows the WASG, and earlier versions, to the extent that they do not conflict with domestic law. FAA notes there is not a specific requirement in 49 U.S.C. 41722, or the WASG, to use a particular baseline for scheduling reduction meetings.

United also argues that FAA vaguely referenced competition in correspondence and the meeting notice to carriers and that the manner in which competition was referenced is insufficient to support the decision. FAA simply intended to convey to air carriers that the cuts necessary would reflect the competitive allocation of runway operations as of Summer 2025, the baseline. FAA is considering competition in the same manner that it has done in previous scheduling reduction meetings, including EWR, in that it made reductions that were proportional to the number of operations the air carrier held in the baseline. FAA did not arbitrarily cut from one carrier or another without considering their competitive position at ORD *vis-à-vis* each other. The final operational cap and the baseline used to allocate operations to carriers do not reflect a decision by FAA to “affirmatively interfere with the competitive balance at ORD” nor is this claim borne out in the reductions themselves.

Lastly, United questions the FAA’s rationale for the caps including in both meeting notices and raised in the discussions with air carriers. See Section IV for FAA’s rationale for the final reductions.

Mr. Steven P. Endres submitted a comment stating that he believes the FAA’s schedule facilitation infringes on his ability to pursue business

opportunities to airspace reservations. As stated previously, the U.S. Government has exclusive sovereignty of the airspace of the United States and FAA is the schedule coordinator of record for the United States.

Two anonymous commenters provided feedback on the notice. One commenter asked if this will raise ticket prices, reduce options, and cause air carriers to use larger jets potentially resulting in more noise or pollution. The second commenter advocated for more common use gates at ORD to prevent “gate squatting” between the dominant airlines.

FAA appreciates these comments from members of the public. FAA and DOT share the goal of promoting consumer options and accessible fares for passengers. This order is intended to be a temporary measure to prevent significant levels of operational disruption that would negatively impact the customer experience in their travel journey. Additionally, FAA has conducted an environmental evaluation on the proposed action. The results of this evaluation can be found in Section VIII.

In response to the second anonymous commenter, as stated above, FAA does not determine gate usage or leasing arrangements. This is an issue for the local airport authority to address. Overall, FAA understands that imposing operating limitations on carriers at this point in the scheduling season will result in cancellations and restrict operations at the airport for air carriers, however, this is a consequence of the airport being oversubscribed to such an extent it necessitated the scheduling reduction meetings.

IV. Scheduling Limitations

To ensure safety and efficiency, the FAA has proposed a daily operational cap for Summer 2026 at O’Hare of 2,708 operations, with operations allocated among carriers based on Summer 2025 approved schedules, to mitigate chronic congestion and achieve delays no worse than what occurred last summer. FAA expects that air carriers will work cooperatively with the Slot Administration Office to implement the cap and allocations in a manner that is operationally feasible and achieves the stated goals of safety and efficiency.

Air carriers asked to reduce operations will find that this limit is slightly increased from that proposed in the March 18, 2026, Notice. FAA found some of the discussion points raised throughout the meetings, particularly CDA’s arguments that construction at ORD will be less impactful than last summer, as a reason to modestly

increase the operational cap. CDA assuaged some of FAA’s concerns regarding construction-related delays by providing detailed expectations on several construction projects. Specifically, CDA informed FAA that the Taxiway Alpha/Bravo rehabilitation project is mostly complete and will not impact Summer 2026 operations. Next, the Taxiway LL project shifted into a new phase that is not projected to negatively impact Summer 2026 operations. Lastly, CDA projects that the Taxiway T/R Grade Separated Roadway and advanced RTR–U utilities work also have significantly less impact on Summer 2026 operations compared to Summer 2025. CDA anticipates that this will provide operational relief. This information gives FAA confidence that the limitations could be raised from proposals discussed in the second round of scheduling reduction meetings slightly, although the need for reductions remains. The planned operations for 2026 were beyond what the airport can handle, but FAA understands the importance of enabling growth to the extent practicable at the airport over last year given the infrastructure improvements year over year.

From May 17, 2026, through October 24, 2026, between 06:00 a.m. and 23:59 p.m., operations will be limited at ORD to 2,708 operations per day. Operations will be allocated to air carriers in proportion based on their share of operations in approved Summer 2025 schedules. ATC staffing requirements and runway configuration changes require that there be certain “valleys” for a minimum period to safely transition throughout the day. FAA will issue the limitations to air carriers by half-hour. These half-hour limitations will range from 30 operations per half-hour during low demand periods, to 84 operations per half-hour at peak. FAA expects that air carriers will work cooperatively with the Slot Administration Office to ensure their allocated operations fit within these operational requirements.

FAA and DOT mean for this exercise to result in ORD performing more efficiently than last summer. These limitations are intended to be temporary and applicable for this season only. However, FAA retains the ability to review and assess schedules submitted for winter 2026/2027 and beyond to ensure that the communicated schedules align with the airport’s demonstrated capacity.

Alternative options that FAA considered included delaying the start of the scheduling reduction meeting until the overscheduling negatively

²⁶ Comments of United Airlines, Inc., page 20 (March 26, 2026).

impacts operations or using one of the alternative limits FAA discussed throughout these proceedings. Another option included utilizing routine air traffic control management tools to facilitate overscheduling on a daily basis. This approach is unsustainable over the course of the summer season, would ignore any competitive considerations if ATC had to reactively reduce or delay operations daily, and diminish the sense of stability and certainty for passengers with travel plans through ORD this summer.

V. Foreign Air Carriers

Foreign air carriers were not asked to reduce operations as part of this scheduling reduction process as 49 U.S.C. 41722 applies to domestic air carriers.²⁷ Should a foreign carrier assess their operations at ORD and propose any voluntary schedule reductions or modifications that may alleviate congestion at ORD, FAA will work with foreign carriers to maintain historic prioritization for any previously approved timings for the purposes of establishing an operational baseline for the next corresponding season.

VI. Unscheduled Operations

FAA will continue to accommodate other unscheduled operations, such as cargo, charter, or nonscheduled foreign carrier operations, on a “first come, first serve” basis to the extent such operators can be accommodated at ORD. All requests must be submitted to and approved by the FAA Slot Administration at 7-awa-slotadmin@faa.gov. In addition, these operations must also obtain approval from the ORD terminal to operate.

VII. Operational Flexibility

Based on FAA’s experience with capacity-constrained airports, FAA anticipates that carriers may occasionally need to modify their schedules for operational or other reasons while this Order is in effect. Accordingly, this Order provides a mechanism through which such carriers can modify their schedules.

Carriers operating at ORD must obtain written approval from the FAA Slot Administration Office before making a schedule change to outside the half-hourly arrival and departure windows associated with an authorized timing.

FAA recognizes that there may be unexpected disruptions due to

operational issues, weather, or other circumstances beyond the carrier’s control. Since ORD is a Level 2 airport, FAA will work with the carrier on any additional relief needed to prioritize impacted operations for the purposes of establishing operational baselines for the next corresponding season.

VIII. National Environmental Policy Act

The FAA has determined that this action qualifies for categorical exclusion (CATEX) under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) in accordance with FAA Order 1050.1G, “Environmental Impacts: Policies and Procedures,” paragraphs B–2.5.j, B–2.6.d, and B–2.6.f. The CATEX listed in FAA Order 1050.1G, paragraph B–2.5.j, applies to the following category of actions: “Implementation of procedures to respond to emergency air or ground safety needs, accidents, or natural events with no reasonably foreseeable long-term adverse impacts.” FAA has determined that overscheduling requires FAA to reduce operations through this order in the interest of air and ground safety. Moreover, there are no reasonably foreseeable long-term adverse impacts given that the Order is of limited duration and involves only reduced, as opposed to increased, operations.

The CATEX listed in FAA Order 1050.1G, paragraph B–2.6.d applies to: “Issuance of regulatory documents (*e.g.*, Notices of Proposed Rulemaking and issuance of Final Rules) covering administrative or procedural requirements.” The CATEX in paragraph B–2.6.f applies to: “Regulations, standards, and exemptions (excluding those that if implemented may cause a significant impact on the human environment).” The FAA has determined that these CATEX categories are applicable as well.

This action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that would preclude the use of this CATEX and require a higher level of NEPA review.

IX. Order

Accordingly, with respect to flight operations at ORD, under the authority provided to the Secretary of Transportation and the FAA Administrator by 49 U.S.C. 40101, 40103, 40113, and 41722, it is hereby ordered that:

1. This Order establishes a daily scheduling limit for arrivals and

departures at ORD of 2,708 operations from 6:00 a.m. through 23:59 p.m., Central Time, until October 24, 2026.

2. This Order allocates those 2,708 operations at ORD during the affected hours as reflected by authorized scheduled timings for the IATA Northern Summer 2025 scheduling season. The limits range from 30 to 84 operations per half hour.

3. FAA will not accommodate authorized scheduled timings under this Order for any person or entity other than a certificated U.S. air carrier with appropriate economic authority and FAA operating authority under 14 CFR part 121, 129, or 135. This Order further affirms that FAA will not accommodate new requests or re-timings into schedule-facilitated hours if such a request will result in exceeding the operational limit. Finally, FAA will accommodate unscheduled operations in certain hours throughout the schedule-facilitated day, on a “first come, first serve” basis. All requests must be submitted to and approved by the FAA Slot Administration at 7-awa-slotadmin@faa.gov. The FAA Vice President, System Operations Services, is the final decision-maker for determinations under this paragraph. The provisions in paragraphs 2 through 11 below apply to the following:

a. All U.S. air carriers conducting scheduled operations at ORD as of the date of this Order, any U.S. air carrier that operates under the same designator code as such carrier, and any air carrier that has or enters into a codeshare agreement with such carrier.

b. All U.S. air carriers operating scheduled or regularly conducted commercial service to ORD while this Order is in effect.

4. This Order takes effect on May 17, 2026, and expires on October 24, 2026.

5. The Administrator may change the targeted limit if he determines that capacity exists to accommodate additional operations without a significant increase in delays.

6. Carriers will retain historic priority for the next corresponding season for authorized scheduled timings reduced or re-timed under the scheduling reduction proceedings.

7. A carrier operating an authorized scheduled timing may request the Administrator’s approval to move any arrival or departure scheduled from 6:00 a.m. through 23:59 p.m. to another half hour so long as this request would not exceed the limit designated for that half hour. Except as provided in paragraph seven, the carrier must receive the written approval of the Administrator, or his delegate, prior to conducting any scheduled arrival or departure. All

²⁷ Air carriers subject to 49 U.S.C. 41722 scheduling reduction proceedings are those defined under 49 U.S.C. 40102(a)(2). “Air carrier” is defined in under 49 U.S.C. 40102(a)(2) as a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

requests to move an authorized scheduled timing must be submitted to the FAA Slot Administration Office at 7-AWA-Slotadmin@faa.gov, and must come from a designated representative of the carrier.

8. Notice of a swap must be submitted in writing to the FAA Slot Administration Office at 7-AWA-Slotadmin@faa.gov and must come from a designated representative of each carrier. FAA must confirm and approve these exchanges in writing prior to the effective date of the exchange.

9. Any authorized scheduled timing not used during the remainder of the Summer 2026 scheduling season will not be prioritized for the purposes of establishing an operational baseline for the next corresponding season unless the carrier notifies FAA of a request for prioritization. FAA and DOT will review these requests. FAA will respond to the carrier with an acknowledgement of the request and a determination.

10. If FAA determines that a further reduction in targeted scheduled operations is needed, FAA may call an additional scheduling reduction meeting pursuant to 49 U.S.C. 41722.

11. FAA may enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). A carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, will be liable for a civil penalty of up to \$75,000 for every flight it operates above the limits set forth in this Order. A carrier that is a small business as defined in the Small Business Act will be liable for a civil penalty of up to \$16,630 for every flight it operates above the limits set forth in this Order. FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of this Order.

12. FAA may modify or withdraw any provision in this Order on its own or on application by any carrier for good cause shown.

Issued in Washington, DC, on April 16, 2026.

Bryan Bedford,

Administrator, Federal Aviation Administration.

[FR Doc. 2026-07665 Filed 4-16-26; 4:15 pm]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2025-0391]

Agency Information Collection Activities; Approval of a New Information Collection Request: Crash Risks by Commercial Motor Vehicle (CMV) Driver Schedules

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The information collection titled *Crash Risks by Commercial Motor Vehicle (CMV) Driver Schedules* will answer important questions related to driver schedules and how these factors impact overall driver performance and fatigue. The information collected will be used to examine the relative risk of crashes and inspection violations based on various factors related to the driver's work schedule and demographics.

DATES: Comments on this notice must be received on or before May 20, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Theresa Hallquist, Research Division, DOT, FMCSA, W58-213, 1200 New Jersey Avenue SE, Washington, DC 20590-0001; 202-366-1064; Theresa.hallquist@dot.gov.

SUPPLEMENTARY INFORMATION: Title: Crash Risks by Commercial Motor Vehicle (CMV) Driver Schedules.

OMB Control Number: 2126-00XX.

Type of Request: New ICR.

Respondents: Motor carriers.

Estimated Number of Respondents: 60.

Estimated Time per Response: 15 minutes (0.25 hours).

Expiration Date: N/A. This is a new ICR.

Frequency of Response: One time (IC1, IC2); quarterly (IC3).

Estimated Total Annual Burden: 45 hours.

The total annual burden is calculated as the sum of IC1, IC2, and IC3:

IC1: 15 responses per year $\times$ 0.25 hours per response = 3.75 total annual burden hours.

IC2: 15 responses per year $\times$ 0.25 hours per response = 3.75 total annual burden hours.

IC3: 150 responses per year $\times$ 0.25 hours per response = 37.5 total annual burden hours.

Background

This information collection supports the DOT Strategic Goal of Safety. The preamble of FMCSA's 2011 final hours of service (HOS) rule (76 FR 81134) stated that FMCSA is committed to an analysis of the relative crash risk by driving hour, the impact of the changes in the HOS provisions, and examination of differences in crash risk after restarts that include 2 nights and those that do not. The HOS final rule also said that FMCSA would work with the OMB on the methodologies of these new statistical data collections.

FMCSA needs additional data to answer important questions related to driver schedules and how these factors impact overall driver performance and fatigue. This research requires data to be collected for HOS duty logs, accident and incident data, and inspection violations records. HOS duty logs, as well as incident and crash data, will be obtained through an integration with the telematics system provider, and driver demographic data will be provided directly by participating carriers. FMCSA will provide access to the Motor Carrier Management Information System database, which provides records of all DOT recordable crashes and inspection violation records. All data will be collected electronically. The information collected will be used to examine the relative risk of crashes and inspection violations based on various factors related to the driver's work schedule and demographics. There are three ICs: IC1—Carrier Task: TSP Setup for HOS Data; IC2—Carrier Task: TSP Setup for SCE Data; and IC3—Carrier Task: Driver Demographic Data Exports.

Pulsar Informatics, under contract with FMCSA, is required to develop a publicly available deidentified data set to be housed in the FMCSA Data Repository. All personally identifiable information shall be removed, and other methods of protecting privacy shall be utilized as needed. This deidentified data set will be provided to FMCSA after all relevant statutes of limitations (at both State and Federal levels)

pertaining to legal discoverability processes have expired.

FMCSA has determined that this collection of information is necessary for study completion. Currently, there is no comprehensive, existing data set that can be used for this project. Not collecting this data would result in an incomplete understanding of HOS-related factors that impact crash risk and the effect of alternative schedules as they relate to various aspects of HOS provisions on crash risk in CMV operations. Further, the absence of this information collection would prevent FMCSA from meeting its goal—derived from the 2015 report¹ by the National Academies of Sciences, Engineering, and Medicine—of developing a comprehensive, structured database of crash data and driver schedules to benefit future research.

FMCSA published a **Federal Register** notice with a 60-day comment period soliciting comments on the information collection and received 19 comments. They were from individuals, anonymous commenters, and industry groups. These comments revolved around six concerns. Responses to these concerns are below.

Fatigue Risks

Twelve commenters expressed concerns related to recognizing fatigue as a major safety risk while noting that current regulations compel drivers to operate CMVs while fatigued. These comments also indicated that fear of discipline discourages honest self-reporting of fatigue.

FMCSA response: Drivers' concerns about the significance of fatigue risks in CMV operations are of incredible importance. This proposed data collection aims to better understand fatigue-related factors that may correlate with accidents and incidents to inform future decision-making in the industry.

Inflexibility of HOS Regulations

Eight commenters focused on how the rigid structure of HOS rules, particularly the 14-hour on-duty and 34-hour restart, fails to reflect the actual nature of CMV operations.

FMCSA response: One objective of this study is to collect data related to how HOS provisions are being used. This data will assist in understanding HOS-related factors that impact crash risk and the effect of alternative schedules as they relate to various aspects of HOS provisions on crash risk

in CMV operations. Further, this data will aid FMCSA in developing a comprehensive, structured database of crash data and driver schedules to benefit future research.

Safe and Legal Parking

Four commenters discussed concerns related to the lack of adequate, legal parking options near customers, urban centers, and rest areas. These commenters also mentioned concerns about having to choose between violating HOS rules, parking illegally, or driving while fatigued due to parking shortages.

FMCSA response: While this study does not focus on the availability of legal CMV parking, the relevance of driving while fatigued in these circumstances is important. By collecting data on factors related to HOS, crashes, and inspection violations, future research may use this deidentified dataset to improve the understanding of parking shortages as it relates to fatigued driving, illegal parking, and HOS violations.

Driver Autonomy

Seven commenters mentioned a growing loss of control over their schedules, citing pressure from carriers, shippers, and enforcement agencies to prioritize productivity over safety.

FMCSA response: While the broader issues of scheduling pressures and driver autonomy are relevant to discussions of occupational well-being, they are beyond the scope of the present study. This research is specifically designed to examine the association between HOS and CMV crash and inspection violation involvement. System-level or organizational factors, while potentially related, are not directly evaluated within the current analytical framework. Data collected in this study may assist in future research efforts.

Study Design

One commenter discussed concerns related to the study design, specifically about the lack of control for time-of-day and the lack of connection between HOS logs and driver fatigue.

FMCSA response: The study is an observational study, and the study design controls for time-of-day effects by including duty and driving time-of-day as covariates in the modeling framework. This separates time-of-day effects from the effects of schedule factors (e.g., long duty) and prevents confounding between these factors.

While the commenter noted HOS logs do not directly measure fatigue and do not capture all the factors influencing

driver fatigue, HOS logs do provide information on sleep opportunity, time awake, and time-on-task, all of which are directly related to fatigue risk.

Study Recruitment

One commenter discussed concerns about the recruitment strategy and whether participating carriers would be representative of the broader trucking industry, citing the reliance on telematics and the number of carriers.

FMCSA response: The study aims to recruit a diverse range of carriers based on industry segments and carrier size. Participation is voluntary, but carriers will be contacted through a recruitment campaign that includes random outreach from the FMCSA census, targeted outreach through advertisement and trade shows, and coordinated efforts with FMCSA. The 60 carriers will be based on the expected number of miles driven needed to observe crashes based on power analysis to determine sample size. Enrollment will not be limited to 60 participants and will include additional carriers as feasible. The research team will work with all carriers wanting to participate to support the transfer of electronic logging device data for inclusion in the study to the extent practicable.

Also, because this study relies on the cooperation and assistance of companies to gather data, larger companies that are well-resourced may be overrepresented in the study data. These biases will be accounted for by the modeling approach but have the anticipated effect of underestimating the true risk of fatigue in the industry. The recruitment and data collection methods will be documented in publications to guide interpretation relative to potential bias.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87.

David M. Sutula,

Acting Associate Administrator, Office of Research and Registration.

[FR Doc. 2026-07627 Filed 4-17-26; 8:45 am]

BILLING CODE 4910-EX-P

¹ The report, "Commercial Motor Vehicle Driver Fatigue, Long-Term Health, and Highway Safety," is available at <https://nap.nationalacademies.org/catalog/21921/commercial-motor-vehicle-driver-fatigue-long-term-health-and-highway-safety>.

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Retail Foreign Exchange Transactions**

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, "Retail Foreign Exchange Transactions." The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by May 20, 2026.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email:* prainfo@occ.treas.gov.
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557-0250, 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

- *Fax:* (571) 293-4835.

Instructions: You must include "OCC" as the agency name and "1557-0250" in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed

information collection should also be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. You can find this information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- **Viewing Comments Electronically:** Go to www.reginfo.gov. Hover over the "Information Collection Review" tab and click on "Information Collection Review" from the drop-down menu. From the "Currently under Review" drop-down menu, select "Department of the Treasury" and then click "submit." This information collection can be located by searching OMB control number "1557-0250" or "Retail Foreign Exchange Transactions." Upon finding the appropriate information collection, click on the related "ICR Reference Number." On the next screen, select "View Supporting Statement and Other Documents" and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482-7340.

FOR FURTHER INFORMATION CONTACT:

Shaquita Merritt, Clearance Officer, (202) 649-5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks the OMB to extend its approval of the collection in this notice.

Title: Retail Foreign Exchange Transactions.

OMB Control No.: 1557-0250.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Description: The OCC's rule pertaining to retail foreign exchange transactions ("retail forex") (12 CFR part

48) allows national banks and Federal savings associations to offer or enter into retail foreign exchange transactions. In order to engage in these transactions, institutions must comply with various reporting, disclosure, and recordkeeping requirements included in that rule.

Reporting Requirements

The reporting requirements in 12 CFR 48.4 state that, prior to initiating a retail forex business, a national bank or Federal savings association must provide the OCC with prior notice and obtain a written supervisory no-objection letter. In order to obtain a supervisory no-objection letter, a national bank or Federal savings association must have written policies, procedures, and risk measurement and management systems and controls in place to ensure that retail forex transactions are conducted in a safe and sound manner. The national bank or Federal savings association also must provide other information required by the OCC, such as documentation of customer due diligence, new product approvals, and haircuts applied to noncash margins.

Disclosure Requirements

Under 12 CFR 48.5, a national bank or Federal savings association must promptly provide the customer with a statement reflecting the financial result of the transactions and the name of any introducing broker to the account. The institution must follow the customer's specific instructions on how the offsetting transaction should be applied.

Twelve CFR 48.6 requires that a national bank or Federal savings association furnish a retail forex customer with a written disclosure before opening an account through which the customer will engage in retail forex transactions. It further requires a national bank or Federal savings association to secure an acknowledgment from the customer that the disclosure was received and understood. Finally, the section requires a national bank or Federal savings association to disclose its profitable accounts ratio and its fees and other charges.

Twelve CFR 48.10 requires a national bank or Federal savings association to issue monthly statements to each retail forex customer and send confirmation statements following transactions.

Twelve CFR 48.13(c) prohibits a national bank or Federal savings association engaging in retail forex transactions from knowingly handling the account of any related person of another retail forex counterparty unless it receives proper written authorization,

promptly prepares a written record of the order, and transmits to the counterparty copies of all statements and written records. Twelve CFR 48.13(d) prohibits a related person of a national bank or Federal savings association engaging in retail forex transactions from having an account with another retail forex counterparty unless it receives proper written authorization and copies of all statements and written records for such accounts are transmitted to the counterparty.

Twelve CFR 48.15 requires a national bank or Federal savings association to provide a retail forex customer with 30 days prior notice of any assignment of any position or transfer of any account of the retail forex customer. It also requires a national bank or Federal savings association to which retail forex accounts or positions are assigned or transferred to provide the affected customers with risk disclosure statements and forms of acknowledgment and obtain the signed acknowledgments within 60 days.

The customer dispute resolution provisions in 12 CFR 48.16 require certain endorsements, acknowledgments, and signatures. The section also requires that a national bank or Federal savings association, within 10 days after receipt of notice from the retail forex customer that the customer intends to submit a claim to arbitration, provide the customer with a list of persons qualified in the dispute resolution.

Policies and Procedures; Recordkeeping

Twelve CFR 48.7 and 48.13 require that a national bank or Federal savings association engaging in retail forex transactions keep full, complete, and systematic records and to establish and implement internal rules, procedures, and controls. Section 48.7 also requires that a national bank or Federal savings association keep account, financial ledger, transaction, and daily records, as well as memorandum orders, post-execution allocation of bunched orders, records regarding its ratio of profitable accounts, possible violations of law, records for noncash margin, and monthly statements and confirmations. Twelve CFR 48.9 requires policies and procedures for haircuts for noncash margin collected under the rule's margin requirements and annual evaluations and modifications of the haircuts.

Estimated Burden

Estimated Frequency of Response: On occasion.

Estimated Number of Respondents: 22.

Estimated Total Annual Burden: 32,880 hours.

Comments: On February 10, 2026, the OCC published a 60-day notice for this information collection, (91 FR 5989). No comments were received.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Carl Kaminski,

Assistant Director, Office of the Comptroller of the Currency.

[FR Doc. 2026-07664 Filed 4-17-26; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Reestablishment of the Art Advisory Panel of the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Notice of Reestablishment of the Art Advisory Panel of the Commissioner of Internal Revenue.

SUMMARY: The charter for the Art Advisory Panel will be re-established for a two-year period beginning no sooner than seven days following publication of this notice.

FOR FURTHER INFORMATION CONTACT:

Valeria B. Farr, 1835 Assembly Street, Suite 508, Columbia, SC 29201. Telephone: (803) 312-7828 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 8(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. 1008, that the Art Advisory Panel of the Commissioner of Internal Revenue, a necessary committee that is in the public interest, will be reestablished for a two-year period

beginning no sooner than seven days following publication of this notice.

The Panel helps the Internal Revenue Service review and evaluate the acceptability of property appraisals submitted by taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1986, as amended.

For the Panel to perform this function, Panel records and discussions must include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b(c)(3), (4), (6) and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 9(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of the Internal Revenue Code.

Spencer W. Clark,

Committee Management Officer, U.S. Department of the Treasury.

[FR Doc. 2026-07587 Filed 4-17-26; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Alcohol and Tobacco Tax and Trade Bureau Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before May 20, 2026 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection notice by

selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Spencer W. Clark by emailing PRA@treasury.gov, calling (202) 927-5331, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

1. *Title:* Formula and/or Process for Article Made with Specially Denatured Spirits.

OMB Control Number: 1513-0011.

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

Description: In general, under the Internal Revenue Code (IRC) at 26 U.S.C. 5214, distilled spirits used in the manufacture of nonbeverage articles are not subject to Federal excise tax, and, under the IRC at 26 U.S.C. 5273, persons who intend to produce such articles using specially denatured distilled spirits (SDS) must obtain prior approval of their formulas and manufacturing processes. For medicinal preparations and flavoring extracts intended for internal human use, that section also prohibits SDS from remaining in the finished articles. Under those authorities, the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations in 27 CFR part 20 require persons to file formula and process approval requests for articles made with SDS. TTB personnel examine the collected information to verify that the described articles are nonbeverage products made in compliance with 26 U.S.C. 5273 and may examine manufacturing records to verify that such articles are being made in accordance with their approved formulas and processes.

Form: TTB F 5150.19.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 60.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 60.

Estimated Time per Response: 37.5 minutes.

Estimated Total Annual Burden Hours: 37.5 hours.

2. *Title:* Report—Export Warehouse Proprietor.

OMB Control Number: 1513-0024.

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

Description: In general, under chapter 52 of the IRC, tobacco products and

cigarette papers and tubes manufactured in, or imported into, the United States are subject to Federal excise tax while tobacco products and cigarette papers and tubes removed for export, and all processed tobacco, are not subject to that tax. Additionally, the IRC at 26 U.S.C. 5722 requires export warehouse proprietors to provide reports regarding such articles as the Secretary of the Treasury (the Secretary) prescribes by regulation. Under those authorities, the TTB regulations in 27 CFR part 44 require export warehouse proprietors to file a monthly operations report listing the amount of tobacco products, cigarette papers and tubes, and processed tobacco received, removed, lost, or unaccounted for during a given month. TTB uses the collected information to detect unlawful diversion and verify compliance with Federal laws and regulations related to the removal and export of such articles.

Form: TTB F 5220.4.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 65.

Frequency of Response: Monthly.

Estimated Total Number of Annual Responses: 780.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 780 hours.

3. *Title:* Inventory—Export Warehouse Proprietor.

OMB Control Number: 1513-0035.

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

Description: In general, chapter 52 of the IRC exempts all tobacco products and cigarette papers and tubes removed for export from the Federal excise tax imposed by that chapter, as well as all processed tobacco. Additionally, section 5721 of the IRC requires export warehouse proprietors to take an inventory of all tobacco products, cigarette papers and tubes, and processed tobacco on hand at the commencement of business, the conclusion of business, and at other times prescribed by regulation. Under that authority, the TTB regulations in 27 CFR part 44 require all export warehouse proprietors to take and report such inventories at the opening and closing of their business, when certain changes in control of the business occur, and if required by TTB, and, under section 5741 of the IRC, such record copies of those inventories must be retained for 3 years. Because export warehouse proprietors hold untaxed articles until they are exported without payment of tax, transferred in bond to

another export warehouse, or returned to the manufacturer, TTB uses the required inventories to establish a contingent Federal excise tax liability on such articles, and to detect diversion of untaxed articles into the taxable domestic market.

Form: TTB F 5220.3.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 65.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 65.

Estimated Time per Response: 5 hours.

Estimated Total Annual Burden Hours: 325 hours.

4. *Title:* Distilled Spirits Plants Warehousing records (TTB REC 5110/02), and Monthly Report of Storage Operations.

OMB Control Number: 1513-00039.

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

Description: The IRC at 26 U.S.C. 5207 requires distilled spirits plant (DSP) proprietors to maintain records and submit reports of their production, storage, denaturation, and processing activities as required under regulations prescribed by the Secretary. Under that authority, the TTB regulations in 27 CFR part 19 require DSP proprietors to keep certain records regarding their storage and warehousing operations and based on those records, also require DSP proprietors to submit a monthly report summarizing those operations. Because, under the IRC at 26 U.S.C. 5005(c), a DSP proprietor is liable for the Federal excise tax on all distilled spirits stored on their plant's premises, the required storage records and reports are necessary to protect the revenue and ensure compliance with the relevant Federal laws and regulations.

Form: TTB F 5110.11.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 5,800.

Frequency of Response: Monthly.

Estimated Total Number of Annual Responses: 69,000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 139,200 hours.

5. *Title:* Formula for Distilled Spirits Under the Federal Alcohol Administration Act.

OMB Control Number: 1513-0046.

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

Description: The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) authorizes the Secretary to issue regulations regarding the labeling of alcohol beverage products to prevent consumer deception, to provide the consumer with adequate information as to the identity and quality of such products, and to require a statement of composition in certain cases of distilled spirits produced by blending or rectification or if neutral spirits were used in the product's production. In addition, the IRC at 26 U.S.C. 5222(c), 5223, and 5232, authorizes the Secretary to issue regulations regarding the removal and addition of extraneous substances to distilling materials or the redistillation of domestic and imported spirits. Under those authorities, the TTB regulations in 27 CFR parts 5, 19, and 26 require proprietors to obtain TTB approval of formulas for distilled spirits products when operations such as blending, mixing, purifying, refining, compounding or treating change the character, composition, class, or type of the spirits. Respondents may use TTB F 5110.38, approved under this control number, in lieu of TTB's Formulas Online (FONL) online system or its paper equivalent (TTB F 5100.51) to file such formulas. TTB uses the collected information to determine if a distilled spirits product meets the applicable FAA Act and regulatory requirements.

Form: TTB F 5110.38.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 12.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 36.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 36 hours.

6. Title: Stills: Notices, Registration, and Records (TTB REC 5150/8).

OMB Control Number: 1513-0063.

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

Description: The IRC at 26 U.S.C. 5101 and 5179 authorizes the Secretary to issue regulations requiring manufacturers of stills to submit notices regarding the manufacture and set up of stills, and it requires all persons to register any stills in their possession with the Secretary and provide information as to the location, type, capacity, ownership, and the purpose for which the stills will be used. Under those authorities, the TTB regulations in 27 CFR part 29 require manufacturers and vendors of stills and distilling apparatus to provide certain notices and

keep certain records regarding the manufacture and setup of such equipment. In addition, those regulations require owners of stills and distilling apparatus to register such equipment with TTB and provide certain notices regarding changes in the ownership, location, or disposal of such registered equipment. TTB uses the collected information to ensure that the relevant provisions of the IRC are appropriately applied and to protect the revenue as distilled spirits are generally subject to Federal excise tax under the IRC.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 40.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 160.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 160 hours.

7. Title: Applications and Notices-Manufacturer of Nonbeverage Products (TTB REC 5530/1).

OMB Control Number: 1513-0072.

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

Description: In general, the IRC at 26 U.S.C. 5001 imposes Federal excise tax on distilled spirits produced in or imported into the United States. However, under the IRC at 26 U.S.C. 5111-5114, persons using distilled spirits to produce certain nonbeverage products (medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume) may claim drawback (refund) of all but \$1.00 per proof gallon of the excise tax paid on the distilled spirits used to make such products, subject to regulations issued by the Secretary to prevent fraudulent claims. Under that authority, the TTB regulations in 27 CFR part 17 require manufacturers to submit certain applications and notices regarding their use of distilled spirits in the production of nonbeverage products eligible for drawback. The applications require TTB approval and cover nonbeverage activities that present significant jeopardy to the revenue, while the notices, which do not require TTB approval, cover activities that present less jeopardy to the revenue. The collected information allows TTB to verify that nonbeverage product drawback claimants are eligible for such refunds under the IRC and ensures that respondents are complying with the relevant IRC provisions and TTB regulations.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 30.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 30.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 15 hours.

8. Title: Records of Things of Value to Retailers, and Occasional Letter Reports from Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, etc., under the FAA Act.

OMB Control Number: 1513-0077.

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

Description: The FFA Act at 27 U.S.C. 205 generally prohibits alcohol beverage producers, importers, or wholesalers from offering inducements to alcohol retailers, such as giving things of value or conducting certain types of advertisements, promotions, or sponsorships, unless such action is specifically exempted by regulation. Under that authority, TTB regulations in 27 CFR part 6, "Tied-House," describe exceptions to that prohibition and describe specific "things of value" for purposes of determining whether an inducement has been offered. Those regulations also require alcohol beverage industry members to keep certain records regarding things of value furnished to retailers, which may consist of usual and customary business records, and which must be retained for 3 years, available for TTB inspection. In addition, TTB regulations in 27 CFR parts 6, 8, and 10 provide that TTB may require, as part of a trade practice investigation, a letterhead report from an alcohol industry member regarding any advertisements, promotions, sponsorships, or other activities conducted by, on behalf of, or benefiting the industry member. TTB uses the collected information to detect and prevent unfair trade practices as defined by the FAA Act and ensure compliance with the relevant provisions of the Act.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 97,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 97,010 (97,000 for recordkeeping, 10 for reporting).

Estimated Time per Response: For recordkeeping, the keeping of records

regarding things of value furnished to retailers is a usual and customary business practice undertaken regardless of any regulatory requirement to do so. As such, under the OMB regulations at 5 CFR 1320.3(b)(2), there is no per-respondent burden for the keeping of usual and customary business records. For the submission of letter reports, TTB estimates 10 annual respondents require 8 hours per response to complete such reports.

Estimated Total Annual Burden Hours: 80 hours.

9. Title: Application for Permit to Manufacture or Import Tobacco Products or Processed Tobacco or to Operate an Export Warehouse and Applications to Amend Such Permits.

OMB Control Number: 1513–0078.

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

Description: The IRC at 26 U.S.C. 5712 and 5713 requires that importers and manufacturers of tobacco products or processed tobacco and export warehouse proprietors apply for and obtain a permit before engaging in such operations, or at such other times, as the Secretary prescribes by regulation. In addition, 26 U.S.C. 5712 sets forth circumstances under which a permit application may be denied, such as if the applicant is ineligible to obtain a permit by reason of business experience, financial standing, or certain criminal convictions. Under those authorities, the TTB regulations in 27 CFR parts 40, 41, and 44 require respondents to submit applications for new tobacco industry permits or, under certain circumstances, amended permits. Respondents use the prescribed forms and any required supporting documents to identify themselves and their business, along with its location, organization, financing, and major investors. The required information allows TTB to ensure that only persons eligible under the IRC engage in tobacco-related businesses, which is necessary to protect the revenue.

Forms: TTB F 5200.3, TTB F 5200.16, TTB F 5230.4, and TTB F 5230.5.

Affected Public: Businesses or other for-profits; State, local, and tribal governments.

Estimated Number of Respondents: 316.

Frequency of Response: On occasion.
Estimated Total Number of Annual Responses: 316.

Estimated Time per Response: 1 hour, 26 minutes.

Estimated Total Annual Burden Hours: 455 hours.

10. Title: Distilled Spirits Plant Equipment and Structures (TTB REC 5110/12).

OMB Control Number: 1513–0080.

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

Description: The IRC at 26 U.S.C. 5178 and 5180 authorizes the Secretary to issue regulations regarding the location, construction, and arrangement of distilled spirits plants (DSPs), the identification of DSP structures, equipment, pipes, and tanks, and the posting of an exterior sign at their place of business. The IRC at 26 U.S.C. 5206 also requires DSP proprietors to mark containers of distilled spirits, subject to regulations prescribed by the Secretary. Under those authorities, the TTB regulations in 27 CFR part 19 describe the required exterior DSP identification sign, and the identification signs or marks on DSP structures, cookers, fermenters, stills, tanks, and other major equipment. The regulations also require tank cars and tank trucks used by DSPs as bulk conveyances for distilled spirits to be permanently and legibly marked with identifying information and capacity. The information set forth under this information collection is necessary to protect the revenue and facilitate inspections, as TTB uses the required signs and marks to identify the location, use, and capacity of a DSP's structures, equipment, and conveyances to prevent illegal operations and diversion.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 5,800.

Frequency of Response: On occasion.
Estimated Total Number of Annual Responses: 5,800.

Estimated Time per Response and Total Annual Burden: None. The placing of signs and marks at DSPs by proprietors is a usual and customary business practice undertaken regardless of any regulatory requirement to do so. As such, under the OMB regulations at 5 CFR 1320.3(b)(2), there is no additional respondent burden associated with this information collection.

11. Title: Labeling of Sulfites in Alcohol Beverages.

OMB Control Number: 1513–0084.

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

Description: The U.S. Food and Drug Administration (FDA) has determined that sulfating agents are human allergens that can have serious health

implications for persons who are allergic to sulfites, particularly asthmatics, and, as a result, FDA regulations require food labels to declare the presence of sulfites if there are 10 parts per million (ppm) or more of a sulfating agent in a finished food product. Under the FAA Act at 27 U.S.C. 205(e), the Secretary is authorized to issue regulations requiring alcohol beverage labels to provide “adequate information” to consumers regarding the identity and quality of such products. Under that FAA Act authority and consistent with FDA’s food labeling requirements, the TTB alcohol beverage labeling regulations in 27 CFR part 4 (wine), part 5 (distilled spirits), and part 7 (beer) require a declaration of sulfites on the labels of alcohol beverages released from domestic bottling premises or customs custody when sulfites are present in such products at levels of 10 or more ppm. This label disclosure is necessary to protect sulfite-sensitive consumers from products that potentially could be harmful to them.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 74,100.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 74,100.

Estimated Time per Response: 40 minutes.

Estimated Total Annual Burden Hours: 49,400 hours.

12. Title: Supporting Data for Nonbeverage Drawback Claims.

OMB Control Number: 1513–0098.

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

Description: Under the IRC at 26 U.S.C. 5111–5114 and 7652(g), persons using distilled spirits to produce certain nonbeverage products (medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume) may claim drawback (refund) of all but \$1.00 per proof gallon of the Federal excise tax paid on the distilled spirits used to make such nonbeverage products, subject to regulations prescribed by the Secretary. Under that authority, the TTB regulations in 27 CFR parts 17 and 26 require nonbeverage drawback claimants to submit certain supporting data with their claim regarding the distilled spirits used and the products produced. TTB uses the collected information to ensure that drawback of Federal excise tax is provided only to eligible entities.

Form: TTB F 5154.2.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 280.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 1,736.

Estimated Time per Response: 58 minutes.

Estimated Total Annual Burden Hours: 1,678 hours.

13. Title: Recordkeeping for Tobacco Products Removed in Bond from a Manufacturer's Premises for Experimental Purposes—27 CFR 40.232(e).

OMB Control Number: 1513–0110.

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

Description: The IRC at 26 U.S.C. 5704(a) provides that manufacturers of tobacco products (cigars, cigarettes, smokeless tobacco, pipe tobacco, and

roll-your-own tobacco) may remove such products for experimental purposes without payment of Federal excise tax, as prescribed by regulation. Under that authority, the TTB regulations at 27 CFR 40.232(e) require tobacco product manufacturers to keep certain usual and customary business records documenting the amount, kind, recipient, use, and disposition of tobacco products removed for experimental purposes outside of a factory. These records, which are subject to TTB inspection, are necessary to protect the revenue as they allow TTB to account for the lawful use and disposition of nontaxpaid tobacco products removed from a factory and detect diversion of such products into the domestic market.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 235.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 235.

Estimated Time per Response and Total Annual Burden: None. The keeping of records regarding the removal and experimental use of tobacco products by respondents is a usual and customary business practice undertaken regardless of any regulatory requirement to do so. As such, under the OMB regulations at 5 CFR 1320.3(b)(2), there is no additional respondent burden associated with this information collection.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2026–07604 Filed 4–17–26; 8:45 am]

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Part II

Department of Education

34 CFR Parts 600, 668, and 685

Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability; Proposed Rule

DEPARTMENT OF EDUCATION**34 CFR Parts 600, 668, and 685****[Docket ID ED–2026–OPE–0100]****RIN 1840–AE06****Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability****AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: The Secretary of Education (Secretary) proposes to amend the regulations governing institutional eligibility, general provisions regulations, and the William D. Ford Direct Loan (Direct Loan) Program under title IV of the Higher Education Act (HEA) of 1965, as amended (the title IV, HEA programs). The proposed regulations would implement statutory changes to the title IV, HEA programs included in the One Big Beautiful Bill Act (OBBA), signed by President Trump on July 4, 2025. The OBBA made numerous changes to the HEA, including changes to program eligibility requirements for the Direct Loan program and the introduction of an earnings accountability framework that is intended to limit Direct Loan eligibility to programs whose graduates meet certain earnings benchmarks. This document proposes regulations, based on consensus reached during negotiated rulemaking, to implement the provisions of the OBBA related to low-earning outcome programs and the Direct Loan program, and to harmonize those regulations with requirements for programs that are required to lead to gainful employment (GE programs).

DATES: We must receive your comments on or before May 20, 2026. For information on anticipated effective dates for the proposed regulatory changes, please see the discussion on the waiver of the HEA master calendar requirements in the “Authority for This Regulatory Action” section below.

ADDRESSES: You may find a plain language summary of the proposed rule and submit your comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for sending comments. The Department will not accept comments submitted by fax or by email or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comment

only once. Additionally, please include the Docket ID at the top of your comments.

Information on using *Regulations.gov*, including instructions for submitting comments, is available on the site under “FAQ.” If you require an accommodation or cannot otherwise submit your comments via *Regulations.gov*, please contact regulationshelpdesk@gsa.gov or by phone at 1–866–498–2945. Include [docket number and/or RIN number] in the subject line of the message. If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

Privacy Note: The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking at www.regulations.gov. Therefore, commenters should include in their comments only information that they wish to make publicly available. Additionally, commenters should not include in their comments any personally identifiable information (PII) in comments about other individuals. For example, if your comment describes an experience of someone other than yourself, please do not identify that individual or include any personal information that identifies that individual. The Department reserves the right to redact a portion of a comment or the entire comment at any time any PII about other individuals is included.

FOR FURTHER INFORMATION CONTACT: Joe Massman, Office of Postsecondary Education, 400 Maryland Ave. SW, Washington, DC 20202. Telephone: (202) 453–7771. Email: Joe.Massman@ed.gov.

SUPPLEMENTARY INFORMATION:**I. Executive Summary**

The Secretary proposes regulations to overhaul the accountability framework for the title IV, HEA programs by replacing the former debt-to-earnings (“D/E”) metric with a revised earnings premium measure, expanding transparency, and strengthening institutional compliance standards. Maintaining robust accountability measures would ensure program integrity and protect students from low-earning outcomes, aligning with Congressional objectives for higher education oversight. The Department proposes to remove outdated definitions tied to D/E metrics, introduce the term “earnings,” and revise several existing definitions. The Student Tuition and Transparency System (“STATS”) would

apply to all programs qualifying for title IV, HEA assistance, using the earnings premium measure as the new accountability standard. Institutions would be required to report program-level data, including tuition, fees, and financial aid details such as grants and scholarships to the Department. This reporting would enable the Department to provide enhanced informational disclosures of net program cost to the public. A revised version of the earnings premium measure would apply to both GE and non-GE programs; those failing the earnings premium measure in two of three consecutive years would lose Direct Loan eligibility, though limited extensions may be granted when an orderly program closure described under § 668.603(c)(4) is in students’ best interest. Institutions would be required to update Direct Loan-eligible program lists, issue warnings about program risk and Pell Grant lifetime limits, and meet a new administrative capability standard. These proposed changes aim to incentivize institutions in every sector of higher education to offer programs that deliver economic value, enhance data accessibility for students, and protect taxpayers and students through stricter oversight and comprehensive disclosures on program outcomes.

II. Summary of the Major Provisions of This Regulatory Action*General Definitions*

The proposed regulations would:

- Amend § 668.2 to remove the definitions of “annual debt-to-earnings rate,” “debt-to-earnings rates,” “discretionary debt-to-earnings rate,” “metropolitan statistical area,” “poverty guideline,” “qualifying graduate program,” and “substantially similar program.”

- Amend § 668.2 to add “earnings” and revise existing key terms, including “cohort period,” “earnings threshold,” “eligible non-GE program,” “Federal agency with earnings data,” and “institutional grants and scholarships.”

Subpart Q—Student Tuition and Transparency System (STATS)

The proposed regulations would:

- Amend several provisions in subpart Q to reflect new numbering.
- Amend §§ 668.401, 668.402, 668.403, 668.404, and 668.405 to remove all references to the former D/E metric and use the earnings premium measure as the new accountability standard.
- Amend § 668.401 to remove exclusions for institutions located in the U.S. Territories or Freely Associated

States, and to remove an exclusion for institutions with no groups of substantially similar programs that produced 30 or more total completers over the four most recently completed award years.

- Amend § 668.402 to establish that if a program does not have an earnings threshold for its State and 50 percent or more of enrolled students are from that State, the Department would not calculate the earnings premium measure but would make earnings data publicly available.

- Amend § 668.403(b) to establish that the Secretary would obtain the median annual earnings of students who completed a GE program or eligible non-GE program during the cohort period for the fourth tax year following program completion. The earnings data would be obtained from a Federal agency and would include students who are working and are not excluded from the earnings premium measure calculation.

- Amend § 668.406 to require an institution offering any GE program or eligible non-GE program to report the total amount of Federal, State, private, or other grants and scholarships each student received for their entire enrollment. This reporting requirement would only apply to students who completed or withdrew from the program during the award year.

Subpart S—Earnings Accountability

The proposed regulations would:

- Amend §§ 668.601, 668.602, 668.603, and 668.605 to remove all references of the former D/E metric.

- Amend § 668.601 to establish that earnings accountability applies to an eligible non-GE program or a GE program offered by an eligible institution and the Secretary determines whether the program is eligible for Direct Loan program funds.

- Amend § 668.603(a) to establish that a low-earning outcome program is a GE program or eligible non-GE program that fails the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program's earnings premium measure is calculated. A low-earning outcome program's participation in the Direct Loan program would end upon the completion of a termination action of Direct Loan program eligibility under subpart G.

- Add § 668.603(c)(4) to allow a program that has failed to satisfy the requirements of § 668.402 but is not a low-earning outcome program, to continue participating in the Direct Loan program if the institution voluntarily agrees to conduct an orderly program closure, provided the Secretary

determines that it is in the best interest of the students. This flexibility would be limited to 3 years or the full-time duration of the program, whichever is less, and would require the institution and the Secretary to agree to make certain amendments to the institution's program participation agreement (PPA).

- Amend § 668.604 to remove the transitional certification requirements and require an institution to establish a program's eligibility for Direct Loan program funds by updating the list of the institution's Direct Loan-eligible programs maintained by the Department. An institution would be prohibited from including programs that share the same 4-digit Classification of Instructional Programs (CIP) code and any overlapping Standard Occupational Classification (SOC) codes as a failing program that was subjected to a two-year loss of eligibility.

- Amend § 668.605(c) to require an institution to provide a student who is eligible for Pell Grant funds with an indication of their remaining lifetime eligibility for Pell Grant funds and an explanation that all Pell Grant funds received for enrollment in the program count against their future lifetime eligibility.

- Amend § 668.605(d) to require an institution to provide an enrolled student with information regarding their remaining Pell Grant eligibility at the time that the institution makes a disbursement of Pell Grant funds to them.

Standards for Participation in Title IV, HEA Programs

The proposed regulations would:

- Add § 668.14(h)(1) to require institutions to be placed on provisional status if they fail to comply with 34 CFR 668.16(t) in two out of any three consecutive award years, which would result in the institution's low earning outcome programs becoming ineligible for title IV, HEA funds.

- Add § 668.14(h)(2) to allow an institution to appeal the Secretary's determination if they are found to have failed the conditions in 34 CFR 668.16(t) in two out of any three consecutive award years.

- Amend § 668.16(t) to require an institution to demonstrate administrative capability by showing that at least half of the institution's recipients of title IV, HEA funds and at least half of the institution's total title IV, HEA funds are not from low-earning outcome programs under subpart S.

- Amend § 668.43(d)(1) to require that the program information website includes the median length of calendar time taken for full-time and less than

full-time students to complete the program's academic requirements and obtain the degree or credential awarded by the program.

- Amend § 668.43(d)(2) to no longer require institutions to provide a prominent link to the website maintained by the Secretary on any web page containing academic information about the program or institution. The Secretary may require the institution to modify a web page if the information is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.

Cost and Benefits

As further detailed in the Regulatory Impact Analysis (RIA), the proposed regulations would have significant impacts on students, educational institutions, and taxpayers. Certain degree programs are expected to lose eligibility for title IV, HEA funds under the earnings tests in the proposed regulation, while some undergraduate and graduate certificate programs are expected to gain eligibility relative to current regulations. Students will incur costs when the programs they attend lose eligibility for title IV, HEA funds, or if they enroll in low-earning certificate programs that gain access to title IV, HEA funds. Students will also benefit in cases where the proposed regulation prevents them from attending low-earning and high-cost degree programs. Certain institutions (mainly public and private non-profit institutions) will incur costs when programs they offer lose access to title IV, HEA funds under the proposed regulation. Other institutions (such as proprietary institutions) will benefit as more programs in this sector will remain eligible for title IV, HEA funds. Taxpayers will incur new budget costs via an increase in transfers of title IV, HEA funds to institutions relative to current regulations because the proposed regulation results in a net increase in the number of students attending programs that will be eligible for title IV, HEA funds.

III. Directed Questions

General Definitions: Earnings (§ 668.2(b))

The Department seeks feedback from relevant stakeholders regarding the proposed earnings definition. This definition was developed during negotiated rulemaking to clearly identify the types of earnings income that would be utilized in the earnings premium calculation. During negotiations, several negotiators expressed concerns that the earnings definition may not accurately capture

all of the appropriate earnings income necessary to properly compute an earnings premium calculation. Some earned income elements mentioned by negotiators as areas for concern included tipped income and the value of untaxed housing benefits.

The Department contemplates using the Internal Revenue Service (IRS) as the Federal agency with earnings data as specified under current and proposed regulatory language. This use of data would be consistent with the Department's previous and current processes, including on the College Scorecard, simply with an adjustment for the CIP level under which programs are grouped. Under this approach, the Department would consider earned income sources from work as they are reported on IRS forms attached to IRS Form 1040, some of which include sources that are reported but not subject to Federal income tax. Tip income generally is required to be reported to employers and included in the wages reported in box 1 of IRS Form W-2 and additional tip income not otherwise reported is required to be included with wage income on the filer's tax form. As the Department explained in the preamble to the most recent final rule on gainful employment,¹ individuals are legally required to report their taxable earned income to the IRS, including tipped income. The Department relies on this reported income in the administration of title IV, HEA programs for determinations of earnings for program eligibility and for calculating payments under income-driven repayment plans. The Department's past experiences with the earnings appeal processes under the 2014 GE regulations did not demonstrate that substituted sources of data used in appeals improved the quality of earnings information available to determine program eligibility (see Low-earning outcome programs (§ 668.603) below for more information). No other form of survey or reporting will result in greater accuracy than the income tax reporting process, which has a built-in oversight and enforcement apparatus and involves significant legal penalties for failing to accurately report earned income. Moreover, a 2022 study² showed that underreporting tips among barbers in Texas makes up a small share of total income that, even if accounted for, the difference would be insufficient to

cause programs to pass the earnings premium test. And while ministerial housing allowances may not be subject to Federal income tax, they are reported on the tax forms for determining self-employment tax and would be available for use in median earnings calculations.

The Department must use reliable data for all calculations and believes that federal agencies use reliable methods for collecting earnings data that will ensure that using such data to calculate institutional cohorts will yield accurate results that reflect the actual post-graduation earnings of graduates. This method will allow for a consistent approach as we harmonize the implementation of the OBBB with the existing Financial Value Transparency and Gainful Employment (FVT/GE) regulatory framework.

As discussed below, the OBBB provides that the Secretary shall establish an appeals process so that if a program is determined to be a low-earning outcome program, the institution may appeal that determination. The OBBB did not instruct the Secretary to allow institutions to appeal at each step of the determination, including the reliability of the data set as to that program. The OBBB leaves the Department discretion to make a reasoned choice of the best available data on which to make the low-earning outcome determination. See *Hosp. for Special Surgery v. Becerra*, No. CV 22-2928 (JDB), 2023 WL 5448017, at *9 (D.D.C. Aug. 24, 2023) (agency made a reasoned decision in determining which classification to use in making determination); *Madison-Hughes v. Shalala*, 80 F.3d 1121, 1127 (6th Cir. 1996) (sufficiency of data collected left to agency discretion); *State of Conn. v. E.P.A.*, 696 F.2d 147, 159-60 (2d Cir. 1982) (agency's choice of data set was rationally based and "well within the Agency's discretion").

The Department also considered the difficulty in verifying alternative data in a timely manner and does not believe that, supposing it is accurate, alternative data is likely to have a significant impact on the overall calculation. The Secretary declines to allow such appeals for these reasons.

The Department seeks to understand whether this earnings data may be subject to other limitations that the Department is not aware of, such as if certain types of income are not captured in data held by the federal government or are potentially subject to distorting factors. Please ensure that any feedback provided includes the rationale for any modifications to the definition or the Department's proposed process for obtaining earnings data, details the

specific earnings data the Department should or should not factor in, and any relevant resources that may help support any changes to the earnings definition. Please also provide details for the broad applicability of any recommended data source to most or all covered program graduates, such as geographic or demographic limitations. The Department is specifically seeking broadly applicable administrative data. The Department has concerns that sources of data that vary across states may not be comparable due to different data definitions, assumptions, and criteria for inclusion. The Department also generally seeks to avoid any data source that would create a significant reporting burden on institutions. To maintain the Department's efforts to keep data as comparable as possible between the earnings used for the program and the comparison group used for the earnings threshold, please accompany suggestions for additional programmatic earnings elements with an explanation for why the importance of their inclusion would outweigh any potential problems from those items being covered differently by Census Bureau data in the American Community Survey (ACS).

Earnings Threshold (§ 668.2(b))

The Department seeks feedback on the process by which "fields of study" are defined in Section 668.2(b) for the purposes of determining earnings thresholds for graduate-level programs.

To calculate the earnings thresholds, the statute under HEA Section 454(c)(2), as revised by the OBBB, requires the Department to use data from the Census Bureau. The Department contemplates using the Census Bureau's ACS for this calculation, as it is the only dataset we are aware of that is maintained by the Census Bureau that is nationally representative, is annually updated, and contains all the data elements needed to calculate the earnings threshold metrics specified under Section 84001 of the OBBB.

However, there are some potential limitations with the ACS when calculating one of the graduate-level earnings thresholds described in Section 668.2(b). Specifically, in some instances, it may not be possible for the Department to calculate the median earnings of working adults aged 25-34 with a bachelor's degree in the same field of study (defined using 2-digit or 4-digit CIP codes) in the state in which the institution is located and who are not enrolled in college.

In some cases, especially in uncommon fields of study and in less-populated states, the ACS may not

¹ 88 FR 70004.

² Cellini, Stephanie Riegg & Blanchard, Kathryn J. (2022). Hair and Taxes: Cosmetology Programs, Accountability Policy, and the Problem of Underreported Income. Geo. Wash. Univ. (https://www.american.edu/spa/peer/upload/peer_hairtaxes-final.pdf).

sample any individuals (or only a very small number of individuals) who meet all of these criteria. As described in Section 668.2(b), for cases where fewer than 30 individuals are sampled, the Department proposes not calculating this measure. Instead, these graduate programs would be compared to the lower of the other two thresholds described in Section 668.2(b). The Department is concerned that calculating an earnings threshold using a small number of individuals could produce non-representative values in which programs are judged against. This issue is largest for cases where there are zero individuals sampled in the ACS who meet the criteria for this metric.

As such, the Department seeks feedback on this approach and other alternative approaches. For example, the Department seeks feedback on whether this issue could be mitigated by grouping fields of study into broader categories in the ACS. Alternatively, the Department seeks feedback on whether there are other datasets maintained by the Census Bureau, like the National Survey of College Students, as well as datasets that can be supplemented with Census Bureau datasets, that would allow the Department to calculate this metric when fields of study are defined at the 2-digit or 4-digit CIP level, in a more statistically reliable and accurate manner.

IV. Invitation To Comment

We invite you to submit comments regarding these proposed regulations. For your comments to have maximum effect in developing the final regulations, we urge you to clearly identify the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. The Department will not accept comments submitted after the comment period closes.

The following tips are meant to help you prepare your comments:

- Be concise but support your claims.
- Explain your views as clearly as possible and avoid using profanity.
- Refer to specific sections and subsections of the proposed regulations throughout your comments, particularly in any headings that are used to organize your submission.
- Explain why you agree or disagree with the proposed regulatory text and support these reasons with data-driven evidence, including the depth and breadth of your personal or professional experiences. We encourage commenters to include supporting facts, research, and evidence in their comments. When doing so, commenters are encouraged to

provide citations to the published materials referenced, including active hyperlinks. Likewise, commenters who reference materials which have not been published are encouraged to upload relevant data collection instruments, data sets, and detailed findings as a part of their comment. Providing such citations and documentation will assist us in analyzing the comments.

- Where you disagree with the proposed regulatory text, suggest alternatives, including regulatory language, and your rationale for the alternative suggestion.
- Submit your public comment only; do not submit comments on the behalf of others.
- Do not include personally identifiable information (PII) such as Social Security numbers or loan account numbers for yourself or for others in your submission.
- Do not include any information that directly identifies or could identify other individuals or that permits readers to identify other individuals.

Mass Writing Campaigns: In instances where individual submissions appear to be duplicates or near duplicates of comments prepared as part of a writing campaign, the Department will post one representative sample comment along with the total comment count for that campaign to *Regulations.gov*. The Department will consider these comments along with all other comments received.

In instances where individual submissions are bundled together (submitted as a single document or packaged together), the Department will post all of the substantive comments included in the submissions along with the total comment count for that document or package to *Regulations.gov*. A well-supported comment is more informative to the agency than multiple form letters.

Public Comments: The Department invites you to submit comments on all aspects of the proposed regulatory language specified in this NPRM, and in the Regulatory Impact Analysis and Paperwork Reduction Act sections.

The Department may, at its discretion, decide not to post or to withdraw certain comments and other materials that contain promotion of commercial services or products, and spam.

We may not address comments outside of the scope of these proposed regulations in the final regulations. Comments that are outside of the scope of these proposed regulations are comments that do not discuss the content or impact of the proposed regulations or the Department's

evidence or reasons for the proposed regulations.

Comments that are submitted after the comment period closes will not be posted to *Regulations.gov* or addressed in the Final Rule.

We invite you to assist us in complying with the requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect public comments about these proposed regulations by accessing *Regulations.gov*.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the Information Technology Accessibility Program Help Desk at *ITAPSupport@ed.gov* to help facilitate this request.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make the regulation easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 668.2 General definitions.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulation easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

V. Background

Gainful Employment (GE) Prior Rules

Under Sections 101 and 102 of the HEA, there are two broad categories of title IV-eligible programs: degree programs offered by public and private nonprofit institutions, and programs required to lead to gainful employment in a recognized occupation (which include nondegree programs at any type of institution, and nearly all programs offered by proprietary institutions). The statute does not further elaborate on the gainful employment requirement.

The Department has issued four previous regulations on GE, most recently in 2023 as part of the current FVT/GE accountability framework. These regulations required the Department to calculate two separate metrics for the vast majority of programs eligible for title IV, HEA funds—a debt-to earnings (D/E) rate and an earnings premium—but did not impose program eligibility consequences for programs other than GE programs. The regulations also established a process by which the Department would disclose key information about academic programs to current and prospective students at a point when the information would be most useful for them.

OBBB Earnings Accountability Framework

The OBBB, signed by into law by President Trump on July 4, 2025, amended the HEA to establish a new accountability framework for most postsecondary programs of study that participate in the Direct Loan program. Congress designed this framework to compare the median earnings of graduates to those of working adults, and it requires the Department to discontinue a program's Direct Loan program eligibility if its graduates earn less than the comparison group.

The OBBB framework does not include D/E rates, and although the earnings comparison metric largely resembles the earnings premium measure under current the FVT/GE regulations, there are differences in the populations of institutions and programs covered by the new framework, in the methodology by which the comparison must be performed, and in consequences for

failing programs. To provide students, families, institutions, and the public with meaningful and comparable program information and to promote consistency in the treatment of programs across all credential levels and institutional sectors, the Department seeks to amend and simplify its existing FVT and GE framework to harmonize with the accountability framework required under the OBBB. This would result in the establishment of a single metric that would be calculated for nearly all programs eligible for title IV, HEA funds and that has the same program eligibility consequences for failure of GE and eligible non-GE programs alike.

This NPRM complies with Section 492 of the HEA, which requires the Secretary to obtain public input and conduct negotiated rulemaking before issuing proposed regulations for the title IV, HEA programs. To meet those requirements and implement the new statutory directives provided for in the OBBB, the Department convened the Accountability in Higher Education and Access through Demand-driven Workforce Pell (AHEAD) negotiated rulemaking committee, which reached consensus agreement on the entirety of the regulatory text included in this NPRM.

VI. Authority for This Regulatory Action

The Department's authority to engage in this rulemaking action and pursue a transparency and accountability framework for GE programs and eligible non-GE programs is derived primarily from seven categories of statutory enactments: (1) the Secretary's generally applicable rulemaking authority, which includes provisions regarding data collection and dissemination, and which applies in part to title IV, HEA; (2) authorizations and directives within title IV, HEA regarding the collection and dissemination of potentially useful information about higher education programs, as well as provisions regarding institutional eligibility to benefit from title IV; (3) the definition of institution of higher education under Section 102 of the HEA and other provisions within title IV of the HEA that address programs that prepare students for gainful employment; (4) the Secretary's authority to establish procedures and requirements relating to the administrative capacities of institutions of higher education; (5) recently enacted changes within title IV, HEA as a result of Section 84001 of the OBBB, which establishes an accountability system limiting Direct Loan eligibility for programs that

demonstrate low earning outcomes; (6) the Secretary's authority to develop a quality assurance system under the Direct Loan Agreement; and (7) the Secretary's authority to include other provisions in the Direct Loan Agreement that she determines are necessary to protect the interests of the United States and to promote the purposes of the Direct Loan program. Finally, this section also addresses OBBB's waiver of the HEA's master calendar requirements for some of the proposed regulations discussed in this NPRM.

The Secretary has broad powers to engage in rulemaking to administer programs administered by the Department. Specifically, Section 410 of the General Education Provisions Act (GEPA) grants the Secretary authority "to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department," such as the title IV, HEA programs that provide Federal loans, grants, and other aid to students, to assist in pursuing either eligible non-GE programs or GE programs. 20 U.S.C. 1221e-3. Likewise, Section 414 of the Department of Education Organization Act (DEOA) authorizes the Secretary to "prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department." 20 U.S.C. 3474.

Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024) brought about a sea change in administrative law by overturning *Chevron* deference; however, *Loper Bright* did not disrupt Congress's ability to provide "a degree of deference" to agencies in specific statutes. 603 U.S. 369, 394 (2024). Indeed, the Court directly acknowledged that Congress may "delegate . . . discretionary authority to any agency" by giving directions to agencies to promulgate rules that are "reasonable" or "appropriate." *Id.* In a post-*Loper Bright* case challenging the 2023 FVT/GE rule, a lower court specifically held that the Department has been explicitly granted such deference by Congress under the provisions of GEPA and the DEOA. *American Assoc. of Cosmetology Sch. v. Dep't of Educ.*, 2025 WL 4219345, at *5 (N.D. Tex. Oct. 2, 2025) (*citing* 20 U.S.C. 1221e-3); 20 U.S.C. 3474). The court further stated that, through the HEA, the Congress had clearly granted the Secretary to promulgate rules necessary for the administration of the title IV, HEA programs: "the Supreme Court in *Loper Bright* recognized that Congress may 'delegate[] particular discretionary

authority to an agency' by leaving it with 'flexibility' through terms 'such as 'appropriate' or 'reasonable' " and that HEA confers such authority [on the Secretary] by including the additional specific direction to 'prescribe such regulations as may be necessary to provide for . . . any matter the Secretary deems necessary to the sound administration of the financial aid programs[.]' " *American Assoc. of Cosmetology Sch.* *6 (citing 20 U.S.C. 1094(c)(1)(B); 1099c).

Section 431 of the GEPA grants the Secretary additional authority to establish rules to require institutions to make data available to the public about the performance of Federally supported education programs and about students enrolled in those programs and to collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their intended purposes. *See* 20 U.S.C. 1231a. This provision authorizes the reporting and disclosure requirements in the proposed rule, which would enable the Department to collect data and information for the purpose of developing objective measures of program performance. The reporting is not only for the Department's use in evaluating programs but also serves to inform the public—including enrolled students, prospective students, their families, institutions, and other stakeholders—about relevant information to those Federally supported programs.

The Secretary's authority to establish rules requiring institutions to provide information to the Department is further bolstered by the fact that certain provisions of the HEA would be rendered inoperable if such data was not provided. For example, without collecting data from institutions regarding students participating in title IV, HEA programs, the Department would have no ability to determine whether a program offered by that institution satisfies the earnings test set forth in HEA Section 454(c)(2), added by OBBA. Therefore, in any such case in which the HEA directs the Department to conduct analysis that requires information that an institution possesses, the Secretary is permitted to establish regulations regarding such data collection under the Secretary's broad authority to promulgate regulations necessary or appropriate for governing the applicable programs administered by the Department. *See* 20 U.S.C. 3474.

Furthermore, in the GE setting, the Department has not only a statutory basis for pursuing the effective

dissemination of information to students about a range of GE program attributes and performance metrics, but also has authority to use certain metrics to determine that an institution's program is not eligible to benefit from one or more of the title IV, HEA programs. When an institution's program is at risk of losing eligibility based on a given metric, there should be no real doubt that the Department may require the institution that operates the at-risk program to alert prospective and enrolled students that they may not be able to receive assistance from one or more title IV, HEA programs at the program in question. Without direct communication from the institution to prospective and enrolled students, the students themselves risk losing the ability to make informed choices about their educational pursuits. Congress clearly intended to require institutions to provide this manner of direct communication to students, as plainly evidenced by the presence of the student notice requirements for at-risk degree programs under HEA Section 424(c)(7), as revised by the OBBA. In keeping with the Department's effort to harmonize the accountability requirements for non-GE and GE programs, we believe it is appropriate to similarly require institutions to provide warnings to prospective and enrolled students regarding at-risk GE programs consistent with the warnings expressly required in statute for eligible non-GE programs and that the Secretary is authorized to do so under the Secretary's general authority to promulgate regulations that are necessary or appropriate to administer the title IV, HEA Programs. *See* 20 U.S.C. 1221e–3; 20 U.S.C. 3474.

The data to be collected and analyzed by the Department will not violate the student unit record prohibition found in HEA Section 134. The Department does not propose creating any new databases of student records. It will collect from institutions individual title IV, HEA recipient data, including PII, and will securely transmit that data to a Federal agency with earnings data for matching. The metric calculation will only utilize median earnings data that does not include PII data from student recipients of title IV, HEA assistance. The proposed regulation is also supported by the Department's statutory responsibilities to observe eligibility limits in the HEA. Section 498 of the HEA requires institutions to establish eligibility to provide title IV, HEA funds to their students. 20 U.S.C. 1099c. Eligible institutions must also meet program eligibility requirements for

students in those programs to receive title IV, HEA assistance.

One type of program for which certain types of institutions must establish program-level eligibility is "a program of training to prepare students for gainful employment in a recognized occupation." 20 U.S.C. 1001(b)(1)(A)(i), (c)(1)(A). Section 481 of the HEA articulates this requirement by defining, an "eligible program," in part, as a "program of training to prepare students for gainful employment in a recognized profession." The HEA does not more specifically define the terms "training to prepare," "gainful employment," "recognized occupation," or "recognized profession" for purposes of determining the eligibility of GE programs for participation in title IV, HEA programs. At the same time, the Secretary and the Department have a legal duty to interpret, implement, and apply those concepts in order to observe the statutory eligibility requirements in the HEA.

The Department has long interpreted the word "gainful" in this context to mean "profitable." Program Integrity: Gainful Employment, 79 FR 64890, 64894 (Oct. 31, 2014);

American Assoc. of Cosmetology, 2025 WL 4219345, at *5.³ And the Department has consistently interpreted the broader phrase "gainful employment" to mean that the program "actually train[s] and prepare postsecondary students for jobs that they would be less likely to obtain without that training and preparation."⁴ This would *not* include, for example, "baccalaureate degree[s] in liberal arts" as those programs are statutorily prohibited from being in most instances.⁵

It is relevant to acknowledge that there is some degree of ambiguity in the term "gainful employment." *See Ass'n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133, 145 (D.D.C. 2012) (stating that "There is no unambiguous meaning of what makes employment 'gainful'"); *Ass'n of Proprietary Colleges v. Duncan*, 107 F. Supp. 3d 332, 359 (S.D.N.Y. 2015)

³ "Gainful." Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/gainful>. Accessed March 20, 2026.

⁴ Financial Value Transparency and Gainful Employment (GE), 88 FR 32,300, 32,342 (May 19, 2023).

⁵ Section 102(b)(1)(A)(ii) provides that baccalaureate degrees in liberal arts are no longer considered to be gainful employment programs, but Congress provided a grandfather clause to allow certain institutions that have offered such programs since January 1, 2009 to continue to offer such programs. Those baccalaureate degree programs are now covered by the accountability provisions in OBBA.

(quoting *Ass'n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133 at 145, and adopting its conclusion that “There is no unambiguous meaning of what makes employment ‘gainful’”). Indeed, some dictionaries that define the whole phrase “gainful employment” define it as meaning “work that you get paid for.”⁶ Under this definition, the only programs that do not prepare students for “gainful employment” would be programs that train students for unpaid volunteer positions or hobbies. But courts have warned about reading phrases in isolation like this, as the text of a statute must be construed as a whole. See *Kmart Corp. v. Cartier, inc.* 486 U.S. 281, 291 (1988) (per Kennedy, J.) (“In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.” The interpretative canon, which is generally referred to as the Whole-Text Canon or the Whole Act Rule, provides that the context of the broader statutory scheme is the “primary determinant of meaning.” Scalia & Garner, *Reading Law*, 167 (2012).

As we look to other parts of the statute, we find provisions that help provide clarity regarding the definition of gainful employment. In the first instance, Congress has created two definitions of “institution of higher education.” The first definition, which is in Section 101 of the HEA, authorizes non-profits and public institutions to participate in title IV student aid programs. 20 U.S.C. 1001. The definition in Section 101 does not include references to gainful employment, which is a notable omission and strongly suggests that Congress did intend to limit the universe of eligible programs when using that phrase elsewhere.

In Section 102, Congress provides its second definition of institution of higher education, this time defining it to mean proprietary institutions, vocational institutions, and foreign institutions. Here, Congress tells us that if a subset of these types of institutions (proprietary and vocational) want to participate, they must provide “an eligible program of training to prepare students for gainful employment in a recognized occupation.” The broader phrase makes it clear that these programs “train” students for “a recognized occupation.” Further, we know that Congress does not think

baccalaureate degree programs in liberal arts are gainful employment programs, because Congress says that proprietary institutions can offer (1) gainful employment programs, OR (2) programs leading to a baccalaureate degree in liberal arts if the program has been provided since January 1, 2009 and the institution is accredited by a certain type of accreditor. The disjunctive “or” in this context shows us that “gainful employment” does not mean liberal arts.

For the reasons above, it is clear that the operative purpose of Section 102(b)–(c) is to use taxpayer funds to help support students in their quest to obtain more training such that they may enter a recognized occupation. The Department thinks that this context is key in demonstrating that Congress only wants to fund programs that help make the student better off in their “gainful employment.” Gainful means “profitable,” so Congress wants students to get training that enables them to be more profitable than before they went to school. As such, the Department interprets the term “gainful employment” to mean that a program must, on average, make students better off financially than they would have been had they not attended the program. In other words, institutions must ensure that the median student in a gainful employment program earns a premium, compared to what they would have earned if they had never gone to school. This is the same earnings premium measure called for in OBBB, but the Department believes that the gainful employment statute calls for this type of accountability independent from the amendments made by OBBB.

The Department’s interpretation of the phrase “gainful employment” aligns with the statute and is supported by case law concerning Department’s previous gainful employment regulations. In *Ass’n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133, 146 (D.D.C. 2012), the court stated that term “gainful employment” must be understood in the context of the statutory command that “a given program ‘prepare students for gainful employment in a recognized occupation.’” That court reasoned that the “real question, then, is not how much gain is enough but rather how much preparation is enough” and found that the Department’s attempt to “answer that question by reference to the economic success of a program’s former students” was not precluded by the HEA, as the HEA does not specifically state “how to determine which programs actually prepare their students and which programs do not.”

Id. at 146.⁷ Additionally, in a post-*Loper Bright* case, *American Assoc. of Cosmetology*, the court stated that the ordinary meaning analysis supported the Department’s conclusion that students are not prepared for gainful employment if a program is designed to leave its graduates financially worse off than when they started, and unable to repay their loans. 2025 WL 4219345, at *5.

Furthermore, the Secretary is authorized to establish and enforce administrative capability standards for institutions participating in title IV, HEA programs and to terminate the participation of any institution who the Secretary determines does not meet those standards. Section 498(a) of the HEA provides that, for purposes of qualifying institutions of higher education for participation in title IV, HEA programs, the Secretary shall determine administrative capability of an institution of higher education.

Section 498(d)(1) authorizes the Secretary “to establish procedures and requirements relating to the administrative capacities of institutions of higher education” which can include “consideration of past performance of institutions.” Section 498(d)(2) further authorizes the Secretary to any other reasonable procedures necessary to ensure compliance with the administrative capability standard. Therefore, because of the broad authority conferred on the Secretary to establish such standards and procedures, as well as to consider the past practice of an institution in determining whether or not it satisfies the administrative capability standard, the Department believes that it is well within the Secretary’s authority to establish a standard would penalize an institution where at least half of the institution’s recipients of title IV, HEA funds and at least half of the institution’s total title IV, HEA funds are from low-earning outcome programs under subpart S (and have remained so for two out of three consecutive years) by terminating the overall title IV, HEA program eligibility of all such programs and requiring the institution to participate in title IV, HEA program on a provisional basis.

Section 84001 of the OBBB amends HEA Section 454 to create a new accountability framework, including an earnings test under HEA Section

⁷ This conclusion was directly restated several years later in *Ass’n of Proprietary Colleges v. Duncan*, 107 F. Supp. 3d 332, 359 (S.D.N.Y. 2015), which excerpted a considerable portion of the D.D.C.’s opinion in *Ass’n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133, 146 (D.D.C. 2012).

⁶ See “Gainful Employment”, *Cambridge Dictionary Online*, <https://dictionary.cambridge.org/us/dictionary/english/gainful-employment>. Accessed March 22, 2026.

454(c)(2) for title IV, HEA programs that lead to an undergraduate degree, graduate or professional degree, or graduate certificate. It further specifies under HEA Section 454(c)(7) that such programs which fail the earnings test are ineligible for Direct Loan program participation for a period of not less than two years. HEA Section 454(c)(6) further requires institutions to provide warnings to students regarding at-risk programs.

Direct Loan Agreement Authority

Institutions that participate in the Direct Loan program must agree to comply with the requirements set for in Section 454 of HEA. The requirements in this section, which has been called the Direct Loan Agreement, have been incorporated into the PPA which covers other title IV programs, not just the Direct Loan program. As part of the Direct Loan Agreement, institutions must “provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with institutions of higher education, to ensure that the institution is complying with program requirements and meeting program objectives.” 20 U.S.C. 1087d(a)(4). The Department has never developed a formal quality assurance system before this rulemaking,⁸ but believes that the GE framework proposed herein is authorized by this provision and is itself a quality assurance system.⁹

The quality assurance system authority requires the Secretary to ensure that the institution is complying with program requirements and meeting program objectives. As such, it is important to discuss the “program requirements and program objectives” referenced in HEA Section 454. 20

U.S.C. 1087d(a)(4). The legal scholars Dan Zibel and Aaron Ament have noted that “the HEA is silent as to what is meant by ‘quality assurance,’ ‘program requirements,’ and what it means for an institution to ‘meet[] program objectives.’ In such situations, the law affords the Department ample discretion to fill these statutory voids, resolve statutory ambiguities, and ensure that institutions of higher education are serving students and taxpayers.”¹⁰ Zibel and Ament have argued that “a core ‘program objective’ of the Direct Loan program is to ensure not only that students have access to higher education, but also to ensure that federally issued loans are repaid.”¹¹ The Department largely agrees with these assertions that we have broad authority to provide details as to what the purpose of these programs are and that the Direct Loan program is designed to provide borrowers with capital to attend college and to repay their loans in most circumstances. However, certain subsets of programs within the HEA have additional purposes that are narrower in scope.

Here, the Department believes that the gainful employment text in Section 102(b)–(c) of the HEA provides significant context as to what the program objectives are for proprietary and vocational institution programs as they participate in the Direct Loan program. Both of these types of institutions are required to provide “an eligible program of training to prepare students for gainful employment in a recognized occupation.” 20 U.S.C. 1002(b)–(c). As such, the purpose of these programs is to provide “gainful employment.” With that in mind, it is clear that the gainful employment authority operates in tandem with the quality assurance system authority, in that guardrails to protect the purpose of a GE program can be incorporated into a quality assurance system. As such, the Secretary is permitted to develop a quality assurance system on a curated basis for these specific GE programs that ensures quality in how these institutions are preparing students for gainful employment. As discussed above, the Department has determined that the gainful employment statute requires institutions to ensure that most graduates of a gainful employment program earn a premium compared to what they would have earned if they had never gone to the program.

In sum, the Department has concurrent authority under Section

454(a)(4) along with Section 102(b)–(c) of the HEA to require institutions to comply with the earnings premium. Institutions that fail to comply with Section 102 fail to meet the definition of “institution of higher education” for the purposes of title IV, and are no longer eligible institutions and the Secretary must terminate eligibility. And institutions that fail to comply with the terms of the Direct Loan Agreement under Section 454 are not eligible to participate in the Direct Loan program. As such, as part of this rulemaking the Department is proposing the earnings premium measure to be a quality assurance system that establishes eligibility for all GE programs to participate only in the Direct Loan program, consistent with the scope of Section 454, which only applies to Direct Loans.

The quality assurance system authority also requires the Department to develop the quality assurance system in consultation with institutions of higher education, which we have done as part of the negotiated rulemaking process. In addition, institutions will have the ability to comment on this proposed rule. The Department is required to consider making changes in response to all substantive comments under informal notice-and-comment rulemaking, and as such, we are effectively consulting with institutions of higher education under the existing rulemaking procedures because we are seeking and obtaining advice from institutions. 5 U.S.C. 553; 20 U.S.C. 1098a.

Institutions must also comply with “other provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part.” 20 U.S.C. 1087d(a)(7). Failure to abide by the terms of the Direct Loan Agreement results in disqualification from participating in the Direct Loan program, but not necessarily other title IV, HEA programs.

The Department believes that it has authority under these provisions in Section 454 of the HEA, as well as the GE provisions in Section 102, to require GE programs to comply with the earnings premium standard. However, the Department believes that the appropriate remedy for programmatic noncompliance is loss of eligibility for Direct Loans for such programs that fail the earnings premium, except when a large number of an institution’s programs fail, which is discussed in greater length below. The Secretary has been given significant deference by Congress in Section 454 in designing the quality assurance system, and that

⁸ See Dan Zibel & Aaron Ament, *Protection and the unseen: How the US Department of Education’s underdeveloped authorities can protect students and promote equity in higher education*, Brookings Economic Studies, 13 (Oct. 2020) (noting that the quality assurance authority in Section 454(a)(4) has never been relied upon, but that “[n]evertheless, section 454(a)(4) of the HEA (the “QA authority”) unambiguously provides that the DLA” shall implement a quality assurance system”), available at <https://www.brookings.edu/wp-content/uploads/2020/10/ES-10.13.20-Zibel-Ament.pdf>.

⁹ The Department has relied on its authority in Section 454(a)(7) to justify certain aspects of the 2016 Borrower Defense regulations, such as provisions prohibiting arbitration agreements in certain settings. See Student Assistance General Provisions, 81 FR 75926, 75932 (Nov. 1, 2026). These provisions were ultimately removed when the Department published 2019 borrower defense regulations, which are now in effect under Section 85001 of the OBBA; however, the Department did not disclaim the authority to impose these provisions and made the change for policy reasons. See Student Assistance General Provisions, 84 FR 49788, (Sept. 23, 2019).

¹⁰ Zibel & Ament, *supra* note 8 at 14 (cleaned up).

¹¹ *Id.*

includes the option to tailor the remedy for noncompliance to a program-by-program basis to protect the interests of the United States. Indeed, it would not be in the interest of the United States to disqualify all programs at an institution if only one or a few programs are not performing because students in high performing programs would also lose access to programs that are adding value.

The Department also has authority under Section 454(a)(7) for this rulemaking, which authorizes the Secretary to include in the Direct Loan agreement (which is incorporated into the PPA) “such other provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part.” 20 U.S.C. 1087d(a)(7).

Indeed, this broad grant of deference to the Secretary gives the Department significant latitude in designing to protect the interests of the United States and promote the purposes of this part. As explained above, the holding in *Loper Bright* does no work to disrupt deference provided to the Department in broad statutory grants of authority like we have here. *Loper Bright*, 603 U.S. at 394–95.

As stated above, the purpose of authorizing proprietary institutions and vocational institutions to participate in title IV, HEA programs is to provide students opportunities for training designed to ensure that they may become gainfully employed in a recognized occupation. As such, the Department believes that Section 454(a)(7) provides additional authority for the Department to require the earnings premium measure, because doing so advances the purposes of the Direct Loan program through institutional eligibility under Section 102(b)–(c).

In sum, the Department has overlapping and concurrent authority to require an earnings premium for GE programs under the gainful employment authority in Section 102(b)–(c), the quality assurance system authority in Section 454(a)(4), the “protect” and “promote” authority in Section 454(a)(7), and our broad authority to regulate Section 410 of GEPA. The Department believes that all of these authorities work in tandem and authorize us, independent from the amendments made by OBBB related to accountability, require an earnings premium for such GE programs.

In practice, the proposed earnings premium under OBBB is the same as the earnings premium under GE. The only type of program not covered by the earnings premium under OBBB are

certificate programs, which are covered by GE. As such, if a court disagrees with our assessment of the robust legal authority we have, the accountability provisions relating to GE are severable and would only have a practical impact on certificate programs.

Summary of Authorities

The above authorities collectively empower the Secretary to promulgate regulations to (1) Require institutions to report information about GE programs and eligible non-GE programs to the Secretary; (2) Require institutions to provide disclosures or warnings to students regarding programs that do not meet earnings measures established by the Department; (3) Implement Direct Loan program eligibility requirements pertaining to graduate earnings outcomes, including an earnings premium metric and associated reporting, certification, and warning processes; and (4) Define the GE requirement in the HEA by establishing similar measures to determine the eligibility of GE programs for participation in the Direct Loan program, which also is supported by the overlapping authority the Department has to create a Quality Assurance System for institutions participating in the Direct Loan program. Where helpful and appropriate, the Department will elaborate on the relevant statutory authority in our overviews and section-by-section discussions below.

Waiver of HEA Master Calendar Requirements

Congress may waive, modify, or rescind requirements in the HEA and Administrative Procedure Act (APA) that require the Department to follow certain processes and procedures when engaging in informal notice-and-comment rulemaking. See, e.g., *Asiana Airlines v. F.A.A.*, 134 F.3d 393, 398 (D.C. Cir. 1998); *Methodist Hospital of Sacramento v. Shalala*, 38 F.3d 1225, 1237 (D.C. Cir. 1998) (finding that certain parts of the APA procedural framework had been waived when Congress gave an agency direction that conflicts with and is irreconcilable with the APA).

At the same time, the court in *Asiana Airlines* made clear that the APA requires “clear intent” from Congress to justify a departure from the procedural requirements in the APA, noting that 5 U.S.C. 559 requires an explicit waiver of APA procedural requirements. Here, the Department is complying with all of the requirements for informal notice-and-comment rulemaking in 5 U.S.C. 553, so an express waiver is not needed. The explicit waiver standard in 5 U.S.C. 559

only applies to the procedural requirement of the APA, and does not apply to the Master Calendar provision in Section 482(c) of the HEA. Had Congress wished for the HEA Master Calendar provision to have the same rule of construction as it does for procedural requirements of the APA, we would have expected that Congress would either cross reference and incorporate 5 U.S.C. 559 into the HEA or use similar language to 5 U.S.C. 559 within Section 482(c) of the HEA. Congress knows how to create these types of special rules of construction when they want to, and they declined to do so in Section 482(c) of the HEA.

Absent an explicit rule of construction in the HEA, we rely on the ordinary tools of statutory interpretation to glean the meaning of the statute. The Harmonious-Reading Canon provides that statutes should, when possible, be interpreted in a way that renders them compatible, not contradictory, but such an approach is not always possible if context and other considerations (including the application of other canons) make it impossible to do so, another approach to statutory interpretation, such as the General/Specific Canon must be applied. See Scalia & Garner, *Reading Law*, 155 (2012). The General/Specific Canon dictates that, in cases where a general prohibition is contradicted by a specific permission or a general permission that is contradicted by a specific prohibition, the more specific of the two provisions controls. *Id.* at 158. Because, as discussed below, the OBBB contains provisions with effective dates that cannot possibly be implemented in regulation in accordance with the HEA’s master calendar requirements, and as such, implicitly provides a limited waiver of the HEA’s master calendar requirement, so far as it is necessary to promulgate regulations that give effect to those provisions. See *Dorsey v. United States*, 567 U.S. 260, 274 (2012) (stating that an agency’s compliance with an existing statute “cannot justify a disregard of the will of Congress as manifested either expressly or by necessary implication in a subsequent enactment” (quoting *Great Northern R. Co. v. United States*, 208 U.S. 452, 465 (1908)).

Here, the OBBB was enacted on July 4, 2025. The OBBB directs the Department to implement roughly a dozen provisions by July 1, 2026. Many of these provisions are not self-executing and could not be implemented absent the Department promulgating regulations to provide details for institutions on how to comply with the OBBB. Congress gave

the Secretary discretion within the OBBB to implement the provisions impacting the title IV, HEA programs and knew that its commands were not self-executing when directing the Secretary to take action. Congress expected the Secretary to act via rulemaking before July 1, 2026, to enable these provisions to actually go into effect.

The master calendar in the HEA provides that regulatory changes initiated by the Secretary affecting the title IV, HEA programs must be published in final form by November 1st in order for them to go into effect by July 1st of the following year. 20 U.S.C. 1089(c)(1). Section 492 of the HEA requires the Department to undertake negotiated rulemaking as part of any regulation under title IV of the HEA. In order to conduct negotiated rulemaking and meet APA requirements, the Department must have a public hearing (providing notice to the public), solicit nominations from the public to serve on a negotiated rulemaking committee, select non-Federal negotiators, hold negotiations, develop an NPRM, publish an NPRM (with at least a 30-day comment period), and then publish a final rule that responds to any substantive comments received. The fastest possible timeframe in which the negotiated rulemaking process for the rulemaking packages assigned to the AHEAD Committee could have occurred is 149 days, which is irreconcilable with the timeline allowed by the enactment of the OBBB, due to the fact that there were 120 days from July 4, 2025, (the day the OBBB was enacted), through and including November 1, 2025, (the publication date of the final rule required by the master calendar).

It would not have been possible for the Department to undertake every step of the negotiated rulemaking process by November 1, 2025, in order to implement the provisions that become effective in the OBBB by July 1, 2026, which is the statutory effective date. Congress was aware of this temporal impossibility when they passed the OBBB, yet Congress decided that these provisions would still go into effect on July 1, 2026. Because these provisions are not self-implementing and cannot go into effect unless the Department promulgates a final rule, the OBBB implicitly waives the master calendar.

With important details unanswered by the plain text of the OBBB, it is clear that the policy scheme set forth in the HEA made by the OBBB cannot be implemented absent regulatory action by the Department. At the same time, even though the requirements of negotiated rulemaking are onerous, it is

possible to undergo negotiated rulemaking and publish a final rule at least 30 days prior to the effective date of these OBBB provisions on July 1, 2026. Therefore, the OBBB does not waive negotiated rulemaking nor any provision in the APA. For provisions in the OBBB that become effective July 1, 2027, and beyond, Congress did not implicitly repeal the master calendar because it is possible for the Department to publish a final rule that complies with the master calendar to implement those provisions.

Severability

“It is axiomatic” that a regulation may be invalid in part but not in whole or as applied to one set of facts but not another. *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329 (2006). If a court finds one part of a regulation is unlawful, the “normal rule” is to enjoin only that part. *Id.* (quoting *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985)).

It is the Department’s intent that if any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

Statutes and regulations are severable if the separate provisions are “wholly independent of each other” and can operate independently. *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 502 (1985). That is the case here. No part herein will be affected if another part is found to be unlawful. Nor does the Department believe courts or regulated parties would be unable to apply the rule if one part is held invalid. *C.f. Dep’t of Educ. v. Louisiana*, 603 U.S. 866, 868 (2024) (per curiam) (denying the government’s request to stay a preliminary injunction against an entire rule where only parts were found to be invalid because “schools would face in determining how to apply the rule for a temporary period with some provisions in effect and some enjoined”).

VII. Public Participation

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by the title IV, HEA programs. Prior to developing this NPRM, the Department obtained advice and recommendations from individuals and representatives of groups involved in the title IV, HEA programs. This outreach included a 30-day public comment period, one day of public hearings, and five days of in-person negotiated rulemaking on these

proposed regulations at the Department’s headquarters in Washington, DC. Further details regarding these efforts are provided below.

On July 25, 2025, the Department published in the **Federal Register** (90 FR 35261) a notice of our intent to hold public hearings and to establish two negotiated rulemaking committees to consider regulatory changes to the title IV, HEA programs, with one committee addressing topics including institutional and programmatic accountability and the Pell Grant Program. The engagement included a 30-day written public comment period, a public hearing on August 7, 2025, and five days of negotiated rulemaking specific to this NPRM.

Public Comments and Hearings

We received 1,864 written comments in response to the **Federal Register** notice. Additionally, we held a virtual public hearing on August 7, 2025. A total of 57 individuals testified virtually at the hearing.

You may view the written comments submitted in response to the July 29, 2025 “Intent to Establish Negotiated Rulemaking Committees; Correction” correction notice (90 FR 35652), by visiting the Federal eRulemaking Portal at <https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-education-policy/negotiated-rulemaking-for-higher-education-2025-2026>. Instructions for finding comments are also available on the site under “FAQ.”

Transcripts of the public hearings can be accessed at <https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-education-policy/negotiated-rulemaking-for-higher-education-2025-2026>.

VIII. Negotiated Rulemaking

On July 25, 2025, we published the notice in the **Federal Register** referenced earlier in the Public Participation section. That notice also set forth a schedule for committee meetings and requested nominations for individual negotiators to serve on the AHEAD Committee.

We chose members of the negotiated rulemaking committee from individuals nominated by groups involved in the title IV, HEA programs. We selected individuals with demonstrated expertise or experience with the proposed topics. The negotiated rulemaking committee included the following members, representing their respective constituencies:

- Students who are currently enrolled and receiving assistance from the title IV, HEA programs: Eric Atchison, Arkansas State University System, and

Magnus Noble (alternate), University of Illinois Springfield.

- Students who are veterans, U.S. military service members or groups representing them: Matthew Feehan, Veterans Education Project, and Julie Howell (alternate), Paralyzed Veterans of America.

- Employers and groups representing the business community, including small, medium, and large businesses: David Kafafian, CLASP, and Dennis Cariello (alternate), Hogan Marren Babbo & Rose.

- Legal assistance organizations that represent students and borrowers, consumer advocates, and civil rights groups that represent students: Tamar Hoffman, Community Legal Services of Philadelphia, and Zoe Kemmerling (alternate), Legal Aid of the District of Columbia.

- Public institutions of higher education, including institutions eligible to receive Federal assistance under Title III and Title V of the HEA, Tribal Colleges and Universities, and Historically Black Colleges and Universities: Kristin Hultquist, HCM Strategists, and Tonjua Williams (alternate), St. Petersburg College.

- Private nonprofit institutions of higher education including institutions eligible to receive Federal assistance under title III and title V of the HEA, Tribal Colleges and Universities, and Historically Black Colleges and Universities: Aaron Lacey, Thompson Coburn LLP, and Joanna Roush (alternate), Liberty University.

- Proprietary institutions of higher education, as defined in 34 CFR 600.5: Jeff Arthur, ECPI University, and Ryan Claybaugh (alternate), Paul Mitchell Advanced Education.

- State workforce agencies and workforce development boards: Rachael Stephens Parker, Maryland Governor's Workforce Development Board, and Andrea DeSantis (alternate), North Carolina Department of Commerce.

- State grant agencies, and other State and non-profit higher education financing organizations: J. Ritchie Morrow, Nebraska Coordinating Commission for Higher Education, and Elizabeth McCloud (alternate), Pennsylvania Higher Education Assistance Agency.

- State higher education executive officers, State authorizing agencies, and other State regulators: Randy Stamper, Virginia Community College System, and Heather DeLange (alternate), Colorado Department of Higher Education.

- Accrediting agencies recognized by the Secretary of Education: Michale McComis, Accrediting Commission of

Career Schools and Colleges, and Gedalia (Gary) Litke (alternate), Association of Advanced Rabbinical and Talmudic Schools.

- Organizations representing taxpayers and the public interest: Preston Cooper, American Enterprise Institute, and Ethan Pollack (alternate), Jobs for the Future.

After obtaining extensive advice and recommendations from the public, the Secretary, as required by Section 492 of the HEA, 20 U.S.C. 1098a, prepared draft regulations and submitted them to a negotiated rulemaking process. The Committee for these proposed regulations convened on January 5, 2026, and concluded on January 9, 2026. The Committee reviewed and discussed draft regulations prepared by the Department, as well as alternative regulatory language and suggestions proposed by Committee members. Additionally, during each negotiated rulemaking meeting, some non-Federal negotiators shared feedback that they had received from stakeholders in their respective constituencies. This approach facilitated the inclusion of a wide array of ideas and perspectives, which contributed to the development of the consensus language.

Under the organizational protocols for negotiated rulemaking agreed to by all members of the Committee, if the Committee reaches consensus on the proposed regulations, the Department agrees to publish, without substantive alteration, a defined group of regulations on which the Committee reached consensus—unless the Secretary reopens the process or provides a written explanation to the participants stating why she has decided to depart from the agreement reached during negotiations. In this instance, consensus is considered to be the absence of dissent by any member of the negotiated rulemaking Committee (abstaining members are not considered to be dissenting from the proposal). The Committee reached consensus on the entirety of the draft regulations on January 9, 2026. As a result, this NPRM reflects the consensus language with minor technical and non-substantive corrections which are noted in subsequent sections of this NPRM.

As part of this process, the Department engaged in extensive consultation with institutions of higher education in accordance with Section 454(a)(4) of the HEA. Institutions were represented on the negotiated rulemaking committee, were able to comment at the August 7, 2025 hearing, and are able to submit comments in response to this proposed rule.

IX. Significant Proposed Regulations

The Department discusses substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

General Definitions

Annual Debt-to-Earnings Rate (Annual D/E Rate) (§ 668.2(b))

Statute: See the “Authority for This Regulatory Action” section of this NPRM.

Current Regulations: The current regulations provide that the annual debt-to-earnings rate is the ratio of a program's annual loan payment amount to the annual earnings of the students who completed the program, expressed as a percentage.

Proposed Regulations: None.

Reasons: The Department is proposing to eliminate references to the D/E rates that are not needed for calculation of the earnings premium metric and is eliminating this definition accordingly. For a more detailed explanation for and analysis of the removal of the D/E rates, please see the discussion later under the section “§ 668.402—Student tuition and transparency system framework.”

Cohort Period (§ 668.2(b))

Statute: Section 454(c)(2) of the HEA, added by the OBBB Section 84001, specifies that the initial period used to evaluate program completers is the academic year four years before the year of determination. Section 454 (c)(4) provides a procedure to obtain further data to reach the minimum threshold requirement.

Current Regulations: Initially, the Department uses completers from the third and fourth award year prior to the calendar year for which the most recent earnings data is available, constructing a two-year cohort period. If the program does not have at least 30 completers who can be matched with earnings data, completers from the fifth and sixth award years prior to the calendar year for which the most recent earnings data is available are added to the two-year cohort period, constructing a four-year cohort period. If at least 30 completers in the four-year cohort period cannot be matched, metrics will not be calculated for the program for that award year.

If a program is a qualifying graduate program, the award years used for graduation shift three years further into the past (sixth and seventh award year prior for the two-year cohort, adding the eighth and ninth award year prior for a four-year cohort if needed to reach an n-

size of 30) to account for delayed earnings growth for mandatory post-graduation training such as a residency program.

Proposed Regulations: Under the proposed regulations, the cohort of students used to determine a program's median student earnings and calculate the earnings premium metric under proposed 34 CFR 668 subpart Q would begin with the program's graduates from a single award year ending four years prior to the calendar year used to source earnings data. For example, in 2027, earnings data from IRS records would be available for calendar year 2025, and students who completed the program in award year 2020–2021 would be included in this cohort.

If the single year cohort does not yield 30 completers or if a sufficient number cannot be paired with earnings, the Department would add completers from the fifth, sixth, seventh, and eighth award years prior to the earnings year, one award year at a time, until a minimum number of completers is reached. For example, if a program did not yield enough completers from award year 2020–2021, students who completed in award years 2019–2020, 2018–2019, 2017–2018, and 2016–2017 would be added as needed.

If the expanded cohort group still does not reach the minimum number of completers, the cohort would continue to include the completers from all five years (fourth through eighth award years prior to the earnings year) at that six-digit CIP code and credential level. Then, completers from programs at the same credential level sharing the first four CIP code digits would be added one at a time, starting with the fourth award year prior to the earnings year.

Continuing with the same example, the Department would keep completers at the six-digit level for award years 2016–2017 through 2020–2021 and add 2020–2021 completers at the four-digit CIP level, then 2019–2020, and so on as needed, stopping after adding completers from award year 2016–2017.

If adding completers from all five award years at the same credential level sharing the same first four CIP code digits still does not reach the minimum number of completers, the Department would keep the completers at the six-digit and four-digit CIP levels and add completers sharing the same credential level and first two digits of a CIP code one award year at a time as needed, going from the fourth award year through the eighth award year prior to the earnings year, following the same pattern used to add completers at the four-digit CIP level.

If cohort expansion proceeds through the addition of students who completed a program in the fourth through eighth award years prior to the earnings year at the six, four, and two-digit CIP levels and a minimum number of completers still cannot be reached, the Department would not publish median earnings or an earnings premium for the program.

Reasons: The proposed regulatory language aligns with statutory requirements in Sections 454(c)(2) and (4) of the HEA, added by Section 84001 of the OBBB, which requires the creation of a one-year cohort, then aggregates additional years of programmatic data if needed, then expands to add data from other similar educational programs. The Department interprets the statutory phrase “educational programs of equivalent length” used in Sections 454(c)(2) and (4) to refer to programs offered at the same credential level.

Because the proposed framework only matches completers who are working and who are not enrolled in an eligible institution during the earnings year or subject to another exclusion, it is possible that a cohort that meets the n-size of 30 will have too few matches to earnings data for the federal agency with earnings data to meet their own threshold to release what they consider to be statistically reliable median earnings to the Department. In this case, it is possible that further cohort expansion to additional steps in the sequence would be required to obtain statistically reliable data.

Debt-to-Earnings Rates (D/E Rates) (§ 668.2(b))

Statute: See the “Authority for This Regulatory Action” section of this NPRM.

Current Regulations: The current regulations define “debt-to-earnings rates” as including discretionary debt-to-earnings rate and annual debt-to-earnings rate as calculated under current § 668.403.

Proposed Regulations: None.

Reasons: The Department is proposing to eliminate references and requirements related to the current D/E rates that are not needed for calculation of the earnings premium metric, and is eliminating this definition accordingly. For a more detailed explanation for and analysis of the removal of the D/E rates, please see the discussion later under the section “§ 668.402—Student tuition and transparency system framework.”

Discretionary Debt-to-Earnings Rate (Discretionary D/E Rate) (§ 668.2(b))

Statute: See the “Authority for This Regulatory Action” section of this NPRM.

Current Regulations: The current regulations define “discretionary debt-to-earnings rate” as the percentage of a program's annual loan payment compared to the discretionary earnings of the students who completed the program, with discretionary earnings defined as the median earnings for the program minus 150 percent of the poverty guideline for a single person in the continental United States.

Proposed Regulations: None.

Reasons: Discretionary debt-to-earnings rates are one of the components of debt-to-earnings rates, which would be eliminated under the proposed consensus language.

Earnings (§ 668.2(b))

Statute: Section 454(c)(2) of the HEA, as amended by Section 84001 of the OBBB, specifies that the Secretary is to determine the earnings of program completers.

Current Regulations: None.

Proposed Regulations: The Department proposes to define earnings for the purposes of subparts Q and S of this part, as wages, and other earned income as reported to the IRS, including net income reported from self-employment. This does not include other forms of income (whether taxed or untaxed).

Reasons: After discussions with negotiators, the Department developed an earnings definition to provide clarity and transparency regarding the types of earnings that would be included in the median earnings used in the accountability metrics. Several negotiators raised concerns regarding the types of income that would be included in or excluded from the earnings metric, including unreported tips and the value of certain housing allowances. The Department believes that the proposed definition includes all relevant earnings sources for the accountability metric; however, during negotiations, the Department committed to asking a directed question on this topic to ensure that we have considered all of the appropriate earnings from work and source limitations in our definition. Please refer to the Directed Questions section listed under the **SUPPLEMENTARY INFORMATION** section III for more information.

Earnings Premium (§ 668.2(b))

Statute: Section 454(c)(2) of the HEA, added by Section 84001 of the OBBB,

prescribes an accountability metric that compares the median earnings for recipients of title IV, HEA program funds who completed a program during a specific cohort period to the median earnings of a working adult described in Section 454(c)(3). The statute stipulates that if the program's median earnings are less than those of the comparison group in two out of three award years, the program is a low-earning outcome program. See also the "Authority for This Regulatory Action" section of this NPRM.

Current Regulations: The Department currently defines the term "earnings premium" as the amount by which the median annual earnings of students who recently completed a program exceed the earnings threshold, as calculated under current § 668.404.

Proposed Regulations: The proposed regulatory language matches the language in existing regulations but revises the citation from § 668.404 to § 668.403.

Reasons: The proposed change would update the regulatory citation to align with the structure of the new proposed regulatory language.

Earnings Threshold (§ 668.2(b))

Statute: Section 454(c)(3) of the HEA, as amended by Section 84001 of the OBBB, specifies the populations used to develop the comparison groups for the accountability metric under the OBBB.

Current Regulations: Median earnings are currently based on data from the Census Bureau for working adults aged 25–34 with only a high school diploma (or recognized equivalent), who were not currently enrolled in an institution of higher education, and who either worked during the year or indicated they were unemployed in the State in which the institution is located. The median earnings would use national data if fewer than 50 percent of the students in the program are from the State where the institution is located or if the institution is a foreign institution.

Proposed Regulations: The Department proposes to align the earnings threshold definition with statutory requirements for both undergraduate and graduate programs using the following methodology.

For undergraduate programs offered by an eligible institution located in a State, the comparison group is based on data from the Census Bureau, using the median earnings for working adults aged 25–34 with only a high school diploma (or recognized equivalent), who worked and were not enrolled in an eligible institution. The Department uses data for the State in which the institution is located, or national data if

fewer than 50 percent of the students enrolled in the institution are from the State where the institution is located.

For graduate programs offered by an eligible institution located in a State, the earnings threshold is based on data from the Census Bureau for the median earnings of working adults aged 25–34 with only a baccalaureate degree, who worked and were not enrolled in an eligible institution at the time earnings were measured by the Census Bureau. The median earnings used for the earnings threshold will be the lowest of: (1) the median earnings of working adults in the State in which the institution is located; (2) the median earnings of working adults in the same field of study under the two-digit CIP or four-digit CIP code in the State in which the institution is located; or (3) the median earnings of working adults nationally in the same field of study under the two-digit CIP or four-digit CIP code. If fewer than 50 percent of the students enrolled in the institution are from the State where the institution is located, the earnings threshold would use national data, taking the lowest of the median earnings of working adults with a baccalaureate degree, or the median earnings of working adults with a baccalaureate degree in the same field of study under the two-digit CIP or four-digit CIP code. For States and certain U.S. Territories, where the Census Bureau data necessary to perform the calculations set forth in subsections (1) and (2) is not available, there will be no earnings threshold.

For eligible foreign institutions, the Department proposes using different methodologies for undergraduate and graduate programs. For undergraduate programs offered by eligible foreign institutions, the comparison group would be based on data from the Census Bureau, which provides the median earnings of working adults aged 25–34 in the United States with only a high school diploma or recognized equivalent and who were not enrolled in an eligible institution during the year of the associated measured earnings. For graduate programs offered by eligible foreign institutions the comparison group is based on data from the Census Bureau, the median earnings of working adults aged 25–34 with only a baccalaureate degree, who were not enrolled in an eligible institution during the year of the associated measured earnings. The median earnings will be the lowest of the median earnings of working adults nationally in the United States; or nationally in the United States in the same field of study under the two-digit CIP code or four-digit CIP code.

Reasons: The Department's methodology for establishing the earnings threshold is derived largely from Section 454(c)(3) of the HEA, as amended by Section 84001 of the OBBB, with several exceptions described below that are based on limitations on the Census Bureau data that the law requires the Department to use.

Some negotiators raised questions about various elements of the Census Bureau's ACS being used to determine the earnings threshold for evaluation. The ACS is the only dataset maintained by the Census Bureau that contains the data elements needed to compute the metric specified in statute. During negotiated rulemaking, several negotiators indicated concern about whether data for high school graduates might sometimes include individuals with undergraduate certificates. The Department has sought further clarification from the Census Bureau on how individuals with undergraduate certificates are instructed to complete the "highest educational attainment" question on the ACS and will incorporate these findings in the final regulations. We also encourage commenters with insights into this data element to submit information for the Department's consideration.

The law is prescriptive with regard to the exact manner in which program earnings would be evaluated, specifying factors for comparison such as age ranges, working status, education level, and geography. Congress did not include a regional price parity adjustment in Section 84001, even though they included it elsewhere in the OBBB for value-added earnings for eligible workforce programs. See Section 83002 of the OBBB (adjusting median earnings based upon regional price parities of the Bureau of Economic Analysis based on the location of the program). In doing so, Congress demonstrated it knows how to require a regional price adjustment when it wants to. *Id.*; see also *Kimbrough v. United States*, 552 U.S. 85, 87 (2007) (reading implicit directives into statutes is disfavored where Congress has demonstrated it knows how and has previously directed such practices in express terms). Here, it omitted such an adjustment, and we assume it did so intentionally because it did not want such an adjustment. Therefore, the Department believes that it would be inconsistent with the statute for the program earnings to be computed using a regional price adjustment.

Another negotiator submitted a suggestion to adjust the earnings threshold for certificate programs having at least 75 percent of female

completers downward to 85 percent of the median earnings for the comparison group to account for sex-based wage gaps. The Department does not believe that it possesses the statutory authority to establish different standards for completers of different sexes when analyzing the outcomes of Title IV, HEA programs as the statute does not provide any indication that Congress intended the Department to such distinctions, either implicitly or explicitly.

Distinctions based upon sex are subject to intermediate scrutiny under the Fifth Amendment to the Constitution. To survive such review, the government must show “at least that the challenged [sex-based] classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” See *United States v. Virginia*, 518 U.S. 515, 533 (1996) (quoting *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982), and *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 150 (1980)) (cleaned up). To survive such review, the government must demonstrate an “exceedingly persuasive justification” for that action. *Virginia*, 518 U.S. at 531.

As stated previously, there is no clear statutory command in the OBBB or the HEA more broadly directing the Department to create an earnings variance based upon sex. Construing the statute to give us the authority to create such a sex-based variance would create a constitutional difficulty. Even if we assumed the statute was ambiguous, the constitutional doubt canon would caution against reading the statute to permit such a sex-based variance. Indeed, when an ambiguous statute could be construed in either a constitutional manner or a manner that creates constitutional difficulties, the constitutional doubt canon directs the Department to construe the statute “to avoid the need even to address serious questions about their constitutionality” See *United States v. Davis*, 588 U.S. 445, 463 n. 7, (2019) (citing *Rust v. Sullivan*, 500 U.S. 173, 190–191(1991)). Here, even if the statute could be read implicitly as giving us the authority to create a sex-based variance, the constitutional doubt canon requires us to avoid that constitutional difficulty by reading the statute in a sex-neutral manner.

A sex-based variance could also raise problems with consistent treatment of programs and could potentially lead to confusion. Furthermore, a sex-based variance would conflict with Executive Branch policy as required under Executive Order 14173’s prohibition on

identity-based preferential treatment based on race, color, sex, sexual preference, religion, or national origin.¹²

For the purposes of constructing the earnings threshold, a working adult is an individual who earns a positive, non-zero income from wages, salary, farm income, or self-employment and was not enrolled in an eligible institution at the time earnings are measured by the Census Bureau.

One negotiator submitted a proposal for incorporating SOC codes, licensure-linked professional categories, predominant feeder bachelor’s degree fields, and two-digit, four-digit, and six-digit CIP codes into the construction of the earnings threshold, with the Department using whichever of the named categories has the lowest reliable median earnings as a program’s “same field of study” benchmark. When the Department said that it did not currently have the data to support the adoption of that proposal, the negotiator indicated a preference for use of the four-digit CIP level instead of the two-digit level to narrow interpretation of field of study around occupational field.

At this time, the Department believes the best data available for matching field of study is the two-digit CIP data as recommended by the statute. At this time, the ACS currently contains field of study information that is only disaggregated at the 2-digit CIP level. Further, the Department believes the two-digit CIP data is most appropriate because it reasonably approximates earnings for similar programs and is reliable. Should earnings data through ACS become widely available and statistically reliable at the four-digit CIP level at some point in the future, the Department would consider using such data.

For graduate-level programs at institutions where at least 50 percent of enrollment is from the State in which the institution is located, if statistically significant data (n-size of at least 30) for working adults aged 25–34 in the same field of study in the same State is unavailable, the Department proposes that the program will be evaluated against the lower of median income for working adults with a baccalaureate degree aged 25–34 in the same State and median income for working adults aged 25–34 with a baccalaureate degree in the same field of study nationally. The Department is concerned that calculating an earnings threshold using less than 30 individuals could produce arbitrary and non-representative values

in which programs are judged against. As described in the Directed Questions section above, the Department is seeking feedback on this approach and possible alternative approaches. Specifically, the Department is interested in feedback related to the way that fields of study are defined. For example, the Department is interested in feedback about grouping 2-digit CIP codes into broader fields of study, which could reduce the extent to which the Department is unable to calculate this median earnings value. Further, the Department is interested in feedback about other possible datasets maintained by the Census Bureau, and other Federal agencies or external sources, that could be used for this calculation. Please refer to the Directed Questions section listed under the **SUPPLEMENTARY INFORMATION** section III for more information.

Eligible Non-GE Program (§ 668.2(b))

Statute: Section 431 of the GEPA grants the Secretary authority to establish rules to require institutions to make data available to the public about the performance of their programs and about students enrolled in those programs. That section directs the Secretary to collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their intended purposes, and also to inform the public about Federally supported education programs.

Section 454(c)(2) of the HEA, as amended by Section 84001 of the OBBB, establishes the accountability framework that makes programs with low-earning outcomes ineligible for the Direct Loan program. This section mentions the inclusion of undergraduate degrees, and graduate and professional degrees, covering the scope of programs participating in the title IV aid programs beyond merely gainful employment programs.

Current Regulations: The Department defines an eligible non-GE program as an educational program other than a GE program offered by an institution and included in the institution’s participation in the title IV, HEA programs, identified by a combination of the institution’s six-digit Office of Postsecondary Education ID (OPEID) number, the program’s six-digit CIP code as assigned by the institution or determined by the Secretary, and the program’s credential level.

Proposed Regulations: In the proposed regulation, the Department provides a cross reference to HEA Section 454(c).

¹² Exec. Order No. 14,173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 90 FR 8633 (January 21, 2025).

Reasons: The proposed additional phrase referencing 454(c) of the HEA would provide clarity as to the source of authority being used, making it clear that change is being made in direct response to accountability provisions established in such section by the OBBB.

Federal Agency With Earnings Data (§ 668.2(b))

Statute: Section 454(c)(2) of the HEA, as amended by Section 84001 of the OBBB, specifies that earnings used in the accountability metric are derived by a process to be determined by the Secretary.

Current Regulations: The regulations define a Federal agency with which the Department enters into an agreement to access earnings data for the D/E rates and earnings threshold. This may include agencies such as the Treasury Department (including the IRS), the Social Security Administration, the Department of Health and Human Services, and the Census Bureau.

Proposed Regulations: The proposed regulations continue to define the term to mean a Federal agency with which the Department enters into an agreement to access earnings data for the earnings threshold or value-added earnings measure and provide several examples of agencies the Department may work with. The only changes to the definition include the removal of a reference to D/E rates and the inclusion of a reference to value-added earnings pertaining to eligible workforce programs.

Reasons: The meaning of “Federal agency with earnings data” remains essentially the same under the proposed regulatory language as compared to the current regulations. The reference to D/E rates was eliminated because the Department is proposing to eliminate that metric from the regulations. The reference to value-added earnings was added as a conforming change to align with other parts of the regulatory scheme.

Institutional Grants and Scholarships (§ 668.2(b))

Statute: Section 431 of the GEPA grants the Secretary authority to establish rules to require institutions to make data available to the public about the performance of their programs and about students enrolled in those programs. That section directs the Secretary to collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their intended purposes, and also to inform

the public about Federally supported education programs.

Current Regulations: The Department defines institutional grants and scholarships as assistance that the institution or its affiliate(s) controls or directs to reduce or offset the original amount of a student’s institutional costs and that do not have to be repaid. Typically, an institutional grant or scholarship includes a grant, scholarship, fellowship, discount, or fee waiver.

Proposed Regulations: The Department proposes to expand the definition to include grants or scholarships that could convert to loans if students do not meet certain requirements, and also would outline what is not considered institutional grants or scholarships, including Federal education benefits; State, Tribal, local, or private grants and scholarships that the institution does not control or direct; the institutional share of Federal Campus-based programs; or assistance that must be repaid.

Reasons: The proposed additions would provide further clarification and resolve confusion among stakeholders for which data elements should be included in this reporting category. In reporting under the FVT/GE regulations, this was a data field that generated numerous questions from institutions regarding which aid types were and were not included as institutional grants or scholarships. The Department believes that further clarification would improve data quality.

Metropolitan Statistical Area (§ 668.2(b))

Statute: See the “Authority for This Regulatory Action” section of this NPRM.

Current Regulations: The Department defines a metropolitan statistical area as a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core.

Proposed Regulations: None.

Reasons: The current regulations require institutions to report whether a program meets licensure requirements or prepares students to sit for a licensure exam for all states in their metropolitan statistical area. The Department originally proposed to eliminate the related reporting requirement because it was burdensome to institutions and was not specifically relevant to the development of a net price. However, several non-federal negotiators argued that the information would be valuable for consumer information purposes, and the administrative burden associated with

the reporting would be diminished if the required reporting aligned with the existing licensure disclosure requirements under 34 CFR 668.43(a)(5)(v). The Department agreed, and amended the proposed regulations to require institutions to report whether a program meets licensure requirements or prepares students to sit for a licensure examination in any State, and a list of all States where the institution has determined the program meets such requirements. Thus, the metropolitan statistical area is no longer part of the reporting requirements and the regulatory definition would no longer be necessary. As such, the Department proposes to eliminate the definition from the regulations.

Poverty Guideline (§ 668.2(b))

Statute: See the “Authority for This Regulatory Action” section of this NPRM.

Current Regulations: In section 668.2(b), the Department defines poverty guideline as the U.S. Department of Health and Human Services’ published poverty guideline for a single person in the continental United States.

Proposed Regulations: None.

Reasons: The poverty guideline’s role in 34 CFR 668 subpart Q was to establish discretionary earnings for the calculation of discretionary debt-to-earnings rates, with discretionary earnings equal to earnings minus 150 percent of the poverty guideline. With the proposed removal of discretionary debt-to-earnings rates, the Department no longer needs a definition for poverty guideline in part 668 and proposes to eliminate it.

Qualifying Graduate Program (§ 668.2(b))

Statute: See the “Authority for This Regulatory Action” section of this NPRM.

Current Regulations: The Department defines a qualifying graduate program as one where at least half of the program’s graduates obtain licensure in a field where post-graduation training requirements apply, in a degree field specified by the Department and published in the **Federal Register**. For the first three years of rates, these programs would be in the fields of medicine, osteopathy, dentistry, clinical psychology, marriage and family counseling, clinical social work, and clinical counseling.

Proposed Regulations: None.

Reasons: Under the current regulations, the distinction for qualifying graduate programs was created to account for the fact that

graduates in required post-graduation training programs, such as residency programs, have reduced earnings for a longer period of time following graduation. The time frame prescribed by the OBBB uses the same span between graduation and earnings measurement for all program types, including undergraduate and graduate programs. Since the framework in proposed 34 CFR 668 subpart Q uses the time span prescribed by statute for graduates of all program types, creating a separate distinction for qualifying graduate programs is no longer necessary, and the Department therefore proposes to eliminate the definition.

Substantially Similar Program (§ 668.2(b))

Statute: See the “Authority for This Regulatory Action” section of this NPRM.

Current Regulations: The Department indicates that two programs are deemed substantially similar if they share a 4-digit CIP code, regardless of credential level.

Proposed Regulations: None.

Reasons: The concept of substantially similar programs as currently described in the regulations does not comport with the Department’s proposed earnings accountability framework. The current definition uses a different restriction on establishing new programs with subject matter overlapping programs that were voluntarily discontinued or lost eligibility following failing metrics under proposed 34 CFR 668.604(b)(2), but that restriction employs different criteria and different terminology. The exemption from reporting for substantially similar program groupings under FVT/GE did not have an equivalent provision in the OBBB statute, nor was a similar provision added in negotiated rulemaking. Therefore, due to changes in statute and proposed regulatory changes related to the new accountability metric, the Department determined that the substantially similar program definition is no longer necessary and proposes to eliminate it.

Student Tuition and Transparency System (STATS)

Student Tuition and Transparency System Scope and Purpose (§ 668.401)

Statute: Section 431 of the GEPA requires the Secretary to prepare and disseminate information about applicable programs to states, LEAs, and institutions. The Secretary must also inform the public about federally supported education programs. The

Secretary is required to collect data and information on applicable programs for the purpose of obtaining objective measures of effectiveness of such programs to achieve their intended purpose. In addition, Section 454(c)(2) of the HEA, as amended by Section 84001 of the OBBB, establishes an accountability framework that identifies low-earning program outcomes.

Current Regulations: The current regulations require institutions to report information about a GE program or eligible non-GE program to the Secretary. The Secretary evaluates the program’s debt and earnings outcomes for the programs. The regulations in part 668, subpart Q generally exempt institutions located in U.S. Territories or Freely Associated States, except for the reporting requirements under current § 668.408. In addition, the regulations also exempt institutions that did not offer any groups of substantially similar programs, meaning groups of programs with the same four-digit CIP code, that produced fewer than 30 total completers within the last four award years.

Proposed Regulations: The Department proposes to rename part 668, subpart Q from Financial Value Transparency to Student Tuition and Transparency System (STATS) to better reflect the subpart’s focus on students and transparency. The current version of this regulation does not apply to institutions in the U.S. Territories and the Freely Associated States, except that such institutions are required to report data under current § 668.408. The proposed regulations would update the regulations to create a framework that applies to those institutions. We further clarify that the STATS framework applies to nearly all programs eligible for title IV, HEA funds, including both GE programs and eligible non-GE programs offered by an eligible institution.

Reasons: We believe it is necessary to update the language to clearly affirm the removal of the exemptions for institutions located in U.S. Territories or Freely Associated States and institutions with no groups of substantially similar programs with a total of at least 30 completers over the four most recently completed award years. The OBBB does not specifically exempt such programs and, in order to avoid confusion, complexity, and additional burden to institutions, the Department is proposing to harmonize the OBBB’s earnings accountability framework with requirements for GE programs. Additionally, given the sequential expansion of cohorts provided under the OBBB explained in the proposed changes to the definition

of “cohort period” at § 668.2, we anticipate few instances where the earnings premium measure would not be calculated for a program.

The U.S. Territories and Freely Associated States are already required to report data under the FVT framework. The Department believes that modification of this regulation to include all eligible institutions and a wider range of programs would benefit students and the general public by providing useful and comparable information across institutions and programs, regardless of where the institution is located.

Student Tuition and Transparency System Framework (§ 668.402)

Statute: Section 454(c) of the HEA, as amended by Section 84001 of the OBBB, describes a process whereby the Secretary determines the Direct Loan eligibility for certain programs based on the calculation of the median earnings of program completers. In addition, Section 431 of the GEPA requires the Secretary to collect and publish data on applicable programs to obtain objective measurements of effectiveness of such programs in achieving their intended purposes. See also the “Authority for This Regulatory Action” section of this NPRM.

Current Regulations: The current regulations at § 668.402(b) establish a framework through which the Secretary determines the debt and earnings outcomes for a GE program or an eligible non-GE program using debt-to-earnings rates and an earnings premium measure. Currently, the debt-to-earnings rates are determined when the Secretary calculates for each award year two D/E rates for an eligible program: the discretionary debt-to-earnings rate, and the annual debt-to-earnings rate. The discretionary D/E rate compares annual loan payments for student debt to the borrower’s total discretionary income above 150 percent of the Federal poverty line. The annual debt-to-earning rate compares annual loan payments for student debt to the borrower’s total annual income.

A program passes the D/E rates if its discretionary debt-to-earnings rate is less than or equal to 20 percent, if its annual debt-to-earnings rate is less than or equal to 8 percent, or if the median annual or discretionary earnings of either rate is zero and the median debt payment amount is zero.

A program fails the D/E rates if it fails both parts of a two-prong test. First a program fails the D/E rates test if its discretionary debt-to-earnings rate is greater than 20 percent, or the income for the median discretionary earnings is

negative or zero and the median debt payment amount is positive. Second, a program fails the D/E rates if its annual debt-to-earnings rate is greater than 8 percent or the median annual earnings is zero and the median debt payment amount is positive.

The Secretary also calculates the earnings premium measure for an eligible program for each award year. A program passes the earnings premium measure if the median annual earnings of the students who completed the program exceed the earnings threshold, which represents the median annual earnings of those who did not attend postsecondary education. A program fails the earnings premium measure if the median annual earnings of the students who completed the program are equal to or less than the earnings threshold.

Proposed Regulations: The current FVT/GE framework includes two tests: the earnings premium measure test and the debt-to-earnings rate test. Under the existing regulations under part 668, subpart S, GE programs that fail the same test in two out of three consecutive years for which rates were calculated lose all title IV, HEA program eligibility. The Department proposes to remove the D/E rate metric and use only an earnings premium measure.

For programs in States where an earnings threshold cannot be determined, an earnings premium would only be calculated if at least 50 percent of the students enrolled in the institution are from locations other than that State. If, during the award year in which the calculations are performed, 50 percent or more of the students enrolled in the institution are from the State, no earnings premium measure would be calculated; the Department would, however, make the earnings data for these programs available to the public.

Reasons: We believe the proposed revision to remove D/E rates is consistent with the statute, which provides for an earnings premium and does not establish a D/E rate. The Department recognizes and acknowledges that it is changing its position on this issue. The Department has previously issued regulations on these issues four times. This includes the 2011 Prior Rule (76 FR 34385), the 2014 Prior Rule (79 FR 64889), and the 2019 Prior Rule (84 FR 31392), which rescinded the 2014 Prior Rule, and the 2023 Prior Rule, which restored and revised major aspects of the 2014 Major Rule.

The 2011 Prior Rule (which was vacated in federal court), the 2014 Prior Rule, and the 2023 Prior Rule all

asserted that the gainful employment statute authorized a D/E eligibility test. The 2019 Prior Rule repealed the D/E eligibility test, arguing that had “the Department believes that the GE regulations do not align with the authority granted by section 431 of the Department of Education Organization Act since the D/E rates measure that underpins the GE regulations does not provide an objective measure of the effectiveness of such programs.” 84 FR 31395.

The Department did not take the position in the 2019 Prior Rule that Section 102 of the HEA did not permit it to establish an earnings outcome measure under the gainful employment authority. Rather, the Department abandoned the D/E rate because it viewed it as a “flawed metric that inflates a borrower’s monthly or annual repayment obligation above that which is required by the law and does not accurately distinguish between high-quality and low-quality programs.” 84 FR 31434. The Department is changing its position here because the Department agrees with the 2019 rule that D/E metric does not accurately distinguish between high-quality and low-quality programs and for other reasons discussed below.

The Department also proposes to harmonize the requirements for GE programs, including undergraduate certificate programs, with the requirements of the OBBB for all other programs, reducing complexity, taxpayer cost, and burden on institutions. During negotiated rulemaking, some negotiators agreed from the outset with the Department’s proposed changes to eliminate the D/E rate calculation. They noted that the Department’s effort to implement the accountability framework enacted in the OBBB would be coherent, administrable, and applied consistently across proprietary, nonprofit, and public institutions. They acknowledged that the proposed elimination of the debt-to-earnings metric reduces unnecessary complexity while preserving meaningful accountability. These negotiators believed the shift reflects statutory intent and promotes regulatory durability. On the other hand, other negotiators initially believed that the D/E test should continue to apply to all GE programs because it is an important accountability measure to ensure the Department does not waste valuable resources funding programs that may leave students in a position where they are unable to pay their debt. They argued that the D/E metric protects students from spending their time, money, and resources on programs that

could leave them in a position where they are unable to afford their student loan payment relative to their earnings. These negotiators also stressed their belief that the D/E metric would remain important in the years to come as policy shifts. They opined that the new loan limits established by the OBBB will cause an uptick in private lending which may leave students vulnerable to predatory lending, high interest, and unable to repay their loans. Although these negotiators were initially reluctant to eliminate the D/E metric, they ultimately voted to do so.

The Department agrees with the negotiators who supported removing the D/E rates. Calculation of D/E rates requires the use of a significant amount of data reported by institutions to the Department beyond what is normally necessary to administer the title IV, HEA programs. During the implementation of the current FVT regulations, many institutions expressed confusion with the reporting requirements, which may have resulted in reporting of inaccurate data. The Department’s proposed approach would dramatically reduce complexity for institutions because the earnings premium test relies on administrative enrollment data that institutions have become accustomed to reporting for more than 10 years.

Furthermore, the Department’s analysis of data obtained for the College Scorecard revealed that it is likely that including a D/E test for GE programs would not result in a substantial number of additional programs failing the metric. The Department estimates that, after accounting for the programs that fail the earnings premium measure, maintaining the D/E metric would result in a 0.2 percentage point increase in the share of all programs that would, and that share would likely be even smaller once pending changes to loan limits¹³ under the OBBB are implemented (see Table 6.1 in the “Alternatives Considered” section, below). In the Department’s view, this amounts to a de minimis number of impacted programs. The Department notes that the estimated net budget impact for the proposed regulation reflects a larger effect from removing the D/E metric than the Department’s separate analysis that identifies additional failing programs used for research purposes.¹⁴

¹³ The OBBB establishes new loan limits for students enrolled in graduate programs that will become effective July 1, 2026. For more information, see 91 FR 4254.

¹⁴ The 0.2 percentage point increase in failing programs that would occur if a D/E metric were added to the accountability framework is estimated using data from a more recent cohort of students

The Department seeks to reduce unnecessary regulatory burden on institutions as part of our broader effort to implement Executive Order 14192, entitled “Unleashing Prosperity Through Deregulation.” 90 FR 9065. After considering the de minimis impact that continuing to use the D/E rates would have on eligibility, the Department believes that the value-added earnings premium test would have virtually the same substantive effect in providing quality assurance that programs lead to gainful employment while substantially reducing the burden on institutions. Given the significant reduction in regulatory burden and the de minimis effect on program eligibility, the Department has determined that deregulating by eliminating the D/E rates is appropriate and advances the Executive Branch’s policy to deregulate under Executive Order 14192. In sum, the Department believes eliminating the D/E metric would be fairer to institutions, more consistent across sectors and program types, and would provide useful and comparable information to students and the general public when comparing all types of programs.

The Department has considered reliance interests relating to the current D/E rate calculation. The Department thinks the reliance interests are minimal here because the Department is not aware of D/E rates from any of the GE regulations being widely used by consumers as a gauge of institutional quality. The Department thinks that reliance on the part of institutions is minimal as the D/E rate creates institutional burden associated with reporting and compliance.

Calculating Earnings Premium Measure (§ 668.403)

Statute: Section 454 (c)(3) of the HEA, as amended by the OBBB, explains the requirements for calculating the median earnings of program completers. The Secretary is also required to collect data and information on programs to ascertain the effectiveness of such programs in achieving their intended purposes under Section 431 of the GEPA.

Current Regulations: The current regulation entitled “Calculating

Earnings Premium Measure” is numbered as § 668.404. The Secretary calculates the earnings premium measure for a program by determining whether students’ annual earnings exceed the earnings threshold.

Under current regulations, a Federal agency with earnings data provides the Secretary with the most currently available median annual earnings of the students who completed the program during the cohort period. The Secretary uses the median annual earnings of students with a high school diploma or GED to calculate the earnings threshold. The Secretary annually publishes the earnings thresholds in the **Federal Register**.

In current § 668.404(c), students are excluded from the earnings premium measure calculation if the Secretary determines that (1) one or more of the student’s Direct Loans have been approved for a total and permanent disability discharge; (2) the student was enrolled full-time in any other program qualifying for title IV, HEA funds during the calendar year of the earnings data; (3) for an undergraduate program, the student completed a higher credentialed undergraduate program at the same institution prior to the earnings premium measure calculation; (4) for a graduate program, the student completed a higher credentialed graduate program at the institution prior to the earnings premium measure calculation; (5) the student is enrolled in an approved prison education program; (6) the student is enrolled in a comprehensive transition and postsecondary (CTP) program; or (7) the student died.

The Secretary does not issue the earnings premium measure for a program if fewer than 30 students completed the program during the two-year or four-year cohort period or when the Federal agency with earnings data does not provide the programs median earnings data for the program.

Proposed Regulations: First, the Department proposes to strike the existing 668.403 regulation entitled Calculating D/E rates, consistent with our proposal to eliminate that metric. As a conforming change, we propose to renumber the “Calculating Earnings Premium Measure” provisions currently in § 668.404 to 668.403.

The proposed regulations would slightly broaden the programs considered to be passing the earnings premium measure calculation to include those in which the median annual earnings of the students who completed the program equal or exceed the earnings threshold, as opposed to only those whose earnings exceed the

threshold as under the current regulations. In proposed § 668.403(b)(1), the proposed regulations clarify that the calculation would use the most currently available median annual earnings of the students who completed the program during the cohort period and would specifically consider earnings from the fourth tax year following program completion of students who are working. Proposed changes to § 668.403(b)(2) would more generally describe the earnings thresholds as using the median annual earnings of working adults, removing the reference to students with a high school diploma or GED, consistent with the proposed changes to the definition of the earnings threshold discussed in § 668.2. Under proposed § 668.403(b)(3), the Secretary would no longer publish the earnings thresholds using a notice in the **Federal Register**, instead allowing the Department to publish the earnings threshold through other, less formal means, such as, on a website.

Reasons: The Department proposes to update which programs would pass the earnings premium measure to incorporate the changes included in the OBBB accountability framework. Section 84001 of the OBBB states that a program only fails if the median earnings of its graduates are less than the median earnings of a working adult, which would allow a program to pass if the median graduate earnings were equal to working adults. The OBBB accountability framework only includes working students in that median calculation, a change from the current regulations which include both working and non-working students in the calculation of median earnings for a program.

Initially, the Department proposes to remove an exclusion for completers of graduate programs, whereby the Secretary would exclude a student from the earnings premium measure calculation for a graduate program if the Secretary determined that the student completed a higher credentialed graduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the earnings premium measure. The Department believed that this exclusion for higher credentialed graduate programs would apply less frequently than in undergraduate programs, and that removing it could potentially reduce confusion and burden for institutions. Institutions raised numerous questions during the 2024 and 2025 FVT/GE reporting cycles. For example, institutions repeatedly asked why an associate degree

than those used to estimate fail rates in the budget baseline. The more recent cohort has higher earnings than the older cohort, partly because the older cohort earnings were measured during the COVID-19 pandemic. Additionally, the D/E metric in the budget baseline uses a different earnings metric that produces lower earnings and therefore higher fail rates under the D/E metric than in the count of failing programs.

completer would be excluded if they later completed a bachelor's degree, but a bachelor's completer would not be similarly excluded if they later completed a graduate or professional degree. Institutions also voiced confusion about higher credential roll-up when graduate-level sequences of study did not follow a numerical progression of credential levels. For example, as a first professional degree, a Juris Doctor (JD) would have the credential level "07". In many cases a student pursuing further study after the JD would seek a Master of Laws (LLM), which as a master's degree would correspond with the credential level "05". Because a master's degree corresponds to a lower-numbered credential level in the FVT/GE framework, debt from a JD program would not roll up to a subsequently completed LLM degree at the same institution, despite the fact that a LLM is considered to be further along the sequence of study. With this in mind, the Department initially proposed removing higher credential roll-up for graduate-level programs. However, during negotiated rulemaking, negotiators noted the importance of maintaining higher credential roll-up. In response to negotiators who advocated for the retention of this exclusion, we agreed to retain the language to exclude students who completed graduate programs and then went on to complete a higher-credentialed graduate program at the same institution. The Department agreed with the negotiators that there are several potential downsides associated with the removal of the higher credential exclusion and roll-up, including the possibility that the earnings of a student completing a master's degree on the way to completing a doctoral degree could be counted in the master's program rather than the doctoral program. Typically, in such circumstances, the doctoral degree is the terminal degree and would be the program that is more appropriately evaluated under the earnings accountability framework.

For undergraduate certificate programs only, some negotiators also proposed to use the 60th percentile of completer earnings, rather than the median, for undergraduate certificate programs only. Those negotiators believed that using the 60th percentile would provide a more accurate and stable measure of program performance while preserving rigorous accountability. They believed that this approach would not alter the comparison benchmark, the timing of earnings measurement, or the statutory

structure of the earnings premium test. The negotiators also believed that the refinement would improve measurement accuracy, reduce false negative determinations driven by known statistical distortions, and remain consistent with the accountability objectives of the OBBB. The Department disagreed, indicating that using the 60th percentile of completer earnings for undergraduate certificate programs only would unfairly advantage these programs compared with other programs and would contradict the Department's goal of a fair framework that treats all types of academic programs consistently. Furthermore, using the 60th percentile of completer earnings is inconsistent with the accountability framework established in the OBBB, which calls for the use of medians.

The Department believes that it is important to publish earnings thresholds annually, however the publication of the earnings threshold in the **Federal Register** annually would be burdensome for the Department. The Department believes it is more appropriate to include it with other guidance that we publish, such as a Dear Colleague Letter or publication on a Department website, in part because there would be significantly more variants of the earnings thresholds under the OBBB framework than for the existing FVT framework.

Process for Obtaining Data and Calculating Earnings Premium Measure (§ 668.404)

Statute: Section 454(c) of the HEA, as amended by the OBBB, describes the data that the Secretary uses to calculate the median earnings of certain student cohorts to determine low earning outcome programs. In addition, Section 431 of the GEPA requires the Secretary to prepare and disseminate information about applicable programs to determine whether programs achieved their intended purpose.

Current Regulations: The current regulations at § 668.405 explain the process the Department uses to calculate D/E rates and earnings premiums for programs using enrollment, disbursement, and program data, along with other title IV, HEA participation data institutions are required to report to the Secretary. An institution must correct or update any reported data within 60 days after an award year.

The current process allows the Secretary to use the data to create a list of students who completed programs during the cohort period, obtain from a Federal agency with earnings data the median annual earnings of the students

on each list, calculate the D/E rates and earnings premium measure, and provide them to the institution.

Proposed Regulations: The Department proposes renumbering § 668.405 to 668.404 as a conforming change, following the elimination of § 668.403 "Calculating D/E rates" as mentioned above. We would also modify the process described in the regulations to allow the Secretary to calculate the earnings premium measure using Federal agency earnings data reports from records of earnings on at least 16 students who are working. We propose to strike the current provision that removes the highest loan debts for the number of completers not matched to earnings data, because it is unnecessary after removal of D/E rates.

Reasons: Since the IRS would most likely be the Federal agency to provide earnings data, and it sets its threshold for returning aggregated earnings data to more than 15 individuals, we propose to change to 16 individuals to establish that threshold. The Department indicated that it expects that the IRS would be the Federal agency that provides the earnings data, but as discussed above in § 668.2, the proposed regulations would offer the Department flexibility to use data from another Federal agency or a combination of data from multiple agencies if appropriate. Additionally, we propose removing language from the current regulation which required the highest loan debts to be removed for the number of completers that did not match earnings data. That calculation would no longer be needed, because it is unnecessary after removal of D/E rates calculations.

Determination of the Earnings Premium Measure (§ 668.405)

Statute: HEA Section 454 (c)(6) requires institutions to provide warnings to students regarding at-risk programs. Section 454 (c)(7) also states that programs that fail the earnings test are ineligible for Direct Loan program participation for a period of not less than two years.

Current Regulations: The Secretary calculates D/E rates and the earnings premium measure for a program, for each award year. The Secretary issues a notice of determination to inform institutions of the D/E rates for each program, the earnings premium measure for each program, and the consequences of passing or failing GE programs. The Secretary also determines whether student acknowledgments are required. For GE programs, the notice of determination informs the institution whether the GE program could become

ineligible based on its final D/E rates or earnings premium measure for the next award year, and whether the institution must provide student warnings for a GE program at the risk of losing title IV, HEA eligibility.

Proposed Regulations: We propose to renumber § 668.406 to § 668.405 and to rename the section consistent with the elimination of the D/E rate calculation from the transparency framework. The proposed regulations would also eliminate all references to the D/E rate calculation and the acknowledgement process and would refer to all programs, instead of GE programs, when describing program eligibility consequences for failing the measure.

Reasons: The Department would determine if programs pass or fail the earnings premium measure and reference warnings across all types of programs. Institutions would no longer need to require student acknowledgments under § 668.407, since the accountability framework in part 668, subpart S, including the student warning process in § 668.605, would now apply to both GE and non-GE programs. The separate student acknowledgement process is not required under the OBBB framework, and it is duplicative with the warning process described in 34 CFR 668.605. Overall, the changes to this section would be made to reflect the elimination of the D/E rates calculation from the regulation and to reflect the change of scope to apply provisions consistently to both GE programs and eligible non-GE programs.

Reporting Requirements (§ 668.406)

Statute: Section 431 of the GEPA grants the Secretary authority to establish rules to require institutions to make data available to the public about the performance of their programs and about students enrolled in those programs. That section directs the Secretary to collect data and information on applicable programs for the purpose of obtaining objective measures of the effectiveness of such programs in achieving their intended purposes and also to inform the public about Federally supported education programs.

Current Regulations: Current 34 CFR 668.408(a) specifies the data elements that institutions must report to the Department under the FVT framework. An institution offering any group of substantially similar programs, defined as all programs in the same four-digit CIP code at an institution, with 30 or more completers in total over the four most recent award years, must report to

the Department certain data at the program level and at the student level.

At the program level, for each GE program and eligible non-GE program, an institution must report for its most recently completed award year—

- The name, CIP code, credential level, and length of the program;
- Whether the program is programmatically accredited and, if so, the name of the accrediting agency;
- Whether the program meets licensure requirements or prepares students to sit for a licensure examination in a particular occupation for each State in the institution's metropolitan statistical area;
- The total number of students enrolled in the program during the most recently completed award year, including both recipients and non-recipients of title IV, HEA funds; and
- Whether the program is a qualifying graduate program whose students are required to complete postgraduate training programs, as described in the current definition under 34 CFR 668.2.

Current 34 CFR 668.408(a)(2) specifies the student-related data elements that must be reported annually to the Department. For each student, institutions must report the following—

- Information needed to identify the student and the institution;
- The date the student initially enrolled in the program;
- The student's attendance dates and attendance status (e.g., enrolled, withdrawn, or completed) in the program during the award year;
- The student's enrollment status (e.g., full-time, three-quarter time, half time, less than half time) as of the first day of the student's enrollment in the program;
- The student's total annual cost of attendance (COA);
- The total tuition and fees assessed to the student for the award year;
- The student's residency tuition status by State or district;
- The student's total annual allowance for books, supplies, and equipment from their COA under HEA section 472;
- The student's total annual allowance for housing and food from their COA under HEA section 472;
- The amount of institutional grants and scholarships disbursed to the student;
- The amount of other State, Tribal, or private grants disbursed to the student; and
- The amount of any private education loans disbursed to the student for enrollment in the program that the institution is, or should reasonably be, aware of, including private education loans made by the institution.

The current regulation under 34 CFR 668.408(a)(3) further requires an institution to report the following information on students who completed or withdrew from the program during the award year—

- The date the student completed or withdrew from the program;
- The total amount the student received from private education loans, as described in current 34 CFR 668.403(d)(1)(ii), for enrollment in the program that the institution is, or should reasonably be, aware of;
- The total amount of institutional debt, as described in 34 CFR 668.403(d)(1)(iii), the student owes any party after completing or withdrawing from the program;
- The total amount of tuition and fees assessed to the student for the student's entire enrollment in the program;
- The total amount of the allowances for books, supplies, and equipment included in the student's title IV, HEA COA for each award year in which the student was enrolled in the program, or a higher amount if assessed by the institution for such expenses; and
- The total amount of institutional grants and scholarships provided for the student's entire enrollment in the program.

The current regulation under 34 CFR 668.408(a)(4) states that institutions must report any other information the Secretary requires, as published by the Department in the **Federal Register**.

The current regulations under 34 CFR 668.408(b)(1) provides the timing for initial and annual reporting. Except as provided under the transitional reporting option under paragraph (c) of this section, for initial reporting an institution was required to report the program-level and student-level information described above no later than July 31, 2024.

For all subsequent award years, institutions must annually report the required information by October 1 following the end of the relevant award year, unless the Secretary establishes different dates in a notice published in the **Federal Register**.

The current regulations under 34 CFR 668.408(b)(2) address the possible failure of an institution to provide all or some of the required information. For any award year in which an institution fails to provide all or some of the required information, the institution must provide to the Secretary an explanation, acceptable to her, of why the institution failed to comply with any of the reporting requirements.

The current regulations under 34 CFR 668.408(c)(1) provide for an optional

transitional reporting period and metrics.

For the first six years for which D/E rates and the earnings premium are calculated under the current regulations, institutions could opt to instead initially report the required program-level and student-level information for its eligible programs for only the two most recently completed award years.

The current regulations under 34 CFR 668.408(c)(2) provide that if an institution chose the transitional reporting option, the Department would for the first six years calculate transitional D/E rates using the earnings for students who graduated during the cohort period but the median debt for the more recent period reported. In other words, as the Department explained in Dear Colleague Letter GEN 24–04, for institutions using transitional rates, to calculate D/E rates for the institution's programs, the Department would use earnings for the students from the appropriate cohort period but would use debt information for different students from the most recently completed award years covered by transitional reporting.

Proposed Regulations: The proposed regulations would modify the data elements reported to the Department by adding new items, adding specificity to others, and removing items that would no longer be needed under the proposed STATS framework. The Department proposes to retain many of the existing reporting requirements in current 34 CFR 668.408. We intend to renumber 34 CFR 668.408 to § 668.406 to conform with deleted prior sections of this part.

In 34 CFR 668.406(a), we are proposing to make several changes. We propose to expand the types of institutions required to report by removing the current exemption for institutions with no groups of substantially similar programs with 30 or more total completers over the four most recently completed award years. With regard to licensure reporting, we also seek to collect a list of all States where the institution has determined a program meets licensure requirements, rather than collecting only information about the States in the institution's metropolitan statistical area.

The proposed regulations would clarify the reporting requirement for the cost of attendance by requiring institutions to report values for the award year. We also wish to clarify that when reporting the tuition and fees assessed to the student, institutions should report the actual amount for that student (not a general amount for a category of students). Institutions would

report a student's residency tuition status only as applicable (rather than in all cases). This would capture whether a student was charged in-State (or in-county or in-district) tuition rates or out-of-State rates, or if residency status is irrelevant (*i.e.*, tuition is calculated without regard to residency). The proposed regulations would also more clearly describe the amount and types of aid disbursed for the award year (*e.g.*, grants and private loans).

For students who completed or withdrew from a program during the award year, the proposed regulations would remove reported items related to certain graduate programs that require postgraduate training, student attendance dates, withdrawal dates (if applicable), enrollment statuses, and total institutional debt upon completing or withdrawing from a program.

In 34 CFR 668.406(b), the proposed regulations would change the date institutions must initially report the information specified in 34 CFR 668.406(a) to October 1 following the date the regulations take effect, while for subsequent annual reporting the date would remain October 1 of each year as under the current reporting requirements.

We propose to remove references to 34 CFR 668.406(c) and to remove references to qualifying graduate programs.

The proposed regulations would also remove the transitional reporting process and metrics provided under current 34 CFR 668.406(c).

Reasons: Renumbering 34 CFR 668.408 to § 668.406 is a conforming change required by the deletion of 34 CFR 668.403 and 668.407. This is necessary to ensure consistency and alignment throughout the CFR.

The modifications to the data elements defined in 34 CFR 668.406(a)(1), and ultimately reported to the Department, are required in part because the Department seeks to reexamine and remove reporting items when possible. We believe removing certain items would be helpful to institutions because it should reduce reporting burden and complexity. Some items would be removed because they support metrics or processes that would not be used; other items would be removed because they would not support the Department's more focused priorities for transparency data.

When reporting under the current FVT/GE requirements, institutions often questioned the Department about how to best report the licensure status for each State in the institution's metropolitan statistical area. During negotiated rulemaking, several

negotiators indicated that they believed that the licensure information provided substantial value to consumers, and that reporting burden on institutions could be minimized if the list of States matched the similar listing in existing public disclosure requirements. Therefore, in 34 CFR 668.406(a)(1)(iii), the Department agreed to instead require institutions to provide a list of all States where the institution determines the program meets such requirements. Although this change would expand the number of States that an institution would be required to report, because that list would be consistent with existing disclosure requirements under 34 CFR 668.43(a)(5)(v), the requirement would still be simpler for institutions to perform than narrowing the reporting to only certain metropolitan statistical areas. This change would clarify and simplify the reporting requirement for institutions while still yielding useful information for informational disclosures to students.

In 34 CFR 668.406(a)(1)(v), we propose removing the reporting element addressing whether a program is a qualifying graduate program whose students are required to complete postgraduate training programs. We propose this because under HEA Section 454(c)(2), the Department must measure earnings four years after graduation for all types of programs, with no extended earnings measurement period for graduate programs with postgraduate training requirements.

In 34 CFR 668.406(a)(2), the proposed regulations would clarify the items to be reported to the Department. These clarifications are intended to help institutions regarding which amounts should be reported (*e.g.*, actual tuition and fees) and the time period applicable to those amounts (*e.g.*, award year).

We propose the addition of the phrase “as applicable” in the context of reporting the student's residency tuition status by State or district because some institutions do not distinguish between States or districts or make residency status distinctions related to tuition charges. We believe this change would help reduce confusion for institutions reporting this information.

In 34 CFR 668.406(a)(3), the Department now believes it can obtain the date the student withdraws or completes the program from routine NSLDS enrollment reporting data and does not need a separate reporting item under the STATS requirements.

We propose to remove the total amount of institutional debt the student may owe any party after completing or withdrawing from the program because

it would no longer be needed for purposes of the debt-to-earnings rate (which we propose to eliminate) and because of the complicated way that institutions were required to report this information, particularly for withdrawn students. We believe this change would substantially reduce burden for institutions.

We propose to include the total amount of Federal, State, private, or other grants and scholarships provided for the student's entire enrollment in the program to obtain a more complete picture of the amount of aid an individual receives from an institution in order to calculate a more accurate net price. The Department has collected this through FVT annual amount reporting for the 2024 and 2025 reporting cycles, so this is not a new concept, but we believe it is also necessary for institutions to report this as total amount data for students who complete or withdraw. However, we believe it is appropriate to add a regulatory requirement for something that we would need to collect.

One negotiator argued that private loan debt should not be reported to the Department. The negotiator stressed that reporting this item would introduce data quality, interpretive, and equity concerns and could lead to misleading conclusions, particularly when used in conjunction with earnings-based accountability measures. The Department disagrees and believes private loan debt that the institution is, or normally should be, aware of should be reported in order to convey the greatest extent of consumer information regarding current and future costs (*e.g.*, tuition due at once and future loan repayment obligations) to prospective and current students. In accordance with 34 CFR 668.16(f)(3), the Department does not expect that private loans that the institution does not know about, or should not be normally aware of, be reported.

In 34 CFR 668.406(b) we made conforming changes to remove references to the eliminated section 34 CFR 668.406(c) and to improve readability and clarity. We made further changes by proposing to limit the scope of information that must be reported under this section from five years' worth to two. The Department has already, in most cases, collected data from the prior period through the reporting process under the existing FVT regulations.

We propose removal of 34 CFR 668.406(c) because we see no need for a transitional reporting process under the revised accountability framework. The OBBB requirements are specific and do not provide for a transitional

reporting period and metrics. The proposed new framework does not demand institutional reporting of debt, scholarship, or grant values for cohorts of students who graduated or withdrew numerous years in the past.

Earnings Accountability

Earnings Accountability Scope and Purpose (§ 668.601)

Statute: Section 481 of the HEA defines, in part, certain categories of an "eligible program," including most undergraduate nondegree programs, as a "program of training to prepare students for gainful employment in a recognized profession." Section 454 of the HEA, as amended by Section 84001 of the OBBB, further establishes an accountability framework for programs qualifying for title IV, HEA assistance that lead to an undergraduate degree, graduate or professional degree, or graduate certificate that evaluates such programs by measuring the earnings outcomes of graduates.

Current Regulations: Current regulations under 34 CFR 668.601 establish the scope and purpose of the Department's existing accountability framework under part 668, Subpart S. As noted in § 668.601(a), the current accountability framework applies to programs that prepare students for gainful employment in a recognized occupation and establishes rules and procedures for the Department to make title IV, HEA eligibility determinations regarding such programs.

Current § 668.601(b) provides two exemptions from the GE accountability framework under subpart S. First, the current regulations categorically exempt institutions located in U.S. Territories or Freely Associated States. Second, the regulations exempt a particular institution if it offered no groups of substantially similar programs, at any credential level within the same four-digit CIP code, that produced a combined total of 30 or more completers over the four most recently completed award years.

Proposed Regulations: Proposed changes to § 668.601 would rename the accountability framework under subpart S from Gainful Employment to Earnings Accountability and would broaden its scope to cover both GE programs and eligible non-GE programs, applying the accountability framework to include the same institutions and programs covered under the transparency framework and thereby extending accountability to nearly all programs qualifying for title IV, HEA assistance. Notwithstanding the significantly expanded universe of institutions and programs that the

revised accountability framework would cover, the proposed changes would also narrow the scope of the Department's eligibility determinations under subpart S from determinations of a program's overall title IV, HEA eligibility to determinations of Direct Loan program eligibility only.

The proposed changes would also eliminate the exemptions under current § 668.601(b) for institutions located in U.S. Territories and Freely Associated States and for institutions that offer no groups of substantially similar programs that produced at least 30 total completers over the four most recently completed award years.

Reasons: The accountability framework delineated under Section 84001 of the OBBB applies broadly to undergraduate degree programs, graduate or professional degree programs, and graduate certificate programs, without regard to institutional sector. Some negotiators proposed that the Department entirely rescind the existing GE accountability framework in favor of the OBBB accountability framework to reduce regulatory complexity. Other negotiators countered that rescinding the current GE accountability framework would exclude undergraduate certificate programs from oversight, putting students and taxpayers at an increased risk that may lead to poor earnings outcomes in these programs. If the Department were to rescind the GE accountability framework, it would leave undergraduate certificate programs without any meaningful programmatic accountability, in stark contrast to virtually all other programs, which would remain subject to accountability measures. Similar to the non-federal negotiators, who ultimately voted in favor of the proposed framework here, the Department is firmly unpersuaded that undergraduate certificate programs should be exempt from consequences due to low earnings. Such an exception would not be in the best interest of students or taxpayers.

Although undergraduate certificate programs were not specifically mentioned in Section 84001 of the OBBB, the Department notes that Congress nonetheless did not explicitly forbid the Secretary from applying the accountability framework to those programs, nor did Congress choose to otherwise eliminate, limit, or curtail the Department's existing GE accountability framework, either when crafting the OBBB or in any other prior legislative act. Additionally, Congress did not eliminate other authorities that authorize the Department to ensure accountability, such as under the

quality assurance system authority in the HEA. 20 U.S.C. 1087d(a)(4), (7). Conversely, records clearly demonstrate that Congress was well aware that undergraduate certificate programs were already covered using a similar earnings test under the Department's GE accountability framework.¹⁵ When Congress passed the OBBB, the Department was implementing final rules on GE that were in effect and had not been enjoined, yet Congress made no attempt to alter those regulations. This stands in contrast to how the OBBB delayed the Department's borrower defense to repayment and closed school loan discharge regulations until 2035, eliminated the statutory authority for three income-driven repayment plans that had been created by the Department in regulations, and most importantly created accountability rules for all programs that were not covered by the GE framework.

This context provides compelling support for the notion that Congress did not implicitly relieve only undergraduate certificate programs from all levels of accountability at the same time that it established earnings accountability measures for all other programs for the first time. The better reading is that Congress did not, in the OBBB, disrupt the statutory authority that the Department had, prior to enactment, relating to GE, the quality assurance system authority, and other authorities in the HEA. The Department therefore believes that rescinding the existing GE framework outright, and thereby excluding undergraduate certificate programs from the accountability framework, would be inconsistent with the statute. Again, we also fully agree with the negotiators who noted that doing so would put students and taxpayers at an increased risk.

A negotiator also suggested that for severability purposes, the Department should maintain two separate accountability frameworks, one for GE programs and another for the programs specified under Section 84001 of the OBBB. As stated above, the Department maintains that it has the legal authority to impose an accountability regime on undergraduate certificate programs, a

position upheld by federal courts.¹⁶ But even if we do not (which we would vigorously contest), a court could narrowly tailor a remedy to enjoin application of the rule against only certificate programs while leaving the rest of the scheme intact. As such, the negotiator's concerns about severability are overstated. In addition, having separate GE and OBBB accountability frameworks would add significant complexity, increase administrative burden and costs for institutions and the Department, and could generate increased confusion for students in comparing and understanding differing informational disclosures and warnings generated from multiple frameworks that apply to different institutions and programs. As the Department explained during negotiated rulemaking, we view harmonization of the existing FVT/GE framework and the OBBB accountability framework to be essential in promoting parity among institutions and program types through a single accountability framework that covers the vast majority of programs qualifying for title IV, HEA assistance and nearly all title IV, HEA recipients.

While the Department appreciates the negotiator's concerns about severability, as we explain above in the "Authority for This Regulatory Action" section, we believe this proposed rule falls squarely within the Secretary's statutory authority. Nonetheless, as we explain in the discussion of definitions under § 668.2(b), the Department proposes a minor revision to the current definition of an eligible non-GE program, in part to address the negotiator's concerns about severability and to provide additional clarity regarding which programs would be subject to the accountability framework.

Some negotiators suggested that programs the Department determines to lead to low-earning outcomes under the proposed accountability framework should lose access to all title IV, HEA programs, as required under the current GE accountability framework, rather than only losing eligibility for the Direct Loan program. These negotiators expressed concern about students using

their limited lifetime Pell Grant eligibility on programs that are not performing well, and argued that the prospect of losing all title IV, HEA funding for low-earning outcome programs would better incentivize institutions to shift their program offerings away from failing programs or to improve the quality of their programs, which in turn would better serve the interests of students and taxpayers. Other negotiators argued that a program's loss of Direct Loan program eligibility would in many cases already lead to the closure of the program, or in some cases even the institution itself.

The Department notes that it has a greater interest in applying an earnings accountability framework to the Direct Loan program because, unlike the other title IV, HEA programs, the government and taxpayers expect loan funds to be repaid, and a student's earnings generally correlates with their ability to repay. We further note that the accountability framework set forth in Section 84001 of the OBBB resides in the Direct Loan program-specific provisions in HEA Section 454, which generally limits the scope of consequences to the Direct Loan program only. To the extent that undergraduate certificate programs would be covered by the proposed accountability framework under another statutory authority (*i.e.*, the longstanding HEA requirement for such programs that lead to gainful employment in a recognized occupation), we believe that such authority does not explicitly or inherently require loss of all title IV, HEA eligibility as the sole remedy for noncompliance.

In addition, to address negotiator concerns regarding continued Pell Grant eligibility for low-earning outcome programs, the Department further proposes changes to the PPA and administrative capability regulations at sections §§ 668.14 and 668.16, respectively, that would terminate title IV, HEA eligibility for all of an institution's low-earning outcomes programs if more than half of the institution's title IV, HEA recipients or title IV, HEA revenue are from low-earning outcome programs. We further address those provisions in the discussions below for the relevant regulatory sections.

We further note that while a 15-year history of pendular regulatory changes pertaining to GE has contributed to an environment of lasting uncertainty for institutions, students, and other stakeholders, not one program has yet lost eligibility under the current GE accountability framework or any of the

¹⁵ See Senate Comm. on Health, Educ., Labor, and Pensions, Q&A'S ABOUT HIGHER EDUCATION IN THE ONE BIG BEAUTIFUL BILL at 4 ("Which types of programs are covered by the 'do no harm' earnings standard? . . . The earnings standard applies to undergraduate degree, graduate degree, and graduate certificate programs. (It does not apply to undergraduate certificate programs, which are covered by a similar earnings test in the Gainful Employment regulation)"). available at https://www.help.senate.gov/imo/media/doc/faq_docpdf.pdf.

¹⁶ See *Ass'n of Priv. Sector Colleges & Universities v. Duncan*, 640 F. App'x 5, 8 (D.C. Cir. 2016) ("Had Congress been uninterested in whether the loan-funded training would result in a job that paid enough to satisfy loan debt, it would have created a federal grant system instead of a federal loan system focusing on preparation for gainful employment."); *American Assoc. of Cosmetology*, 2025 WL 4219345, at *5; *Ass'n of Priv. Colleges & Univs. v. Duncan (Duncan I)*, 870 F. Supp. 2d 133, 146 (D.D.C. 2012); See *Ass'n of Private Sector Colleges & Univs. v. Duncan (Duncan II)*, 110 F. Supp. 3d 176, 184, 186 (D.D.C. 2015); *Ass'n of Proprietary Colleges v. Duncan*, 107 F. Supp. 3d 332, 358, 362–63 (S.D.N.Y. 2015).

multiple prior iterations of GE accountability rules. We believe that treating institutions and programs consistently would reduce the likelihood of ongoing regulatory fluctuation. The Department's goal in proposing this unified framework is to at last set forth a harmonized, reasonable, data-driven, minimally burdensome, and implementable accountability framework that ensures parity across all institutions and program types. This framework is designed to withstand the test of time, provide stability for institutions, and offer actual, realized protections for students and taxpayers. To that end, we firmly believe the scope of this proposed accountability framework strikes the correct balance, is well founded, and is consistent with our statutory authority, as further demonstrated by the higher education community's support, expressed through consensus in negotiated rulemaking.

With regard to the proposed removal of the exemptions under current § 668.601(b)(1), Section 84001 of the OBBB does not extend authority to the Department to categorically exempt institutions located in the U.S. Territories or Freely Associated States from the earnings accountability framework. Regarding the proposed removal of the current exemption under § 668.601(b)(2) for institutions that offer no groups of substantially similar programs that produced at least 30 total completers over the four most recently completed award years, Section 84001 of the OBBB similarly does not include this specific exemption. With that said, as discussed above with regard to § 668.403, the Department proposes not to issue an earnings premium measure if the fully expanded cohort period includes fewer than 30 completers and—given the robust cohort period expansion procedures proposed—we anticipate that few students attend programs that would fall below this minimum threshold. Similarly, as discussed above, earnings thresholds would not be calculated for programs in States (including U.S. Territories) where available data from the Census Bureau does not allow for a computation of such a threshold.

Earnings Accountability Criteria (§ 668.602)

Statute: Section 481 of the HEA defines, in part, an “eligible program” as a “program of training to prepare students for gainful employment in a recognized profession.” Section 454 of the HEA, as amended by Section 84001 of the OBBB, further establishes an

accountability framework that evaluates earnings and employment outcomes using an earnings test and limits Direct Loan program eligibility to programs that do not fail this metric in two out of three years.

Current Regulations: Current § 668.602(a) stipulates that the Department considers a GE program to lead to gainful employment in a recognized occupation if it satisfies three conditions. First, the GE program must meet certain certification requirements as set forth in § 668.604. Second, the GE program must not fail the D/E rates measure in two out of any three consecutive award years in which the Department calculates D/E rates for the program. Third, the GE program must similarly not fail the earnings premium measure in two out of any three consecutive award years in which the Department calculates said measure for the program.

If the Department does not calculate or issue D/E rates for a program for an award year, current § 668.602(b) clarifies that the program receives no result under the D/E rates for that award year and would remain in the same status under the D/E rates metric as the previous award year. Current § 668.602(c) further provides that when making program eligibility determinations, the Department disregards any D/E rates that were calculated more than five calculation years prior.

Similarly, if the Department does not calculate or issue the earnings premium measure for a program for an award year, current § 668.602(d) clarifies that the program receives no result under the earnings premium measure for that award year and would remain in the same status under said metric as the previous award year. Current § 668.602(e) similarly provides that when making program eligibility determinations, the Department disregards any earnings premium that was calculated more than five years prior.

Proposed Regulations: Consistent with the proposed changes in scope discussed above with § 668.601, proposed changes to § 668.602 would rename the section from “Gainful employment criteria” to “Earnings accountability criteria” and would expand the universe of programs covered by those criteria to include both GE programs and eligible non-GE programs. In addition, consistent with proposed changes discussed above in § 668.402, proposed changes to § 668.602 would remove all references to the D/E rates metric, establishing the earnings premium measure as the sole

earnings accountability metric. Under the proposed earnings accountability criteria, the Department would consider a GE program or eligible non-GE program to lead to acceptable earnings outcomes if the program satisfies the certification requirement under § 668.604 and the program does not fail the earnings premium measure in two out of any three consecutive award years in which the Department calculates it.

As under the current GE framework, if the Department does not calculate or issue the earnings premium measure for an award year, the program would receive no result for that award year and would remain in the same status under the accountability framework as in the previous award year. For example, if the program fails said measure in one year, and the following year the Department does not calculate the measure, the program would retain eligibility and would continue to be treated as a program that has failed in one year (e.g., the program would remain eligible, student warning requirements would continue to apply, and the program would become ineligible for Direct Loan program participation if the Department calculates a failing earnings premium measure in either of the following two years in which the measure is calculated). The Department would no longer disregard an earnings premium that was calculated more than five years prior.

Reasons: The Department proposes to rename this section to reflect the revised scope of the institutions and programs covered under the accountability framework. HEA Section 454(c)(2), as amended under Section 84001 of the OBBB, applies broadly to undergraduate degree programs, graduate and professional degree programs, and graduate nondegree programs without regard to whether those programs are GE programs or eligible non-GE programs. For the reasons discussed in § 668.601 above, the Department proposes to expand the scope of the earnings accountability framework, including the criteria here in § 668.602 by which the Department would determine whether a program leads to acceptable earnings outcomes, to encompass both GE programs and eligible non-GE programs.

With regard to the proposed removal of D/E rates as an accountability metric, as the Department notes in the discussion of proposed § 668.402, the Direct Loan program accountability framework in HEA Section 454(c) establishes an earnings comparison metric only, not a debt-to-earnings measurement. Moreover, we again note that the Department's data analysis

shows that maintaining the D/E rates metric would result in a 0.2 percentage point increase in the share of failing programs (see Table 6.1 in the “Regulatory Impact Analysis” section). In the Department’s view this marginal addition would not justify the significant difference in complexity, cost, and administrative burden of including D/E rates.

Retaining a program for which the Department does not calculate the earnings premium measure for a given award year under the program’s same status as the preceding year is consistent with the Department’s treatment of programs under the current GE framework, and we believe it remains logical for the program to retain the same status under its most recently calculated results for purposes of determining whether the program leads to acceptable outcomes and whether current and prospective students should be alerted to those outcomes. With that having been said, the Department proposes to no longer discard a calculated earnings premium measure from more than five award years prior, as HEA Section 454(c) does not provide that exclusion, and — given the more robust cohort period expansion procedures proposed in this rule as discussed above in §§ 668.2 and 668.403—we anticipate that few students attend programs that would fall below the minimum completer threshold and believe that the vast majority of students will attend programs where an earnings premium measure is calculated.

Low-Earning Outcome Programs (§ 668.603)

Statute: Section 454(c)(1) of the HEA, as amended by Section 84001 of the OBBB, stipulates that a low-earning outcome program is ineligible for Direct Loan program participation. HEA Section 454(c)(5) provides the opportunity for an institution to appeal the Department’s determination of a program’s low-earning outcome status. HEA Section 454(c)(7) establishes a period of ineligibility of not less than two years for a low-earning outcome program. See also the “Authority for This Regulatory Action” section of this NPRM.

Current Regulations: Current § 668.603(a) stipulates that a GE program becomes ineligible for title IV, HEA participation if it either fails the D/E rates metric in two out of any three consecutive award years in which the Department calculates its D/E rates or fails the earnings premium measure in two out of any three consecutive award

years in which the Department calculates said measure.

Depending upon the institution’s circumstances, there are three mechanisms whereby the Department may process an ineligible GE program’s loss of eligibility. For an institution that is fully certified at the time of the loss of eligibility, the Department would initiate a termination action of program eligibility under part 668, subpart G. For an institution that is provisionally certified at the time of the loss of eligibility, the Department would initiate a revocation of the failing GE program’s eligibility. If the Department is currently reviewing the institution’s application for title IV, HEA recertification at the time of the loss of eligibility, the Department may simply issue a new PPA that does not include the ineligible GE program.

The current regulations at § 668.603(b) explain the conditions under which an institution may appeal a GE program’s loss of title IV, HEA eligibility. An institution may only appeal in instances when the Department processes a GE program’s loss of eligibility through a termination action under part 668, subpart G, and it may only do so on the basis that the Department erred in the calculation of the program’s D/E rates or earnings premium measure. The current regulations do not provide a similar appeal option in cases where the Department processes a GE program’s loss of eligibility through a revocation action for a provisionally certified institution, or where the Department simply issues a new PPA that does not include the ineligible GE program.

The current regulations at § 668.603(c) stipulate that an institution may not disburse title IV, HEA funds to students enrolled in an ineligible program, except as provided in the Department’s existing regulations at § 668.26(d) which allow conditional disbursements of Pell Grant and Direct Loan program funds for, respectively, the remaining portion of the payment period or period of enrollment during which the program lost eligibility. It also establishes a three-year period of ineligibility during which an institution may not seek to reestablish the eligibility of a program that is ineligible under the D/E rates or the earnings premium measure, or to reestablish the eligibility of a failing GE program that the institution discontinued voluntarily before or after the Department issued the program’s D/E rates or earnings premium measure. Either of these categories of programs remains ineligible until the institution again establishes the eligibility of the program under current § 668.604(c).

Proposed Regulations: Consistent with the proposed changes in scope discussed above in § 668.601, proposed changes to § 668.603 would rename the section from “Ineligible GE programs” to “Low-earning outcome programs” and would expand the universe of programs covered under this section to include both GE programs and eligible non-GE programs. In addition, the changes would remove all references to the D/E rates metric, leaving the earnings premium measure as the sole earnings accountability metric. Under proposed § 668.603(a), the Department would classify a GE program or eligible non-GE program as a low-earning outcome program if it fails the earnings premium measure in two out of any three consecutive award years in which it is calculated.

Unlike the current regulations, which include several mechanisms by which the Department may process a program’s loss of title IV, HEA eligibility, the proposed changes would require the Department in all instances to process a low-earning outcome program’s loss of Direct Loan program eligibility as a termination action under part 668, subpart G. This change would extend to all institutions the option to appeal a low-earning outcome program’s loss of Direct Loan program eligibility as provided under proposed § 668.603(b). Similar to the current regulations, the proposed regulations would limit appeals to only instances where the Department erred in the calculation of the program’s earnings premium measure.

Proposed § 668.603(c) would generally limit the consequences for a low-earning outcome program to the loss of Direct Loan program eligibility only, and it would reduce the period of ineligibility from three years under the current regulations to two years. Similar to the current regulations, a low-earning outcome program, or a failing program that the institution voluntarily discontinues, would remain ineligible until the institution reestablishes the eligibility of the program under proposed § 668.604.

Proposed § 668.603(c)(4) would provide an institution with a program that fails the earnings premium measure in a single year an alternative option to retain limited eligibility for the lesser of three years or the full-time normal duration of the program during an orderly closure of the program, provided that the Secretary determines this extension is in the best interest of students. To qualify for the orderly program closure option, the failing program must not yet meet the criteria of a low-earning outcome program (*i.e.*,

has not failed the earnings premium measure in two out of three years in which it was calculated), and the institution must, within 120 days of the Department's notice of determination under proposed § 668.405, amend the institution's PPA. Under the amended PPA, the institution would—

(1) Cease accepting new enrollments to the program, regardless of the student's title IV, HEA eligibility, on or after the date of the agreement;

(2) Engage in an orderly closure of the program in which the institution provides an opportunity for enrolled individuals to complete their program, regardless of their academic progress at the time of program closure;

(3) Inform the institution's State authorizing agency and accrediting agency of the orderly program closure, and meet any program discontinuation or closure requirements of those agencies;

(4) Acknowledge that the program has been voluntarily discontinued and is otherwise subject to the two-year ineligibility period under proposed § 668.603(c)(2), which would begin when the last student exits the program;

(5) Maintain the program under a warning status and provide the warning notice to students as otherwise required under proposed § 668.605, with the exception of the warning element under proposed § 668.605(c)(1)(ii) informing students that the program could lose access to Direct Loans based on the next calculated program metrics;

(6) Provide students the academic and financial options to continue their education in another program, either at the same institution or a different institution, to which the student's academic credit would transfer and that has not failed to satisfy the earnings premium measure; and

(7) Not restart the same program or start a program sharing the same four-digit CIP code for at least two award years following the completion of the orderly program closure.

Proposed § 668.603(c)(4)(ii) would prevent an institution from accessing the orderly program closure option in cases where, based on the program's compliance, the program or the institution is subject to a probation or equivalent action by a recognized accrediting agency or State regulatory agency, including licensing boards, or where the institution is subject to the Department's heightened cash monitoring 2 (HCM2) or reimbursement method of payment under § 668.162(c).

Reasons: As with sections §§ 668.601 and 668.602 above, the Department proposes to rename this section to reflect the revised scope of the

institutions and programs covered under the accountability framework. HEA Section 454(c)(2), as amended by Section 84001 of the OBBB, applies broadly to undergraduate degree programs, graduate and professional degree programs, and graduate nondegree programs without regard to whether those programs are GE programs or eligible non-GE programs. For reasons discussed in § 668.601 above, the Department proposes to expand the scope of the earnings accountability framework, including the criteria here in § 668.603 by which the Department would determine whether a program leads to acceptable earnings outcomes, to encompass both GE programs and eligible non-GE programs, while also generally limiting the consequences for a low-earning outcome program to the loss of Direct Loan eligibility only, as provided in statute. Consistent with the wording Congress selected in HEA Section 454(c)(2), as revised by Section 84001 of the OBBB, and to reflect the narrower scope of the earnings determination given the proposed removal of the current D/E rates metric, the Department proposes to refer to GE and non-GE programs that fail the accountability metric as “low-earning outcome programs.” As specified in HEA Section 454(c)(7), the period of Direct Loan program ineligibility for such programs would be two years.

A negotiator recommended that the Department retain the existing mechanisms provided under the current regulations for the streamlined removal of low-earning outcome programs in cases where the institution is provisionally certified or where the low-earning outcome determination occurs during the Department's consideration of an institution's recertification application, arguing that removing these mechanisms would increase administrative burden on the Department and delay it in acting to protect students and taxpayers from investing in low-earning outcome programs. Although the Department appreciates the negotiator's concerns, we believe the requirement in HEA Section 454(c)(5) to provide an appeal option applies in all instances where a low-earning outcome program would lose Direct Loan program eligibility under the accountability framework, which necessitates the proposed change to the mechanisms under current § 668.603(a) by which the Department would process the change in eligibility. Processing all such losses of Direct Loan program eligibility as termination actions would extend the existing

appeal process under part 668, subpart G to any institution with a low-earning outcome program, consistent with the OBBB requirement. Moreover, this approach would also reflect the Department's goal of harmonizing the requirements and processes across institutions and programs, as further discussed above in § 668.601.

Some negotiators suggested that low-earning outcome programs should not retain Direct Loan program eligibility during the appeal process, arguing that a higher volume of appeals could be expected under the proposed rule, which could slow the Department's processing of appeals while low-earning outcome programs remain eligible during the appeal process. Negotiators also suggested that the Department require institutions to provide a letter of credit during the appeal process.

The Department, however, notes that the statutory language in HEA Section 454(c)(5) allows such programs to continue to participate in the Direct Loan program during an appeal. Administering the required appeals process using existing procedures under part 668, subpart G would allow the Department to both meet this requirement and provide consistency with the Department's treatment of institutions in other types of eligibility appeals. In addition, given that no programs would lose Direct Loan program eligibility under the proposed rule until the second year of calculations, we believe there is sufficient time for the Department to plan and prepare for any anticipated change to the volume of appeals. With regard to the suggestion to require a letter of credit during the appeals process, while we concur that doing so would likely reduce the volume of appeals, we note that providing a letter of credit involves many consequences for institutions and may not be necessary in all instances to protect taxpayer interests. Imposing a LOC is principally used by the Department to protect taxpayers against potential unpaid institutional liabilities and would not be reasonable in all circumstances where a program at an institution fails the earnings premium and chooses to appeal.

Similar to the current GE accountability framework, the proposed earnings accountability framework would limit appeals to instances where the Department erred in the calculation of the program's earnings premium measure. Some negotiators proposed broadening the factors that an institution could appeal to include the underlying median graduate earnings data used to calculate the earnings

premium measure, arguing that there would otherwise rarely be a basis for an institution to appeal under the proposed criteria as both the median graduate earnings and earnings benchmark would be based on elements an institution could not dispute. Negotiators further suggested that the Department consider alternative earnings data, such as local earnings data or survey data, that might address limitations in available administrative earnings data and improve fairness and due process, or that the Department introduce an earnings variance to address unreported tipped income in certain professions. Other negotiators expressed support for the scope of the appeals process as proposed, arguing that appeals in other areas of title IV, HEA administration, such as cohort default rates, can sometimes consume significant time and costs, that the earnings standards set forth in the OBBB are specific enough that an appeal would oftentimes not be fruitful, and appeals must not look at factors that could effectively circumvent the intent of Congress.

The Department disagrees with negotiators who claimed that the proposed basis for appeals would deprive institutions of a meaningful opportunity to appeal a low-earning outcome determination. As under the current GE framework, institutions would have the opportunity to review and correct the list of completers provided to the Federal agency with earnings data to obtain median graduate earnings and could meaningfully appeal any discrepancies pertaining to the completers list.

The Department disagrees with suggestions that we should allow appeals to substitute or modify the earnings data with alternative earnings data. We maintain, as discussed in response to public comments in the FVT/GE Final Rule published October 10, 2023, that it is inappropriate to accept appeals on the basis of alternative earnings for a variety of reasons.¹⁷ IRS earnings data represent the highest quality and most accurate available data source and, accordingly, are also currently used for determining student and family incomes for purposes of establishing student title IV, HEA eligibility and determining loan payments under income-driven repayment plans. Moreover, the Department recalls the low quality of past data submitted by institutions in alternate earnings appeals, such as graduate earnings surveys and employment verifications, including in

submissions after litigation over the 2014 Program Integrity: Gainful Employment Rule.¹⁸ One study concluded, after examining publicly available data from 2017, that after the D.D.C.'s ruling in *Am. Ass'n of Cosmetology Schs. v. Devos*, 258 F. Supp. 3d 50, 76,77 (D.D.C. 2017) prevented the Department from enforcing limitations on the types of appeals alternate earnings, data submitted by cosmetology programs that had initially failed were 82 percent higher than the median reported earnings that the Department had received from SSA.¹⁹ This was significantly greater than the approximately 8 percent of cosmetologists' annual income that was comprised of unreported tipped income, according to estimates in the same study based on IRS "tax gap" and audit data. *Id.* at 4. The problem of such alternative earnings data was addressed in *American Assoc. of Cosmetology Sch. v. Dep't of Educ.*, where the court concluded that the Department's choice of data and its rejection of alternate earnings appeals in the FVT/GE Final Rule published on October 10, 2023 was reasonable. *See* 2025 WL 4219345 at *8, *9. The court noted that, in crafting the FVT/GE Final Rule, the Department had reviewed and responded to comments about the reported earnings, the debt to earnings ratio, and the earnings premium. *Id.* The court further noted that the Department cited studies²⁰ that found underreporting was not a widespread issue, that the FVT/GE Final Rule specifically noted that safeguards that had been put in place to address purported underreporting, if it was in fact an issue. *Id.*

We similarly disagree with suggestions to adjust the median graduate earnings data for a program based on purported underreporting of tipped or self-employment income within an occupation. As the Department explained during negotiated rulemaking, any existing underreporting of income would impact both sides of the earnings premium calculation, *i.e.*, both the measured median earnings of

program graduates and the benchmark median earnings of working adults in the earnings threshold. The Department intentionally selected the use of median earnings rather than the mean earnings for both the program and benchmark earnings, in no small part because it would take over half of the respective earners to shift the median value by even a small amount. Adjusting program earnings across the board by any amount would therefore very likely over adjust for unreported or underreported earnings, to whatever extent they may exist. In addition, as a Federal agency the Department maintains that it would be profoundly inappropriate to legitimize underreporting by adjusting earnings data in an effort to account for purported, yet unsubstantiated, underreporting of wages or tips in certain fields, when earners in those fields are in fact ultimately required by law to truthfully report those wages and tips to the IRS.

Section 454(c)(5) of the HEA does not require the Department to consider appeals of earnings data, only of the low-earning outcome determination in HEA Section 454(c)(2). We further note that if the Department fails to thoughtfully and purposefully manage the scope and basis of appeals, it could result in institutions inundating both the Department and, potentially, the courts with cumbersome appeals and challenges that are unlikely to impact eligibility outcomes based on the merits but would, nonetheless, generate significant burden and costs for both institutions and the Department, all while delaying accountability and leaving students and taxpayers at a continued risk during what would likely be a protracted appeals process. Though the Department proposes to allow narrow appeals, our proposed appeal process would nevertheless be reasoned, meaningful, clear, consistent, and would provide due process and transparency. The proposed appeals process will help ensure that institutions have an opportunity to point out errors, which will help to reduce the instances where the Department takes action against a program based upon erroneous data. Although we understand concerns about the consequences for institutions and students if a program loses Direct Loan program eligibility under the proposed earnings accountability framework, it is equally important to recognize that in any meaningful accountability framework, some programs will fail, something that is clearly in line with OBBB. Finally, given the limited grounds for appeals under the proposed

¹⁸ *See* Program Integrity: Gainful Employment, 79 FR 64890 (Oct. 31, 2014).

¹⁹ Cellini, Stephanie Riegg & Blanchard, Kathryn J. (2022). Hair and Taxes: Cosmetology Programs, Accountability Policy, and the Problem of Underreported Income. Geo. Wash. Univ. (https://www.american.edu/spa/peer/upload/peer_hairtaxes-final.pdf).

²⁰ *See* FVT/GE Final Rule at 32336, 32346 (*citing* Stephanie R. Cellini and Kathryn J. Blanchard, "Hair and taxes: Cosmetology programs, accountability policy, and the problem of underreported income," Geo. Wash. Univ. (Jan. 2022), www.peerresearchproject.org/peer/research/body/PEER_HairTaxes-Final.pdf).

¹⁷ *See* Financial Value Transparency and Gainful Employment, 88 FR 70004, 70095 (Oct. 10, 2023).

rule, to address truly extenuating circumstances, we note that the Department still has the option to exercise other existing authorities to waive or modify title IV, HEA program requirements in national emergencies under the Higher Education Relief Opportunities for Students (HEROES) Act.²¹

The orderly program closure provisions in § 668.603(c)(4) of the consensus language was the result of a joint proposal from several non-Federal negotiators. These negotiators pointed out that the Department's proposed earnings accountability framework narrowly measures a program's earnings outcomes at a specific point in time, rather than the lifetime earnings benefit of a program, the quality of instruction, or the more holistic value of a program to society or to a graduate's personal well-being. Negotiators also argued that, regardless of these types of unmeasured value such a program may offer, the predominant impact of a low-earning outcome program's loss of Direct Loan program eligibility would fall on students currently enrolled in that program. Negotiators advocated for an optional pathway for institutions to carefully and transparently wind down a failing program that might not continue to operate without Direct Loan program access while creating a pathway for students to complete their program of study, all while otherwise leaving the earnings accountability framework and appeals process in place for institutions that do not choose to promptly initiate an orderly program closure for a failing program. The Department believes this option would appropriately balance the interests of fostering accountability, minimizing sudden disruption, helping encourage completion, and allowing institutions to proactively and responsibly wind down programs at risk of losing Direct Loan eligibility, all while still benefiting taxpayers by incentivizing institutions to cease enrolling new students in at-risk programs one year earlier than the program would otherwise lose Direct Loan program eligibility if determined to be a low-earning outcome program. We applaud the negotiators for their creativity in conceiving this innovative provision.

Notwithstanding the general support of the proposed orderly program closure option, some negotiators questioned the provision at proposed § 668.603(c)(4)(i) stipulating that the option would apply if the Secretary determines that it is in the best interest of students. Negotiators voiced concern about whether the Department might selectively choose whether or not to agree to the PPA addendum allowing orderly program closure. The Department clarifies that it included the language in question primarily to reflect the reality that any PPA amendment must be countersigned by the Secretary or her representative. To the limited extent this provision could be used to disallow the extension of Direct Loan program eligibility, the Department would only do so under unusual and compelling circumstances, such as in the case of a precipitous institutional closure or an emergency action against the institution (*e.g.*, in a case of suspected fraud). Absent such severe and unusual circumstances, or the less uncommon disqualifying circumstances already specified in proposed § 668.603(c)(4)(ii), the Department does not consider approving the orderly program closure to be a discretionary decision and anticipates that the Secretary would approve requests for the associated PPA amendments in nearly all cases.

Certification Requirements for GE Programs and Eligible Non-GE Programs (§ 668.604)

Statute: Section 481 of the HEA defines, in part, certain categories of an "eligible program," including most undergraduate nondegree programs, as a "program of training to prepare students for gainful employment in a recognized profession." Section 454 of the HEA, as amended by Section 84001 of the OBBB, further establishes an accountability framework for programs that lead to an undergraduate degree, graduate or professional degree, or graduate certificate, evaluating such programs by measuring the earnings outcomes of graduates.

Current Regulations: The current regulations at § 668.604 describe the institutional certification requirements for GE programs. In particular, § 668.604(d) requires an institution to certify to the Department, for each GE program included on the institution's Eligibility and Certification Approval Report (ECAR), that the program is approved by a recognized accrediting agency or is otherwise included in the institution's accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, that the program

is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation.

Current § 668.604(a) generally requires an institution to have certified to the Department, by December 31 of the year the GE regulations took effect, that each of its eligible GE programs met the above criteria. Current § 668.604(b) further requires an institution to provide a similar certification as a condition of continued title IV, HEA eligibility when applying for recertification or when making changes that may otherwise impact a GE program's eligibility.

The current provisions at § 668.604(c)(1) highlight the process whereby an institution establishes the title IV, HEA eligibility of a GE program by updating its list of eligible programs as provided under current § 600.21(a)(11)(i), and notes that by doing so an institution affirms that the program satisfies the GE program certification requirements. The current version of the regulation at § 668.604(c)(2) prohibits an institution from updating its list of eligible programs to include a GE program, or a GE program that is substantially similar (*i.e.*, sharing the same four-digit CIP code as) to a failing GE program that the institution voluntarily discontinued or that became ineligible under the D/E rates or the earnings premium measure until the three-year period of ineligibility under current § 668.603(c) expires.

Proposed Regulations: The proposed changes to § 668.604 would expand the scope of the certification requirements to encompass both GE programs and eligible non-GE programs. The content of institutional certifications under proposed § 668.604(c) would largely reflect the existing content under current § 668.604(d), but would additionally specify that an institution agrees to comply with the requirements of the STATS framework under part 668, subpart Q, as well as those of the Earnings Accountability framework under part 668, subpart S.

The Department proposes to remove the transitional certification requirements for existing programs under current § 668.604(a).

Most of the remaining proposed revisions to this section would be technical or conforming changes, with only two notable exceptions. One substantive change would revise the restriction for updating an institution's list of Direct Loan-eligible programs, which currently applies to the same program or a substantially similar program to a failing program that lost eligibility or that the institution

²¹ Edward Lio and Sean Stiff, Cong. Rsch. Serv., R47505, Student Loan Cancellation Under the HEROES Act 2 (2023). "(During the course of the COVID-19 pandemic, which Presidents Trump and Biden both declared a national emergency, the Secretary of Education (Secretary) has used the HEROES Act to provide a number of flexibilities to both borrowers and schools that participate in HEA student loan programs.)".

voluntarily discontinued. The revision would instead apply to the same program or one at the same credential level sharing both the same four-digit CIP code and any overlapping SOC codes according to the CIP SOC Crosswalk provided by a Federal agency. The other substantive change would prohibit an institution from updating its list of Direct Loan-eligible programs to reinstate a program that was subject to the two-year ineligibility period, or a program sharing the same four-digit CIP code and any overlapping SOC codes, even after the ineligibility period expires if the program has continued to fail the earnings premium measure in either of the two most recent award years.

Reasons: As with §§ 668.601 through 668.603 above, the Department proposes to rename this section to reflect the revised scope of the institutions and programs covered under the accountability framework. HEA Section 454(c)(2), as amended under Section 84001 of the OBBA, applies broadly to undergraduate degree programs, graduate and professional degree programs, and graduate nondegree programs without regard to whether those programs are GE programs or eligible non-GE programs. For reasons discussed in § 668.601 above, the Department proposes to expand the scope of the earnings accountability framework, including the criteria here in § 668.604, by which the Department would certify the program eligibility under the earnings accountability framework to encompass both GE programs and eligible non-GE programs, while also reflecting the scope of consequences for a low-earning outcome program as a loss of Direct Loan eligibility only, as provided in statute.

The Department proposes to remove the transitional certification requirements under § 668.604(a) for currently eligible programs because they were duplicative of existing requirements for accreditation of all eligible programs. Requiring institutions to provide transitional certifications at the outset for all GE programs would have imposed substantial up-front burden on both institutions and the Department. Moreover, in the Department's view, an institution's existing, signed PPA satisfied the transitional certification requirement, except in circumstances where the Department had reason to believe that a GE program was not accredited by a recognized agency (or, in the case of a public postsecondary vocational institution, the program was not approved by a recognized State agency for the approval of public postsecondary

vocational education).²² Under the current FVT/GE rule, the Department considered an institution's existing PPA to satisfy the transitional certification requirement unless the Department notified an institution otherwise, and for similar reasons we do not believe a transitional certification requirement would be necessary going forward.

With regard to the additional content of eligibility certifications under proposed § 668.604(c)(1), the Department believes that naming in the regulatory certification text the otherwise implicit condition that an institution must agree to comply with the requirements of the transparency framework under part 668, subpart Q and the accountability framework under part 668, subpart S would help improve clarity for institutions by reminding an institution's signing official of important responsibilities the institution must assume when choosing to maintain, establish, or reestablish Direct Loan program eligibility for a program of study.

Some negotiators expressed concern regarding the restrictions on establishing Direct Loan program eligibility for a program that is similar to a low-earning outcome program that was subject to an ineligibility period. These negotiators noted that the committee addressed a similar issue in the context of ineligible Workforce Pell programs, where proposed regulations sought to balance the need for guardrails to prevent gaming by an institution adding programs closely resembling a program that lost eligibility while also preserving the ability for otherwise compliant institutions to seek eligibility for programs that are sufficiently distinct from the program that lost eligibility. The Department understands these concerns, and the consensus language at proposed § 668.604(b)(2) would also limit the prohibition on new programs to those with both the failing program's four-digit CIP code and any overlapping SOC codes.

Negotiators also raised the issue of safeguarding students and taxpayers when an institution potentially seeks to establish or re-establish Direct Loan program eligibility for a low-earning outcome program that was subject to the two-year ineligibility period, but after the ineligibility period expired, the program nonetheless continues to fail

the earnings premium measure. To address this concern, as part of the consensus language the Department added proposed § 668.604(b)(3), which would prevent an institution from establishing or reestablishing the eligibility of the failing program, or of a program sharing the same four-digit CIP code and any overlapping SOC codes as the failing program, until the program has demonstrated acceptable earnings performance by not failing the earnings premium measure in either of the two most recent award years. We also note that the draft consensus language at proposed § 668.604(b)(3) contained two minor technical errors, in the form of incorrect cross references which erroneously referred to the two-year ineligibility period under proposed § 668.403(c) when the ineligibility period can actually be found at proposed § 668.603(c). We have corrected those cross references in this proposed rule and informed the negotiators of this change consistent with 20 U.S.C. 1098a(b)(2), which requires the Secretary to provide negotiators with a written explanation when we depart from the consensus agreement.

Student Warnings (§ 668.605)

Statute: Section 431 of the GEPA grants the Secretary authority to establish rules to require institutions to make data available to the public about the performance of their programs and about students enrolled in those programs. That section directs the Secretary to collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their intended purposes and also to inform the public about Federally supported education programs. Further, the OBBA requires warnings for programs at risk of losing Direct Loan eligibility under Section 454(c)(6) of the HEA.

Current Regulations: The current regulations at 34 CFR 668.605 specify the warnings, warning types, contents, language alternatives, delivery methods, and student acknowledgments relevant to warnings that must be given to current and prospective students when a program could become ineligible under this subpart (e.g., the program could become ineligible based on D/E rates or the earnings premium measure for the next award year for which it is calculated). The current regulations explain the situations that require a warning to be given to current and prospective students. The regulations further explain that a subsequent warning is required when a student

²² See also Dear Colleague Letter GEN-24-04 "Regulatory Requirements for Financial Value Transparency and Gainful Employment" (updated Sept. 16, 2026) at <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2024-03-29/regulatory-requirements-financial-value-transparency-and-gainful-employment-updated-sept-16-2024>.

does not enroll until more than 12 months after receiving the warning, unless, since providing the initial warning, the program has passed both the D/E rates and earnings premium measures for the two most recent consecutive award years in which the metrics were calculated for the program.

The current regulations at § 668.605(c) explain the content that must be included in warnings to help students understand the risks of enrolling in failing programs, as well as the potential for the program's loss of title IV, HEA eligibility. The institution must provide in the warning a statement that the student must acknowledge having viewed the warning. The warning must also include a description of the academic and financial options available to students to continue their education in another program at the institution, as well as an indication of whether, in the event that the program loses eligibility for title IV, HEA program funds, the institution will continue to provide instruction, or refund the tuition, fees, and other required charges. The warning must include an explanation of whether, if the program loses eligibility for title IV, HEA program funds, students could transfer credits earned in the program to another institution in accordance with an established articulation agreement or teach-out plan or agreement. It also requires that the institution provide the warning in alternative languages for those students and prospective students who have limited proficiency in English. The regulation further explains how the warnings must be delivered to enrolled and prospective students. The regulation details the specific items that are required in the warning:

- That the program has not passed standards established by the Department;
- The program could lose access to Federal grants and loans;
- The relevant information to access the program information website maintained by the Secretary;
- A statement that the student must acknowledge having viewed the warning before the institution may disburse any title IV, HEA funds;
- A description of the academic and financial options available to students to continue their education in another program at the institution;
- An indication of whether, if the program loses eligibility for title IV, HEA program funds, the institution will continue to provide instruction in the program; and refund the tuition and fees; and
- An explanation of whether, if the program loses eligibility for title IV,

HEA program funds, the students could transfer credits earned in the program to another institution in accordance with an articulation agreement or teach-out plan or agreement.

The regulation further stipulates that the warning acknowledgment must be obtained from the student prior to enrollment and disbursement, and retained in the institution's records. The final paragraph explains that a student warning or the student's acknowledgment of having received the warning does not lessen the institution's responsibility to provide accurate information to students concerning program status, nor will the Department consider this as dispositive evidence against a student's claim if the student applies for a loan discharge.

Proposed Regulations: The proposed regulations would broaden the recipients of warnings to include any prospective or current student enrolled in a GE program or eligible non-GE program at risk of a loss of program eligibility for Direct Loan program funds, consistent with other changes to these regulations harmonizing requirements for GE and eligible non-GE programs. The warnings would no longer include information about D/E rates and would no longer refer to an acknowledgement to the Department.

The proposed regulations would modify the contents of the warnings, including removing the D/E rate calculation as a warning criterion, specifying that students would lose Direct Loan eligibility rather than eligibility for all title IV aid, and providing more specific information related to program pass/fail eligibility and the student's Pell Grant lifetime eligibility usage. The proposed regulations would also eliminate requirements for an institution to inform students of the academic and financial options available to them in the event that their program lost eligibility for Direct Loan funds, provide information about potential continuation of coursework or tuition refunds, and explain the availability of articulation agreements and options for credit transfer.

Finally, under the proposed regulations, institutions would be required to convey to Pell Grant-eligible students information about their remaining lifetime Pell Grant eligibility and communicate that any Pell Grant funds received will count against future lifetime Pell Grant eligibility.

Reasons: The statute requires institutions to actively warn prospective and current students when an eligible non-GE program may become ineligible for the Direct Loan program based on its

earnings premium measure in order to help the student make educated decisions on where to invest their time and money in pursuit of higher education. The Department is applying the same set of requirements to both GE and eligible non-GE programs consistent with its intent to harmonize all earnings accountability requirements and establish a more uniform framework for providing consumers with information about failing programs. The Department is also removing all references to the D/E rate and a Department-managed acknowledgement process consistent with its intent to eliminate that metric and the Department-managed acknowledgement, respectively.

The Department would continue to require institutions otherwise obligated to provide a warning to provide a new warning if a student seeks to enroll more than 12 months after a previous warning was provided in a program that still remains at risk for a loss of eligibility, which would allow current and prospective students to make enrollment decisions based upon timely and accurate information. The Department initially proposed to remove this requirement. However, it was added back to the consensus language in response to a negotiator's concerns that eliminating such a requirement would limit the effectiveness of any such warning on a student's ability to make an effective choice after a long period of time has elapsed since the last warning.

The Department proposes to add language regarding Pell Grant lifetime eligibility usage in response to concerns raised by negotiators during negotiated rulemaking. The Department agreed with negotiators that institutions must supplement their efforts to keep students informed of their remaining lifetime Pell Grant eligibility and that any Pell Grant funds received will count against their future Pell Grant eligibility. The Department believes that the most appropriate time to communicate this is when Pell Grant funds are disbursed to the student, particularly since notification is already required at disbursement. The Pell Grant lifetime eligibility notification may be completed as part of disbursement notifications already provided by institutions, but the warning must be separate and contain only the content regarding the possible loss of eligibility in accordance with proposed 34 CFR 668.605(c).

The Department proposes to eliminate the current warning contents specified under 668.605(c)(4), (5), and (6) to reduce institutional burden and better focus the content of the warnings on the

items that are most important for students to know under these circumstances. Several studies have found that college students have limited attention for disclosures and notices.²³ Therefore, the Department's view is that consumer disclosures with too much information are more difficult for individuals to focus on, and therefore, only essential information should be provided. The Department also proposes to include disclosures similar to the ones removed here to require an institution to provide to students if it opts to initiate an orderly program closure under the proposed regulation at § 668.603(c)(4).

We propose to eliminate the requirement to provide the warnings in an alternate language. This is consistent with Administration policy under Executive Order 14224, "Designating English as the Official Language of The United States," and guidance issued by the Department of Justice directing agencies regarding how to implement the Executive Order.²⁴ This also eliminates burden on institutions due to the burden associated with providing such a translation in comparison with the small number of students who may be interested in such translations, given that most instruction at institutions that participate in title IV programs is in English. In addition, the Department believes that a student who may prefer a warning in an alternative language could quickly and easily obtain one on his or her own using one of the many free translation options commonly available on the internet.

Standards for Participation in Title IV, HEA Programs

Standards of Administrative Capability (§ 668.16)

Statute: Section 498(a) of the HEA grants the Secretary the authority to establish requirements that postsecondary institutions must follow to demonstrate that they are administratively capable.

Current Regulations: The regulations at current § 668.16 list the standards an

eligible institution must meet to demonstrate to the Secretary the institution's administrative capability to administer the title IV, HEA programs. Among these standards, for an institution that offers GE programs to demonstrate administrative capability, current § 668.16(t) requires that at least half of the institution's total title IV, HEA funds in the most recent award year are not from failing GE programs. Currently, when the Department determines that an institution has failed to demonstrate administrative capability, it takes significant steps to increase oversight and scrutiny of the institution, including, in some cases, placing the institution on a provisional PPA or taking a limitation or termination action against the institution.

Proposed Regulations: The proposed changes would revise the administrative capability requirement at § 668.16(t) to require that at least half of the institution's title IV, HEA recipients and at least half of the institution's total title IV, HEA funds are not from low-earning outcome programs under the earnings accountability framework in proposed part 668, subpart S.

Reasons: The Department proposes to revise this section in part to reflect the revised scope of the institutions and programs covered under the earnings accountability framework. For reasons discussed in § 668.601 above, the Department proposes elsewhere in this rule to expand the scope of the earnings accountability framework, including the potential eligibility consequences for failing programs, to encompass both GE programs and eligible non-GE programs. Because the proposed earnings standard would apply consistently across GE programs and eligible non-GE programs, including the consequences for low-earning outcome programs, we believe it is logical and consistent to update the related administrative capability standard as well.

The proposed earnings accountability regulations in subpart S of part 668 would operate on a programmatic basis and would allow the Department to identify situations where specific offerings at an institution may not provide sufficient earnings benefits to graduates. However, when a majority of an institution's title IV, HEA funding or enrollment is from low-earning outcome programs—regardless of whether those failing programs include GE programs, eligible non-GE programs, or both—those results would suggest a more widespread and systemic set of concerns that is not limited to individual programs and could represent a more substantial risk to

students and taxpayers. Revising § 668.16(t) as proposed would allow the Department to take additional steps to increase its oversight of these institutions, such as placing them on a provisional PPA, as discussed in proposed § 668.14 below.

During negotiated rulemaking, some negotiators expressed confusion over whether the wording of this proposed administrative capability standard should use an "and" or an "or" in describing the two criteria. Given the committee's intent to require both half of the institution's title IV, HEA recipients and half of the institution's title IV, HEA revenue to come from passing programs, the use of "and" is appropriate in the wording of the standard. As a result, if more than half of the institution's title IV, HEA funds or more than half of the institution's title IV, HEA recipients come from failing programs, the standard would not be met.

Program Participation Agreement (§ 668.14(h))

Statute: HEA section 498 requires the Secretary to determine the process through which a postsecondary institution applies to the Department certifying that it meets all applicable statutory and regulatory requirements to participate in the title IV, HEA programs. This includes the requirement for institutions to enter a written PPA with the Department. HEA section 498(d) authorizes the Secretary to establish reasonable procedures and requirements to ensure that institutions are administratively capable. HEA section 498(h) discusses provisional certification of institutional eligibility to participate in the title IV, HEA programs.

Current Regulations: The regulations under § 668.14 outline the various provisions governing an institution's written agreement with the Secretary authorizing the institution's participation in the title IV, HEA programs, also known as the PPA. The current regulations at § 668.14(h) provide for the occasions in which a PPA becomes effective, specifying that a PPA becomes effective on the date the Secretary signs the agreement and that a new PPA supersedes any prior PPA.

Proposed Regulations: The Department proposes to add a new provision as § 668.14(h) and to renumber current paragraphs (h) through (k) as (i) through (l), respectively.

The proposed new § 668.14(h)(1) would establish consequences for an institution that fails to meet the proposed administrative capability

²³ See Moss, B.G., & Yeaton, W.H., Failed warnings: Evaluating the impact of academic probation warning letters on student achievement. *Evaluation Review*, 39(5), 501–524 (2015); and Moss, B.G., & Kelcey, B., Words of warning: A randomized study of the impact of assorted warning letters on academic probation students, *Community College Review*, 50(3), 253–268 (2022).

²⁴ Exec. Order No. 14,224, Designating English as the Official Language of The United States, 90 FR 11363 (March 1, 2025); U.S. Dep't of Just., Memorandum to All Agencies, Implementation of Executive Order 14,224; Designating English as the Official Language of the United States of America, (July 14, 2025), available at https://www.justice.gov/ag/media/1407776/dl?inline=&utm_medium=email&utm_source=govdelivery.

requirement at § 668.16(t). Specifically, if an institution fails in two out of any three consecutive years to demonstrate administrative capability because more than half of its title IV, HEA recipients or more than half of its title IV, HEA funds are from low-earning outcome programs under part 668, subpart S, the Department would place the institution on a provisional PPA status and each of the institution's low-earning outcome programs would be ineligible for all title IV, HEA funds.

Proposed § 668.14(h)(2) would provide the opportunity for an institution to appeal the Department's determination that the institution failed to demonstrate administrative capability under the proposed standard at § 668.16(t) using the appeal and hearing procedures furnished under part 668, subpart G.

Reasons: As we explain above in the context of § 668.601, some negotiators proposed that programs the Department determines to lead to a low-earning outcome under the proposed accountability framework in part 668, subpart S should lose access to all title IV, HEA programs, rather than losing eligibility for the Direct Loan program only. These negotiators expressed concern about students using their limited lifetime Pell Grant eligibility on poor performing programs, and argued that the prospect of losing all title IV, HEA funding for low-earning outcome programs would incentivize institutions to shift program offerings away from failing programs or to improve the quality of their programs, which in turn would better serve the interests of students and taxpayers. Other negotiators argued that a program's loss of Direct Loan program eligibility would, in many cases, already lead to the closure of the program, or in some cases even the institution itself, which could adversely impact students and reduce available postsecondary education and training options.

As we explain in that discussion above, the accountability framework set forth in Section 84001 of the OBBB resides in the Direct Loan program-specific provisions in HEA Section 454, which generally limits the scope of consequences to the Direct Loan program only. As explained further in the "Authority for This Regulatory Action" section, institutions must sign an agreement with the Secretary to participate in the Direct Loan program. 20 U.S.C. 1087d. This agreement, which has been called the Direct Loan Agreement, has been incorporated into the PPA which covers other title IV, HEA programs, not just the Direct Loan program. As part of the Direct Loan

Agreement, institutions must "provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with institutions of higher education, to ensure that the institution is complying with program requirements and meeting program objectives." 20 U.S.C. 1087d(a)(4). Institutions must also comply with "other provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part." Failure to abide by the terms of the Direct Loan Agreement results in disqualification from participating in the Direct Loan program, but not necessarily other title IV, HEA programs.

The Department believes that it has authority under these provisions in Section 454 of the HEA, as well as the GE provisions in Section 102 to require GE programs to comply with the earnings premium standard. However, the Department believes that the appropriate remedy for programmatic noncompliance is loss of eligibility for Direct Loans for such programs that fail the earnings premium. The Secretary has been given significant deference by Congress in Section 454 in designing the quality assurance system, and that includes the option to tailor the remedy for noncompliance to a program-by-program basis to protect the interests of the United States. Indeed, it would not be in the interest of the United States to disqualify all programs at an institution if only one or a few programs are not performing because students in high performing programs would also lose access to programs that are adding value.

Even though the Supreme Court in *Loper Bright v. Raimondo* overturned the deference agencies had in construing ambiguous statutes, it did not foreclose the ability of Congress to provide agencies deference in certain scenarios. 603 U.S. 369, 394(2024). The Supreme Court noted that "[i]n a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion." *Id.*

Here, Congress directed the Secretary to develop a "quality assurance system" without explanation as to what quality should mean, except that it should be a system designed to meet "program requirements and . . . objectives." 20 U.S.C. 1087d(a)(4). These GE programs are required to prepare students for gainful employment in a recognized occupation. 20 U.S.C. 1002. As such, the Secretary has discretion to ensure that they are meeting those program requirements, and may impose loss of

Direct Loan eligibility as a consequence for failing to meet that requirement.

In addition, the Secretary has overlapping authority to "[i]nclude such other provisions [in the Direct Loan agreement] as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part." The statute vests with the Secretary, and the Secretary alone, to determine what is necessary to protect the interests of the United States and to promote the purposes of the United States. *Loper Bright* does no work here in altering this broad delegation handed down by Congress to the Secretary. Here, she has determined that it is not in the interest of the United States to have programs where graduates have low earnings participating in the Direct Loan program because those programs do not do a good job helping prepare students to repay Direct Loans. When students do not repay their Direct Loans, it hurts the interests of the United States in collecting on those student loans, and we aim to eliminate passing along the cost of such loans to taxpayers.

Given those general considerations, the Department further proposes changes to the PPA and administrative capability regulations at sections §§ 668.14 and 668.16, respectively, that would eventually terminate title IV, HEA eligibility for all of an institution's low-earning outcome programs if more than half of the institution's title IV, HEA recipients or title IV, HEA revenue are from low-earning outcome programs in two out of any three consecutive years. As explained in the "Authority for This Regulatory Action" section, the Secretary must determine that an institution possesses the requisite administrative capability to participate in title IV, HEA programs and 20 U.S.C. 1099c(a). The Secretary has broad authority to establish administrative capability standards, which can include "consideration of past performance of institutions". As noted above in the discussion of proposed § 668.16(t), if a majority of an institution's title IV, HEA funding or enrollment is from low-earning outcome programs, those results would suggest a systemic institutional-level issue that is not limited to individual programs and could represent a substantial risk to students and taxpayers. We believe that placing such an institution on a provisional PPA status and terminating title IV, HEA eligibility for all of the institution's low-earning outcome programs would be an appropriate remedy to address an established pattern of serious and systemic administrative capability concerns.

The proposed approach would align with other existing administrative capability standards that are designed to carefully address systemic issues, such as, for example, establishing that an institution must have a cohort default rate under a specific threshold, but clarifying that if this is the sole reason that the institution's administrative capability is impaired, and if the cohort default rate is below the threshold necessary to trigger a loss of eligibility under § 668.187(a) or § 668.206(a), the institution will generally be allowed to continue to participate in the title IV, HEA programs on a provisional basis. See 34 CFR 600.16(m).

The Department chose the proposed standard on the basis that if a majority of an institution's title IV, HEA funding or enrollment in two out of three years is from low-earning outcome programs, and such programs have in turn failed to satisfy the earnings threshold for two out of three consecutive years, it suggests that there is a systemic issue that goes beyond the programs themselves and, due to the failure of the institution to remedy the issue across a wide swath of programs for several years, a sustained lack of administrative capability to do so. The specific thresholds (a majority of an institution's title IV, HEA funding or a majority of an institution's enrollment) are intended to ensure that the standard only penalizes institutions where there appears to be a large-scale, sustained issue with low-earnings value programs.

The Department chose this specific penalty to offer a degree of balance. The Department believes that it has the authority to establish an administrative capability standard that would completely preclude an institution from participation in title IV, HEA programs if a majority of an institution's title IV, HEA funding or enrollment in two out of three consecutive years is from low-earning outcome programs, and such programs have failed to satisfy the earnings threshold in two out of three consecutive years. However, the Department is aware that loss of institutional eligibility can be catastrophic for institutions (sometimes leading to closure of the institution). Therefore, the Department believes that the interests of institutions, students, and taxpayers would be best served by allowing such institutions to continue participating in title IV, HEA programs on a provisional basis and for other programs offered by that institution to retain title IV, HEA eligibility. This balance was chosen because it keeps with the accountability framework set forth in Section 454 of the HEA, as amended by Section 84001 of the OBBB,

which provides for loss of programmatic eligibility, rather than loss of institutional eligibility, giving institutions the opportunity to take the necessary steps to correct the issues with the low-earning outcome programs, while continuing to offer other, compliant programs.

The Department further believes that the regulations, as proposed, would provide sufficient due process to protect institutions and their students from the abrupt loss of title IV, HEA eligibility while safeguarding program integrity from the worst performers. First, we note that an institution could not fail the administrative capability standard based on any single year of poor earnings performance, as the administrative capability standard is tied to low-earning outcome programs, not merely to failing programs, and a program could not be deemed a low-earning outcome program until it fails the earnings premium measure in two out of three years in which the metric is calculated. Second, even in a case where an institution fails the administrative capability standard in the proposed version of § 668.16(t) by deriving more than half of its title IV, HEA recipients or title IV, HEA funds from low-earning outcome programs, the consequences at proposed § 668.14(h) would not apply until the institution remained in this status for two out of three consecutive years.

Described another way, the earliest an institution could possibly be subject to provisional status and loss of title IV, HEA eligibility for low-earning outcome programs under proposed § 668.14(h) would be after three years of consistently failing the earnings premium measure calculations. In year one, the program(s) must receive a failing earnings premium measure. In year two, the program(s) must fail the measure again, at which point the program would be deemed a low-earning outcome program and would face a loss of Direct Loan program eligibility only. Then, for the purposes of the administrative capability requirement at § 668.16(t), the Department would determine if more than 50 percent of the institution's title IV, HEA enrollment or revenue is in low-earning outcome programs, and non-compliant institutions would be notified by the Department at this time. Finally, in year three, the program(s) must yet again receive a failing earnings premium measure, and more than 50 percent of the institution's title IV, HEA enrollment or revenue must once again come from the program(s) in question, at which point the proposed consequences under § 668.14(h) would apply. At that

time, the institution could nevertheless still appeal the administrative capability determination and limitation action under part 668, subpart G. Moreover, long before reaching this point, the institution would have had the opportunity to appeal the low-earning outcome program determination under part 668, subpart G, or to voluntarily discontinue its failing program(s) while retaining Direct Loan program eligibility under the orderly program closure provisions in proposed § 668.603(c)(4).

We believe that these proposed options, timeframes, and procedural safeguards would provide institutions with ample due process and opportunities for improvement. We further believe, as evidenced by the fact that this proposed rule achieved consensus among the negotiators, that the proposed rule strikes a reasonable balance between fairness and accountability.

Institutional and Financial Assistance Information for Students

Institutional and Programmatic Information (§ 668.43)

Statute: Section 431 of the GEPA grants the Secretary authority to establish rules to require institutions to make data available to the public about the performance of their programs and about students enrolled in those programs. That section directs the Secretary to collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their intended purposes, and also to inform the public about Federally supported education programs. Additionally, Section 485(a)(1)(e) of the HEA requires an institution to disclose to all prospective and enrolled students "the cost of attending the institution, including (i) tuition and fees, (ii) books and supplies, (iii) estimates of typical student room and board costs or typical commuting costs, and (iv) any additional cost of the program in which the student is enrolled or expresses a specific interest;"

Current Regulations: The regulations in 34 CFR 668.43 outline a number of broad requirements pertaining to institutional and financial assistance information for students. The current regulations at 34 CFR 668.43(d) explain that beginning on July 1, 2026, the Secretary will establish and maintain a website with information about institutions and their educational programs. Therefore, an institution must provide the Department such information about the institution and its

programs as the Secretary prescribes, such as under current § 668.408. The current regulations at § 668.43(d)(1)(i) list certain information the program information website must provide, including the following items:

- The published length of the program in calendar time (*i.e.*, weeks, months, years);
- The total number of individuals enrolled in the program during the most recently completed award year;
- The total cost of tuition and fees, and the total cost of books, supplies, and equipment;
- The percentage of individuals enrolled in the program during the most recently completed award year who received a Direct Loan program loan, a private loan, or both;
- The median loan debt of students who completed the program during the most recently completed award year or for all students who completed or withdrew from the program during that award year, as calculated by the Department;
- The median earnings of students who completed the program, as provided by the Department;
- Whether the program is programmatically accredited and the name of the accrediting agency;
- The program's debt-to-earnings rates, as calculated by the Department; and
- The program's earnings premium measure, as calculated by the Department.

The website may also include other information deemed appropriate by the Secretary, including but not limited to:

- The primary occupations (by name, SOC code, or both) that the program prepares students to enter, along with links to occupational profiles on O*NET, the Department of Labor's web-based source of occupational information located at <https://www.onetonline.org/>;
- The program or institution's completion rates and withdrawal rates for full-time and less than full-time students, as reported to or calculated by the Department;
- The medians of the total cost of tuition and fees, the total cost of books, supplies, and equipment, and the total net cost of attendance, as calculated by the Department;
- The loan repayment rate for students or graduates who entered repayment on Direct Loan program loans, as calculated by the Department; and
- Whether students who graduate from a program are required to complete postgraduation training program to

obtain licensure before eligible for independent practice.

The current regulations at 34 CFR 668.43(d)(2) specify that the institution must provide a prominent link to, and any other needed information to access, the program information website on any web page containing academic, cost, financial aid, or admissions information about the program or institution.

The current regulations at § 668.43(d)(3) require the institution to provide the relevant information to access the program information website to any prospective student, or a third party acting on behalf of the prospective student, before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.

Finally, the current regulations at § 668.43(d)(4) require the institution to provide the relevant information to access the program information website to any enrolled title IV, HEA recipient prior to the start date of the first payment period associated with each subsequent award year in which the student continues enrollment at the institution.

Proposed Regulations: The Department proposes to remove three items from the list above: the July 1, 2026, date that the Secretary will establish the website with information about institutions and their educational purpose, the requirement to disclose the program's debt-to-earnings rates, and the disclosure of whether students who graduate from a program are required to complete a postgraduate training program to obtain licensure before becoming eligible for independent practice. We propose adding one item to the list of mandatory disclosure items: the median length of calendar time taken for full-time and less than full-time students to complete their program. In addition, we propose clarifying that the disclosure of the median earnings of completers would reflect the earnings data obtained from the Federal agency with earnings data under § 668.404(c).

Reasons: In 34 CFR 668.43(d)(1), we propose to remove the requirement for the Secretary to establish and maintain a website beginning on July 1, 2026, because it is no longer necessary to specify that date under this provision alone. The original FVT/GE framework became effective July 1, 2024, but contained certain provisions which were delayed until July 1, 2026, including the program information website under § 668.43(d), as well as student acknowledgment requirements and warning requirements under §§ 668.407 and § 668.605, respectively.

Under the new OBBB framework and the implementation timeline for these regulations, there is no longer a need for this specified date.

In 34 CFR 668.43(d)(1)(i)(B), we propose to add the median length of calendar time taken for full-time and less than full-time students to complete the program's academic requirements to obtain a clearer idea of the actual amount of calendar time (in weeks, months, or years) that students take to complete those requirements. We believe that students and consumers should be aware that many students do not finish their programs within the published program length. For example, according to the National Student Clearinghouse (NSC), the average time to degree for associate degree completers is 3.3 years, and the average time to degree for bachelor's degree completers is 5.1 years.²⁵ During negotiated rulemaking, a negotiator raised a concern about students who may start and stop enrollment in a program for necessary reasons and thus increase the apparent timeline for program completion. However, we note that the length of time is based on the median length of time for program completion, which is not as easily influenced by outliers (in this case, students who stop out) because the median measures the middle student. Outliers could influence the mean, but the Department is not using that average measure.

A negotiator also proposed that the Department require the addition of the percentage of full-time and less than full-time students in a program of study; however, the Department argued that the proposed disclosure of the median length of calendar time for full-time and less than full-time sufficiently addresses this issue. Many students change enrollment status during the enrollment period. The definition of full-time may vary between institutions and even by program. The proposed language in 34 CFR 668.43(d)(1)(i)(B), should provide the student with meaningful data to estimate how long it may take to complete the program. In addition, we remind institutions that they can always supplement their consumer information materials to explain why a measure or statistic appears a certain way.

Another negotiator raised a concern regarding tracking and reporting private loans to the Department. We acknowledge that private loans can be a burdensome item for institutions to

²⁵ NSC Research Center (2025). "Yearly Progress and Completion." National Student Clearinghouse. <https://nscresearchcenter.org/category/completions/>.

track; however, we believe that it is valuable data for students to consider. A private loan is often the difference between Federal loan annual maximums and the overall cost of attendance. The amount of the private loan can be significant, and in some cases the terms and conditions of the loan are less favorable to students than those of Direct Loans. Generally, we consider private loans to be loans certified by the institution and intended for enrollment at the institution, and we do not consider private loans to include other forms of credit of which the school is not reasonably aware.

In 34 CFR 668.43(d)(1)(i)(G), we propose adding the reference to 34 CFR 668.404(c) to clarify where the data used in calculating the median earnings would be obtained. We propose removing current 34 CFR 668.43(d)(1)(i)(H) regarding debt-to-earnings rates because they would no longer be calculated, consistent with Section 84001 of the OBBB and the proposed changes to the transparency framework discussed under § 668.402.

We propose to remove the disclosure under current § 668.43(d)(1)(ii)(E) about whether students who graduate from a program are required to complete a postgraduation training program to obtain licensure before becoming eligible for independent practice because that information is specific to qualifying graduate programs. As discussed more fully above in the context of general definitions at § 668.2(b), the Department proposes to remove the definition and concept of a qualifying graduate program because HEA Section 454(c)(2) does not provide a distinction between different occupations and credential levels with regard to the prescribed four-year earnings measurement period.

The Department originally proposed to remove 34 CFR 668.43 (d)(2) because we were concerned about the burden of complying with the regulation on institutions. During negotiated rulemaking, non-Federal negotiators presented arguments on both sides of this issue. In the interest of consensus and in an attempt to find the best balance of meaningful consumer information and institutional effort, we determined it was appropriate to retain this requirement as written, except to remove the requirement to include a link to the program information website on any page containing academic information. We believe this change will substantially reduce burden on institutions while providing adequate dissemination of helpful information to prospective students and the public.

The remainder of the changes to this section are conforming changes to allow for renumbering required for regulatory insertions and deletions throughout this section.

Technical and Conforming Changes

Date, Extent, Duration, and Consequence of Eligibility (§ 600.10)

Statute: As explained above, Section 84001 of the OBBB modifies HEA Section 454 to create low-earning outcome programs, and this rulemaking adds the definition of eligible non-GE program to round out what kinds of programs can be low-earning outcome programs.

Current Regulations: Section 600.10(c) explains steps that institutions must follow regarding the eligibility of educational programs, and paragraph (3) refers to GE programs that have become subject to restrictions under 34 CFR 668.603 and instructs eligible institutions that they must update their application according to 600.21.

Proposed Regulations: We proposed to add to the reference to GE programs in paragraph (3) eligible non-GE programs as also requiring institutions to update their applications when the programs have become low-earning outcome programs under the proposed 668.603. We are also adding “Direct Loan” before “eligibility of the program” to specify that it is such loan eligibility that would be relevant rather than the broad eligibility for title IV, HEA programs.

Reasons: This is a necessary conforming change that clarifies what programs would be subject to the updating requirement when they have become low-earning outcome programs and what eligibility (for Direct Loans rather than other title IV, HEA aid) they lose as a consequence. The Department will need information on all programs qualifying for title IV, HEA program assistance in order to ensure that it can end eligibility for a program due to failing the earnings premium metric.

Updating Application Information (§ 600.21)

Statute: Section 454 of the HEA as modified by Section 84001 of the OBBB.

Current Regulations: Section 600.21 explains the conditions under which institutions must update their application to participate in the title IV, HEA programs, including when changing the program’s name, CIP code, or credential level, or when updating the program’s certification under § 668.604.

Proposed Regulations: We are changing the reference in paragraph

(a)(11)(vi) to 34 CFR 668.604(b), Program participation agreement certification, from paragraph (b) to (a).

Reasons: This is a minor conforming change resulting from the deletion of the current paragraph (a), Transitional certification for existing programs under current § 668.604. That paragraph concerns only GE programs and a transitional certification that had to have occurred by December 31, 2024, and it would no longer apply under the proposed accountability framework.

Also, we have noticed that the stem language to paragraph (a)(11) mentions only GE programs and not non-GE programs. This was an oversight during the Department’s drafting of the proposed regulations, but due to the fact that we achieved consensus in the negotiations, we are not proposing to correct it here. We do intend to correct it in the final rule so that non-GE programs are included in the stem language, consistent with the changes to the scope of the accountability framework discussed in § 668.602 and elsewhere in this NPRM, and we invite commenters to discuss this conforming change in their submissions.

Initial and Final Decisions (§ 668.91)

Statute: Section 454 of the HEA as modified by Section 84001 of the OBBB.

Current Regulations: The initial and final decisions of Section 668.91 relate to fine, limitation, suspension, and termination proceedings the Department brings against institutions and third-party servicers.

Proposed Regulations: In paragraph (a)(3)(vi) regarding termination actions against GE programs based on their failure to meet the requirements in § 668.403 or 404, we are including eligible non-GE programs as being subject to this provision. We are also removing the reference to § 668.404.

Reasons: These are conforming changes to include non-GE programs, which have been added under the proposed framework, in this provision and to account for the elimination of the D/E rate measure under the current § 668.403. Because that section would be deleted, the current § 668.404, on calculating the earnings premium measure, would replace it.

Definitions (§ 685.102)

Statute: Section 454 of the HEA as modified by Section 84001 of the OBBB.

Current Regulations: Paragraph (a)(1) of Section 685.102 lists terms that are used in part 685, which pertains to Direct Loans, but that are defined in part 668.

Proposed Regulations: We are adding to this list “eligible non-GE program”

and “gainful employment program (GE program).”

Reasons: The above terms will appear in the part on Direct Loans because the proposed accountability measure bears on institutional eligibility to participate in the Direct Loan program. Therefore, this minor conforming change is necessary to refer to the place in the regulations where the terms would be defined.

Agreements Between an Eligible School and the Secretary for Participation in the Direct Loan Program (§ 685.300)

Statute: Sections 451 and 454 of the HEA, as modified by Section 84001 of the OBBB, govern the requirements to participate in the Direct Loan program.

Current Regulations: Section 685.300 explains the agreements between eligible schools and the Secretary for participation in the Direct Loan program.

Proposed Regulations: We are adding paragraph (a)(3) to the general requirements that institutions must comply with under the Direct Loan program. Paragraph (3) states that GE and eligible non-GE programs must meet the new STATS and earnings accountability requirements under 34 CFR part 668 subparts Q and S, respectively. At a negotiator’s suggestion, the Department modified the original proposed language to clarify that it is the relevant programs that must meet the above requirements to continue to participate in the Direct Loan program and this provision exists as part of the institution’s PPA.

Reasons: Because the new requirements in 34 CFR part 668 subparts Q and S determine the eligibility of GE and non-GE programs for Direct Loans, this addition places a reference to those requirements in the Direct Loan regulations. The modification by the Department during negotiations was to attach this provision specifically to the PPA and to emphasize that it applies solely to Direct Loan eligibility, which would be determined separately for each GE and non-GE program. Pell Grant eligibility for students in these programs, for example, would not generally be affected by this provision.

X. Regulatory Impact Analysis

Executive Orders 12866 and 13563

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of

Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President’s priorities, or the principles stated in the Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

The Department estimates the downward net budgetary impacts to be \$979 million from changes in transfers between the Federal Government and student loan borrowers and transfers of \$5,145 million between the Federal Government and Pell Grant recipients resulting from replacing the current regulations with the accountability framework. Quantified benefits include a net reduction in costs of compliance with paperwork requirements (\$108.6/\$99.1 million) while quantified costs include administrative updates to Government systems (\$2.4/\$2.8 million), implementation staffing and contract costs (\$1.4/\$1.6 million), long-term staffing costs (\$0.9/\$0.9 million), and ongoing contract costs (\$1.9/\$1.8 million) at 3 percent and 7 percent discounting, respectively. Therefore, based on our estimates of quantified costs and benefits, OIRA has determined that this proposed regulation is “economically significant” under section 3(f)(1) of Executive Order 12866 and subject to OMB review.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing

that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and considering—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” OIRA has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

This action is expected to be considered a deregulatory action under Executive Order 14192. This Executive Order directs agencies of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources, and to alleviate unnecessary regulatory burdens placed on the American people. This final rule complies with the Executive Order’s requirements and estimates quantified economic impacts include annualized transfers of Pell Grants of \$497 million and \$475 million at 3 percent and 7 percent discounting rates, respectively, and student loan transfers of \$95 million and \$92 million at 3 percent and 7 percent discounting rates, respectively.

Consistent with OMB Circular A–4, we compare the proposed regulations to the current regulations. In this regulatory impact analysis, we discuss the need for regulatory action, potential costs and benefits, net budget impacts, and the regulatory alternatives we considered.

Elsewhere in this section under *Paperwork Reduction Act of 1995*, we identify and explain burdens specifically associated with information collection requirements.

Costs and Benefits: As further detailed in the regulatory impact analysis (RIA), the proposed regulations would have significant costs and benefits to students, educational institutions, and taxpayers. The Department will also incur new administrative costs under the proposed regulations.

In this RIA, we discuss the need for regulatory action, the potential costs and benefits of the proposed regulations, the net budget impacts, and the regulatory alternatives we considered in cases where the Department had discretion. Unless otherwise noted, throughout this RIA we compare the effects of the proposed regulation relative to a pre-statutory baseline where the OBBB has not been enacted. This baseline includes the current Financial Value Transparency and Gainful Employment regulation (enacted October 10, 2023).

Defining Key Terms: Key terms used throughout this RIA are defined as follows:

- “Current Regulations”—refers to the current Financial Value Transparency and Gainful Employment regulations that were enacted on October 10, 2023 (88 FR 70004);²⁶
- “Accountability framework”—refers collectively to the Debt to Earnings (D/E) and Earnings Premium (EP) tests in the context of the current regulation, or to the revised EP test in the context of the proposed regulation;²⁷

²⁶ Financial Value Transparency and Gainful Employment, 34 CFR parts 600 and 668 Docket ID ED–2023–OPE–0089. www.federalregister.gov/documents/2023/10/10/2023-20385/financial-value-transparency-and-gainful-employment.

²⁷ The EP and D/E metrics are defined in the “Methodology for Current Regulation Calculations” and “Methodology for Proposed Regulation Calculations” sections below. In the context of the proposed regulations, “accountability framework” also includes the proposed revisions to the standards of administrative capabilities, discussed in the “Standards of administrative capability (§ 668.16)” section above.

- “GE programs”—refers to programs that are subject to the gainful employment rule and the accountability framework under the current regulations, which includes all non-degree programs and all types of programs offered at proprietary institutions;

- “Non-GE programs”—refers to programs that are not subject to the gainful employment rule and accountability framework under the current regulations, which includes degree programs offered at public and non-profit institutions.

1. Need for Regulatory Action

These proposed regulations are needed to implement certain provisions of the OBBB that affect students and program participants in the Federal student loan programs authorized under title IV of the HEA. The OBBB amended the HEA to create new eligibility criteria for programs of study at institutions to receive title IV loans. These changes establish an accountability framework for all undergraduate degree programs and all types of graduate programs that participate in the Direct Loan program. The proposed regulations are also needed to align existing accountability framework under the current FVT/GE rule (88 FR 70004) with those in the OBBB.

The Department has limited discretion in implementing many of the provisions contained in the OBBB. Many of the changes included in these proposed regulations simply modify the Department’s regulations to reflect statutory changes made by the OBBB. In some cases, the Secretary has exercised her limited discretion to implement certain provisions of the OBBB. Areas of limited discretion include:

- General definitions (§ 668.2), including how earnings would be measured and defined;

- The student tuition and transparency system framework (§ 668.402), including the specific reporting requirements for institutions;

- The method for calculating the earnings premium (§ 668.403), and whether the Department should adjust or exempt certain programs for various reasons;

- The appeals process (§ 668.603), including the usage of alternative earnings data from State data systems; and

- The scope and purpose of the earnings accountability framework (§ 668.601), including whether undergraduate certificate programs should be exempted and whether the sanction for failing programs should be the loss of all title IV eligibility.

These areas of limited discretion are discussed in the “Alternatives Considered” section below. In general, where the Secretary had discretion, she sought to align the accountability framework in Section 84001 of the OBBB with the accountability framework under the current regulations such that all postsecondary programs are covered by the same accountability framework. In addition to the reasons stated earlier in the “Significant Proposed Regulations” section, this alignment reduces complexity, burden, confusion, and compliance costs for both institutions and the Department. Additionally, the Secretary sought to reduce reporting burden under the STATS framework while maintaining the disclosure of relevant information on college costs and outcomes to students and families.

2. Summary of Proposed Provisions

The table below provides a summary of the proposed provisions.

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Table 2.1 - Summary of Key Changes in the Proposed Regulations

Provision	Regulatory Section	Description of proposed provision
STATS and Earnings Accountability		
Date, extent, duration, and consequence of eligibility	§ 600.10	Would require an institution to update its eligibility application when seeking to establish or reestablish a program's Direct Loan program eligibility.
Updating application information	§ 600.21	Would require an institution to report to the Secretary within 10 days any change to a program's name, CIP code, credential level, or earnings accountability certification under § 668.604(a).
General definitions	§ 668.2	Would remove definitions of "annual debt-to-earnings rate," "debt-to-earnings rates," "discretionary debt-to-earnings rate," "metropolitan statistical area," "poverty guideline," "qualifying graduate program," and "substantially similar program." Would add a definition of "earnings." Would revise existing definitions of "cohort period," "earnings threshold," "eligible non-GE program," "Federal agency with earnings data," and "institutional grants and scholarships."
Program participation agreement	§ 668.14	For an institution that does not comply with the administrative capability requirement at § 668.14(t), would require provisional certification status and loss of title IV, HEA eligibility for all of the

		institution's low-earning outcome programs.
Standards of administrative capability	§ 668.16	Would require an institution to demonstrate that at least half of the institution's title IV, HEA recipients and title IV, HEA funds are not from low-earning outcome programs.
Institutional and programmatic information	§ 668.43	Would require that the Department's program information website include the median length of calendar time taken for full-time and less than full-time students to complete the program. Would remove informational disclosures of a program's D/E rates and whether graduates are required to complete a postgraduation training program to become eligible for independent practice. Would no longer require institutions to provide a prominent link to the program information website maintained on any web page containing academic information about the program or institution, while still requiring such a link on any page containing cost, financial aid, or admissions information.
Initial and final decisions.	§ 668.91	Would limit the basis for an appeal of the termination of Direct Loan program eligibility for a low-earning outcome GE program or non-GE program to an error in the earnings premium calculation.
Student tuition and transparency system scope and purpose	§ 668.401	Would rename the existing Financial Value Transparency (FVT) framework to Student Tuition and Transparency System (STATS). Would remove existing exemptions for institutions located in U.S.

		Territories or Freely Associated States and for institutions that offered no groups of substantially similar programs with 30 or more completers over the four most recently completed award years.
Student tuition and transparency system framework	§ 668.402	Would remove D/E rates from the STATS and the Earnings Accountability framework. Would provide that if a program does not have an earnings threshold for its State and 50 percent or more of enrolled students are from that State, the Department would not calculate the earnings premium measure but would make earnings data publicly available.
Calculating earnings premium measure	§ 668.403	Would revise the earnings premium calculation to use the median annual earnings of working completers in the applicable cohort from the fourth tax year following program completion.
Process for obtaining data and calculating earnings premium measure	§ 668.404	Would rename this section and remove provisions specific to D/E rates. Would clarify that the earnings data obtained from the Federal agency with earnings data would be the median earnings of students on the completers list who are working.
Determination of the earnings premium measure	§ 668.405	Would remove provisions specific to D/E rates and would clarify that the remaining provisions apply both to GE programs and eligible non-GE programs.
Reporting requirements	§ 668.406	Would remove the current reporting exemption for an institution that offers no groups of substantially similar programs with 30 or more total completers over

		the four most recent award years. Would revise the current requirement to report whether a program meets State licensure requirements for each State within the institution's metropolitan statistical area to instead require an institution to report a list of all States where the institution has determined the program meets such requirements. Would remove the current requirement to report whether a program is a qualifying graduate program. Would remove current requirements to report the student's attendance dates and attendance status during the award year. Would remove the current requirement to report the student's enrollment status as of the first day of the student's enrollment in the program. Would remove the current requirement to report the date the student completed or withdrew from the program. Would remove the current requirement to report the total amount of institutional debt the student owes after completing or withdrawing from the program. Would require institutions to report for graduated and withdrawn students the total amount of Federal, State, private, or other grants and scholarships provided for the student's entire enrollment in the program. Would revise the initial reporting deadline to October 1 following the date the final regulations take

		effect and would reduce the initial reporting period to include only students who attended, completed, or withdrew during the two most recently completed award years. Would remove the optional transitional reporting and rate calculations provided under current regulations.
Earnings accountability scope and purpose	§ 668.601	Would rename the accountability framework in part 668, subpart S and expand it to cover both GE programs and eligible non-GE programs. Would remove existing exemptions for institutions located in U.S. Territories or Freely Associated States and for institutions that offered no groups of substantially similar programs with 30 or more completers over the four most recently completed award years.
Earnings accountability criteria	§ 668.602	Would remove provisions specific to D/E rates. Would remove the existing exclusion for accountability metrics calculated more than five years prior.
Low-earning outcome programs	§ 668.603	Would rename this section and remove provisions specific to D/E rates. Would limit the consequences for programs that fail the accountability metric two out of three consecutive years to a loss of Direct Loan program eligibility only. Would specify that the Department would process all such losses of Direct Loan program eligibility as termination actions under part 668, subpart G. Would shorten the period of ineligibility from three years to two years. Would

		establish a process to allow a failing program that is not yet a low-earning outcome program to conditionally continue participating in the Direct Loan program for a limited period if the institution voluntarily opts to conduct an orderly program closure.
Certification requirements for GE programs and eligible non-GE programs	§ 668.604	Would apply earnings accountability certification requirements to both GE programs and eligible non-GE programs. Would prohibit an institution from updating its list of Direct Loan-eligible programs to include programs that share the same four-digit CIP code and any overlapping SOC codes as a failing program that was subjected to a two-year loss of eligibility. Would prohibit an institution from updating its list of Direct Loan-eligible programs to include a program that was subject to the two-year loss of eligibility, or one sharing the same four-digit CIP code and any overlapping SOC codes, if the program is a failing program in either of the two most recent award years. Would require an institution to certify, when seeking Direct Loan program eligibility for a program, that it agrees to comply with the requirements of subparts Q and S of part 668.
Student warnings	§ 668.605	Would extend student warning requirements to eligible non-GE programs as well as GE programs. Would expand the content of warnings to include a description of the student's remaining lifetime Pell Grant eligibility and

		an explanation that all Pell Grant funds received for enrollment in the program count against the student's future lifetime eligibility, which must be delivered at the time the institution makes a Pell Grant disbursement to the student. Would streamline the content of warnings to remove the description of academic and financial options available to students to continue their education in another program at the institution, information about whether the institution will continue to offer or provide a refund for a program that loses eligibility, and an explanation of whether students could transfer credits to another institution under an established articulation agreement or teach-out plan. Would remove the requirement for an institution to provide warnings in alternative languages for students with limited proficiency in English.
Definitions	§ 685.102	Would adopt by reference under the William D. Ford Federal Direct Loan program provisions at 34 CFR part 685 the definitions of "Eligible non-GE program" and "Gainful employment program (GE program)" from the Student Assistance General Provisions at 34 CFR part 668.
Agreements between an eligible school and the Secretary for participation in	§ 685.300	Would require an institution to demonstrate, as a condition of its eligibility to participate in the Direct Loan program, that a program meets the STATS requirements under 34 CFR part 688,
the Direct Loan program		subpart Q, and the earnings accountability requirements under 34 CFR part 668, subpart S.

3. Impact of the Proposed Regulation

This section presents the Department's analysis on the anticipated impact of the proposed regulations. For this analysis, the Department estimated which programs would fail the proposed regulations relative to the current regulations, which is the baseline for the analysis. The Department also analyzed the characteristics of these failing programs and the characteristics of students who attend them. The following subsections describe the data and methodology the Department used and the estimated impacts on students, programs, and institutions.

Data Description

Throughout this RIA, we use data from a modified version of the 2026 Program Participation Data (PPD:2026) that the Department compiled for the negotiated rulemaking sessions. This data was made publicly available on the Department's website prior to the January 2026 negotiated rulemaking sessions, along with additional details. You may find the data at www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-education-policy/negotiated-rulemaking-for-higher-education-2025-2026.²⁸

²⁸ U.S. Department of Education AHEAD Session 2 Program Performance Data Fact Sheet, <https://www.ed.gov/media/document/ahead-session-2-program-performance-data-fact-sheet-112902.pdf>; AHEAD Session 2 Program Performance Data Variable Codebook, <https://www.ed.gov/media/document/ahead-session-2-program-performance-data-variable-codebook-112904.pdf>; AHEAD Session 2 Program Performance Data Technical Appendix <https://www.ed.gov/media/document/>

PPD:2026 was assembled by combining data from a variety of public and private sources, including the Integrated Postsecondary Education Data System (IPEDS), the College Scorecard, the Internal Revenue Service (IRS), the Office of Federal Student Aid (FSA), and the American Community Survey (ACS). It includes information on enrollments, earnings, and title IV, HEA disbursements, among other variables.

The unit of analysis in PPD:2026 is the unique combination of institutional ID (*opeid6*), credential level (*credlev*), and four-digit classification of instructional program (CIP) code (*cip4*).²⁹ ³⁰ When necessary, OPEIDs are linked to UNITIDs using the UNITID of the main campus, identified using the College Scorecard crosswalk files.³¹ The universe of programs in PPD:2026 includes all programs eligible for title

ahead-session-2-program-performance-data-technical-appendix-112901.pdf.

²⁹ Programs are defined using the unique combination of institutional ID (OPEID6), credential level, and 4-digit CIP codes. In almost all cases, 4-digit CIP code titles align with the 2010 CIP code taxonomy. In some cases, 4-digit CIP codes appear only in the 2020 CIP code taxonomy. In these cases, the 2020 CIP code taxonomy is used to title the program. Programs with CIP codes that do not appear in the 2010 or 2020 CIP code taxonomies are dropped. This removes fewer than 20 individual programs, representing less than 0.006% of all higher education programs in the final data set.

³⁰ Credential levels are defined by the following eight categories: (1) Undergraduate certificate programs, (2) Associate degree programs, (3) Bachelor's degree programs, (4) Post-Baccalaureate degree programs, (5) Master's degree programs, (6) Doctoral programs, (7) First-Professional Programs, and (8) graduate certificate programs.

³¹ UNITIDs are the unique institution identifiers used in IPEDS data.

IV, HEA funds that had at least one title IV enrollee reported to the National Student Loan Data System (NSLDS) during the 2023–24 or 2024–25 award years. In total, PPD:2026 includes information for 209,321 unique programs offered at 5,096 unique higher education institutions.

There is one key difference between the data used in this RIA and the public dataset available on the Department's website. Specifically, the data used in this RIA contains information on the specific counts of enrollees regardless of program size. This differs from the publicly released version of PPD:2026, where student counts fewer than 20 are privacy-suppressed or perturbed. Estimates in this RIA may therefore differ slightly from those using the publicly released version of PPD:2026. Additional information is available in the technical documentation for PPD:2026 on the Department's website.³²

Data Limitations & Assumptions

The data used in this RIA (PPD:2026) differs slightly from what the Department would use to evaluate programs under the current and proposed regulations. These differences are summarized in Table 3.1. We make several assumptions in our analysis to account for these differences and note that the estimates in this RIA may slightly differ from the actual rates.

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³² For more information, see: www.ed.gov/media/document/ahead-session-2-program-performance-data-technical-appendix-112901.pdf.

**Table 3.1 – Comparison of PPD:2026 to Data to be Assembled
for the Current and Proposed Regulations**

	PPD:2026	Final Data used to Evaluate Programs Under Current Rule	Final Data used to Evaluate Programs Under Proposed Rule
Program Definition	Unique combination of OPEID6 by Credential level by 4-digit CIP.	Unique combination of OPEID6 by Credential level by 6-digit CIP.	Unique combination of OPEID6 by Credential level by 6-digit CIP.
Cohort Construction	A single, pooled cohort of Title IV completers from two award years.	Title IV completers for either two or four years of pooled award years, depending on program size.	Title IV completers from a single award year, unless the program does not meet the minimum size threshold.
Program Failure	For current regulations: Assumed to fail if the program fails the Debt to Earnings or the Earnings Premium metric after 1 year. For the proposed regulations: Assumed to fail if the program fails the Earnings Premium metric after 1 year.	Failing the Debt to Earnings metric in 2 out of 3 consecutive years, or failing the Earnings Premium metric in 2 out of 3 consecutive years.	Failing the Earnings Premium metric in 2 out of 3 consecutive years.
Missing Earnings Values	76% of programs have missing earnings values.	69% of programs are expected to have missing earnings values.	38% of programs are expected to have missing earnings values.

Notes. Missing earnings values occur due to IRS privacy protocols. Programs that do not meet a minimum cohort size will have missing earnings data and therefore be exempt from the accountability framework in the current and/or proposed regulations.

Source. Department of Education calculations using PPD:2026.

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First, our estimates may slightly overcount the share of programs that ultimately fail the accountability framework in the current and proposed regulations because programs in PPD:2026 are identified by a unique combination of 6-digit OPEID, credential level, and 4-digit CIP code. However, in the current and proposed regulations, programs are identified by a unique combination of 6-digit OPEID, credential level, and 6-digit CIP code. We therefore assume that earnings outcomes of programs within the same 4-digit CIP code, credential level, and institution are equally distributed across (unobserved) 6-digit CIPs. Fail rates may not match exactly between this analysis

and the proposed regulations if different programs (defined at the 6-digit CIP level) that are nested with the same overarching 4-digit CIP have different earnings outcomes. Any effect this has on our estimates should be small because approximately 83 percent of 4-digit CIP codes have only a single 6-digit CIP code nested within it.³³

Second, student completer cohorts in PPD:2026 are constructed differently than under the current and proposed regulations. Specifically, the cohort for

earnings in PPD:2026 includes title IV completers from two pooled award years; these data were drawn from the College Scorecard for expediency and therefore use the cohort construction from that source. Under the current regulation, cohorts would include title IV completers from two or four pooled award years, depending on program size. Under the proposed regulation, cohorts will generally include title IV completers from a single award year unless the program does not meet the minimum size threshold (discussed in the “Cohort period (§ 668.2(b))” section above), in which case cohorts will be aggregated with similar programs for up to four prior award years, until a

³³ Blagg, K., (2026). Measuring Program-Level Outcomes in Higher Education. Washington, DC: The Urban Institute. www.urban.org/sites/default/files/2026-01/Measuring_Program-Level_Outcomes_in_Higher_Education.pdf.

statistically reliable cohort size is achieved. We therefore must assume that the cohort aggregation processes for the current and proposed regulations would result in programs having similar earnings as the cohorts used in PPD:2026.

Third, our estimates use the earnings outcomes from the single pooled cohort of completers, but in the current and proposed regulations, programs face sanctions only if they fail the accountability framework for multiple cohorts (two out of three consecutive years).³⁴ A single cohort is used for the analysis in this section because PPD:2026 does not include multiple, consecutive years of program-level earnings outcomes. This is another reason why our estimates may slightly overcount the share of programs that fail the accountability framework under the current and proposed regulation.³⁵

Another caveat is that earnings are missing for many programs in PPD:2026, usually due to the IRS's privacy protocols.³⁶ Earnings data will,

however, be collected for many of these programs because cohorts will be aggregated to include more students under the proposed regulation. Table 3.2 presents the total counts of programs in PPD:2026 (by credential level) and the share with missing (unobserved) earnings data. In total, 76 percent of programs in PPD:2026 have missing earnings data for evaluating the proposed regulation, and 89 percent of programs have missing earnings data for evaluating the current regulation.

To estimate the pass and fail rates for programs in PPD:2026 where earnings data are missing, we assume that these programs fail the accountability framework at equivalent rates as similar programs with reported earnings data in PPD:2026. Specifically, using the subset of programs where earnings data are available, we calculate the fail rates within each sector, broad field of study, credential level, and institutional level. Using those rates, we then assume that programs with missing earnings data will fail the accountability frameworks under the current and proposed regulations at the same rate as programs with reported earnings data from the corresponding sector, broad field of study, credential level, and institutional level.³⁷ This method for estimating pass and fail rates slightly differs from the preliminary analysis presented by the Department during the negotiated rulemaking sessions in January 2026 (available at: www.ed.gov/media/document/2025-ahead-results-of-earnings-test-and-ge-changes-112932.pdf) because that preliminary analysis excluded programs with missing earnings data.³⁸

³⁷ This means our estimates may undercount the true share of programs that fail the earnings test in the proposed regulation if the earnings of small programs are systematically lower than the earnings of larger programs. Conversely, our estimates may overcount the true share of programs that fail the earnings test if the earnings of small programs are systematically higher than the earnings of large programs.

³⁸ In most cases, the Department's preliminary analysis presented during the negotiated

To account for the fact that some programs are so small that they will not have an earnings value computed (even with the cohort aggregation process described in the "Cohort period (§ 668.2(b))" section above), we limit our analysis to programs in PPD:2026 that will likely meet the minimum size requirement under the proposed regulation.³⁹ This includes a total of 128,934 unique programs (of which, 37 percent have earnings data reported in PPD:2026). The Department estimates that the other 80,000 programs in PPD:2026 will likely be exempt from the accountability framework in the current and proposed regulations because these programs are unlikely to reach the minimum size requirement.⁴⁰ Table 3.3 displays the final counts of programs used in our analysis, disaggregated by credential level.

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rulemaking sessions in January 2026 are within a fraction of a percentage point from the estimates presented in this RIA. The marginal difference in estimates is because the preliminary analysis presented at the negotiated rulemaking sessions excluded programs with missing earnings, whereas the analysis in this RIA includes these programs and assumes they pass and fail the accountability framework at equivalent rates as similar programs (programs in the corresponding sector, broad field of study, credential level, and institutional level) with observed earnings data.

³⁹ To determine if a program would likely meet the minimum size requirement, we used PPD:2026 and summed the number of title IV completers from the 2020–21 to 2024–25 award years. Following the aggregation process described in the "Cohort period (§ 668.2(b))" section, we summed together completers from the same college and credential level who shared the same four-digit or two-digit CIP code and completed within during the 2020–21, 2021–22, 2022–23, 2023–24 and 2024–25 award years. If this value did not exceed 30 unique title IV completers, we assume the program (defined at the OPEID6 x CREDLEV x CIP4 level) would not reach the minimum size requirement needed to be included under the proposed rule and therefore removed it from the sample.

⁴⁰ As shown in Table 3.2, 78 percent of programs in PPD:2026 have missing earnings data to be evaluated under the current regulations.

³⁴ In the current regulation, GE programs that fail the D/E test in two out of three consecutive years or GE programs that fail the EP test in two out of three consecutive years lose access to *all* title IV, HEA funds. Under the proposed regulations, programs that fail the EP test in two out of three consecutive years lose access to title IV Federal student loans.

³⁵ We anticipate this issue will be very small given that program earnings outcomes are based on completers who exited a program approximately six calendar years prior to the date in which earnings are measured. For this reason, there is little, if anything, colleges could do to alter the earnings outcomes of their former students. In other words, we anticipate that failing the earnings test one year will be highly correlated with failing the earnings test in the subsequent year.

³⁶ The IRS (which was the agency that provided the Department with earnings data used in PPD:2026) is usually unable to provide the Department with median earnings estimates for programs where there is a relatively small number of working title IV recipients with available tax records. In some cases, the IRS may be unable to provide the Department with median earnings estimates depending on the distribution of earnings within programs. This results in many small programs having unobserved (missing) program earnings.

Table 3.2 - Share of Programs with No Earnings Data in**PPD:2026**

	All Programs		GE Programs	
	N	Percent	N	Percent
		with No		with No
		Earnings		Earnings
		Data		Data
	(1)	(2)	(3)	(4)
A. Public				
Undergrad Cert	32,277	89.3	32,277	92.7
Associate	37,539	83.0	0	--
Bachelor	30,715	50.0	0	--
Post-Bacc Cert	2,175	97.3	2,175	98.5
Masters	18,090	72.4	0	--
Doctoral	7,282	92.4	0	--
Professional	747	52.9	0	--
Grad Cert	4,682	96.6	4,682	97.1
Total	133,507	76.5	39,134	93.5
B. Non-Profit				
Undergrad Cert	2,527	89.4	2,527	90.9
Associate	3,719	84.9	13	100.0
Bachelor	37,080	75.5	45	86.7
Post-Bacc Cert	1,231	97.8	1,231	99.2
Masters	14,813	72.4	12	100.0
Doctoral	4,345	89.4	2	100.0
Professional	830	64.0	0	--
Grad Cert	3,513	95.6	3,513	97.0
Total	68,058	78.0	7,343	95.2
C. Proprietary				
Undergrad Cert	3,545	43.1	3,545	51.3
Associate	1,675	58.6	1,630	62.8
Bachelor	1,176	57.7	1,083	67.3
Post-Bacc Cert	63	100.0	63	96.8
Masters	737	61.6	713	69.8
Doctoral	232	70.7	225	77.8
Professional	71	77.5	70	84.3
Grad Cert	257	85.2	257	87.5
Total	7,756	53.4	7,586	60.5
Grand Total	209,321	76.2	54,063	89.1

Notes. Data includes all programs from PPD:2026. Programs are counted as GE programs if they were ever classified as a GE program between the 2016 and 2025 award years. Earnings data in column 2 are median 4-year earnings of working title IV completers from the pooled 2017-18 and 2018-19 award years, where earnings are measured in 2022 and 2023, respectively. Earnings data in column 4 are median 4-year earnings of title IV completers from the pooled 201-15 and 2015-16 award years. Throughout the analysis, these different earnings variables are used to account for the different definitions of "earnings" across the proposed and current regulations.

Source. Department of Education calculations using PPD:2026.

**Table 3.3 - Share of Programs with No Earnings Data in
PPD:2026, After Excluding Programs with < 30 Title IV
Completers**

	All Programs		GE Programs	
	N	Percent	N	Percent
		with No		with No
		Earnings Data		Earnings Data
	(1)	(2)	(3)	(4)
A. Public				
Undergrad Cert	14,201	77.1	14,201	84.8
Associate	21,094	70.8	0	--
Bachelor	26,375	42.5	0	--
Post-Bacc Cert	545	90.5	545	96.3
Masters	13,830	64.7	0	--
Doctoral	3,888	86.2	0	--
Professional	534	35.6	0	--
Grad Cert	1,570	90.8	1,570	93.1
Total	82,037	62.8	16,316	86.0
B. Non-Profit				
Undergrad Cert	750	68.0	750	74.1
Associate	1,205	57.8	3	100.0
Bachelor	25,186	65.0	36	83.3
Post-Bacc Cert	189	89.4	189	96.8
Masters	10,279	61.7	7	100
Doctoral	2,129	79.1	0	--
Professional	491	39.7	0	--
Grad Cert	1,030	87.5	1,030	91.9
Total	41,259	65.1	2,015	85.6
C. Proprietary				
Undergrad Cert	2,849	32.6	2,849	42.7
Associate	1,141	44.1	1,114	52.1
Bachelor	849	43.9	769	56.4
Post-Bacc Cert	12	100.0	12	91.7
Masters	501	45.1	479	57.4
Doctoral	136	50.7	133	62.4
Professional	30	50.0	29	65.5
Grad Cert	120	72.5	120	79.2
Total	5,638	39.3	5,505	49.3
Grand Total	128,934	62.5	23,836	77.5

Notes: The sample includes all programs from PPD:2026 that are estimated to have at least 30 title IV completers under the cohort aggregation process from the proposed regulation. Programs are counted as GE programs if they were ever classified as a GE program between the 2016 and 2025 award years. Earnings data in column 2 are median 4-year earnings of working title IV completers from the pooled 2017-18 and 2018-19 award years, where earnings are measured in 2022 and 2023, respectively. Earnings data in column 4 are median 4-year earnings of title IV completers from the pooled 2014-15 and 2015-16 award years. Throughout the analysis, these different earnings variables are used to account for the different definitions of "earnings" across the proposed and current regulations.

Source. Department of Education calculations using PPD:2026.

Further, the Department's analysis may slightly overestimate the share of programs and students that fail the accountability framework under the proposed rule because the Department is unable to accurately incorporate two policies into its analysis, both of which are described in the "Low-earning outcome programs (§ 668.603)" section above. First, the proposed rule includes a teach-out provision that allows institutions to continue receiving title IV, HEA funds if they agree to an orderly program closure. Failing programs that exercise this teach-out option can continue to receive title IV, HEA funds for the lesser of three years or the full-time normal duration of the program, meaning students currently enrolled in these failing programs would not be immediately impacted. Second, the proposed rule includes an appeals process that allows institutions to appeal the Department's determination for failing programs. If institutions successfully appeal, those programs initially identified as failing would not lose eligibility for Federal student loans.⁴¹

Finally, our analysis in the remainder of this section ("Impact of the Proposed Regulations") assumes that students who attend failing programs will not switch to a different, non-failing program.⁴² We expect this assumption to have a minimal impact on our estimates because this assumption is applied consistently to our estimates of both the current and proposed regulations.⁴³

⁴¹ The inability to account for these factors may ultimately result in a slight overestimate in the share of programs, students, and title IV student aid disbursements impacted under the proposed rule.

⁴² The Department's analysis in the "Impact of the Proposed Regulations" section does not account for the possibility of program switching. This is because the analysis in this section is presented at specific fields of study and credential levels, and the Department is unable to predict how students may switch across specific types of fields of study and credentials. This differs from the assumptions made in the "Net Budget Impact" section, which does account for the possibility of program switching when estimating the budgetary impact of the proposed rule. The "Net Budget Impact" section can account for program switching because the estimates are derived with assumptions using broad volume-based groups that students may switch to; the budget estimates are not disaggregated by specific fields of study or credential levels.

⁴³ Our estimates could differ from the true impact of the proposed regulation if students would differentially switch programs under the proposed regulation relative to how they would switch programs under the current regulation. This could occur, for example, if under the current regulation students are more likely to drop out of college (due to losing access to both Pell Grant and Federal student loan eligibility) relative to the extent that students drop out of college (rather than switch programs) under the proposed rule, since under the proposed rule students would lose access to Federal student loans only.

Methodology for Current Regulation Calculations

Throughout the RIA, the Department estimates the share of programs that fail the accountability framework under the current and proposed regulations to determine the net-effects of the proposed regulation relative to the baseline.⁴⁴ We first estimate which programs would fail the earnings premium metric and D/E metrics under the current regulations. Consistent with the current GE regulation, we count a GE program as failing if it failed either the earnings premium metric or the D/E metric according to our estimates of these measures using PPD:2026.

GE programs are counted as failing the earnings premium metric under the current regulation if the median earnings of program graduates is below the earnings threshold, which is defined as the median annual earnings of working individuals aged 25 to 34 whose highest level of educational attainment is a high school diploma (or equivalent) in the relevant geographic area.⁴⁵ For this calculation, we used the

⁴⁴ While the baseline assumes the current regulations are in effect, we note that no program has actually failed the current regulations at the time this NPRM is published because the EP and D/E metrics (as defined under the current regulations) have not yet been computed by the Department. However, in the absence of the proposed rule, these rates would be calculated, which is why we use the impact of the current regulation as the baseline to judge the impact of the proposed rule.

⁴⁵ For programs that enrolled greater than half of their students from in-State, the relevant geographic area is the State in which the college is located. For programs that enroll less than half of their students from in-State, the relevant geographic area is the entire United States. In our analysis, we do not observe the share of enrollees in a program that are from out of State. We proxy for program-level in-State enrollment shares using institution-level data on the share of students across the entire institution who are from in-State. To determine whether an institution enrolls more than half its students from out-of-state, we use each enrolled student's address reported in the student's most recently reported FAFSA relative to the award year being evaluated.

⁴⁶ These data were collected by the Department for the original version of the PPD during development of the current GE/FVT regulation. It is the only cohort of students for which readily available earnings data match the requirements of the current GE/FVT regulation. The Department does not have more recent data that match these requirements. Note that one of the measurement years for earnings was during the COVID-19 pandemic. Specifically, title IV completers from the 2014–15 award year had their earnings measured during the 2019 calendar year, and title IV completers from the 2015–16 award year had their earnings measured during the 2020 calendar year. Program graduates who were enrolled in postsecondary education at the time earnings were measured are excluded from this calculation. The median earnings value includes statistical noise added by the IRS to protect student privacy.

⁴⁷ Earnings were defined as the combined sum of personal income from wages and salary (*incwage*) and personal income from self-employment and

three-year median earnings of title IV program graduates in the labor market who completed during the 2014–15 and 2015–16 pooled award years, obtained from the IRS.⁴⁶ To calculate the earnings threshold, we used the median annual earnings of working high school graduates using the 2023 ACS 5-Year Estimates, obtained from IPUMS.⁴⁷ All monetary values were adjusted to constant 2024 dollars using the CPI–U.

Next, we counted GE programs as failing the D/E metric if they failed either the Annual Earnings Rate measure or the Discretionary Earnings Rate measure under current regulation.⁴⁸ For this calculation the Department used program-level data on cumulative student debt from the College Scorecard for individuals who completed during the pooled 2017–18 and 2018–19 award years.⁴⁹ To calculate the annual loan payment amount (which is used in both the Earnings Rate Measure and Discretionary Earnings Rate measure), we assumed a 4.45 percent interest rate on loans for undergraduate programs and a 6.23 percent interest rate for graduate programs.⁵⁰ To calculate the denominator for the Annual Earnings

farm income (*incbus00*). The median earnings value is taken using individuals who live in the relevant geographic area (e.g., the corresponding state, or nationally), who have the relevant educational attainment level (e.g., those who only have a high school diploma or equivalent with no postsecondary education), who are between 25–34 years old (inclusive), and who have a positive, non-zero income. Appropriate survey weights were utilized to ensure estimates were representative at the national and state levels.

⁴⁸ The Annual Earnings Rate measure is defined as $\text{Annual Earnings Rate} = (\text{Annual Loan Payment}) / (\text{Annual Earnings})$; the Discretionary Earnings Rate measure is defined as $\text{Discretionary Earnings Rate} = (\text{Annual Loan Payment}) / (\text{Discretionary Earnings})$. Under current regulation, programs are counted as failing the D/E metric if the Annual Earnings Rate measure exceeds 8% or if the Discretionary Earnings Rate measure exceeds 20% in two out of three consecutive years.

⁴⁹ To calculate the Annual Loan Payment amount, the Department used the following amortization periods: undergraduate certificate, associate degree, post-baccalaureate certificate programs, and graduate certificate programs are amortized over 10 years; bachelor's and master's degree programs are amortized over 15 years; and doctoral and first professional degree programs are amortized over 20 years. These differing amortization periods account for the typical outcome that borrowers who enroll in higher-credentialed programs (e.g., bachelor's and graduate degree programs) are likely to have more loan debt than borrowers who enroll in lower-credentialed programs and, as a result, are more likely to take longer to repay their loans. The amortization rates mirror those used in the 2014 and 2023 prior rules.

⁵⁰ These interest rates were determined by taking a weighted average of the interest rates on Undergraduate Unsubsidized Stafford Loans, Graduate Stafford Loans, and Grad PLUS Loans between 2016 and 2019, which were the available interest rates on these loans around the time that borrowers completed their programs.

Rate measure and the Discretionary Earnings Rate measures, we used the same program-level earnings measure described above. When relevant, we used 150 percent of the Federal Poverty Guidelines for a single person in 2024, which was \$22,590.⁵¹

Methodology for Proposed Regulation Calculations

The Department estimated which programs would fail the revised earnings premium metric under the proposed regulation using PPD:2026. Programs are counted as failing if the median earnings of *working* program graduates are below the relevant earnings threshold. For this calculation, we used the four-year median earnings (obtained from the IRS) of title IV program graduates who completed during the 2017–18 and 2018–19 pooled award years and were working at the time earnings was measured.⁵²

⁵¹ The Federal Poverty Guideline is used to calculate the denominator of the Discretionary Earnings Rate measure.

⁵² Specifically, title IV completers from the 2017–18 award year had their earnings measured during

The relevant earnings thresholds for each program are listed in Table 3.4. There are six different earnings thresholds in which a program could be judged under the proposed regulation, including:

- *In-State High School (HS)*. The median earnings of individuals aged 25–34 in the state where the college is located, who are working,⁵³ and have

the 2022 calendar year, and title IV completers from the 2018–19 award year had their earnings measured during the 2023 calendar year. Earnings were inflation adjusted to 2024. Program graduates who were enrolled in postsecondary education at the time earnings were measured are excluded from this calculation. Individuals are determined to be “working” if they had positive income reported to the IRS from wages, salary, or self-employment during the calendar year earnings were measured. The median earnings value includes statistical noise added by the IRS to protect student privacy.

⁵³ For all six ETs in the proposed regulation, we determine an individual was working if the individual reported positive, non-zero personal income from wages, salary, or self-employment income (including farm income) during the year. Individuals who reported that they were currently unemployed (at the time they completed the survey) but had otherwise worked during other parts of the year (meaning they had positive personal income from wages, salary, or self-employment) are still counted as working.

only a high school diploma or its recognized equivalent.

- *National HS*. The median earnings of individuals aged 25–34 in the entire United States, who are working, and have only a high school diploma or its recognized equivalent.

- *Same-State, Same-Field Bachelor's degree (BA)*. The median earnings of individuals aged 25–34 in the state where the college is located, who are working, and have a bachelor's degree in the same field of study.

- *Same-State BA*. The median earnings of individuals aged 25–34 in the state where the college is located, who are working, and have a bachelor's degree.

- *National Same-Field BA*. The median earnings of individuals aged 25–34 in the entire United States who are working and have a bachelor's degree in the same field of study.

- *National BA*. The median earnings of individuals aged 25–34 in the entire United States who are working and have a bachelor's degree.

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Table 3.4 - List of Earnings Thresholds used in the Revised Earnings Premium Metric

	Earnings Thresholds Applied Under the Proposed Regulations	
	<50% Institution Enrollment from Out of State	≥ 50% Institution Enrollment from Out of State
	(1)	(2)
Undergrad Cert	In-State HS Median	National HS Median
Associates	In-State HS Median	National HS Median
Bachelors	In-State HS Median	National HS Median
Post-Bacc Cert	In-State HS Median	National HS Median
Masters	Lowest of: Same-State, Same-Field BA Median; Same-State BA Median; National Same-Field BA Median	Lowest of: National Same-Field BA Median; National BA Median
Doctoral	Lowest of: Same-State, Same-Field BA Median; Same-State BA Median; National Same-Field BA Median	Lowest of: National Same-Field BA Median; National BA Median
Professional	Lowest of: Same-State, Same-Field BA Median; Same-State BA Median; National Same-Field BA Median	Lowest of: National Same-Field BA Median; National BA Median
Grad Cert	Lowest of: Same-State, Same-Field BA Median; Same-State BA Median; National Same-Field BA Median	Lowest of: National Same-Field BA Median; National BA Median

Notes: See text for a definition of the earnings threshold names used in this table. Note that this analysis defines each institution's in-state and out-of-state enrollment shares using enrollment from the entire institution, not enrollment in particular programs. The proposed regulation makes that determination on at the program level. To determine the share of in-state students at an institution in this analysis, we use students' home location based on the address reported in their most recently reported FAFSA relative to the award year being evaluated.

To calculate each of the six earnings thresholds, we used data from the 2023 ACS 5-Year Estimates, obtained from IPUMS. We defined earnings using the same approach described in the “Methodology for Current Regulation Calculations” section.⁵⁴ We computed each specific earnings threshold by using the corresponding group of individuals aged 25–34 who live in the relevant geographic area (*e.g.*, the corresponding state, or nationally), who have the relevant educational

⁵⁴ Specifically, earnings are defined as the combined sum of personal income from wages and salary (*incwage*) and personal income from self-employment and farm income (*incbus00*), and are adjusted to 2024 dollars using CPI–U. Individuals with \$0 or non-positive earnings are omitted from the medians.

attainment level (*e.g.*, high school diploma/recognized equivalent or bachelor’s degree in the relevant field of study), and who are not currently enrolled in college.⁵⁵

⁵⁵ Appropriate survey weights were utilized to ensure estimates were representative at the National and state levels. For programs that enrolled greater than half of their students from in-state, the relevant geographic area is the State in which the college is located. For programs that enroll less than half of their students from in-state, the relevant geographic area is the entire United States. In our analysis, we do not observe the share of enrollees in a program that are from out-of-state. We proxy for program-level in-state enrollment shares using institution-level data on the share of Title IV students across the entire institution who are from in-state. We use each enrolled Title IV student’s address reported in the student’s most recently reported FAFSA relative to the award year being evaluated to determine if students are in-state or out-of-state.

A majority of programs are compared against the in-state earnings thresholds, reflective of the fact that most postsecondary students are in-state residents of the college they attend. Summary statistics on the share of programs that compared against the in-state thresholds are shown in Table 3.5. This reveals variation in the rate at which certain types of programs are judged against the in-state thresholds. For example, undergraduate culinary programs are most likely to be compared to the in-state earnings threshold (97%), whereas graduate-level religious studies programs are least likely to be compared to the in-state earnings threshold (53%).

Table 3.5 - Share of Programs Compared to In-state and Out-of-state Earnings Thresholds, by Broad Field of Study and Credential Level

Broad Field of Study	Share of Programs at Institutions with >50% Enrollment from In-State	Share of Programs at Institutions with >50% Enrollment from Out-of-State
A. Undergraduate Programs		
Humanities/Liberal Arts	82.4%	17.6%
Social/Behavioral Sciences	82.1	17.9
Life Sciences	83.4	16.6
Physical Sciences	80.2	19.8
Computer/Information Science	89.2	10.8
Engineering/Math	82.2	17.8
Education	90.4	9.6
Business/Management	90.1	9.9
Health-Related	93.5	6.5
Vocational/Technical	96.9	3.1
Other Technical/Professional	87.8	12.2
Culinary & Personal Services	97.0	3.0
Religious Studies	68.5	31.5
B. Graduate Programs		
Humanities/Liberal Arts	79.0%	21.0%
Social/Behavioral Sciences	80.5	19.5
Life Sciences	79.2	20.8
Physical Sciences	81.1	18.9
Computer/Information Science	75.8	24.2
Engineering/Math	79.1	20.9
Education	87.5	12.5
Business/Management	79.0	21.0
Health-Related	81.4	18.6
Vocational/Technical	78.8	21.2
Other Technical/Professional	78.4	21.6
Culinary & Personal Services	75.0	25.0
Religious Studies	53.2	46.8

Notes: Broad Field of Study Categories are based on categories used in the 2020 NPSAS using the variable MAJORS12_2010. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies was combined with "Other Technical Professional"; Math was combined with "Engineering"; new categories were created for "Culinary and Personal Services" (CTP2=12) and "Religious Studies" (CIP2=38 or 39). Undergraduate programs include ungraduated certificate programs, associate degree programs, baccalaureate degree programs, and post-baccalaureate certificate programs. Graduate programs include master's degree programs, doctoral programs, professional programs, and graduate certificate programs. Note that this analysis defines each institution's in-state and out-of-state enrollment shares using enrollment from the entire institution, not enrollment in particular programs. That determination is made using the students' home location based on the address reported on their most recently reported FAFSA relative to the award year being evaluated. The proposed regulation makes that determination at the program level.

Source: Department of Education calculations using PPD:2026.

graduate program shared the same 2-digit CIP as the bachelor's degree program.⁵⁶ Monetary values were adjusted to constant 2024 dollars using the CPI-U. In a small number of cases we could not reliably calculate the “*Same-State, Same-Field BA*” earnings threshold due to the small number of individuals sampled in the ACS in the correct age range who had a bachelor's degree in a specific field and were located in the relevant state.⁵⁷ In these cases, we compared graduate programs at in-State serving institutions to the lower of the other two ETs specified in the regulation and shown in Table 3.4 (*i.e.*, these programs were compared to the lower of the “*Same-State BA*” and the “*National Same-Field BA*”). Approximately 3 percent of graduate programs are impacted by this limitation.

Consistent with the regulations, we counted programs as failing the revised earnings premium test under the proposed regulation if the median earnings of program graduates were below the relevant earnings threshold in Table 3.4. The proposed regulations also modify the standards of administrative capability as described in the

“Standards of administrative capability (§ 668.16)” section above. Under the proposed regulations, all programs (GE- and non-GE programs alike) that fail the revised earnings premium test will lose access to Pell Grants (in addition to losing access to Federal student loans) if:

- More than half of title IV, HEA funds disbursed to an institution are to students attending programs that fail the revised EP test under the proposed regulations; or
- More than half of title IV students enrolled at an institution are in programs that fail the revised EP test under the proposed regulations.

The Department estimated which programs will be impacted by the proposed changes to the standards of administrative capability. We used PPD:2026 to estimate the amount of title IV, HEA funds (Pell Grants and Federal student loans) disbursed during the 2024–25 award year to failing programs as a percentage of all title IV, HEA funds disbursed to each institution during that award year. Similarly, we calculated the share of title IV enrollees in failing programs during the 2024–25 award year as a share of all title IV enrollees during that award year at each institution. If either of those percentages exceeded 50 percent, failing programs at those institutions are assumed to lose Pell Grant eligibility, in addition to Federal student loan eligibility.⁵⁸

⁵⁸ Our estimates may slightly overcount the share of programs that lose access to Pell Grants under the proposed regulation's revisions to the standards of administrative capabilities. This is because the revised standards in the proposed regulation apply to institutions after three years of failing the revised earnings premium metric. However, as described above, we do not observe multiple, consecutive years of program-level earnings data in PPD:2026. Thus, our estimates may slightly overcount the share of programs that are impacted by the

Impact of the Proposed Regulations on Institutions

Although the current and proposed regulations would establish an accountability framework for individual programs, we considered their effects on institutions with two approaches: by estimating how many programs fail within each level of institution type, and how many institutions will see high and low rates of program failure. For this analysis, higher education institutions are categorized into levels by their predominant degree offered (Less-than 2-year; 2-year; 4-year; Exclusively Graduate-degree Granting).

Examining the rate of program failure within levels, we estimate that 26 percent of programs at the less-than two-year level would fail under the current regulation, whereas only 18 percent are estimated to fail under the proposed regulation (Table 3.6). At the two-year, four-year, and graduate levels, we estimate an increase in the share of programs that fail the accountability framework under the proposed regulation. Overall, the Department estimates that slightly more programs will fail under the proposed regulation relative to the current regulation (5.1 percent vs. 4.6 percent), but these programs enroll fewer students than those that fail under the proposed regulation (4.4 percent vs. 4.7 percent) resulting in a smaller loss in title IV disbursements (3.9 percent vs. 5.0 percent). This is consistent with the estimated net cost from the proposed regulation in the net budget impact section, as shown in Tables 5.1A and 5.1B.

proposed regulation's revisions to the standards of administrative capabilities since we assume they fail this standard after failing the accountability framework in a single year.

⁵⁶ We used the variable DEGFIELD from the ACS to crosswalk fields of study to two-digit CIP codes. To do so, we subtracted 10 from the value of DEGFIELD to match the corresponding two-digit CIP code. One exception was DEGFIELD=38 (Military Technologies), where we had to subtract 11 (rather than 10) to achieve the corresponding two-digit CIP code. For more information, see https://usa.ipeds.org/usa-action/variables/DEGFIELD#codes_section.

⁵⁷ If an earnings threshold would be based on fewer than 30 individuals in the ACS, we did not calculate the earnings threshold because we believed it would not be statistically reliable or representative. The Department seeks feedback on this approach or alternative possible approaches. See the “Directed Questions” section for additional information.

Table 3.6 - Estimated Impact of the Proposed Regulation on Institutions, by Predominant Degree Awarded

Institution Level	Number of Institutions	Programs		Title IV Enrollments		Title IV Volume	
		Number of Programs	Share of Programs that Fail	Number of Students	Enrollment In Failing Programs	Annual Volume (\$ Millions)	Volume in Failing Programs
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
A. Current Regs							
L/T 2-Year	1,990	15,800	25.8%	2,444,900	23.6%	\$11,361	32.0%
2-Year	840	23,200	6.1	4,341,700	3.5	13,937	5.2
4-Year	1,700	89,100	0.5	11,849,000	1.3	86,688	1.6
Exclusively Grad	180	900	4.0	115,400	1.7	4,006	1.5
Total	4,710	129,000	4.6	18,751,000	4.7	115,992	5.0
B. Proposed Regs							
L/T 2-Year	1,990	15,800	18.1%	2,444,900	17.1%	\$11,361	19.4%
2-Year	840	23,200	7.3	4,341,700	5.0	13,937	4.8
4-Year	1,700	89,100	2.1	11,849,000	1.6	86,688	1.7
Exclusively Grad	180	900	10.7	115,400	4.7	4,006	3.2
Total	4,710	129,000	5.1	18,751,000	4.4	115,992	3.9

Notes. This table excludes 300 institutions that exclusively had programs that were estimated to not achieve the minimum cohort size requirement. The sample includes all programs in PPD:2026 except those that are estimated to have fewer than 30 title IV completers after the cohort aggregation process under the proposed regulation.

Source. Department of Education calculations using PPD:2026.

Next, we estimated how many programs within each institution would fail the accountability framework under the current and proposed regulations and then assigned institutions to one of five groups based on the degree to which students attend programs that fail (Tables 3.6 and 3.7). For this analysis we disaggregate institutions by level and sector (Public; Private Non-Profit; Proprietary).⁵⁹

This analysis shows that approximately 91 percent and 98

percent of public and private non-profit institutions, respectively, have 0 percent of their enrollment in failing GE programs under the baseline (Table 3.7). At the other end of the distribution, we find that just 1 percent of public and private non-profit institutions have all (100 percent) of their enrollment in failing GE programs under the baseline.

These rates noticeably differ from shares estimated for the proposed regulation (Table 3.8). Under the proposed regulation, 65 percent and 80

percent of public and private non-profit institutions, respectively, are unaffected by the proposed regulation (these institutions have 0 percent of their enrollment in failing programs). On the other end of the distribution, about 4 percent of private non-profit institutions have 100 percent of their enrollment in failing programs—more than four times the rate as the current regulation.

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⁵⁹ Estimates for the current regulation are based on enrollments in GE programs with non-missing

earnings data, while estimates for the proposed

regulation are based on enrollments in all types of programs with non-missing earnings data.

Table 3.7 - Share of Enrollment in Programs that Fail the Current Regulation, by Sector and Predominant Degree Awarded

Institution Level	Number of Institutions	Share of Enrollment in Failing GE Programs, Conditional on Having Earnings Data				
		0%	0-25%	25-50%	50-99%	100%
	(1)	(2)	(3)	(4)	(5)	(6)
A. Public						
L/T 2-Year	570	80.7%	10.2%	3.2%	2.6%	3.3%
2-Year	640	92.0	7.2	0.3	0.3	0.2
4-Year	550	99.6	0.4	<0.1	<0.1	<0.1
Exclusively Grad	10	>99.9	<0.1	<0.1	<0.1	<0.1
Total	1,770	90.8	6.0	1.1	0.9	1.1
B. Non-Profit						
L/T 2-Year	110	82.3%	0.9%	1.8%	3.5%	11.5%
2-Year	100	97.0	2.0	1.0	<0.1	<0.1
4-Year	1,090	99.5	0.4	<0.1	<0.1	0.1
Exclusively Grad	150	>99.9	<0.1	<0.1	<0.1	<0.1
Total	1,450	98.1	0.5	0.2	0.3	0.9
C. Proprietary						
L/T 2-Year	1,310	45.5%	1.1%	2.5%	3.4%	47.5%
2-Year	100	59.2	11.7	4.9	6.8	17.5
4-Year	70	69.6	11.6	13.0	2.9	2.9
Exclusively Grad	30	80.0	<0.1	<0.1	<0.1	20.0
Total	1,510	48.2	2.3	3.1	3.5	42.9

Notes. Institutions are classified by the predominant degree offered. The percentages in columns 2, 3, 4, 5, and 6 are computed by calculating the share of title IV institutional enrollment in failing GE programs (conditional on having earnings data) under the current regulations out of all title IV institutional enrollment in programs that have earnings data that fall within the range listed in the column header. The percentages in columns 2, 3, 4, 5, and 6 may not sum to 100 percent due to rounding. The number of institutions in column 1 are rounded to the nearest ten. "L/T" = Less than. "Exclusively Grad" = Institution exclusively offers graduate programs. Enrollments include title IV enrollees during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

Table 3.8 - Share of Enrollment in Programs that Fail the Proposed Regulation, by Sector and Predominant Degree Awarded

Institution Level	Number of Institutions	Share of Enrollment in Failing Programs, Conditional on Having Earnings Data				
		0%	0-25%	25-50%	50-99%	100%
	(1)	(2)	(3)	(4)	(5)	(6)
A. Public						
L/T 2-Year	570	64.6%	25.4%	5.4%	2.6%	1.9%
2-Year	640	64.7	31.9	1.9	1.4	0.2
4-Year	550	64.7	34.9	0.2	0.2	<0.1
Exclusively Grad	10	>99.9	<0.1	<0.1	<0.1	<0.1
Total	1,770	64.9	30.6	2.5	1.4	0.7
B. Non-Profit						
L/T 2-Year	110	71.7%	3.5%	2.7%	5.3%	16.8%
2-Year	100	85.0	7.0	2.0	2.0	4.0
4-Year	1,090	78.7	16.3	1.7	0.8	2.5
Exclusively Grad	150	84.1	5.5	1.4	0.7	8.3
Total	1,450	79.2	13.6	1.8	1.2	4.3
C. Proprietary						
L/T 2-Year	1,310	35.1%	4.3%	2.1%	3.7%	54.7%
2-Year	100	70.9	14.6	1.9	4.9	7.8
4-Year	70	69.6	23.2	2.9	2.9	1.4
Exclusively Grad	30	88.0	<0.1	<0.1	<0.1	12.0
Total	1,510	40.1	5.8	2.1	3.7	48.3

Notes. Institutions are classified by the predominant degree offered. The percentages in columns 2, 3, 4, 5, and 6 are computed by calculating the share of title IV institutional enrollment in failing programs (conditional on having earnings data) under the proposed regulations out of all title IV institutional enrollment in programs that have earnings data that fall within the range listed in the column header. The percentages in columns 2, 3, 4, 5, and 6 may not sum to 100 percent due to rounding. The number of institutions in column 1 are rounded to the nearest ten. "L/T"=Less than. "Exclusively Grad" = Institution exclusively offers graduate programs. Enrollments include title IV enrollees during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

The Department also estimated the impact of the proposed regulation on special types of institutions and those with unique missions, including Historically Black Colleges and Universities (HBCUs), Tribally Controlled Colleges and Universities (TCCUs), Minority Serving Institutions

(MSIs), religiously affiliated institutions, rural institutions, and institutions located in foreign territories (Table 3.9). We find that HBCUs, religiously affiliated colleges, and foreign institutions will be more negatively impacted by the proposed regulation relative to the current regulation. This is

because these institutions are estimated to have more students and title IV, HEA funds in programs that would fail the accountability framework under the proposed regulation (Panel B) relative to the accountability framework in the current regulations (Panel A).

Table 3.9 - Estimated Impact of the Proposed Regulation on Institutions with Specialized Missions

Institution Type	Programs		Students		Title IV Volume	
	Number of Programs	Share of Programs that Fail	Number of Students	Enrollment In Failing Programs	Annual Volume (\$ Millions)	Volume in Failing Programs
	(1)	(2)	(3)	(4)	(5)	(6)
A. Current Regulations						
HBCUs	2,300	1.8%	307,700	0.2%	\$3,000	0.1%
TCCUs	100	<0.1	8,500	<0.1	23	<0.1
Other MSIs	32,700	4.4	5,997,100	2.5	29,454	1.7
Religiously Affiliated	21,600	0.6	1,610,100	0.5	14,294	0.2
Rural	13,200	4.8	1,468,900	1.7	7457	1.4
Foreign Institutions	1,700	<0.1	226,700	<0.1	1,493	<0.1
B. Proposed Regulations						
HBCUs	2,300	4.1%	307,700	4.3%	\$3,000	2.3%
TCCUs	100	<0.1	8,500	<0.1	23	<0.1
Other MSIs	32,700	3.7	5,997,100	2.9	29,454	2.3
Religiously Affiliated	21,600	1.9	1,610,100	2.5	14,294	1.8
Rural	13,200	5.1	1,468,900	2.2	7,457	1.1
Foreign Institutions	1,700	5.7	226,700	4.6	1,493	2.2

Notes. "Other MSIs" include colleges with any of the following designations: PBI, AANAPIII, HSI, and ANNHI. "Religiously affiliated" institutions include colleges with any listed religious affiliation from any denomination. "Rural" institutions are institutions located in counties where greater than 50 percent of the population in the county lives in a designated rural census tract. "Foreign Institutions" include institutions of higher education located in any of the following territories: AS, FM, GU, MH, MP, PR, PW, VI. Counts in columns 1 and 3 are rounded to the nearest 100. Counts in column 5 are rounded to the nearest million. Percentages in columns 2, 4, and 6 are computed prior to rounding. Enrollment includes title IV enrollees during the 2024-25 award year. title IV volume is the annual title IV volume disbursed during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

The Department also estimated the share of institutions that fail the standards of administrative capabilities under the current and proposed regulations (Table 3.10). Overall, similar shares of institutions will fail the standard (16.3 percent and 15.4 percent under the proposed and current regulations, respectively). Although these are similar shares, the penalty for failing the standard is less under the proposed regulation. Under the proposed rule, only programs that fail the accountability framework would

lose eligibility for Pell Grants. Under the current regulations, all programs at an institution that fails to meet the standard would lose access to all title IV, HEA funds.

Proprietary institutions are expected to fail the standards of administrative capabilities at the highest rates. Under the proposed standard, approximately half (47 percent) of proprietary institutions are estimated to fail. One reason the proprietary sector has higher fail rates is because these institutions offer fewer programs, making it more

likely that failing programs will account for a majority of enrollment or title IV HEA funds at the institution. Less than two-year proprietary institutions offer an average of just 3 programs (Panel C, column 4). If just one program at one of these institutions fails the accountability framework under the current or proposed regulations, the institution has a higher probability of failing the standards of administrative capabilities than other institutions that offer a broad range of programs.

Table 3.10 - Percent of Institutions that Fail the Standards of Administrative Capability Requirements, by Sector and Predominant Degree Awarded

Institution Level	Number of Institutions	Percent that Fail the Standards of Administrative Capabilities		Average Number of Programs Per Institution
		Current Regulations	Proposed Regulations	
	(1)	(2)	(3)	(4)
A. Public				
L/T 2-Year	610	2.6%	1.2%	36
2-Year	650	2.0	0.2	65
4-Year	550	0.5	0.2	124
Exclusively Grad	10	<0.1	<0.1	15
Total	1,820	1.7	0.5	73
B. Non-Profit				
L/T 2-Year	150	12.4%	14.5%	7
2-Year	130	1.6	2.4	12
4-Year	1,180	1.1	2.5	54
Exclusively Grad	220	1.9	6.5	6
Total	1,680	2.3	4.1	40
C. Proprietary				
L/T 2-Year	1,380	49.3%	53.3%	3
2-Year	110	16.7	9.6	10
4-Year	80	14.5	3.6	27
Exclusively Grad	30	20.0	6.7	6
Total	1,600	44.8	46.9	5
Grand Total	5,100	15.4%	16.3%	41

Notes. Programs with missing earnings data are assumed to pass accountability framework under the current and proposed rule. The sample in this table includes all programs and institutions (see Table 3.2). The N sizes (institution counts) in column 1 differ from the institution counts in prior tables because the counts in prior tables were based on the subset of programs used in the main analysis (see Table 3.3).

Source. Department of Education calculations using PPD:2026.

Impact of the Proposed Regulations on Programs

The Department estimated the share of programs by credential level that will be impacted by the proposed regulation (Table 3.11). We estimate the proposed regulation will result in a slight increase in the total share of programs that would fail the accountability framework, growing from 4.6 percent of all programs under current regulation to 5.1 percent under the proposed regulation (Panel A). This increase is driven by associate's, bachelor's, master's, and professional degree

programs. Many of these programs are offered at institutions that are exempt from the accountability framework under the current regulation but are now subject to it under the proposed regulation. In contrast, undergraduate and graduate certificate programs are expected to fail the accountability framework at lower rates under the proposed regulations. These reductions in fail rates, however, are not enough to offset the large increase in expected fail rates among associate's, bachelor's, master's, and professional degree programs, resulting in a net increase in the share of programs that fail.

In terms of students (Panel B), we estimate the proposed regulation will result in a slight reduction in the total share of students enrolled at programs that would fail the accountability framework, dropping from 4.7 percent of students under the current regulation to 4.4 percent under the proposed regulation. Even though a larger share of programs would fail under the proposed regulation relative to the baseline, those programs enroll fewer students than programs that fail under the current regulation on average.

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Table 3.11 - Estimated Share of Programs that Fail and Enrollment in Failing Programs, by Credential Level

Credential Level	N	Share that Fail	
		Current Regs	Proposed Regs
	(1)	(2)	(3)
A. Program-Weighted			
Undergrad Cert	17,800	29.3%	18.1%
Associate	23,400	1.6	6.0
Bachelor	52,400	0.3	1.4
Post-Bacc Cert	700	<0.1	1.3
Masters	24,600	0.4	4.2
Doctoral	6,200	0.2	0.4
Professional	1,100	0.8	2.3
Grad Cert	2,700	4.1	3.2
Total	128,900	4.6	5.1
B. Student-Weighted			
Undergrad Cert	1,726,900	39.4%	25.5%
Associate	5,305,000	1.5	4.1
Bachelor	8,911,200	0.9	0.8
Post-Bacc Cert	21,300	<0.1	0.9
Masters	1,975,100	1.0	4.1
Doctoral	400,700	1.6	0.7
Professional	297,000	2.4	3.9
Grad Cert	113,800	5.7	5.4
Total	18,751,000	4.7	4.4

Notes. In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV enrollment counts. Ns are rounded to nearest 100. Total Ns may not sum to their subcomponents due to rounding. Title IV enrollment corresponds to enrollment during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

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When looking at the effect of the proposed regulation on sectors (Table 3.12), we estimate that the public and non-profit sectors will experience a net-increase in the share of programs that fail. This is because many programs offered in these sectors are exempt from the accountability framework under the current regulation. Conversely, under the proposed regulation, we estimate that the proprietary sector will experience a reduction in the share of

programs expected to fail—primarily driven by the reduction in failing undergraduate certificate programs. This is largely because under the current regulations, undergraduate programs at proprietary institutions are subject to a more-punitive earnings premium metric relative to the proposed regulations.

We find this pattern holds when weighting by title IV enrollment (Table 3.13). Under the proposed regulations, we estimate that 2.2 percent of students at programs in the public sector attend

programs expected to fail the accountability framework. This is modestly higher than the estimated share who attended failing programs under current regulations (1.5 percent). The increase is driven by the large number of students who attended associate's, bachelor's, and master's degree programs at public institutions that would be subject to the accountability framework but are currently exempt. This increase more than offsets the reduction in students

attending undergraduate certificate programs at public institutions that are no longer expected to fail the accountability framework. A similar pattern exists for students who attend private non-profit programs (Panel B). While there is a reduction in the share of students who attended failing certificate programs at those

institutions, there are increases in the shares of students who attend failing programs in all other credentials, resulting in an overall increase in the share of students who attend failing programs.

In the proprietary sector (Panel C), we estimate that fewer students attend programs that fail the proposed

regulation relative to the current regulation (18.5 percent vs. 30.2 percent), mainly because the EP test was made slightly easier under the proposed regulation (program earnings are measured after 4-years and include only working individuals).

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**Table 3.12 - Estimated Share of Programs that Fail, by
Credential Level and Sector**

Credential Level	Number of Programs	Share that Fail	
		Current Regs	Proposed Regs
	(1)	(2)	(3)
A. Public			
Undergrad Cert	14,200	21.2%	11.0%
Associate	21,100	0.0	5.6
Bachelor	26,400	0.0	1.0
Post-Bacc Cert	500	<0.1	<0.1
Masters	13,800	0.0	3.5
Doctoral	3,900	0.0	0.2
Professional	500	0.0	0.0
Grad Cert	1,600	2.6	3.2
Total	82,000	3.7	4.3
B. Non-Profit			
Undergrad Cert	800	29.9%	21.9%
Associate	1,200	0.0	7.8
Bachelor	25,200	0.0	1.8
Post-Bacc Cert	200	<0.1	5.2
Masters	10,300	0.0	4.7
Doctoral	2,100	0.0	1.0
Professional	500	0.0	3.5
Grad Cert	1,000	5.0	3.1
Total	41,300	0.7	3.1
C. Proprietary			
Undergrad Cert	2,800	69.1%	52.2%
Associate	1,100	33.1	11.5
Bachelor	800	16.0	3.1
Post-Bacc Cert	<100	<0.1	<0.1
Masters	500	17.5	12.7
Doctoral	100	7.1	0.0
Professional	<100	26.7	21.1
Grad Cert	100	14.8	3.5
Total	5,400	47.0	31.1

Notes. Ns are rounded to nearest 100. Total program counts may not sum to their subcomponents due to rounding.

Source. Department of Education calculations using PPD:2026.

Table 3.13 - Estimated Share of Enrollment in Programs that Fail, by Credential Level and Sector

Credential Level	Title IV Enrollment (1)	Enrollment in Failing Programs	
		Current Regs (2)	Proposed Regs (3)
A. Public			
Undergrad Cert	901,600	20.7%	9.7%
Associate	4,679,800	0.0	3.2
Bachelor	5,744,400	0.0	0.4
Post-Bacc Cert	15,800	<0.1	<0.1
Masters	901,300	0.0	1.7
Doctoral	160,600	0.0	0.1
Professional	137,800	0.0	<0.1
Grad Cert	56,300	1.4	1.8
Total	12,597,600	1.5	2.2
B. Non-Profit			
Undergrad Cert	73,000	49.8%	36.8%
Associate	257,500	0.0	16.2
Bachelor	2,470,400	0.0	1.5
Post-Bacc Cert	5,000	<0.1	4.1
Masters	807,800	0.0	4.1
Doctoral	189,000	0.0	1.3
Professional	145,100	0.0	3.6
Grad Cert	43,600	2.5	7.9
Total	3,991,400	0.9	3.8
C. Proprietary			
Undergrad Cert	752,300	60.9%	43.3%
Associate	367,800	21.5	6.5
Bachelor	696,400	11.3	1.3
Post-Bacc Cert	600	<0.1	<0.1
Masters	266,000	7.3	12.2
Doctoral	51,000	12.4	<0.1
Professional	14,100	51.3	44.8
Grad Cert	13,900	33.2	11.8
Total	2,162,100	30.2	18.5

Notes. Ns are rounded to nearest 100. Total enrollment may not sum to their subcomponents due to rounding. Title IV enrollment corresponds to enrollment during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

framework, disaggregated by credential level (Table 3.14).^{60 61} Overall, the Department estimates that failing programs under the proposed regulation would lose a smaller amount of title IV, HEA funds than under the current regulations (3.9 percent vs. 5.0 percent). Undergraduate certificate programs will experience the largest change. Under the

current regulations, almost half (49 percent) of all title IV, HEA funds disbursed to undergraduate certificate programs are projected to be lost due to the accountability framework. Under the proposed regulations, only 28 percent is projected to be lost. This reduction is driven by the fact that programs lose eligibility for only Federal student loans

under the proposed regulation (unless it is offered at an institution that also fails the standards of administrative capabilities, in which case the program also loses eligibility for Pell Grants), and because undergraduate certificate programs face an easier accountability framework.

Table 3.14 - Estimated Annual Federal Title IV, HEA Volume and Share Disbursed to Programs that Fail, by Credential Level

Credential Level	Annual Title IV Volume (\$ Millions)	Volume to Failing Programs	
		Current	Proposed
		Regs	Regs
	(1)	(2)	(3)
Undergrad Cert	\$8,042	48.5%	27.6%
Associate	17,493	4.0	3.7
Bachelor	53,068	1.3	0.8
Post-Bacc Cert	15	<0.1	1.3
Masters	19,318	1.2	4.3
Doctoral	5,834	1.9	1.5
Professional	11,618	0.6	2.4
Grad Cert	603	7.5	2.1
Total	115,992	5.0	3.9

Notes: Annual title IV volume (column 1) is the total annual title IV volume from Federal student loans and Pell Grants, rounded to the nearest million. Percentages in columns 2 and 3 are estimated prior to rounding. Annual volume corresponds to disbursements made during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

When disaggregated by sector (Table 3.15), we estimate no net change in the overall amount of title IV, HEA funds disbursed to failing programs at public institutions. While more undergraduate and graduate certificate programs in the public sector (Panel A) will pass the proposed accountability framework relative to the baseline, all other credential levels in the public sector fail

at higher rates, resulting in no net change in the title IV disbursements.

The Department’s estimates suggest that there could be a sizeable reduction in title IV, HEA funds disbursed to the non-profit sector (Panel B) because all programs in this sector are now subject to an accountability framework. Under the current regulations, failing non-profit programs account for just 0.7 percent of the total title IV, HEA funds

disbursed to programs in the non-profit sector. Under the proposed regulations, that figure is estimated to rise to 4 percent, driven by the large increase in failing associate’s, bachelor’s, master’s, and professional degree programs. The proprietary sector (Panel C) demonstrates the opposite pattern. Under the proposed regulations, these programs will see an increase in title IV, HEA funds relative to the baseline. This

⁶⁰ Under the current regulations, lost title IV HEA funds includes both Pell Grants and Federal student loans. Under the proposed regulations, lost title IV, HEA funds includes only Federal student loans, unless the program is at an institution that is

estimated to also fail the administrative capability standards—in which case, lost title IV HEA funds also includes Pell Grants for that program.

⁶¹ Our estimates on title IV, HEA student aid disbursements assume no program switching for

students who switch from a failing program to a passing program and therefore continue to receive title IV, HEA funds.

is because the accountability framework is (generally) easier for these programs to pass, and the proposed regulation

allows failing programs to continue receiving Pell Grants (as long as the

institution does not fail the standards of administrative capability requirements).

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Table 3.15 - Estimated Annual Federal Title IV, HEA Volume and Share Disbursed to Programs that Fail, by Credential Level and Sector

Credential Level	Annual Title IV Volume (\$ Millions)	Volume to Failing Programs	
		Current Regs	Proposed Regs
	(1)	(2)	(3)
A. Public			
Undergrad Cert	\$1,990	22.1%	2.3%
Associate	12,652	0.0	0.8
Bachelor	31,614	0.0	0.2
Post-Bacc Cert	7	<0.1	<0.1
Masters	7,066	0.0	1.7
Doctoral	1,421	0.0	0.1
Professional	4,745	0.0	<0.1
Grad Cert	241	2.3	1.0
Total	59,736	0.7	0.6
B. Non-Profit			
Undergrad Cert	\$461	57.4%	39.8%
Associate	1,769	0.0	22.2
Bachelor	16,385	0.0	1.6
Post-Bacc Cert	7	<0.1	3.0
Masters	9,685	0.0	4.0
Doctoral	3,717	0.0	2.3
Professional	6,518	0.0	3.7
Grad Cert	279	4.5	0.5
Total	38,821	0.7	4.0
C. Proprietary			
Undergrad Cert	\$5,592	57.2%	35.6%
Associate	3,073	22.8	5.0
Bachelor	5,069	14.1	2.1
Post-Bacc Cert	1	<0.1	<0.1
Masters	2,566	8.7	12.2
Doctoral	696	15.9	<0.1
Professional	355	20.3	9.8
Grad Cert	83	32.6	10.5
Total	17,435	28.9	15.0

Notes. Annual title IV volume (column 1) is the total annual title IV volume from Federal student loans and Pell Grants, rounded to the nearest million. Total volume may not sum to their subcomponents due to rounding. Title IV volume corresponds to total Federal student loans and Pell Grants disbursed during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

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Next, we estimated how the proposed regulation would impact specific fields of study.⁶² The Department estimates that some programs, such as Humanities/Liberal Arts programs (CIPs=05, 16, 23, 24, and 50) and Religious Studies programs (CIPs=38 and 39) will fail at a higher rate relative to the baseline (Table 3.16). Other programs, such as Health-Related

⁶² The Department grouped programs into broad field of study categories using a slightly modified version of the field of study categories defined in the variable "MAJORS12" from NPSAS:2020. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies was combined with "Other Technical Professional"; Math was combined with "Engineering"; new categories were created for "Culinary and Personal Services" (CIP2=12) and "Religious Studies" (CIP2=38 or 39). For more information, see <https://nces.ed.gov/datalab/codebooks/by-subject/157-national-postsecondary-student-aid-study-2020-undergraduate-students>.

undergraduate programs (CIPs=51, 60, 34, and 61), Business/Management undergraduate programs (CIP=52), Computer/Information Science undergraduate programs (CIP=11), and Vocational/Technical undergraduate programs (CIPs=15, 41, 46, 47, 48, and 49), are estimated to fail at lower rates. Culinary & Personal Services undergraduate programs (CIP=12) will fail the accountability framework at the highest rates, though the share that fail under the proposed regulation (76 percent) is slightly lower than the share under the current regulation (79 percent).

A similar pattern is observed when estimates are weighted by enrollment (Table 3.17). For example, approximately five times as many students are enrolled in Religious Studies undergraduate programs that are expected to fail under the proposed

regulation relative to the share of these students attending Religious Studies programs that would fail under the current regulations. Many of these programs are offered at public and private non-profit institutions, which are exempt from accountability framework under the baseline.

Undergraduate programs in Religious Studies are also estimated to have a sizeable loss in title IV, HEA funds (Table 3.18). These programs will experience an estimated five-fold reduction in title IV, HEA disbursements. Other types of programs, however, are expected to experience large increases in the amount of title IV, HEA funds under the proposed regulations. This includes programs in Culinary & Personal Services, Health, Technical/Professional Programs, and Business.

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**Table 3.16 - Estimated Share of Programs that Fail, by
Broad Field of Study and Level**

Broad Field of Study	Undergrad.		Graduate	
	Number of Programs	Share of Programs that Fail	Number of Programs	Share of Programs that Fail
	(1)	(2)	(3)	(4)
A. Current Regulations				
Culinary & Personal Services	1,800	79.2%	<100	<0.1%
Health-Related	17,300	12.3	6,500	1.3
Vocational/Technical	7,500	6.1	200	<0.1
Business/Management	14,100	5.6	3,800	0.1
Computer/Information Science	5,200	3.7	900	<0.1
Education	4,500	3.0	6,700	0.4
Humanities/Liberal Arts	10,800	2.6	1,800	1.0
Other Technical/Professional	12,800	2.2	4,200	0.3
Religious Studies	1,200	1.0	600	0.3
Life Sciences	5,400	0.2	2,800	1.5
Social/Behavioral Sciences	7,600	0.1	2,900	0.8
Engineering/Math	4,200	<0.1	3,100	<0.1
Physical Sciences	2,000	<0.1	1,000	<0.1
Total	94,400	6.1	34,500	0.6
B. Proposed Regulations				
Culinary & Personal Services	1,800	75.6%	<100	60.0%
Health-Related	17,300	6.7	6,500	7.2
Vocational/Technical	7,500	1.7	200	<0.1
Business/Management	14,100	3.1	3,800	1.1
Computer/Information Science	5,200	1.0	900	3.0
Education	4,500	7.7	6,700	0.3
Humanities/Liberal Arts	10,800	8.2	1,800	17.1
Other Technical/Professional	12,800	4.8	4,200	1.9
Religious Studies	1,200	8.8	600	6.6
Life Sciences	5,400	1.8	2,800	2.3
Social/Behavioral Sciences	7,600	2.3	2,900	3.3
Engineering/Math	4,200	<0.1	3,100	0.2
Physical Sciences	2,000	0.4	1,000	<0.1
Total	94,400	5.7	34,500	3.3

Notes. Program counts (columns 1 and 3) are rounded to nearest 100. Total program counts may not sum to the sum of their subcomponents due to rounding. Broad Field of Study Categories are based on categories used in the 2020 NPSAS using the variable MAJORS12_2010. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies was combined with "Other Technical Professional"; Math was combined with "Engineering"; new categories were created for "Culinary and Personal Services" (CIP2=12) and "Religious Studies" (CIP2=38 or 39). Source. Department of Education calculations using PPD:2026.

Table 3.17 - Estimated Share of Enrollment in Programs that Fail, by Broad Field of Study and Level

Broad Field of Study	Undergrad.		Graduate	
	Title IV Enrollment	Share of Enrollment in Failing Programs	Title IV Enrollment	Share of Enrollment in Failing Programs
	(1)	(2)	(3)	(4)
A. Current Regulations				
Culinary & Personal Services	299,800	82.3%	400	<0.1%
Health-Related	3,043,900	11.2	823,100	3.1
Vocational/Technical	683,200	4.9	11,400	<0.1
Business/Management	2,492,000	1.3	437,800	0.3
Computer/Information Science	950,900	2.0	80,400	<0.1
Education	617,700	1.5	530,300	0.1
Humanities/Liberal Arts	2,951,100	2.4	55,500	3.0
Other Technical/Professional	1,801,400	4.0	405,000	0.8
Religious Studies	80,400	4.7	45,600	0.9
Life Sciences	1,029,000	0.1	94,400	0.9
Social/Behavioral Sciences	1,266,600	0.9	209,400	3.1
Engineering/Math	624,100	<0.1	72,300	<0.1
Physical Sciences	124,400	<0.1	20,900	<0.1
Total	15,964,500	5.3	2,786,500	1.4
B. Proposed Regulations				
Culinary & Personal Services	299,800	74.5%	400	19.8%
Health-Related	3,043,900	6.3	823,100	9.1
Vocational/Technical	683,200	0.9	11,400	<0.1
Business/Management	2,492,000	1.0	437,800	0.4
Computer/Information Science	950,900	1.2	80,400	1.1
Education	617,700	5.5	530,300	0.1
Humanities/Liberal Arts	2,951,100	3.7	55,500	16.4
Other Technical/Professional	1,801,400	3.9	405,000	0.8
Religious Studies	80,400	22.5	45,600	14.6
Life Sciences	1,029,000	1.2	94,400	1.0
Social/Behavioral Sciences	1,266,600	1.9	209,400	1.4
Engineering/Math	624,100	<0.1	72,300	<0.1
Physical Sciences	124,400	0.4	20,900	<0.1
Total	15,964,500	4.5	2,786,500	3.6

Notes. Student counts (columns 1 and 3) are rounded to nearest 100. Percentages are computed prior to rounding. Broad Field of Study Categories are based on categories used in the 2020 NPSAS using the variable MAJORS12_2010. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies was combined with "Other Technical Professional"; Math was combined with "Engineering"; new categories were created for "Culinary and Personal Services" (CIP2=12) and "Religious Studies" (CIP2=38 or 39). Title IV enrollment corresponds to enrollment during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

Table 3.18 - Estimated Annual Federal Title IV, HEA Volume and Share Disbursed to Programs that Fail, by Broad Field of Study and Level

Broad Field of Study	Undergrad.		Graduate	
	Annual Title IV Volume (\$ Millions)	Share of Volume to Failing Programs (2)	Annual Title IV Volume (\$ Millions)	Share of Volume to Failing Programs (4)
A. Current Regs				
Culinary & Personal Services	\$1,820	85.7%	\$1	<0.1%
Health-Related	15,472	13.8	18,332	1.2
Vocational/Technical	3,703	5.1	62	<0.1
Business/Management	11,796	1.7	3,481	0.4
Computer/Information Science	4,300	1.6	496	<0.1
Education	3,176	0.9	3,525	0.2
Humanities/Liberal Arts	11,874	3.5	537	5.7
Other Technical/Professional	9,125	6.4	7,101	0.9
Religious Studies	474	4.5	212	1.7
Life Sciences	5,900	<0.1	813	0.7
Social/Behavioral Sciences	6,866	1.4	2,486	4.6
Engineering/Math	3,466	0.1	285	<0.1
Physical Sciences	646	<0.1	41	<0.1
Total	78,618	6.7	37,372	1.2
B. Proposed Regs				
Culinary & Personal Services	\$1,820	69.1%	\$1	<0.1%
Health-Related	15,472	7.4	18,332	5.3
Vocational/Technical	3,703	0.5	62	<0.1
Business/Management	11,796	0.5	3,481	0.4
Computer/Information Science	4,300	1.2	496	0.7
Education	3,176	1.0	3,525	0.1
Humanities/Liberal Arts	11,874	3.4	537	22.3
Other Technical/Professional	9,125	2.0	7,101	0.5
Religious Studies	474	28.7	212	1.7
Life Sciences	5,900	0.1	813	1.3
Social/Behavioral Sciences	6,866	0.2	2,486	1.4
Engineering/Math	3,466	<0.1	285	<0.1
Physical Sciences	646	<0.1	41	<0.1
Total	78,618	4.2	37,372	3.2

Notes. Annual title IV volume (columns 1 and 3) is rounded to nearest million. Broad Field of Study Categories are based on categories used in the 2020 NPSAS using the variable MAJORS12_2010. The following adjustments were made to the field of study categories for conformability: Multi/Interdisciplinary Studies was combined with "Other Technical Professional"; Math was combined with "Engineering"; new categories were created for "Culinary and Personal Services" (CIP2=12) and "Religious Studies" (CIP2=38 or 39). Title IV volume corresponds to total Federal student loans and Pell Grants disbursed during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

To conclude the program-level analysis, the Department examined the programs estimated to fail the proposed regulations at the highest rates (Table 3.19).⁶³ Some of these—such as Cosmetology (CIP=12.04), Somatic Bodywork (CIP=51.35), and Dental Support Services (CIP=51.06)—fare better under the proposed regulation

⁶³ The Department included the twelve programs (defined by the unique combination of *cip4* and *credlev*) that had the highest share of programs estimated to fail under the proposed regulations. Programs where there were fewer than 100 observations with non-missing earnings data nationally were excluded from the ranking.

relative to the baseline. For example, the Department estimates that 97 percent of undergraduate certificate programs in Cosmetology would fail under the baseline, but 93 percent fail under the proposed regulation. So, while many Cosmetology certificate programs will fail under the proposed regulation, it is less punitive for these programs than the current regulation.

Mental and Social Health & Allied Professions master's degree programs (CIP=51.15), Teacher Education and Professional Development associate's degree programs (CIP=13.12), and Drama/Theater Arts bachelor's degree

programs (CIPs=50.05, 50.07, and 50.09) are anticipated to be most impacted by the proposed regulations. These programs are often between 10 and 20 times more likely to fail the accountability framework under the proposed regulation relative to the current regulations. These higher fail rates are driven by the fact that a large share of these programs are offered at public and non-profit institutions, which would no longer be exempt from the accountability framework under the proposed rule.

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Table 3.19 - Twelve Most-Impacted Programs Under the Proposed Regulation

Program (CIP4)	Credential Level	N	Share that Fail	
			Current Regs	Proposed Regs
		(1)	(2)	(3)
A. Programs				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	1,200	97.4%	92.5%
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	300	98.8	89.3
Mental/Social Health Services & Allied Professions. (5115)	Master's	400	1.1	38.7
Dental Support Services and Allied Professions. (5106)	Ug Cert	400	84.7	38.5
Allied Health and Medical Assisting Services. (5108)	Ug Cert	900	84.4	37.1
Teacher Education & Prof. Devlpmt Specific Levels. (1312)	Associate	400	0.8	29.1
Health and Medical Administrative Services. (5107)	Ug Cert	800	78.5	28.3
Drama/Theatre Arts and Stagecraft. (5005)	Bachelor	700	0.5	15.9
Fine and Studio Arts. (5007)	Bachelor	900	0.8	14.9
Music. (5009)	Bachelor	900	1.2	14.3
Health and Medical Administrative Services. (5107)	Associate	700	8.3	13.5
Rehabilitation and Therapeutic Professions. (5123)	Master's	300	<0.1	11.8
B. Title IV Enrollment				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	225,400	97.3%	92.5%
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	18,000	99.7	89.0
Mental/Social Health Services & Allied Professions. (5115)	Master's	84,600	10.1	64.3
Dental Support Services and Allied Professions. (5106)	Ug Cert	31,000	91	58.9
Allied Health and Medical Assisting Services. (5108)	Ug Cert	155,200	89.9	50.0
Teacher Education & Prof. Devlpmt Specific Levels. (1312)	Associate	77,900	2.7	24.0
Health and Medical Administrative Services. (5107)	Ug Cert	111,000	80.1	31.0
Drama/Theatre Arts and Stagecraft. (5005)	Bachelor	43,800	1.3	11.4
Fine and Studio Arts. (5007)	Bachelor	107,100	1.4	8.5
Music. (5009)	Bachelor	63,800	5.8	11.0
Health and Medical Administrative Services. (5107)	Associate	116,100	13.9	29.7
Rehabilitation and Therapeutic Professions. (5123)	Master's	19,300	<0.1	9.0
C. Title IV Student Aid Volume				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	\$1,424	97.9%	93.0%
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	91	99.7	89.6
Mental/Social Health Services & Allied Professions. (5115)	Master's	964	8.5	54.7
Dental Support Services and Allied Professions. (5106)	Ug Cert	188	92.5	64.0
Allied Health and Medical Assisting Services. (5108)	Ug Cert	957	91.6	54.0
Teacher Education & Prof. Devlpmt Specific Levels. (1312)	Associate	253	5.9	24.7
Health and Medical Administrative Services. (5107)	Ug Cert	621	83	38.4
Drama/Theatre Arts and Stagecraft. (5005)	Bachelor	402	2.1	12.7
Fine and Studio Arts. (5007)	Bachelor	748	2.2	8.7
Music. (5009)	Bachelor	462	8.7	11.9
Health and Medical Administrative Services. (5107)	Associate	660	19.8	47.2
Rehabilitation and Therapeutic Professions. (5123)	Master's	356	<0.1	7.4

Notes. The twelve programs on this list are the twelve programs (defined at the 4-digit CIP x Credential Level) with the highest fail rates (program-weighted) under the proposed regulations in which there were at least 100 programs with non-missing earnings data nationally. In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV student enrollment counts. In Panel C, "N" refers to total title IV loan volume disbursements in AY2025 (in millions). N sizes are rounded to the nearest 100 in Panels A and B. N sizes are rounded to the nearest million in Panel C. "Ug Cert" = Undergraduate Certificate. Four-digit CIP codes are listed in parentheses. Title IV enrollment and title IV volume correspond to the amounts in the 2024-25 award year. Source. Department of Education calculations using PPD:2026.

Impact of the Proposed Regulations on Students

Lastly, the Department estimated the share of students in failing programs

from each sex and race category using data from IPEDS for completers from the 2017-18 and 2018-19 pooled award years (Table 3.20). For each program, we multiplied the number of title IV

enrollees from the 2024-25 award year by the ratio of completers from the given

sex or race category.⁶⁴ As reported above, fewer students attend programs that are estimated to fail under the proposed regulation relative to the baseline. Consistent with this finding, we estimate a reduction in the overall share of students from both sex categories and all race categories who attend failing programs. The estimated reduction is largest for male students and white students.

Table 3.20 - Estimated Demographic Characteristics of Students in Failing Programs

Student Characteristic	Enrollment (Millions)	Current		Proposed		Percent Change in Fail Rate
		Pass	Fail	Pass	Fail	
	(1)	(2)	(3)	(4)	(5)	(6)
Male	6.5	97.5%	2.5%	97.9%	2.1%	-16.0%
Female	10.0	93.5	6.5	94.2	5.8	-10.8
White	8.7	96.2	3.8	96.8	3.2	-15.8
Black	2.1	91.5	8.5	92.6	7.4	-12.9
Hispanic	2.9	92.5	7.5	93.3	6.7	-10.7
Asian	1.0	97.5	2.5	97.6	2.4	-4.0
Other Race	2.0	95.6	4.4	96.2	3.8	-13.6

Notes. See PPD:2026 codebook for definitions of race categories, available at: www.ed.gov/media/document/ahead-session-2-program-performance-data-variable-codebook-112904.pdf. Enrollments correspond to the estimated number of title IV enrollees from the sex or race category during the 2024-25 year. Column 6 presents the percent change using the values in columns 3 and 5.

Source. Department of Education calculations using PPD:2026.

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4. Discussion of Costs and Benefits

As shown in the prior analysis, the proposed regulations will result in costs and benefits for various entities. Specifically, the Department anticipates that certain students and institutions will incur new costs, along with the Department and taxpayers. Further, the Department anticipates that certain students, institutions, and the Department itself will incur new benefits because of the proposed regulations.

Costs of the Proposed Regulations:

The proposed regulations will result in costs to students, institutions, and taxpayers. We further discuss the costs in that order.

Students will experience costs due to the impact the proposed regulation would have on certain programs. Some students—especially current and prospective students in public and private non-profit degree programs—attend programs that would fail the accountability framework under the proposed regulation but pass under the

current regulation (shown in Tables 3.11 and 3.13). Institutions may choose to close these programs due to the loss of eligibility for Federal student loans. Students in these programs may be negatively impacted if they desire to attend those closed programs despite the low-earning outcomes. For example, some Drama programs may close due to the proposed regulations, but students may desire to attend these programs for reasons other than the monetary return.

Certain students in specific fields of study may be disproportionately impacted by the proposed regulation (Tables 3.17 and 3.19). At the undergraduate level, students in Religious Studies programs, Humanities/Liberal Arts programs, Education programs, Drama programs, and Music programs will be most impacted. At the graduate level, students in Religious Studies programs, Mental/Social Health Services & Allied Professions programs, Humanities/Liberal Arts programs, and Health-related programs will be most impacted (Tables 3.17 and 3.19). Thus, current, former, and prospective students

pursuing credentials in these specific fields of study are most likely to experience costs associated with the proposed regulations due to the high rates of program closures that may occur in these fields.

In some cases, program closures may occur abruptly and cause further disruption for enrolled students.⁶⁵ If closures are sudden, students may inadvertently cease their enrollment if they are not instructed on how to transfer. Other students may choose to end their postsecondary education if there are no substitutable programs to attend. For students who choose to remain enrolled, program closure may force them to change majors or transfer to a different institution, imposing search costs and possible financial costs on affected students.

The proposed regulation may also impose reputational costs on the former graduates of failing programs. Graduates from degree programs in the public and non-profit sectors would be most impacted, as certain programs in these sectors are more likely to fail the accountability framework under the

⁶⁴ For example, we multiplied the number of title IV enrollees in each program by the ratio of completers from the program (using IPEDS data)

who were male to calculate the share of male students in passing and failing programs.

⁶⁵ The Department has attempted to mitigate these disruptions by including a teach-out provision in

the proposed regulations that allows programs to implement an orderly program closure.

proposed regulation relative to the baseline (Tables 3.11 and 3.13). Prospective job applicants who formerly graduated from these failing programs may become disadvantaged in the labor market relative to other job applicants from non-failing programs. For example, employers may view degrees awarded from failing programs as less valuable. This would occur if failing the accountability framework under the proposed regulations sends a negative signal to employers about the graduates' former program quality, potentially

impacting the ability for graduates to find employment.

Lastly, certain students pursuing undergraduate certificates may also experience new costs. The accountability framework under the proposed regulation will allow more programs at that credential level to remain eligible for title IV, HEA funds, and some of these programs leave students with relatively lower earnings. The typical earnings of students who attend passing undergraduate certificate programs under the proposed regulations are slightly lower than the

typical earnings of passing programs under the current regulations (Table 4.1, column 1 vs. 2). Furthermore, earnings are lower for students who complete programs that pass the accountability framework under the proposed regulation but fail it under the current regulation (columns 1 vs. 4). These students may be negatively impacted by the proposed regulation because they may be better off not attending such programs, though it is difficult for the Department to estimate a proper counterfactual for these students.

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Table 4.1 - Median Earnings for Students in Passing and Failing Programs under the Current and Proposed Accountability Framework

	Four-Year Median Earnings of 2017-18 & 2018-19 Title IV Completers who are Working and Not Enrolled			
	Passes Current Regulations	Passes Proposed Regulation	Fails Proposed Regulation, Passes Current Regulation	Passes Proposed Regulation, Fails Current Regulation
	(1)	(2)	(3)	(4)
Undergrad Certificate	\$50,000	\$48,700	\$28,400	\$37,500
Associate	47,900	48,100	32,300	38,700
Bachelor	63,100	63,100	33,300	47,000
Master's	79,400	80,300	58,000	60,000
Total	62,700	62,900	29,300	39,000

Notes. Credential levels are not shown if there were fewer than 10 programs with non-missing earnings data to calculate the median earnings values in columns 3 or 4. Earnings data are for title IV completers who graduated during the 2017-18 or 2018-19 award years, with earnings measured in 2022 and 2023, inflation adjusted to 2024 dollars using CPI-U. Median earnings values in this table are calculated by taking the median of "md_earn_wne_p4", weighted by "count_wne_p4". See PPD:2026 codebook for details. Median earnings values are rounded to the nearest \$100.

Source. Department of Education calculations using PPD:2026.

BILLING CODE 4000-01-C

The second group that will experience costs are institutions of higher education; more specifically, institutions of higher education that participate in title IV, HEA programs. These costs will vary across institutions depending on the extent to which they offer GE-programs vs. non-GE programs. While the current regulation calculates the EP and D/E metrics for non-GE programs, those programs are not subject to sanctions (loss of all title IV eligibility) if they fail those metrics.

Under the proposed regulation, all programs—regardless of credential level and the sector of the institution at which they are offered—are now subject to sanctions (loss of Federal student loan eligibility)⁶⁶ for failing the accountability framework.

In other words, some non-GE programs will lose access to Federal

⁶⁶ Programs can also lose eligibility for Federal Pell Grants under the proposed regulation if they are offered at institutions that fail the standards of administrative capability.

student loans due to the proposed regulations because these programs will be covered by the accountability framework for the first time. Without access to Federal student loans, these programs may experience enrollment declines, ultimately resulting in lost revenue to the institutions that offer them. This loss in revenue may exceed the loss in Federal student loan revenue because institutions often receive additional revenues from students who

pay tuition and fees using non-Federal resources.

Next, some institutions will incur new costs due to the loss of Pell Grant eligibility for certain programs. Programs lose Pell Grant eligibility, in addition to Federal student loan eligibility, if they are offered at institutions that fail the standards of administrative capability under the proposed regulations. This loss in Pell Grant revenue may drive further enrollment and revenue declines and, for some institutions, lead them to close their institution altogether. Note that only degree programs at public and non-profit institutions stand to incur new costs related to loss of Pell Grant eligibility, because these programs are exempt from the accountability framework under the current regulation.

The Department estimates that certain public institutions and private non-profit institutions will incur greater costs from the proposed regulations relative to the current regulations. Specifically, public and private non-profit institutions offering large shares of associate's degree programs, bachelor's degree programs, and master's degree programs will incur the largest costs, as these programs are projected to fail the accountability framework under the proposed regulation at the highest rates relative to the current regulations (Tables 3.12 and 3.13). Additionally, certain types of institutions (mainly those located in foreign territories and those that exclusively offer Religious Studies programs, Humanities/Liberal Arts programs, and Music/Theater programs) may be uniquely impacted because they offer programs that are anticipated to fail the accountability framework under the proposed regulation at the highest rates relative to the baseline (Tables 3.9, 3.17, and 3.19).

Should these institutions obtain a reputation for offering low-quality educational services because of the proposed accountability framework, they may struggle to recruit and enroll students. Ultimately, these institutions may incur financial costs due to lost tuition revenue from students who now choose to avoid these institutions due to reputational risks.

Further, institutions that offer programs that fail the accountability framework under the proposed regulation but pass under the current regulation (e.g., degree programs at public and non-profit institutions) will experience new costs related to compliance. First, institutions with failing programs must notify students in those programs to alert them of the failing status. Tracking and alerting

students will create administrative costs for institutions if they must hire additional staff to manage this process. Even if institutions do not hire new staff to oversee this process, they may still experience non-monetary costs if these regulations require colleges to divert their existing staff away from other essential activities. Second, institutions may choose to appeal the Department's determination of a failing program. This process will impose administrative costs and (potentially) legal costs on institutions who choose to exercise this option.

Taxpayers are the third group that will experience costs. They will incur costs from the budgetary costs due to increased transfers of title IV loans to GE programs that now pass the accountability framework under the proposed regulation but fail under current regulation. As noted in the accounting statement (Table 5.12), these annualized costs are approximately \$95 million at a 3 percent discount rate.

Taxpayers will also incur budgetary costs due to increased transfers of Pell Grants to programs. Unlike the current regulation, programs that fail the accountability framework under the proposed regulation remain eligible for Pell Grants unless they are offered at institutions that do not meet the standards for administrative capability. As noted in the accounting statement (Table 5.12), these annualized costs are approximately \$497 million at a 3 percent discount rate.

Taxpayers may also face costs if the loss of title IV revenue and enrollment under the proposed regulation causes institutions to close. Under 34 CFR 685.214, students who are enrolled at an institution upon closure (or withdraw within 180 days of such closure) and do not complete their program may be eligible for discharges on their federal student loans if they are unable to complete their program at another institution. Thus, for institutions that close because of the proposed accountability framework, there may be some cost to taxpayers if those closures result in additional loan discharges that may not have occurred if the proposed regulations were not in place.⁶⁷

⁶⁷ Note that this cost to taxpayers only includes public and non-profit institution closures, because these institutions offer programs that are subject to an accountability framework for the first time. Costs associated with closing proprietary institutions are not considered a cost to taxpayers because these institutions were more likely to close under the current regulation relative to the proposed regulation, since the current regulation had a stricter accountability framework and removed eligibility for both Federal student loans and Pell Grants.

The Department, and by extension the taxpayer, is the final group that will experience costs due to the proposed regulation. Costs to the Department are due to the administrative costs needed to implement the changes to the Federal student loan and Pell Grant programs. We estimate that, based on comparable changes made in the past, those administrative costs would average approximately \$6.6 million (using a 3 percent discount rate, Table 5.12) in systems modifications, contract changes, and staffing on an annualized basis over the 2026–2035 period. Most of these estimated costs will be incurred during the first two years of implementation.

To implement the proposed changes, the Department needs to update its systems for loan and grant origination to align with the new eligibility rules for programs of study in order to correctly identify programs that maintain or lose eligibility. This includes changes to the Common Origination and Disbursement (COD) system, which supports origination, disbursement, and reporting for Direct Loan, Pell Grant, and the Teacher Education Assistance for College and Higher Education (TEACH) Grant programs. The system uses a single “Common Record” (XML format) for efficiency and elimination of duplicate student and borrower data, providing a centralized system for title IV program administration used by the Department and all institutions that participate in the delivery of Federal student aid.

The Department must also update the National Student Loan Data System (NSLDS), which is the central database for all disbursements made through title IV, HEA programs. NSLDS tracks title IV loans and grants through their entire lifecycle, from approval to repayment or closure. The system provides an integrated view for institutions and the Department to track aid, loan status, and enrollment. It consolidates data from schools, lenders, and programs, enabling users to access loan history, disbursement details, and servicer information via the FSA Partner Connect portal. The NSLDS system provides the Department with the data needed to identify program enrollment and completer cohorts that are central to administering the earnings-based eligibility tests in the proposed regulation.

While most of the administrative costs the Department will incur implementing the OBBB occur in the first few years, the Department will incur long-term administrative costs for maintaining the Department's COD, NSLDS, and other system changes in future years to

account for ongoing development, operations, and maintenance.

The Department expects to incur additional administrative costs to train and support institutions of higher education that now must align their procedures and systems with the new eligibility rules for loans, grants, and programs of study.

The Department must also modify its internal systems and amend its data-sharing agreement with a federal agency with earnings data, which will be used to annually determine program eligibility under the new and modified earnings tests. The Department will incur minor, long-term administrative costs associated with the earnings tests and maintaining a data-sharing agreement with a federal agency with earnings data. As shown in Table 5.12, these costs will average \$1.9 million on an annualized basis (3% discount rate). Approximately 70% of these costs will support the data-sharing agreement with a federal agency with earnings data. The balance of the funds will be used to maintain the NSLDS system to support the annual operations of the accountability framework in the proposed regulation.

Benefits of the Proposed Regulations:

The proposed regulations provide benefits to students, institutions of higher education, and the Department. These benefits are discussed in that order.

Students will benefit under the proposed regulations in several ways. First, students in non-GE programs may experience higher earnings outcomes. Under the current regulations, these programs were exempt from the accountability framework, but under the proposed regulation, low-earning non-GE programs at public and non-profit institutions can lose eligibility for title IV, HEA funds. Students will benefit from this because, in the absence of the proposed regulation, they may have attended these low-earning outcome programs and were at a heightened likelihood of experiencing financial harm as a result. The Department estimates that approximately 200,000 title IV students attend programs at public and non-profit institutions that will fail the accountability framework under the proposed regulation but would have passed under the current regulation (Table 3.13).

Certain students may also benefit due to the proposed regulation better

positioning them to pay back their student loans through the possibility of higher earnings outcomes that occur as a result of low-earning outcome programs that close. As shown in Table 4.1, the typical earnings of students from passing associate and master's degree programs under the proposed regulation are slightly higher than the earnings of students who attended passing programs under the current regulation. This is because many low-earning associate and master's degree programs are offered at public and non-profit institutions, which were exempt from the accountability framework under the current regulations. Similarly, debt levels and default rates are lower, on average, for programs that pass the accountability framework in the proposed regulation relative to passing programs under the current regulation (Tables 4.2 and 4.3). These estimates suggest that students may be better positioned to pay back their loans as a result of the proposed regulation, which benefits students if it saves them from experiencing these adverse outcomes related to debt and default.

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Table 4.2 - Median Debt of Borrowers, by Credential Level and Pass/Fail Status

Credential Level	Current Regulation		Proposed Regulation		Difference in Median Debt Among Passing Programs
	Fail	Pass	Fail	Pass	
	(1)	(2)	(3)	(4)	(5)
Undergrad Cert	\$9,300	\$11,600	\$9,300	\$11,300	-\$300
Associate	21,600	14,500	18,200	14,600	100
Bachelor	38,300	22,400	24,700	22,500	100
Masters	71,900	44,600	52,700	44,500	-100
Doctoral	181,100	85,600	104,600	90,000	4,400
Professional	227,900	164,700	184,800	153,900	-10,800
Grad Cert	80,000	42,700	62,600	43,700	1,000
Total	14,200	29,900	16,000	28,900	-1,000

Note. Median debt is defined as the median cumulative student debt of borrowers who completed during the 2017-18 or 2018-19 award years. See the PPD:2026 Codebook for more details. Column 5 ("Difference") is the difference between columns 4 and 2. Debt values are rounded to the nearest 100.

Source. Department of Education calculations using PPD:2026.

Table 4.3 - Default Rates of Borrowers, by Credential Level and Pass/Fail Status

Credential Level	Current Regulation		Proposed Regulation		Difference in Default Rates Among Passing Programs
	Fail	Pass	Fail	Pass	
	(1)	(2)	(3)	(4)	(5)
Undergrad Cert	24.6%	25.8%	24.7%	24.1%	-1.67
Associate	24.5	25.2	26.5	24.7	-0.5
Bachelor	19.7	14.3	19.7	14.0	-0.3
Masters	8.2	6.2	7.3	5.8	-0.4
Doctoral	5.0	5.7	2.5	5.5	-0.2
Professional	1.7	1.5	1.9	1.6	0.1
Grad Cert	7.1	6.7	7.1	5.9	-0.8
Total	24.1	19.5	24.7	18.8	-0.8

Note. Default rates are calculated using the cohort of federal student loan borrowers who entered repayment during the 2015-16 award year. Default rate is the share of those borrowers who have ever entered default within three years of entering repayment. See the PPD:2026 Codebook for more details. Column 5 ("Difference") is the percentage point difference between columns 4 and 2. The difference may not sum to the total due to rounding.

Source. Department of Education calculations using PPD:2026.

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Additionally, students who attend non-GE programs may benefit if institutions take measures to improve programs that are at risk of failing the accountability framework. Institutions offering non-GE programs had little incentive to improve these programs under the current regulations since these programs were exempt from the accountability framework. Given that they are subject to the accountability framework under the proposed regulation, institutions may choose to begin offering better student services, working with employers to ensure graduates have in-demand skills, and helping students with career planning, or risk losing access to title IV, HEA funds. These efforts may lead to better graduation rates and labor market outcomes for students.⁶⁸

Lastly, a subgroup of students in GE programs may benefit from the proposed regulations. This would occur when two conditions are met: first, the GE program

they attend passes the accountability framework under the proposed regulation but fails under the current regulations, and second, if the students in those programs desire to attend despite the earnings outcomes of the program. For this unique group of students, they benefit because they can continue receiving Federal student loans and Pell Grants to attend their program under the proposed regulation, and these students may attain other non-monetary benefits because they are able to continue their education in their desired program.

Institutions will also benefit from the proposed regulations in several ways. First, institutions will benefit from the reduced reporting requirements under the proposed regulation relative to the reporting requirements under the existing FVT regulations. In total, the proposed regulation reduces the number of data elements that institutions are required to report by approximately 30 percent. Many of these are elements the Department determined it can calculate and report through its administrative data systems (e.g., withdraw dates) and the Department will continue to report this information publicly under STATS.

Because institutions no longer need to calculate and report this information, they will incur reduced administrative costs to comply with the proposed regulations.

Second, some institutions offer programs that fail the accountability framework under the current regulations but will pass under the proposed regulation and retain access to title IV, HEA funds. The Department estimates that this would primarily benefit programs at proprietary institutions and undergraduate and graduate certificate programs from all sectors (Table 3.14).

Lastly, many institutions that offer GE programs will benefit from the fact that failing the accountability framework under the proposed regulation results only in loss of eligibility for Federal student loans. To better understand this benefit, Table 4.4 decomposes the overall change in title IV, HEA funds disbursed to failing programs (Panel A) by separately showing the estimated change in Federal student loan disbursements (Panel B) and Pell Grant disbursements (Panel C).⁶⁹ As shown in

⁶⁸ This is not a benefit for students who attend proprietary institution programs since these institutions face an easier accountability framework under the proposed regulations relative to the current regulations.

⁶⁹ Note that programs only lose eligibility for Pell Grants under the proposed regulation if they are at

Panel B, we estimate a similar share of Federal student loans are disbursed in failing programs under both the current and proposed regulations. This is because the increase in failing associate, master's, and professional degree programs under the proposed rule is almost completely offset by the reduction in failing undergraduate

an institution that fails the standards of administrative capability requirements.

certificate programs in terms of loan disbursements.

This differs from Panel C, where we estimate a smaller share of total Pell Grant volume will be disbursed to failing programs under the proposed regulation (6.2 percent) relative to the share of Pell volume disbursed to failing programs under the current regulation (7.1 percent). The reduction is driven by undergraduate certificate programs: under the current regulations, these programs were expected to lose half (49

percent) of their total Pell Grant volume, whereas under the proposed regulations these programs are estimated to lose one-third of their Pell Grant volume. This suggests institutions offering undergraduate certificates will benefit, as more of these programs will maintain access to Pell Grants under the proposed regulation. Maintaining eligibility for Pell Grants may buffer enrollment declines at these institutions and help their program continue to operate.

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Table 4.4 - Estimated Annual Federal Title IV, HEA Funds and Share Disbursed to Programs that Fail, by Credential Level & Aid Type

	Annual Title IV Volume (\$ Millions)	Volume to Failing Programs	
		Current	Proposed
		Regs	Regs
	(1)	(2)	(3)
A. Total Title IV Student Aid			
Undergrad Cert	\$8,042	48.5%	27.6%
Associate	17,493	4.0	3.7
Bachelor	53,068	1.3	0.8
Post-Bacc Cert	15	<0.1	1.3
Masters	19,318	1.2	4.3
Doctoral	5,834	1.9	1.5
Professional	11,618	0.6	2.4
Grad Cert	603	7.5	2.1
Total	115,992	5.0	3.9
B. Federal Student Loans Only			
Undergrad Cert	\$3,987	48.4%	32.5%
Associate	6,215	6.6	7.4
Bachelor	32,606	1.3	0.9
Post-Bacc Cert	14	<0.1	1.5
Masters	19,318	1.2	4.3
Doctoral	5,834	1.9	1.5
Professional	11,618	0.6	2.4
Grad Cert	603	7.5	2.1
Total	80,195	4.0	4.1
C. Pell Grants Only			
Undergrad Cert	\$4,055	48.5%	33.1%
Associate	11,278	2.6	5.4
Bachelor	20,462	1.4	1.3
Post-Bacc Cert	2	0.0	0.0
Masters	0	N/A	N/A
Doctoral	0	N/A	N/A
Professional	0	N/A	N/A
Grad Cert	0	N/A	N/A
Total	35,797	7.1	6.2

Notes: In Panel A, annual title IV volume (column 1) includes Federal student loans and Pell Grants, rounded to the nearest million. The corresponding cells below in Panels B and C may not sum to the total listed in Panel A due to rounding. Percentages in columns 2 and 3 are estimated prior to rounding. Title IV volume corresponds to total Federal student loans and Pell Grants disbursed during the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

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The Department will also benefit from the proposed regulation, largely from a

streamlined and simplified administrative process for the GE

regulation. The proposed regulation removes the complicated D/E metric

from the current accountability framework, which will reduce burden and save administrative costs.

5. Net Budget Impact

The accountability framework implemented by the proposed regulations is estimated to have a net Federal budget impact of \$979 million in Direct Loan cohorts 2026 to 2035 and \$5,145 million in Pell Grants in FYs 2026 to 2035 as shown in Tables 5.1A and 5.1B. A cohort reflects all loans originated in a given fiscal year.

Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans.

The baseline for estimating the cost of these regulations is the President's Budget FY2026 baseline updated for other provisions of the OBBB. This baseline includes the Department's estimates for the current regulations and therefore the cost estimate captures

changes in the accountability framework from that regulation. Direct Loan and Pell Grant volumes at failing programs under current regulations are higher than those at failing programs under the proposed accountability framework, so the estimated reduction in volume is greater under current regulations. Therefore, the net budget impact of replacing the current regulations with the accountability framework in the proposed regulation is scored as a cost to the taxpayer.

Table 5.1A - Estimated Annual Net Budget Impact for Direct Loans, Outlays in Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Subs.	0	33	44	48	51	53	52	56	58	59	455
Unsub.	0	27	36	37	37	32	28	29	33	32	290
PLUS (Par & Grad)	0	4	12	19	17	14	13	9	5	1	95
Consol	0	0	3	7	11	15	21	24	27	30	139
Total for Loans	0	64	94	110	116	114	115	119	124	122	979

Table 5.1B - Estimated Annual Net Budget Impact for Pell Grants, Outlays in Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Discretionary	0	450	306	345	349	413	486	567	660	751	4,327
Mandatory	0	87	59	66	66	78	92	106	124	140	818
Total for Pell	0	537	365	411	415	491	578	673	784	891	5,145

Methodology for Net Budget Impact

This section describes the methodology used to estimate the budget impact of the proposed regulations. The main behaviors that drive the direction and magnitudes of the budget impacts of the proposed regulations are the performance of programs and the enrollment and borrowing decisions of students. The Department developed a model based on assumptions regarding enrollment, program performance, student response to program performance, and average amount of title IV, HEA funds per student to estimate the budget impact of these proposed regulations. These assumptions and results vary from those in the "Impact of the Proposed

Regulations" section, consistent with the Credit Reform Act of 1990. The model (1) uses PPD:2026 to synthesize programs' results on the earnings premium measure to predict future results, and (2) tracks programs' cumulative results across multiple cycles of results to determine title IV, HEA loan eligibility and estimated effects on borrowing and Pell Grant receipt. While programs will be defined at the six-digit CIP level for the regulation, the data file includes two-digit and four-digit CIP codes that are used in our estimation process.

Assumptions

Assumptions were made in four areas to estimate the budget impact of the

proposed regulations: (1) Program performance under the proposed regulations (initial and continued); (2) Student behavior in response to program performance; (3) Borrowing of students under the proposed regulations; and (4) Enrollment growth of students in passing and failing programs. Table 5.2 provides an overview of the main categories of assumptions and sources. Assumptions that are included in our sensitivity analysis are also noted. Wherever possible, our assumptions are based on past performance and student enrollment patterns in data maintained by the Department or documented by scholars in prior research.

Table 5.2 - Main Assumptions and Sources

Category	Detail	Source	Included in sensitivity?
Initial Program Performance	Share in each performance category in public data set	Department Data	No
Enrollment Growth	Annual enrollment growth rate by sector/level and year	Sector-level projections based on Department data	No
Program transition between performance categories	AY2026-27 onward, separately by loan risk group	Based on Department Data	Yes
Student response	Share of students who remain in programs, transfer to passing programs, or dropout by program performance category and transfer group	External research and assumptions from 2023 RIA	Yes
Student borrowing	Debt changes if students transfer to passing program or dropout by program performance, risk group, cohort	Based on Department Data	No

Enrollment Growth Assumptions

For AYs 2026 to 2036, the budget model assumes a constant yearly rate of growth or decline in enrollment of students receiving title IV, HEA program

funds in absence of the rule.⁷⁰ The average annual rate of change in title IV, HEA enrollment from AY 2016 to AY 2025 is computed, separately by the combination of control and credential level. This rate of growth is assumed for

each type of program for AYs 2026 to 2036 when constructing our baseline enrollment projections.⁷¹ Table 5.3 reports the assumed average annual percent change in title IV, HEA enrollment.

Table 5.3 - Annual Enrollment Growth Rate (Percent)

Assumptions

	Public	Private, Non-Profit	Proprietary
Associate	0.4	1.2	3.0
Bachelor	0.9	0.9	0.6
Doctoral	4.4	5.6	0.3
Graduate Certificate	8.1	6.9	5.4
Master's	3.4	1.3	1.5
Post-Bacc Certificate	12.4	1.8	2.4
Professional	1.9	2.0	2.4
Undergrad Certificate	3.9	0.7	4.7

Program Performance Transition Assumptions

The methodology, described in more detail below, models title IV, HEA enrollment over time not for specific programs, but rather by groupings of programs by broad credential level and control, the number of alternative programs available, and whether the

program passes or fails the relevant performance measure. The model estimates the flow of students between these groups due to changes in program performance over time and reflects assumptions for the share of enrollment that would transition between the following two performance categories in each year:

- Passing (includes with and without data).
- Failing earnings premium measure. A program becomes ineligible if it fails the earnings premium measure in two out of three consecutive years.⁷² The model applies the same program transition assumptions across the budget estimation window from FY 2026 to FY 2035. All transition

⁷⁰ AYs 2027 to 2036 are transformed to FYs 2026 to 2035 later in the estimation process.

⁷¹ The number of programs in proprietary graduate certificate and proprietary professional degrees was too low to reliably compute a growth

rate. Therefore, we assumed a rate equal to the overall proprietary rate of 2.4 percent.

⁷² Factors, such as in-state percentage, contribute to the earnings threshold used at the program-level and are incorporated into the public data file used

in this analysis. For more information, see Table 3.4 in the “Methodology for Proposed Regulation Calculations” section.

probabilities are estimated separately for four aggregate groups: proprietary 2-year or less; public or non-profit 2-year or less; 4-year programs; and graduate programs.⁷³

The assumptions for program transition are taken directly from an observed comparison of actual rates in the PPD:2026 data results. The initial assignment of performance categories in 2027 is based on the PPD:2026 for students who completed programs during the 2017–18 and 2018–19 award years, whose earnings are measured in calendar years 2022 and 2023, respectively (adjusted to constant 2024 dollars using CPI–U). The program

transition assumptions for 2027 to 2036 are based on the outcomes for this cohort of students. Programs with fewer than 16 completers with earnings records are determined to be passing.

As the earnings premium metric in this regulation is backwards looking, it is not expected for there to be much churn between failing and passing for programs across consecutive years. It is expected for there to realistically be a small amount of movement around the earnings thresholds. To simulate this, the percentage of programs within a 1 percent band of their earnings premium threshold (0.5 percent on either side) were calculated for each group. The

percentage of programs within the band, dependent on their initial status, were applied to calculate the share of enrollment that transitions from passing to failing or failing to passing. The percentages of programs outside of the band, dependent on their initial status, were applied to calculate the share of enrollment that remain passing or failing. The share of enrollment that transitions from each performance category to another is computed separately for each group. An alternative assumption was incorporated by increasing the band from 1 percent to 2 percent for calculating these transitions in the sensitivity analysis.

Table 5.4 - Program Transition Assumptions

		Percent in Year t+1 Status	
		Pass	Fail EP
Proprietary 2-year or less			
Year t Status	Pass	99.2	0.8
	Fail EP	6.0	94.0
Public and Non-Profit 2-year or less			
Year t Status	Pass	99.6	0.4
	Fail EP	3.3	96.7
4-year			
Year t Status	Pass	99.9	0.1
	Fail EP	5.3	94.7
Graduate			
Year t Status	Pass	99.9	0.1
	Fail EP	4.6	95.4

Student Response Assumptions

The Department's model applies assumptions for the probability that a current or potential student would transfer or choose a different program, remain in or choose the same program, or withdraw from or not enroll in any postsecondary program in reaction to a program's performance. The model assumes that student response would be greater when a program becomes ineligible for title IV, HEA loans than when a program has a single year of inadequate performance, which initiates warnings and publicly disclosed performance information. The rates of transfer and withdrawal or non-enrollment differ with the number of

alternative transfer options available to students enrolled (or planning to enroll) in a failing program. Specifically, individual programs are categorized into one of four categories:

- High transfer options: Have at least one passing program in the same credential level at the same institution and in a related field (as indicated by being in the same 2-digit CIP code).
- Medium transfer options: Have a passing transfer option within the same ZIP3, credential level, and narrow field (4-digit CIP code).
- Low transfer options: Have a passing transfer option within the same ZIP3, credential level, and broad (2-digit) CIP code.

- Few transfer options: Do not have a passing transfer option within the same ZIP3, credential level, and broad (2-digit) CIP code. Students in these programs would be required to enroll in either a distance education program or enroll outside their ZIP3. Over 99 percent of failing programs have at least one non-failing program at the same credential level and 2-digit CIP code in the same State.

For each of the four categories above, assumptions are made for each type of student transition. Programs with passing metrics are assumed to retain all their students. Students from programs with failing metrics that transfer are assumed to transfer to passing programs.

⁷³ The budget simulations separate lower and upper division enrollment in 4-year programs. We assume the same program transition rates for both.

It is assumed that rates of withdrawal (or non-enrollment) and transfer are higher for ineligible programs than those where only the warning is

required. It is also assumed that rates of transfer are decreasing (and rates of dropout and remaining in programs are both increasing) as students have fewer

transfer options. These assumptions regarding student responses to program results are provided in Table 5.5.

Table 5.5 - Student Response Assumptions, by Program Result and Number of Alternative Program Options Available

Program Result Student Response	Pass			Fail once			Ineligible		
	Remain	Transfer	Dropout	Remain	Transfer	Dropout	Remain	Transfer	Dropout
High Alternatives	1	0	0	0.80	0.15	0.05	0.2	0.6	0.2
Medium Alternatives	1	0	0	0.85	0.09	0.06	0.2	0.55	0.25
Low Alternatives	1	0	0	0.90	0.03	0.07	0.25	0.45	0.3
Few Alternatives	1	0	0	0.90	0.02	0.08	0.25	0.35	0.4

The assumptions for student responses are applied to the estimated enrollment in each aggregate group after factoring in enrollment growth. Table 5.6, includes details of the assumptions

of the destinations among students who transfer, separately for the following groups:⁷⁴

- Risk 1 (Proprietary <= 2 year)
- Risk 2 (Public, Non-Profit <= 2 year)
- Risk 3 (Lower division 4 year)
- Risk 4 (Upper division 4 year)
- Risk 5 (Graduate)

Table 5.6 - Student Response Assumptions, Among Transferring Students

Shift from...	Shift to New Programs				
	Risk 1	Risk 2	Risk 3	Risk 4	Risk 5
Risk 1	0.5	0.4	0.1	0	0
Risk 2	0.2	0.7	0.1	0	0
Risk 3	0.05	0.1	0.85	0	0
Risk 4	0	0	0	1	0
Risk 5	0	0	0	0	1

The values in the student response tables are based on assumptions from extant research that we view as reasonable guides to the share of students likely to transfer to or choose another program when their program loses title IV, HEA eligibility. For instance, a 2021 Government Accountability Office (GAO) report found that about half of non-completing students who were enrolled at closed institutions transferred.⁷⁵ This magnitude is similar to recent analysis that found that 47 percent of students reenrolled in another program after an

institutional closure.⁷⁶ The authors of this report find very little movement from public or non-profit institutions into proprietary institutions, but considerable movement in the other direction. For example, about half of re-enrollees at closed proprietary, 2-year institutions moved to public 2-year institutions, whereas less than 3 percent of re-enrollees at closed public and private non-profit 4-year institutions moved to proprietary institutions. Other evidence from historical cohort default rate sanctions indicates a transfer rate of about half of students at proprietary

colleges that were subject to loss of federal financial aid disbursement eligibility, with much of that shift to public two-year institutions.⁷⁷ The Department also considered an internal analysis of ITT Technical Institute closures. About half of students subject to the closure re-enrolled elsewhere (relative to pre-closure patterns). The majority of students that re-enrolled did so in the same two-digit CIP code. Of associate's degree students that re-enrolled, 45 percent transferred to a public institution, 41 percent transferred to a different proprietary

⁷⁴ Lower division includes students in their first two years of undergraduate education. Upper division includes students in their third year or higher.

⁷⁵ U.S. Government Accountability Office. "College Closures: Education Should Improve Outreach to Borrowers about Loan Discharges." July 15, 2022. www.gao.gov/products/gao-22-104403.

⁷⁶ State Higher Education Executive Officers Association (2022). "More Than 100,000 Students Experienced An Abrupt Campus Closure Between July 2004 and June 2020. November 15, 2022. sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/.

⁷⁷ Cellini, S.R., Darolia, R., & Turner, L.J. (2020). Where do students go when for-profit colleges lose federal aid? *American Economic Journal: Economic Policy*, 12(2), 46–83.

institution, and 13 percent transferred to a private non-profit institution. Most remained in associate's or certificate programs. Of bachelor's degree students that re-enrolled, 54 percent transferred to a different proprietary institution, 25 percent shifted to a public institution, and 21 percent transferred to a private non-profit institution.

Data from the Beginning Postsecondary Students Longitudinal 2012/2017 study provides further information on students' general patterns through and across postsecondary institutions (not specific to responses to sanctions or closures). Of students that started at a public or private non-profit 4-year institution, about 3 percent shifted to a proprietary institution within 5 years. Of those that began at a public or private non-profit 2-year institution, about 8 percent shifted to a proprietary institution within 5 years.

Student Borrowing Assumptions

To incorporate changes in average loan volume associated with student transitions, the average subsidized and unsubsidized direct loan, Grad PLUS, and Parent PLUS per student enrolled are computed separately by risk group and program performance group. These averages are then applied to shifts in enrollment to generate changes in the amount of aid. The baseline incorporates the sunset of Grad PLUS loans due to the OBBB. Students that drop out of (or decline to enroll in) failing programs are assumed to acquire no educational debt.

Process for Net Budget Impact Estimate

The budget model estimates a yearly enrollment for AYs 2027 to 2036 and the distribution of those enrollments in programs is characterized by earnings premium measure performance, risk group, and transfer category. This enrollment is projected for a baseline (in absence of the accountability framework) and under the legislative changes implemented in the proposed regulations. The net budget impact for each year is calculated by applying assumptions regarding the average amount of title IV, HEA program funds received by these distributions of enrollments across groups of programs. The difference in these two scenarios provides the Department's estimate of the impact of the accountability framework. We do not simulate the impact on the rule at the individual program level because doing so would necessitate very specific assumptions about which programs students transfer to in response to the proposed regulations. Therefore, for the purposes

of budget modeling, we perform analysis with aggregations of programs into groups (called "program aggregate" groups) defined by the following:

- Five student loan model risk groups: (1) 2-year (and below) proprietary; (2) 2-year (and below) public or non-profit; (3) 4-year (any control) lower division, which is students in their first two years of a Bachelor's program; (4) 4-year (any control) upper division, which is students beyond their first two years of a Bachelor's program; (5) Graduate student (any control).
- Four transfer categories (high, medium, low, few alternatives) by which the student transfer rates are assumed to differ. This is an initially assigned program-level characteristic and is assumed not to change.
- Four performance categories: Pass, Fail earnings premium measure, Pre-ineligible (a program's current enrollment is title IV, HEA eligible, but next year's enrollment would not be), Ineligible (current enrollment is not title IV, HEA eligible).

We first generate a projected baseline (in absence of the accountability framework) enrollment, Pell volume, and loan volume for each of the program aggregate groups from AYs 2027 to 2036. This baseline projection includes several steps. First, we compute average annual growth rate for each control by credential level from 2016 to 2025. These growth rates are presented in Table 5.3. We then apply these annual growth rates to the actual enrollment by program in 2025 to forecast enrollment in each program in 2026. This step is repeated for each year to get projected enrollment by program through 2036. We then compute average Pell, subsidized and unsubsidized direct loan, Grad PLUS, and Parent PLUS per enrollment by risk group and program performance group for 2025. These averages are then adjusted according to the President's Budget FY2027 assumptions loan volume and Pell Grant baseline assumptions for the change in average loan by loan type and the change in average Pell Grant. We then multiply the projected enrollment for each program by these average aid amounts to get projected total aid volume by program through 2036. Finally, we sum the enrollment and aid amounts across programs for each year to get enrollment and aid volume by program aggregate group, AYs 2027 to 2036, and shift the baseline Pell and loan volume from AYs 2027 to 2036 to FYs 2026 to 2035 for calculating budget cost estimates.

The most significant task is to generate projected enrollment, Pell

volume, and loan volume for each of the program aggregate groups from AYs 2027 to 2036 with the proposed accountability framework in place. We assume the first set of rates would be released in the 2027 award year, so this is the starting year for our projections. Projecting counterfactual enrollment and aid volumes involves several steps:

Step 1: Start with the enrollment by program aggregate group in 2027. In this first year, there are no programs that are ineligible for title IV, HEA funding.

Step 2: Apply the student transition assumptions to the enrollment by program aggregate group. This generates estimates of the enrollment that is expected to remain enrolled in the program aggregate group, the enrollment that is expected to drop out of postsecondary enrollment, and the enrollment that is expected to transfer to a different program aggregate group.

Step 3: Compute new estimated enrollment for the start of 2028 (before the second program performance is revealed) for each cell by adding the remaining enrollment to the enrollment that is expected to transfer into that group. We assume that (1) students transfer from failing or ineligible programs to passing programs in the same transfer group; (2) Students in risk groups 4 or 5 stay in those risk groups; (3) Students in risk group 1 can shift to risk groups 2 or 3; (4) Students in risk group 2 can shift to risk groups 1 or 3; (5) Students in risk group 3 can shift to risk groups 1 or 2. Therefore, we permit enrollment to shift between proprietary and public or non-profit certificate, associate's, and lower-division bachelor's programs, based on the assumptions listed in Table 5.6.

Step 4: Determine the change in aggregate baseline enrollment between 2027 and 2028 for each risk group and allocate these additional enrollments to each program aggregate group in proportion to the group enrollment computed in Step 3.

Step 5: Apply the program transition assumptions to the aggregate group enrollment from Step 4. This results in estimates of the enrollment that would stay within or shift from each performance category to another performance category in the next year. This mapping would differ by risk group, as reported in Table 5.4. Enrollment in a failing category would not remain in the same category because if a metric is failed twice, this enrollment would move to pre-ineligibility. The possible program transitions for programs are:

- Pass → Pass, Fail Earnings Premium
- Fail Earnings Premium → Pass, Pre-Ineligible

Step 6: Compute new estimated enrollment at end of 2028 (after program performance is revealed) for each program aggregate group by adding the number that stay in the same performance category plus the number that shift from other performance categories.

Step 7: Repeat steps 1 to 6 above using the end of 2028 enrollment by group as the starting point for 2029 and repeat through 2036. The only addition is that in Step 5, two more program transitions are possible for failing programs:

- Pre-Ineligible → Ineligible
- Ineligible → Ineligible (no change)

Step 8: Generate projected Pell and loan volume by program aggregate group from AYs 2027 to 2036 under the proposed rule. We multiply the projected enrollment by group by average aid amounts (Pell and loan volume) that vary over time to get projected total aid amounts by group through 2036. Any enrollment that has dropped out (not enrolled in any postsecondary program) get zero Pell Grant and loan amounts. Enrollment in the Ineligible category initially receives Pell Grants but no loan amounts. To account for revisions to the standards of administrative capability (§ 668.16), Pell Grant amounts in the Ineligible category are reduced by 60 percent starting in 2030 to capture the estimated impact. This is based on an analysis, using PPD:2026, of the percentage of Pell

Grant volume at low-earning outcome programs at institutions in which more than half of title IV, HEA recipients or more than half of title IV, HEA funds are from low-earning outcome programs. While the accountability framework does not make programs ineligible for Pell Grants immediately, we do estimate that borrowers whose programs lose eligibility for title IV, HEA loans will transfer programs or choose not to attend with corresponding effects on their Pell Grants.

Step 9: Shift Pell and loan volume under the proposed rule from AYs 2027 to 2036 to FYs 2026 to 2035 for calculating budget cost estimates.

Step 10: Calculate adjustment factors capturing the replacement of the current regulations with the accountability framework in the proposed regulations. This is done by first calculating the percentage change between the model results for the baseline and accountability framework scenarios described in the previous steps and then generating the inverses of the adjustment factors for the current regulations. These two adjustment factors are multiplied to create a final adjustment factor that represents both the removal of the current regulations and the impact of the accountability framework.

Accountability Framework and Model Results

Key distinctions between the proposed accountability framework and

the current GE regulations are the applicability to programs regardless of institutional control and the removal of annual and discretionary debt-to-earnings rate metrics. Degree programs at private proprietary, private not-for-profit, and public institutions that fail the earnings premium measure in two of any three years will lose eligibility for title IV, HEA loans. The proposed regulations are estimated to shift enrollment towards passing programs with higher median earnings and away from programs that fail the earnings premium metrics. The vast majority of students are assumed to resume their education at the same or another program in the event they are warned about poor program performance or if their program loses eligibility. The proposed regulations are also estimated to reduce overall enrollment, as some students decide not to enroll. Changes in enrollment patterns in Tables 5.7 and 5.8 reflect students transferring in and out of each risk group, as well as remaining in programs that do not provide title IV, HEA loans, or dropping out.⁷⁸ Table 5.7 summarizes the main enrollment results from within the accountability framework model. By the end of the analysis window, 99.6 percent of title IV, HEA enrollment is expected to be in passing programs.

Table 5.7 - Projected Title IV, HEA Enrollment Estimate within the Accountability Framework Model

		2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Projected Total Aggregate Enrollment (millions)											
	Baseline	20.99	21.29	21.60	21.92	22.25	22.60	22.95	23.31	23.68	24.07
	Policy	20.99	21.25	21.34	21.76	22.14	22.50	22.85	23.20	23.55	23.91
Percent of Enrollment by Program Performance											
Pass	Baseline	96.8	96.8	96.7	96.7	96.6	96.6	96.5	96.5	96.4	96.4
	Policy	96.8	97.2	99.4	99.6	99.6	99.6	99.6	99.6	99.6	99.6
Fail EP	Baseline	3.2	3.2	3.3	3.3	3.4	3.4	3.5	3.5	3.6	3.6
	Policy	3.2	2.8	0.6	0.4	0.4	0.4	0.4	0.4	0.4	0.4

⁷⁸Tables 5.7 and 5.8 represent enrollment estimated within the accountability framework model, which is not equivalent to borrower count.

Table 5.8 - Projected Percent of Title IV, HEA Enrollment**Estimate by Loan Risk Category within the Accountability****Framework Model**

		2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Percent of Enrollment by Loan Risk Category											
Prop. 2-year & below	Baseline	5.63	5.77	5.93	6.08	6.24	6.40	6.56	6.73	6.90	7.08
	Policy	5.63	5.64	5.05	5.29	5.51	5.70	5.87	6.03	6.18	6.34
Public/NP 2-year & below	Baseline	33.49	33.36	33.24	33.11	32.99	32.87	32.73	32.60	32.47	32.34
	Policy	33.49	33.40	33.47	33.37	33.25	33.11	32.97	32.82	32.66	32.51
4-year (lower)	Baseline	32.60	32.42	32.25	32.07	31.88	31.69	31.50	31.30	31.10	30.89
	Policy	32.60	32.50	32.71	32.46	32.25	32.06	31.88	31.71	31.54	31.37
4-year (upper)	Baseline	13.55	13.47	13.40	13.33	13.25	13.18	13.10	13.02	12.93	12.85
	Policy	13.55	13.50	13.54	13.41	13.31	13.22	13.14	13.06	12.99	12.91
Graduate	Baseline	14.74	14.96	15.18	15.40	15.63	15.86	16.10	16.34	16.59	16.84
	Policy	14.74	14.97	15.24	15.46	15.68	15.91	16.15	16.39	16.63	16.87

In addition to changes in enrollment, both overall and between risk groups, differences in average loan amounts are a factor in estimating total volume. While Tables 5.7 and 5.8 display estimates from within the accountability framework model, total volume changes and the net budget impact include removal of the current regulations. While non-GE programs were not subject to potential ineligibility under the current regulations, students could react to poor performance, so the net budget impact reflected changes for all institution types. In the current regulations, higher-level and higher-debt programs were particularly impacted by the D/E measures and resulting student reactions. Additionally, Pell Grant eligibility was treated the same way as loan eligibility in the current regulations, while the impact of the accountability framework on Pell Grants from the standards of administrative capability is lesser.

The accountability framework estimation process described in the methodology, and the resulting change in Direct Loan and Pell Grant volume

over the budget window compared to the estimated change in Direct Loan and Pell Grant volume from current regulations, generates the primary net budget impact shown in Tables 5.1A and 5.1B.

Sensitivity Analysis

The Department's calculations of the net budget impacts represent our best estimate of the effect of the regulations on the Federal student aid programs. Realized budget impacts will be heavily influenced by actual program performance, student response to program performance, student borrowing, and changes in enrollment because of the regulations. For example, if students, including prospective students, react more strongly to the warnings or potential ineligibility of programs than anticipated, and if many of these students leave postsecondary education, the impact on Pell Grants and loans could change.

Therefore, we conducted simulations of the rule while varying several key assumptions. Specifically, we provide estimates of the change in title IV, HEA

volumes using varied assumptions about student transitions, student dropout, and program performance. We believe these to be the main sources of uncertainty in our model.

Along with the primary estimate, the scenarios presented in the "Sensitivity Analysis" are intended to provide a reasonable estimation of the range of impact that the proposed regulations could have on the budget.

Varying Levels of Student Transition

The primary analysis assumes rates of transfer and dropout for programs based on relevant research and literature, but these quantities are uncertain. The alternative models adjust transfer and dropout rates for all transfer groups to the rates for high alternatives (Tables 5.9A and 5.9B) and few alternatives (Tables 5.10A and 5.10B). As reported in Tables 5.9A, 5.9B, 5.10A, and 5.10B, it is estimated that the proposed regulations would result in an increase in title IV, HEA aid between fiscal years 2026 and 2035, regardless of whether all students have the highest or lowest amount of transfer alternatives.

Table 5.9A - High Transfer Sensitivity Analysis - Estimated
Annual Net Budget Impact for Direct Loans, Outlays in
Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Subs.	0	35	48	51	54	55	54	57	59	60	472
Unsub.	0	28	37	38	38	36	30	30	33	32	302
PLUS (Par & Grad)	0	2	7	16	14	12	11	8	4	1	75
Consol	0	0	3	7	15	16	22	25	28	31	148
Total for Loans	0	65	96	112	121	119	117	120	125	123	997

Table 5.9B - High Transfer Sensitivity Analysis - Estimated
Annual Net Budget Impact for Pell Grants, Outlays in
Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Discretionary	0	462	357	393	396	447	511	586	676	764	4,592
Mandatory	0	90	68	75	75	85	96	110	127	143	869
Total for Pell	0	552	425	468	471	532	607	696	803	907	5,461

Table 5.10A - Low Transfer Sensitivity Analysis - Estimated
Annual Net Budget Impact for Direct Loans, Outlays in
Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Subs.	0	27	31	35	41	45	46	50	53	55	382
Unsub.	0	23	28	26	30	28	23	26	31	31	247
PLUS (Par & Grad)	0	10	23	31	28	24	21	16	12	7	172
Consol	0	0	2	4	7	10	13	16	22	22	97
Total for Loans	0	60	84	97	106	107	103	109	118	115	898

Table 5.10B - Low Transfer Sensitivity Analysis - Estimated
Annual Net Budget Impact for Pell Grants, Outlays in
Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Discretionary	0	405	164	183	166	260	358	458	565	666	3,225
Mandatory	0	78	32	35	32	49	67	86	106	124	609
Total for Pell	0	483	196	218	198	309	425	544	671	790	3,834

Increased Program Transition Band

Our primary analysis assumes that programs in a one percent band around

the relevant earnings threshold will transition from failing to passing, and vice versa, but the transition band could be higher. A sensitivity was modeled

with a two percent band to demonstrate the effect of more programs changing between failing and passing statuses.

As reported in Tables 5.11A and 5.11B, we estimate that the regulations would result in an increase in title IV,

HEA aid between fiscal years 2027 and 2036, regardless of whether a one or two

percent band around the relevant earnings threshold is applied.

Table 5.11A - High Program Transition Band Sensitivity -

Estimated Annual Net Budget Impact for Direct Loans,

Outlays in Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Subs.	0	33	45	47	50	52	51	54	56	57	445
Unsub.	0	28	36	37	37	31	24	27	32	31	284
PLUS (Par & Grad)	0	4	10	18	16	14	11	8	2	(2)	81
Consol	0	0	3	7	11	15	21	24	27	29	138
Total for Loans	0	65	94	109	114	112	108	113	118	116	949

Table 5.11B - High Program Transition Band Sensitivity -

Estimated Annual Net Budget Impact for Pell Grants, Outlays

in Millions \$

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Discretionary	0	457	327	351	337	392	458	532	619	704	4,177
Mandatory	0	88	63	67	64	75	86	100	116	132	791
Total for Pell	0	545	390	418	401	467	544	632	735	836	4,968

Accounting Statement

As required by OMB Circular A-4, we have prepared an accounting statement showing the classification of the benefits, costs, and transfers associated with the provisions of these regulations. As noted in the *Paperwork Reduction*

Act section, some items are reductions in burden and others are increases, with a combination of one-time adjustments and recurring items. The net effect of this is a reduction in burden that is displayed as a benefit in the accounting statement. This is a contrast to the presentation in the *Paperwork*

Reduction Act summary table that presents the annual burden without the subsequent net reductions in future years. Table 5.12 provides our best estimate of the changes in annualized monetized benefits, costs, and transfers as a result of these proposed regulations.

Table 5.12 Accounting Statement for Primary Scenario

	Annualized Impact (millions, \$(2026))	
Category	Benefits	
	3 percent	7 percent
Net reduction in costs of compliance with paperwork requirements	\$108.6	\$99.1
Earnings gain for students at programs that are not low-earning outcome programs.	Not quantified	
Measures to improve programs at risk of failing, such as offering better student services, helping with career planning, and working with employers to ensure graduates have in-demand skills may lead to better graduation and labor market outcomes.	Not quantified	
Reduced risk that students enroll in high-cost programs that do not produce earnings that justify their costs	Not quantified	
Approximately 30 percent reduction in reporting elements required of institutions, many of which the Department can produce from its administrative data	Not quantified	
No loss of title IV, HEA aid and additional non-Federal revenues for programs, primarily programs at proprietary institutions and certificate programs from all sectors, that would lose eligibility under the current regulations but not the proposed regulations	Not quantified	
Category	Costs	
	3 percent	7 percent

Costs of system changes for Education to implement the proposed regulations	\$2.4	\$2.8
Federal implementation staffing and contract costs	\$1.4	\$1.6
Federal long-term staffing increases	\$0.9	\$0.9
Additional ongoing contract costs to operate and maintain systems to administer regulatory provisions	\$1.9	\$1.8
Potential for abrupt closures to disrupt enrolled students and impose search costs and financial costs to switch majors or institutions	Not quantified	
Reputational costs for former graduates of failing programs	Not quantified	
Students at lower-earnings certificate programs that would not remain eligible under the current regulations may earn less	Not quantified	
Reputational cost to institutions offering multiple failing programs	Not quantified	
Lost revenue from non-Federal sources because of enrollment declines at institutions with failing programs	Not quantified	
Category	Transfers	
	3 percent	7 percent
Reduced transfers from Federal government to Pell recipients at programs satisfying the earnings measure	\$497	\$475
Increased transfers of Federal loan dollars from the Federal Government to students at programs that pass the earnings measure	\$95	\$92
Transfer of State aid dollars from failing programs for dropouts	Not quantified	

6. Alternatives Considered

During the negotiated rulemaking process, the Department received more than 40 proposals from non-Federal negotiators representing numerous impacted constituencies on a variety of issues. Throughout the *Significant Proposed Regulations*, we noted proposals that were accepted by the committee, all other proposals were discussed and declined. To view all submitted proposals, see here: <https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-education-policy/negotiated-rulemaking-for-higher-education-2025-2026>.

This section will summarize particularly significant alternatives to the proposed regulations which were declined during negotiated rulemaking.

§ 668.2 General Definitions

In this rule, we propose to adapt the existing definition of the earnings threshold used in the earnings premium calculation under the current FVT regulations to conform with the earnings benchmark specified under the OBBB. This benchmark would use State or national earnings data from the ACS.

Some negotiators raised questions about various elements of the ACS, which is to be used to determine the earnings threshold for evaluation. In particular, negotiators expressed concern that the use of median earnings data at only the State or national level may disadvantage programs and institutions located in rural areas where expected wages may be lower compared to State and national medians.

The Department examined this issue and found that programs at rural institutions will be impacted by the proposed regulation at a roughly equivalent rate as the current regulation (Table 3.9). Specifically, the Department estimates that approximately 2.2 percent of enrollment at rural institutions is in programs that would fail under the proposed rule, which is a slight increase relative to the current regulations (1.7 percent). However, rural institutions would lose a smaller share of title IV, HEA funds under the proposed regulation relative to the current rule (1.1 percent vs. 1.4 percent).

Furthermore, the OBBB is highly prescriptive with regard to the precise manner in which program earnings would be evaluated, specifying factors for comparison such as age ranges, working status, education level, and geography. Congress did not include a regional price parity adjustment in Section 84001, even though they included it elsewhere in the OBBB for

value-added earnings for eligible workforce programs. The Department believes that the absence of a regional price parity in Section 84001, but its inclusion in other parts of the OBBB, suggests that Congress did not intend for the Department to adjust program earnings at rural institutions.

Another negotiator submitted a suggestion to adjust the earnings threshold for certificate programs having at least 75 percent of female completers downward to 85 percent of the median earnings for the comparison group to account for “gender-based” wage gaps. The Department disagrees with this proposal for several reasons. First, the Department does not believe that the statute allows this manner of adjustment to the earnings benchmark. Again, Congress was prescriptive regarding how the benchmark group must be defined. Second, such an adjustment could also undermine the consistent treatment of programs, could potentially lead to confusion among stakeholders, and would also appear to be in conflict with the spirit of Executive Order 14173’s prohibition on identity-based preferential treatment based on race, color, sex, sexual preference, religion, or national origin. Third, the Department finds that undergraduate certificate programs that enroll at least 75 percent of female students do not earn less, on average, than other types of programs after controlling for program field of study.⁷⁹

§ 668.402 Student Tuition and Transparency System Framework

In this rule, we propose to amend the existing FVT framework to harmonize with the earnings accountability framework provided under the OBBB. Among these changes, the proposed regulations would rescind the existing D/E rates metric, adapting the earnings premium measure as the sole earnings accountability metric.

Some negotiators proposed that the Department retain the D/E rates metric. These negotiators argued that D/E rates are valuable in preventing the flow of title IV, HEA funds to programs that leave students in a position where they may not be able to afford to repay their student debt. They further reasoned that D/E rates would remain important in the future because pending changes to

Direct Loan limits under the OBBB may result in an increase in private lending. Other negotiators supported the Department’s proposed changes to eliminate the D/E rates metric, noting that this change would reduce unnecessary complexity while preserving meaningful accountability. These negotiators reasoned that the change reflects statutory intent and may therefore reduce risk of future policy fluctuations.

As the Department notes above in the discussion of proposed § 668.402, we believe the proposed revision to remove the D/E rates metric reflects the intent of the OBBB, as the Direct Loan program accountability framework in revised HEA Section 454(c) establishes an earnings comparison metric only, not a debt-to-earnings measurement. While calculating an earnings premium measure requires very little reported data other than an accurate list of students who completed the program, D/E rates rely heavily on significant amounts of institutionally reported data regarding costs and sources of student financial assistance beyond the title IV, HEA programs. Such reporting can be burdensome and confusing for institutions and, given the Department’s concerns about the completeness and accuracy of this reported data, we believe this data would be more appropriate for use in informational disclosures as we have proposed rather than in an accountability metric used to determine a program’s eligibility for Direct Loan program funds.

Furthermore, the Department finds that maintaining the D/E metric would result in a very small increase in the overall share of programs that would fail the accountability framework. As shown in Table 6.1, maintaining the D/E metric would increase the share of programs that fail from 5.1 percent to 5.3 percent (columns 3 vs. 4).⁸⁰ In real terms, this increase represents approximately 260 additional programs that would fail the accountability framework, which is an extremely small fraction of the 200,000+ programs that enroll title IV, HEA students nationally.

Furthermore, the Department believes this is likely an overestimate of impact of maintaining the D/E metric for two reasons. First, the debt measures in the PPD:2026 do not reflect the new annual Federal student loan limits that will

⁷⁹ For this analysis, the Department limited the sample to undergraduate certificate programs with earnings data and regressed program earnings on a binary indicator equal to 1 if at least 75 percent of program completers are female and program (cip4) fixed effects. Programs were weighted by the count of individuals in the earnings cohort (*count_wne_p4*) and standard errors were clustered at the program level. The coefficient on the indicator was not statistically significant at conventional levels.

⁸⁰ This analysis assumes that the Annual Earnings Rate measure or the Discretionary Earnings Rate measure under current regulation are aligned with the new earnings definition from Section 84001 in the OBBB—specifically, the median earnings of working title IV graduates measured four years after completion who are not currently enrolled in college.

take effect on July 1, 2026, under the OBBB. Those annual limits (\$20,500 for graduate programs and \$50,000 for professional programs) will reduce the debt that graduate and professional borrowers can accumulate, reducing the risk that program completers would accumulate unmanageable levels of debt.⁸¹ Second, the debt measure in

⁸¹ The Department approximates that a third of the programs it estimates would fail only the D/E test would instead pass once borrowers are subject

PPD:2026 includes the debt of only Federal student loan borrowers, whereas the debt measure under the current regulation includes all students who received title IV, HEA aid, even if they did not borrow. That means the debt measure in PPD:2026 is higher than the one that would ultimately be used if the D/E metric was maintained in the proposed regulation, which would likely result in a smaller share of

to the OBBB loan limits for graduate and professional students.

programs failing the D/E test than what is estimated here.

In summary, the Department estimates that, at most, maintaining the D/E metric would result in a 0.2 percentage point increase in the overall share of programs that would fail the accountability framework. In the Department's view, this marginal addition would not justify the significant difference in complexity, cost, and administrative burden of including D/E rates.

Table 6.1 - Estimated Share of Failing Programs and Students in Failing Programs with D/E Maintained, by Credential Level

Credential Level	N	Share that Fail		
		Current Regs	Proposed Regs	Proposed Regs + Keeping DTE
	(1)	(2)	(3)	(4)
A. Program-Weighted				
Undergrad Cert	17,800	29.3%	18.1%	18.3%
Associate	23,400	1.6	6.0	6.2
Bachelor	52,400	0.3	1.4	1.5
Post-Bacc Cert	700	<0.1	1.3	1.3
Masters	24,600	0.4	4.2	4.3
Doctoral	6,200	0.2	0.4	0.8
Professional	1,100	0.8	2.3	2.5
Grad Cert	2,700	4.1	3.2	6.7
Total	128,900	4.6	5.1	5.3
B. Student-Weighted				
Undergrad Cert	1,726,900	39.4%	25.5%	25.5%
Associate	5,305,000	1.5	4.1	4.4
Bachelor	8,911,200	0.9	0.8	0.9
Post-Bacc Cert	21,300	<0.1	0.9	0.9
Masters	1,975,100	1.0	4.1	4.3
Doctoral	400,700	1.6	0.7	2.6
Professional	297,000	2.4	3.9	4.2
Grad Cert	113,800	5.7	5.4	11.3
Total	18,751,000	4.7	4.4	4.7

Notes. In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV, HEA student counts. Ns are rounded to nearest 100. Total Ns may not sum to their subcomponents due to rounding. Title IV, HEA enrollment corresponds to enrollment during the 2024-25 award year. "DTE" = Debt to Earnings test. When calculating the Annual Earnings Rate and Discretionary Earnings Rate metrics, we use the 4-year median earnings of program completers who are working and not enrolled. This differs from current regulation, where those metrics are calculated using the 3-year median earnings of program completers who are not enrolled.

Source. Department of Education calculations using PPD:2026.

§ 668.403 Calculating Earnings Premium Measure

In this rule, we propose to calculate a program's earnings premium measure using the median annual earnings of working students who completed the program during the cohort period for the fourth tax year following program completion. As under the current FVT/GE regulations, a Federal agency with

earnings data would provide this earnings data and the data would be unmodified other than the potential use of marginal statistical noise for privacy masking purposes.

Some negotiators proposed the use of alternative sources of earnings data. In particular, negotiators suggested that the Department consider obtaining earnings data from State data systems where

available, speculating that such earnings data might in some cases be more accurate than data available at the Federal level and speculating that State data systems may improve over time. Other negotiators expressed concern about the use of non-Federal earnings data, noting that if the Department were to consider the use of State-level earnings data, the Department would

need to evaluate whether the earnings data is more reliable than what a Federal agency with earnings data would provide.

The Department disagrees with the proposal to use State-level earnings data, and we concur with the concerns of the negotiators who objected to this proposal. We believe it would be highly impractical for the Department to evaluate, on an ongoing basis for each State, whether the quality of State-level earnings data exceeds that of Federal-level earnings data. Moreover, even if this were feasible, HEA Section 454(c) does not provide authority for the Department to enter agreements with States to obtain State-level earnings data.

Some negotiators proposed that the Department adjust a program's median earnings data to account for various circumstances including tip income and self-employment. This discussion focused heavily on cosmetology programs, and negotiators suggested that the Department introduce an earnings modifier to address the possibility of

unreported tipped income. Proponents of this view argued that some occupations—such as barbers—rely heavily on tips which may be underreported in Federal earnings data.

The Department disagrees with suggestions to adjust the median graduate earnings data for a program based on purported underreporting of tipped or self-employment income within an occupation. First, the Department's proposed approach includes earned income sources from work as they are reported on IRS forms. Tip income is generally required to be reported to employers and included in the wages reported in box 1 of IRS Form W-2. Additional tip income not otherwise reported is required to be included with wage income on the filer's tax form. Any existing underreporting of income would impact both sides of the earnings premium calculation, *i.e.*, both the measured median earnings of program graduates and the benchmark median earnings of working adults in the earnings threshold.

Second, the Department examined the share of cosmetology programs that would fail the accountability framework under the proposed regulation (Tables 3.16, 3.17, and 3.19). We found that cosmetology programs perform better under the Department's proposed regulation relative to the baseline without an earnings adjustment, implying that, at minimum, these programs will be better off than they would if the existing regulations were left unchanged.

Third, the Department finds that an earnings adjustment for cosmetology programs would not result in a meaningful change in fail rates for these programs (Table 6.2). Even with an 8 percent earnings boost, the vast majority of cosmetology programs (84 percent) would still fail the accountability framework under the proposed rule. These findings align with points raised by other negotiators, who argued that tips are usually reported, and that to the extent that they may be underreported, that underreporting is minimal.

Table 6.2 - Estimated Share of Cosmetology Certificate

Programs that Fail, with Earnings Adjustment

Cosmetology and Related Personal Grooming Services.	Credential Level	N	Share that Fail		
			Current Regs	Proposed Regs	Proposed Regs + Boosted Earnings
			(1)	(2)	(3)
Programs	Ug Cert	1,200	97.4%	92.5%	83.9%
Students	Ug Cert	225,400	97.3	92.5	83.6
Title IV Volume	Ug Cert	1,424	97.9	88.3	80.4

Notes. Program and student N sizes are rounded to the nearest 100. Title IV Volume, in \$ millions, is rounded to the nearest million. Percentages in columns 2, 3, and 4 are computed prior to rounding. In column 4, program earnings are boosted by 8 percent, reflecting the estimated share of un-reported tipped income found in Cellini & Blanchard (2022).

Source. Department of Education calculations using PPD:2026.

Fourth, Congress specifically selected the use of median earnings rather than mean earnings for both the program and benchmark earnings, likely because it would take over half of the respective earners to shift the median value by even a small amount. Adjusting graduate earnings across the board by any amount would over adjust for any

unreported or underreported earnings, to the extent they may exist.

Fifth, negotiators arguing for an earnings adjustment offered no practical way to determine which programs, and by what amount, earnings should be adjusted to account for the possibility of unreported tips. There is limited research on the extent of underreporting

of tipped income by occupation, and the Department does not believe it is appropriate to create a variance for one type of program without clearer information about the extent to which underreporting exists in other occupations.

For all of these reasons, the Department determined that providing

an earnings adjustment for certain programs to account for the possibility of unreported tipped income or self-employment income would be infeasible, burdensome, and arbitrary without stronger data to support establishing a variance to account for unreported earnings for particular types of programs.

Negotiators also suggested modifying a program's median earnings data to account for less than full-time work. The negotiators noted that in certain occupations, graduates may routinely work less than full time, which they argued would unfairly skew earnings premium results that compare their earnings to a full-time earnings benchmark. Other negotiators countered that the statute clearly defines the benchmark group and noted that it would be inappropriate to distinguish between full-time and part-time earnings because all graduates have costs, regardless of how many hours they choose to work. A negotiator further observed that a key function of higher education is to prepare students to obtain better jobs, and to that end the regulations should incentivize full-time work.

The Department disagrees with the suggestion to adjust program earnings to account for the possibility that graduates choose to work less than full time. It is important to note that although some graduates may work less than full time, the same is true of the earnings benchmark group, which considers all applicable working adults of ages 25 through 34 regardless of the number of hours worked. HEA Section 454(c) does not specify that only graduates working full time should be measured, nor does the statute seek to compare graduate earnings to only full-time working adults. Adjusting either side of the earnings premium equation would necessitate adjusting the other, and doing so would invite significant burden, costs, and increased risk of inaccurate determinations. Furthermore, this suggestion may not be feasible since the Federal agency with earnings data may not have access to information on the hours worked by program graduates, preventing them from making adjustments based on full-time and part-

time work status. The Department also believes that the statute does not authorize this type of adjustment, as it would circumvent the specific methodology prescribed by Congress.

§ 668.601 Earnings Accountability Scope and Purpose

In this rule, we propose implementing the accountability framework required under the OBBB pertaining to Direct Loan program eligibility of undergraduate degree programs, graduate and professional degree programs, and graduate nondegree programs, and to harmonize those regulations with requirements for programs that are required to lead to gainful employment (GE programs). Some negotiators proposed that the Department entirely rescind the existing GE accountability framework in favor of the OBBB accountability framework to reduce regulatory complexity. Other negotiators argued for retaining the existing GE accountability framework without alteration, arguing that it provides students and taxpayers a greater degree of protection from poorly performing undergraduate certificate programs and that fully rescinding the current GE accountability framework would exclude undergraduate certificate programs from oversight, putting students and taxpayers at increased risk.

As further discussed in the "Significant Proposed Regulations" section above, although undergraduate certificate programs were not specifically mentioned in Section 84001 of the OBBB, Congress nonetheless did not explicitly forbid the Secretary from applying the accountability framework to those programs, nor did Congress choose to otherwise eliminate, limit, or curtail the Department's existing GE accountability framework, either when crafting the OBBB or in any other prior legislative act. Congress was in fact aware when passing the OBBB that undergraduate certificate programs were already covered using a similar earnings test under the Department's existing GE accountability framework. The Department therefore believes that rescinding the existing GE framework altogether, thereby excluding undergraduate certificate programs from

the accountability framework, would contradict Congressional intent for program accountability in higher education, and we agree with the negotiators who noted that doing so would put students and taxpayers at increased risk.

However, we also disagree with the proposal to maintain the existing GE accountability framework in its current form, because maintaining competing GE and OBBB accountability frameworks would add significant complexity, increase administrative burden and costs for institutions and the Department, and could generate increased confusion for students in comparing and understanding differing informational disclosures and warnings generated from multiple frameworks that apply to different types of institutions and programs. We view harmonization of the existing FVT/GE framework and the OBBB accountability framework to be essential in establishing parity among institutions and program types through a single accountability framework that covers the vast majority of programs qualifying for title IV, HEA assistance and nearly all title IV, HEA recipients.

To better understand this issue, the Department examined the share of programs and students who would attend failing programs if the existing GE accountability framework was entirely rescinded (Table 6.3). We find that entirely rescinding the GE accountability framework would result in half as many failing programs relative to the proposed rule which maintains the GE accountability framework (2.6 percent vs. 5.1 percent). The reduction is entirely driven by undergraduate and graduate certificate programs: these programs would be exempt from the accountability framework if the GE regulation was rescinded. In addition to the reasons stated in the "Significant Proposed Regulations" section above, the Department believes maintaining the GE accountability framework is important because these programs usually produce earnings outcomes that are lower than other programs.

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Table 6.3 - Estimated Share of Programs that Fail and Students in Failing Programs if GE were Eliminated, by Credential Level

Credential Level	N	Share that Fail		
		Current Regs	Proposed Regs	Proposed Regs + Eliminate GE
	(1)	(2)	(3)	(4)
A. Program-Weighted				
Undergrad Cert	17,800	29.3%	18.1%	0.0%
Associate	23,400	1.6	6.0	6.0
Bachelor	52,400	0.3	1.4	1.4
Post-Bacc Cert	700	<0.1	1.3	0.0
Masters	24,600	0.4	4.2	4.2
Doctoral	6,200	0.2	0.4	0.4
Professional	1,100	0.8	2.3	2.3
Grad Cert	2,700	4.1	3.2	3.2
Total	128,900	4.6	5.1	2.6
B. Student-Weighted				
Undergrad Cert	1,726,900	39.4%	25.5%	0.0%
Associate	5,305,000	1.5	4.1	4.1
Bachelor	8,911,200	0.9	0.8	0.8
Post-Bacc Cert	21,300	<0.1	0.9	0.0
Masters	1,975,100	1.0	4.1	4.1
Doctoral	400,700	1.6	0.7	0.7
Professional	297,000	2.4	3.9	3.9
Grad Cert	113,800	5.7	5.4	5.4
Total	18,751,000	4.7	4.4	2.1

Notes. In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV student counts. Ns are rounded to nearest 100. Percentages in columns 2, 3, and 4 are computed prior to rounding.

Source. Department of Education calculations using PPD:2026.

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Some negotiators suggested that programs that lead to low earning outcomes under the proposed accountability framework should lose access to all title IV, HEA programs, as under the current GE accountability framework, rather than losing eligibility for the Direct Loan program only. These negotiators expressed concern about students using their limited lifetime Pell Grant eligibility on programs that are not performing well, and argued that the prospect of losing all title IV, HEA funding for low-earning outcome programs would better incentivize institutions to shift their program offerings away from failing programs or

to improve the quality of their programs, which in turn would better serve the interests of students and taxpayers. Other negotiators argued that a program's loss of Direct Loan program eligibility would in many cases already lead to the closure of the program or possibly the institution itself.

The Department notes that it has a greater interest in applying the accountability framework to the Direct Loan program because, unlike the other programs under title IV, HEA, the government and taxpayers expect loan funds to be repaid. We further note that the accountability framework set forth in Section 84001 of the OBBB resides in the Direct Loan program-specific

provisions in HEA Section 454, which generally limits the scope of consequences to the Direct Loan program only. To the extent that undergraduate certificate programs would be covered by the proposed accountability framework under the GE statutory authority, we believe that authority does not explicitly require the loss of all title IV, HEA eligibility as the sole remedy for noncompliance. In addition, the further proposed changes to the PPA and administrative capability regulations at sections §§ 668.14 and 668.16 would terminate title IV, HEA eligibility for all of an institution's low-earning outcome programs if more than half of the institution's title IV, HEA

recipients or title IV, HEA revenue are from low-earning outcome programs. We believe these proposed provisions would sufficiently address concerns about continued Pell Grant eligibility for institutions whose programs lead to consistently poor earnings outcomes for students.

§ 668.603 Low-Earning Outcome Programs

In this rule, we propose to provide all institutions the option to appeal a low-earning outcome program's loss of Direct Loan program eligibility. Similar to the current GE accountability framework, the proposed earnings accountability framework would limit appeals to instances where the Department erred in the calculation of the program's EP measure.

Some negotiators proposed broadening the factors that an institution could appeal to include the underlying median graduate earnings data used to calculate the earnings premium measure, arguing that there would otherwise rarely be a basis for an institution to appeal under the proposed criteria as both the median graduate earnings and earnings benchmark would be based on elements an institution could not dispute. Negotiators further suggested that the Department consider alternative earnings survey data that might address limitations in available administrative earnings data and improve fairness and due process. Other negotiators expressed support for the scope of the appeals process as proposed, arguing that appeals in other areas of title IV, HEA administration, such as cohort default rates, can sometimes consume significant time and costs, that the earnings standards set forth in the OBBB are specific, and appeals must not circumvent the will of Congress.

The Department disagrees with negotiators who claimed that the proposed basis for appeals would deprive institutions of a meaningful opportunity to appeal a low-earning outcome determination. As under the current GE framework, institutions would have the opportunity to review and correct the list of completers provided to the Federal agency with earnings data to obtain median graduate earnings and could meaningfully appeal any discrepancies pertaining to the completers list. The Department emphatically disagrees with suggestions to allow appeals on the basis of alternative earnings data. IRS earnings data represents the highest quality and most accurate available data source and, accordingly, is also currently used for many other title IV, HEA purposes such

as determining student and family incomes for purposes of establishing student title IV, HEA eligibility and determining loan payments under income-driven repayment plans. Federal requirements for accurate reporting of income and the increasing prevalence of electronic transactions make underreporting income both more difficult and less likely than under past accountability frameworks. The Department also remains concerned about the low quality of data submitted by institutions in alternate earnings appeals, such as graduate earnings surveys and employment verifications, given the Department's experience with such data in appeal submissions under past iterations of GE regulations.

HEA Section 454(c)(5) does not require the Department to consider appeals of earnings data, only of the low-earning outcome determination in HEA Section 454(c)(2). If the Department fails to thoughtfully and purposefully manage the scope and basis of appeals, it could result in institutions inundating both the Department and, potentially, the courts with cumbersome appeals and challenges that are unlikely to prevail but would, nonetheless, generate significant burden and costs for both institutions and the Department, all while delaying accountability and leaving students and taxpayers at continued risk during the appeals process. While we understand concerns about the consequences for institutions and students if a program loses Direct Loan program eligibility under the proposed earnings accountability framework, it is equally important to recognize that in any meaningful accountability framework, some programs will fail. Finally, even given the limited grounds for appeals under the proposed rule, to address truly extenuating circumstances we note that the Department still has the option to exercise other existing authorities to waive or modify title IV, HEA program requirements in national emergencies and has exercised these authorities in the past when appropriate.

Regulatory Flexibility Act

This section considers the effects that the proposed regulations may have on small entities in the Educational Sector as required by the Regulatory Flexibility Act (RFA, 5 U.S.C. *et seq.*, Pub. L. 96–354) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The purpose of the RFA is to establish as a principle of regulation that agencies should tailor regulatory and informational requirements to the size of entities,

consistent with the objectives of a particular regulation and applicable statutes.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute unless the agency certifies that the rule will not have a “significant impact on a substantial number of small entities.”

This proposed regulation amends the current gainful employment regulation to implement statutory changes to the title IV, HEA programs included in the OBBB. Currently, the Department's regulations apply two tests—a debt-to-earnings test and an earnings premium test—to all undergraduate certificate programs and any program offered by proprietary institutions. If these programs fail one of the tests in two out of three consecutive award years, they lose eligibility for all types of title IV, HEA program funding, including both Pell Grants and Direct Loans. As stated throughout the RIA, the Department's baseline assumes the current gainful employment regulations are in effect. This is because, in the absence of the proposed rule, the requirements in the current regulation would be calculated. This is why we use the impact of the current regulation as the baseline to judge the impact of the proposed rule.

The OBBB applies an earnings premium test (“accountability framework”) to each degree program at institutions, expanding the universe of affected programs to include degree programs at non-profit and public institutions. Programs where the median earnings of graduates do not meet a specified threshold in two out of three years lose access to title IV, HEA student loans. Under a separate provision (standards of administrative capability) the proposed regulations require that if a majority of an institution's students or title IV, HEA disbursements are in programs that fail the accountability framework for three years, those programs also lose access to Federal Pell Grants. The proposed regulation also modifies the current FVT/GE rule to replace its eligibility tests with the same earnings tests as under OBBB. However, the law and the Department's proposed regulations would also eliminate one of the two tests by which programs are judged, *i.e.*, the debt-to-earnings test. The law and regulations also amend the earnings premium test that is not as strict as the current version of the test.

For the purposes of this certification the Department has defined “significant economic impact” as increasing or

reducing a small entity's revenues by more than 3 percent, and a "substantial number of small entities" as more the 5 percent of institutions that meet the Department's definition of a small entity.

While the Department is unable to assess the revenue effects of the proposed regulation on individual institutions of higher education due to missing data on the earnings of program completers (see "Data Limitations & Assumptions" section above), the Department can assess the average effects on institutions within different categories. Using that approach, the Department has determined that small institutions will experience a 0.5 percent increase in revenue on average due to the proposed regulations, less than what the Department defines as a significant economic impact. Small institutions are likely to experience an increase in revenue because the proposed accountability framework includes an easier earnings test than under the current accountability framework, resulting in fewer programs failing (and losing access to Federal Title IV funds) within small institutions. Furthermore, the Department determines that each of the four subcategories of small institutions we examine will experience a change in

total revenues of less than 3 percent (Table 7.4).

Description of, and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will Apply

The Small Business Administration (SBA) defines "small institution" using data on revenue, market dominance, tax filing status, governing body, and population. The majority of entities to which the Office of Postsecondary Education's (OPE) regulations apply are institutions of higher education, which do not report such data to the Department. As a result, for purposes of this NPRM, the Department proposes to continue defining "small entities" by reference to enrollment, to allow meaningful comparison of regulatory impact across all types of higher education institutions. We construct four different categories of small entities for the purposes of classifying higher education institutions:⁸²

- (1) Extremely Small (1–249 FTE, full-time equivalent student enrollees);
- (2) Very Small (250–499 FTE);

(3) Moderately Small (500–749 FTE); and

(4) Small (750–999 FTE).

Table 7.1 summarizes the number of institutions affected by these proposed regulations. In total, 53 percent of institutions are classified as small institutions under the enrollment-based definition. Specifically, 33 percent are Extremely Small (1–249 FTE), 9 percent are Very Small (250–499 FTE), 6 percent are Moderately Small (500–749 FTE), and 5 percent are Small (750–999 FTE).

As seen in Table 7.2, small entities (all four categories combined) in the public sector generate \$3.9 billion in revenues annually, small entities (all four categories combined) in the private non-profit sector generate \$11.7 billion in revenues annually, and small entities (all four categories combined) in the proprietary sector generate \$4.5 billion in revenues annually. An outsized share of these revenues come from institutions in the largest category of small entities (institutions with 750–999 FTE). These institutions make up just 9 percent of all institutions classified as a small entity (having fewer than 1,000 FTE) but comprise 36 percent of the annual revenues generated by these institutions.

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⁸² The Department consulted with the SBA Office of Advocacy regarding the use of an alternative size standard. The Department seeks comments on the appropriateness of this size standard for this rule.

Table 7.1 - Number of Small Institutions Under Enrollment-Based Definition, by Sector

	Small Entities					All Colleges	Percent Small
	Extremely Small (1-249 FTE)	Very Small (250-499 FTE)	Moderately Small (500-749 FTE)	Small (750-999 FTE)	Small Subtotal		
A. Public							
Public, Primarily 4yr	0	5	5	10	20	542	3.7%
Public, Primarily 2yr	180	68	68	81	397	1,231	32.3
Total	180	73	73	91	417	1,773	23.6
B. Non-Profit							
Non-prof, Primarily 4yr	288	101	119	103	611	1,372	44.5%
Non-prof, Primarily 2yr	154	34	21	8	217	246	88.2
Total	442	135	140	111	828	1,618	51.1
C. For-Profit							
For-prof, Primarily 4yr	29	15	10	5	59	100	59.0%
For-prof, Primarily 2yr	950	226	70	57	1,303	1,433	90.9
Total	979	241	80	62	1,362	1,533	88.8
Grand Total	1,601	449	293	264	2,607	4,924	52.9%

Notes: Institutions are defined using OPEID6 identification codes. in the 2023-24 IPEDS institutional characteristics data. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year. "Primarily 2yr" includes institutions that predominantly award 2-year degrees and credentials that are less than 2 years in length. Source: Department analysis using 2023-24 IPEDS data and PPD:2026.

Table 7.2 - Total Revenue in 2023-24, by Institution Size Categories (\$ in millions).

	Small Entities					All Colleges	Percent Small
	Extremely Small (1-249 FTE)	Very Small (250-499 FTE)	Moderately Small (500-749 FTE)	Small (750-999 FTE)	Small Subtotal		
A. Public							
Public, Primarily 4yr	0.0	92.7	170.7	514.4	777.8	361,144.6	0.2%
Public, Primarily 2yr	199.9	364.8	852.9	1,655.5	3,073.1	111,857.5	2.7
Total	199.9	457.5	1,023.6	2,169.9	3,850.9	473,002.1	0.8
B. Non-Profit							
Non-prof, Primarily 4yr	1,751.5	1,886.5	3,191.7	4,001.6	10,831.4	312,634.4	3.5%
Non-prof, Primarily 2yr	295.1	214.9	248.3	135.3	893.7	14,450.3	6.2
Total	2,046.6	2,101.4	3,440.0	4,136.9	11,725.1	327,084.7	3.6
C. For-Profit							
For-prof, Primarily 4yr	66.0	129.3	175.2	173.2	543.7	9,795.3	5.6%
For-prof, Primarily 2yr	1,377.5	1,111.9	624.2	825.7	3,939.3	10,686.9	36.9
Total	1,443.5	1,241.2	799.4	998.9	4,483.0	20,482.2	21.9
Grand Total	3,690.0	3,800.1	5,263.0	7,305.7	20,059.0	820,569.0	2.4%

Notes: Institutions are defined using OPEID6 identification codes. A small number of programs at institutions in PPD:2026 are excluded if they did not match to institutions in the 2023-24 IPEDS institutional characteristics data. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year.

Institutional revenues are from the 2023-24 academic year.

Institutional revenues are defined using the fld01, f2b01, and f3d09 variables in IPEDS. "Primarily 2yr" includes institutions that predominantly award 2-year degrees and credentials that are less than 2 years in length.

Source: Department analysis using 2023-24 IPEDS data and PPD:2026.

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Table 7.3 compares the share of programs at small entities that are estimated to fail the accountability framework under the current regulations and the accountability framework under

the proposed regulations. Both the current and proposed regulations include accountability frameworks and Table 7.3 shows the fail rates under each, revealing the net change from the proposed regulation. Relative to the

current regulations, programs at small entities will fail at slightly lower rates under the proposed regulations. We find similar results when weighting estimates by title IV enrollments (Panel B).

Table 7.3 - Estimated Share of Programs that Fail and Enrollment in Programs that Fail, by Institution Size Categories

Institution Size Category	N	Share that Fail	
		Current Regs	Proposed Regs
	(1)	(2)	(3)
A. Program-Weighted			
Extremely Small (1-249 FTE)	2,100	61.2%	57.1%
Very Small (250-499 FTE)	1,700	41.2	34.6
Moderately Small (500-749 FTE)	2,500	15.3	12.7
Small (750-999 FTE)	3,300	13.5	12.3
Small Subtotal	9,600	29.3	26.2
All Colleges	128,900	4.6	5.1
B. Student-Weighted			
Extremely Small (1-249 FTE)	161,000	69.4%	64.6%
Very Small (250-499 FTE)	167,900	52.6	48.9
Moderately Small (500-749 FTE)	187,400	24.5	23.6
Small (750-999 FTE)	246,800	24.8	23.6
Small Subtotal	763,100	40.3	37.8
All Colleges	18,751,000	4.7	4.4

Notes. In Panel A, "N" refers to program counts. In Panel B, "N" refers to title IV enrollment counts. Ns are rounded to nearest 100. Totals may not sum together due to rounding. A small number of programs at institutions in PPD:2026 are excluded if they did not match to institutions in the 2023-24 IPEDS institutional characteristics data. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year.

Source: Department analysis using 2023-24 IPEDS data and PPD:2026.

To assess the impact of the proposed regulation on small entities, the Department estimated how much revenue institutions may lose on average when programs become ineligible for title IV, HEA funds because their programs fail the accountability framework. Note that because the current regulations already include an accountability framework,⁸³ the Department's analysis is concerned with the change in program fail rates and revenue effects relative to the current regulations. The potential loss

in revenue for small institutions can be compared with small institutions' total revenue to determine the effect on small entities (Table 7.4).

On average, small institutions are at risk of losing 11.3 percent of their total revenue due to the loss of title IV, HEA funds under the current regulations. Under the proposed regulations they are estimated to lose 10.8 percent of their revenue. That results in a net change of 0.5 percent in revenue due to the proposed regulations. Extremely small entities are the most impacted subgroup.

Under the current accountability framework, they are at risk of losing 28.8 percent of their revenue, but under the proposed framework they are at risk of losing 26.0 percent of revenue, resulting in a net increase in funds equal to 2.8 percent of their revenue. Extremely small entities are the most affected subgroup because they tend to offer the types of programs (mainly undergraduate certificates in fields such as cosmetology) that see the largest change in eligibility for title IV, HEA funds under the proposed regulation.

⁸³ See Financial Value Transparency and Gainful Employment, 88 FR 70004, 70095 (Oct. 10, 2023).

**Table 7.4 - Estimated Annual Federal Title IV, HEA Aid
Volume and Institutional Revenues to Programs that Fail, by
Institution Size Categories**

Institution Size Category	Annual Title IV Volume (\$ Millions)	Share of Volume in Failing Programs	Total Institutional Revenue (\$ Millions)	Share of Title IV Volume in Failing Programs as a Share of Total Revenue
A. Current Regulations				
Extremely Small (1-249 FTE)	1,154.7	64.7%	2,588.1	28.8%
Very Small (250-499 FTE)	1,337.4	45.2	3,597.8	16.8
Moderately Small (500-749 FTE)	1,830.4	18.8	5,166.2	6.7
Small (750-999 FTE)	1,906.9	20.5	7,139.3	5.5
Small Subtotal	6,229.4	33.5	18,491.4	11.3
All Colleges	115,991.0	5.0	818,194.3	0.7
B. Proposed Regulations				
Extremely Small (1-249 FTE)	1,154.7	58.2%	2,588.1	26.0%
Very Small (250-499 FTE)	1,337.4	43.6	3,597.8	16.2
Moderately Small (500-749 FTE)	1,830.4	21.3	5,166.2	7.6
Small (750-999 FTE)	1,906.9	17.9	7,139.3	4.8
Small Subtotal	6,229.4	31.9	18,491.4	10.8
All Colleges	115,991.0	3.9	818,194.3	0.6

Notes. Annual volume (column 1) includes Federal student loans and Pell Grants, rounded to the nearest million. Totals may not sum together due to rounding. A small number of programs at institutions in PPD:2026 are excluded if they did not match to institutions in the 2023-24 IPEDS institutional characteristics data. Institutions are classified into small categories using 12-month FTE enrollment from the 2023-24 academic year. Institutional revenues are from the 2023-24 academic year. Institutional revenues are defined using the fld01, f2b01, and f3d09 variables in IPEDS. Source: Department analysis using 2023-24 IPEDS data and PPD:2026.

Lastly, the Department examined the types of programs at small institutions that are estimated to fail the accountability framework at the highest rates (Table 7.5). As shown in Panel A, approximately 93% of cosmetology certificate programs (CIP=12.04) at small institutions are estimated to fail, which is the highest rate among all programs at small entities where there were at least 50 programs with non-missing earnings data. However, when compared the current accountability framework, these programs at small entities will fail at slightly lower rates relative to the existing baseline (97%).

Other common types of programs at small institutions that are estimated to fail the accountability framework in the proposed regulation include undergraduate certificate programs in somatic bodywork (CIP=51.35), allied health (CIP=51.08), dental support services (CIP=51.06), and health administrative services (CIP=51.07). Again, each of these programs will fail the accountability framework at lower rates relative to their fail rates under the current baseline.

The two most common types of programs at small entities that will fail at higher rates under the proposed

regulation (relative to the baseline) are associate degree programs in liberal arts and sciences (CIP=24.01) and allied health diagnostic treatment (CIP=51.09). These programs at small institutions fail at higher rates under the proposed regulation because many of these degree programs were offered at institutions that were previously exempt from the accountability framework under the current regulation. Similar estimates are reported in Panels B and C, which are weighted by Title IV enrollment counts and title IV student aid volume, respectively.

Table 7.5 - Estimated Share of Programs, Enrollment, and Title IV Volume for the Fifteen Most-Impacted Programs at Small Institutions (FTE < 1,000) Under the Proposed Regulation

Program (CIP4)	Credential Level	N	Share that Fail	
			Current Regs	Proposed Regs
		(1)	(2)	(3)
A. Programs				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	940	97.2%	92.8%
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	170	98.3	90.6
Allied Health and Medical Assisting Services. (5108)	Ug Cert	330	89.2	45.8
Dental Support Services and Allied Professions. (5106)	Ug Cert	110	83.8	43.9
Health and Medical Administrative Services. (5107)	Ug Cert	200	85.4	40.3
Allied Health and Medical Assisting Services. (5108)	Associate	130	20.1	16.7
Liberal Arts and Sciences, General Studies, and Humanities. (2401)	Associate	140	<0.1	13.0
Allied Health Diagnostic, Intervention, and Treatment Professions. (5109)	Ug Cert	180	20.0	3.6
Allied Health Diagnostic, Intervention, and Treatment Professions. (5109)	Associate	140	2.8	3.3
Vehicle Maintenance and Repair Technologies/Technicians. (4706)	Ug Cert	130	17.5	2.8
Practical Nursing, Vocational Nursing, and Nursing Assistants. (5139)	Ug Cert	410	7.2	2.5
Precision Metal Working. (4805)	Ug Cert	130	20.5	1.2
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Bachelor	120	<0.1	<0.1
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Associate	200	<0.1	<0.1
Business Administration, Management, and Operations. (5202)	Bachelor	180	<0.1	<0.1
B. Title IV Enrollment				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	167,900	96.6%	94.7%
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	10,700	99.6	94.8
Allied Health and Medical Assisting Services. (5108)	Ug Cert	30,800	92.4	44.0
Dental Support Services and Allied Professions. (5106)	Ug Cert	6,000	90.3	59.9
Health and Medical Administrative Services. (5107)	Ug Cert	7,700	81.8	59.5
Allied Health and Medical Assisting Services. (5108)	Associate	6,200	24.9	20.6
Liberal Arts and Sciences, General Studies, and Humanities. (2401)	Associate	36,300	<0.1	6.3
Allied Health Diagnostic, Intervention, and Treatment Professions. (5109)	Ug Cert	9,600	16.8	2.9
Allied Health Diagnostic, Intervention, and Treatment Professions. (5109)	Associate	17,600	1.8	2.2
Vehicle Maintenance and Repair Technologies/Technicians. (4706)	Ug Cert	18,000	5.5	0.7
Practical Nursing, Vocational Nursing, and Nursing Assistants. (5139)	Ug Cert	43,700	6.3	2.2
Precision Metal Working. (4805)	Ug Cert	9,300	32.9	4.8
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Bachelor	17,900	<0.1	<0.1
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Associate	31,800	<0.1	<0.1
Business Administration, Management, and Operations. (5202)	Bachelor	19,700	<0.1	<0.1
C. Title IV Student Aid Volume				
Cosmetology and Related Personal Grooming Services. (1204)	Ug Cert	\$1,114	97.4%	97.1%
Somatic Bodywork and Related Therapeutic Services. (5135)	Ug Cert	56	99.6	96.5
Allied Health and Medical Assisting Services. (5108)	Ug Cert	206	93.0	54.2
Dental Support Services and Allied Professions. (5106)	Ug Cert	38	89.8	64.1
Health and Medical Administrative Services. (5107)	Ug Cert	41	85.7	68.2
Allied Health and Medical Assisting Services. (5108)	Associate	39	29.0	26.7
Liberal Arts and Sciences, General Studies, and Humanities. (2401)	Associate	127	<0.1	10.8
Allied Health Diagnostic, Intervention, and Treatment Professions. (5109)	Ug Cert	60	23.6	2.9
Allied Health Diagnostic, Intervention, and Treatment Professions. (5109)	Associate	158	2.1	3.0
Vehicle Maintenance and Repair Technologies/Technicians. (4706)	Ug Cert	173	3.0	0.5
Practical Nursing, Vocational Nursing, and Nursing Assistants. (5139)	Ug Cert	323	5.5	2.5
Precision Metal Working. (4805)	Ug Cert	55	36.3	8.4
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Bachelor	123	<0.1	<0.1
Registered Nursing, Nursing Administration, & Clinical Nursing. (5138)	Associate	212	<0.1	<0.1
Business Administration, Management, and Operations. (5202)	Bachelor	139	<0.1	<0.1

Notes. The sample of programs is limited to include only the subset of programs offered at small entities (defined as FTE < 1,000). The fifteen programs on this list are the fifteen programs (defined at the 4-digit CIP x Credential Level) with the highest fail rates (program-weighted) under the proposed regulations in which there were at least 50 programs with non-missing earnings data nationally at institutions classified as small entities. In Panel A, "N" refers to program counts. In Panel B, "N" refers to Title IV student enrollment counts. In Panel C, "N" refers to total Title IV Loan Volume disbursements in AY2025 (in millions). N sizes are rounded to the nearest 10 in Panel A, to the nearest 100 in B, and to the nearest million in Panel C. "Ug Cert" = Undergraduate Certificate. Four-digit CIP codes are listed in parentheses. Title IV enrollment and Title IV volume correspond to the amounts in the 2024-25 award year.

Source. Department of Education calculations using PPD:2026.

Alternatives Considered (Small Entities)

The Department examined whether the proposed regulation could incorporate other options or changes to the rule intended to make compliance less burdensome for small institutions of higher education. Specifically, the Department considered whether small institutions of higher education could be exempted from the changes to the statute in the proposed regulation, or whether they could be granted a delayed start date to the changes. The Department does not have discretion in the OBBB to exempt certain institutions of higher education from the OBBB requirements. The statute also establishes the effective dates for the changes to the Federal student loan program and does not leave flexibility for the Department to consider granting a delay in compliance for small entities that may benefit from such a delay. Therefore, the Department determined that none of these options would be permissible under the statute, and could not identify any reasonable alternatives given the statutory directives. The agency invites comments on reasonable alternatives that are consistent with the stated objectives of the statute.

The Department acknowledges that this analysis defines small entities based on institutions' enrollment. The Department is interested in comments addressing this approach and other alternatives if they were to more fully capture the impact of the proposed regulation on small entities. The

Department welcomes comments and data from the public that may help it improve its impact analyses for small entities with respect to the changes in this proposed regulation.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps make certain that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

§ 600.10 Date, Extent, Duration, and Consequence of Eligibility, § 600.21 Updating Application Information, § 685.300 Agreements Between an Eligible School and the Secretary for Participation in the Direct Loan Program Summary

Sections §§ 600.10 and 600.21 would require a school to report all of its Direct Loan-eligible programs on its Eligibility Application (E-App). GE programs and eligible non-GE programs would need to meet the requirements of STATS and

earnings accountability to maintain eligibility for participation in the Direct Loan program. Currently only GE programs must be reported to the Department in all circumstances.

Burden

These regulatory changes would require an update to the current institutional application form, 1845–0012. The form update would be made available for comment through a full public clearance package before being made available for use by the effective dates of the regulations. The burden changes would be assessed to OMB Control Number 1845–0012, Application for Approval to Participate in Federal Student Aid Programs.

§ 668.2 General Definitions

Summary

Institutions would be required to incorporate several key definitions related to earnings accountability into their policies and procedures.

Burden

Proposed § 668.2 would create burden on institutions. Institutions would be required to review the new regulations (8 hours), identify the scope of the new requirements and updates needed (20 hours), amend their policies and procedures (20 hours), train staff (80 hours), and update relevant systems (160 hours). The Department estimates this will take 288 hours per institution.

Entity	Respondents	Hours	Burden Hours
Public	1,869	288	538,272
Private	1,674	288	482,112
For Profit	2,083	288	599,904
Total	5,626		1,620,288

§ 668.14 Program Participation Agreement

Summary

An institution would be permitted to appeal the Secretary's determination that a program is a low-earning outcome program under § 668.603(a)(2) based on the data used in the calculation. An institution would also be permitted to appeal the Secretary's determination

that a program has failed to meet the proposed administrative capability conditions at proposed § 668.16(t) in two out of three consecutive award years.

Burden

The Department estimates that approximately 6,520 programs could fail the earnings premium measure the first year the calculation becomes effective.

We believe that most programs that fail in the first year will fail in the next. For that reason, we anticipate that 40 percent of those programs will choose to do an orderly shutdown of the program that failed the earnings premium measure.

Of the remaining 3,912 we anticipate that 50 percent of programs would seek an appeal, which is very common for institutions to do. However, the

Department is also proposing to limit an institution's ability to appeal only in instances where the institution believes the Department erred in its calculations. These regulations also propose an opportunity for an orderly program

closure the first year a program fails the earnings premium metric.

Taking these factors into consideration, we expect about half of the institutions with a program that has lost Direct Loan eligibility may appeal

the decision. If it takes an institution three hours to file an appeal, we anticipate this would increase 5,868 burden hours assigned to 1845–0022 Student Assistance General Provisions.

1,956 programs x 3 hours = 5,868 total burden hours.

Entity	Respondents	Hours	Burden Hours
Public	1,065	3	3,195
Private	387	3	1,161
For Profit	504	3	1,512
Total	1,956	N/A	5,868

§ 668.16 Standards of administrative capability

Summary

Proposed § 668.16 would require an institution to demonstrate that they have administrative capability by maintaining the standard that at least half of the institution's students and half of institutions' total title IV, HEA funds do not come from students enrolled in low-earning outcome programs. Failure to do so would cause the institution to be placed on a provisional PPA.

Burden

The Department does not believe proposed changes to 668.16(t) will increase burden on institutions, as administrative capability is an existing requirement of eligibility for title IV, HEA funds. However, we believe it may take institutions time to acknowledge and understand the new requirements. For that reason, we are adding 1 hour of burden per institution.

$5,626 \times 1 \text{ hour} = 5,626 \text{ burden hours}$

§ 668.43 Institutional and Programmatic Information

Summary

The proposed regulation would limit the requirements for providing a prominent link to the program information website to only pages containing cost, financial aid, or admissions information. This will reduce burden on institutions.

Burden

When the Department proposed § 668.43 in 2023, it was estimated that these requirements would add an

additional 5,230 responses and 261,500 hours of burden to 1845–0022. We propose to remove half of the burden for this regulation while retaining the current assessment of 5,230 responses.

$261,500 \text{ hours} / 2 = 130,750$
5,230 responses

§ 668.91 Initial and final decisions

Summary

The Department proposes adding “eligible non-GE programs” to the requirements of these regulations.

Burden

The Department does not believe this regulation adds additional burden to institutions because this regulation pertains to final decisions on punitive actions. Any burden an institution may face because of this proposed regulation has already been accounted for elsewhere in this section.

§ 668.401 Student Tuition and Transparency System Scope and Purpose

Summary

Proposed regulations would require institutions to remove references to the debt-to-earnings metric and update, where necessary, the earnings premium metric.

Burden

Institutions would be required to review the revised earnings premium measure (10 hours), remove any references to the debt-to-earnings metric, and add the revised earnings premium measure to policies, procedures, systems, operations (160 hours), and train staff (60 hours).

$230 \text{ hours} \times 5,626 \text{ institutions} = 1,293,980 \text{ burden hours}$

§ 668.402 Student Tuition and Transparency System Framework

Summary

Section 668.402 proposes to amend the current FVT/GE framework. The Department proposes removing the D/E rate metric and using only using an earnings premium measure.

Burden

Proposed § 668.402 would decrease burden on institutions. The new approach would use significantly less data reported by institutions and instead rely on administrative enrollment data that institutions have become accustomed to reporting. Currently, there are 5,104,110 burden hours assigned to 1845–0184. With the new framework, institutions will still have recordkeeping and reporting requirements, however, the Department estimates the proposed rule will eliminate 30 percent of the currently assessed reporting burden. This results in a decrease of $1,531,233 \text{ burden hours}$. $30 \text{ percent of } 5,104,110 = 1,531,233$

§ 668.403 Calculating Earnings Premium Measure

Summary

Proposed 668.403 explains the process the Secretary uses to calculate the earnings premium measure.

Burden

The Secretary is responsible for calculating the earnings premium measure; therefore, we are not changing any institutional burden based on this proposed regulation.

§ 668.404 Process for Obtaining Data and Calculating Earnings Premium Measure

Summary

Section 668.404 of the proposed regulations explains the processes for the Secretary to obtain data to calculate the earnings premium measure. The Secretary will send institutions lists of completers based on the requirements in this proposed regulation. An institution would have 60 days from receiving the lists to correct any information on the lists.

Burden

This would create burden on institutions. Proposed § 668.403 would allow an institution to review information by the Secretary and correct the information, if necessary, within 60 days of receiving the list. While this regulation is permissive rather than instructive, the Department believes that 80 percent of institutions would still take time to review the information on the list provided by the Department. If it takes an average of 3 hours to review the information, this adds 13,503 burden hours to 1845–0022.

Note that although this is not a new requirement, it was not reflected in the PRA analysis for the FVT/GE regulations in which this requirement originated. Therefore, the Department is calculating burden for this requirement in these proposed regulations.
 $80 \text{ percent of } 5,626 = 4,501 \text{ institutions}$
 $4,501 \text{ institutions} \times 3 \text{ hours} = 13,503 \text{ burden hours}$

§ 668.405 Determination of the Earnings Premium Measure

Summary

Section 668.405 describes the notice of determination that the Secretary sends to institutions each year with information on the outcomes of their programs.

Burden

The Department estimates it will take an institution 2 hours to review the notice of determination. This adds 11,252 additional burden hours.
 $5,626 \text{ institutions} \times 2 \text{ hours} = 11,252 \text{ burden hours.}$

§ 668.406 Reporting requirements

Summary

Section 668.406 proposes reporting requirements for these regulations.

Burden

As stated in earlier sections of this NPRM, the Department estimates that under the proposed regulations, there

could be a 30 percent decrease in burden on institutions for reporting. In 2023, we estimated that the annual burden hours for all institutions for reporting would be 1,459,603 hours. The Department believes there will be a 30 percent reduction in burden and will remove 437,801 hours from 1845–0184 Earnings Accountability Reporting, Disclosures, and Warnings.
 $30 \text{ percent of } 1,459,603 = 437,801 \text{ less burden hours}$

§ 668.601 Earnings Accountability Scope and Purpose

Summary

Section 668.601 proposes to apply the earnings accountability program eligibility consequences to both GE programs and eligible non-GE programs. Previously, the program-level eligibility consequences only applied to GE programs.

Burden

Institutions will be required to apply the earnings accountability metric to nearly all of their title IV eligible programs. This would require an institution to review the new regulations and new metrics (8 hours), update relevant systems (100 hours), and update policies and procedures and train staff (100 hours). This would add 208 burden hours to institutions.
 $208 \text{ hours} \times 5,626 \text{ institutions} = 1,170,208 \text{ total burden hours}$

§ 668.602 Earnings Accountability Criteria

Summary

The Department proposes to amend and rename § 668.602 to conform with proposed regulations.

Burden

We expect any burden stemming from this proposed regulation would be minimal, as the proposed regulation seeks to conform to the language in the regulation to align with new statutory requirements rather than alter any information collections.

668.603 Low-Earning Outcome Programs

Summary

Under the proposed regulations, a program that has failed the earnings premium measure metric, as long as it is not yet a low-earning outcome program, could conduct a voluntary orderly program closure. This would require the institution to meet certain program discontinuation requirements. A voluntary orderly program closure would allow the program to retain Direct Loan eligibility for no more than

3 years while currently enrolled students completed their program.

Burden

The Department estimates that 6,520 programs will fail the earnings premium metric in the first year that the metrics are calculated. Of these, the Department predicts that 40 percent, or 2,608, will choose to complete a voluntary orderly program closure. Based on comparable situations, we anticipate it would take an institution 40 hours of preparation for an orderly program closure, which would include informing students and providing options and agreeing to amend their PPA. We estimate an additional 6 hours for reporting this information to the to the State, accrediting agency, and the Department.

$2,608 \text{ orderly program closures} \times 46 \text{ hours} = 119,968 \text{ Burden hours}$

§ 668.604 Certification Requirements for GE Programs and Eligible Non-GE Programs 1845–0012

Summary

Proposed § 668.604 updates the eligibility requirements for participation in the Direct Loan program.

Burden

These regulatory changes would require an update to the current institutional application form, 1845–0012. The form update would be made available for comment through a full public clearance package before being made available for use by the effective dates of the regulations. The burden changes would be assessed to OMB Control Number 1845–0012, Application for Approval to Participate in Federal Student Aid Programs.

§ 668.605 Student Warnings

Summary

In the proposed regulations, student warning requirements would be extended to eligible non-GE programs for both enrolled and prospective students. The proposed regulations would also expand the content of the warnings to explain Pell lifetime eligibility used. Institutions would be required to send this warning when the Secretary notifies them that the program may become ineligible for the Direct Loan program. Additionally, the institution would be required to provide a Pell lifetime eligibility warning each time Pell is disbursed.

The Department proposes to amend the description of academic and financial options from the current requirements of the student warnings.

Burden

The Department estimates 831,000 students will need to receive such warnings. We believe it would take 5 hours to create this warning and an additional 1 hour per 100,000 students for review and transmission of the warnings, totaling 14 burden hours.

Institutions would also need to send the same group of recipients the Pell lifetime eligibility warning notification for each subsequent Pell disbursement. The Department believes it would take institutions 8 hours to create and implement this requirement. We estimate that subsequent warnings would take 1 hour per 100,000 students, adding 8.3 hours of burden. Pell disbursements may happen more than once during one award year. For this reason, we estimate 2 warnings per student per award year. This totals 16.6 hours of burden.

$5,626 \text{ institutions} \times 16.6 \text{ hours} = 93,392$
annual burden hours.

§ 685.102 Definitions

Summary

To implement the new provisions enacted in the OBBB, we propose adding definitions for eligible non-GE program and GE program to 685.102.

Burden

Proposed § 685.102 will require institutions to update their internal

system definitions. We believe the burden to conform with these new definitions will be minimal as the proposed definitions serve to provide consistency and clarity of these terms rather than change them.

In this NPRM, the Department seeks to promote consistency across institutions and programs by harmonizing the existing FVT/GE framework with the earnings accountability framework established by the OBBB. As part of that harmonization and to reduce burden for institutions, we intend to merge the following existing approved information collections:

1845–0184 Financial Value Transparency and Gainful Employment Reporting Requirements.

1845–0174 Student Disclosure Acknowledgements.

1845–0173 Gainful Employment Student Warnings and Acknowledgments.

The Department requests to retain the 1845–0184 OMB Control number, but would amend the title of the collection to: Earnings Accountability Reporting, Disclosures, and Warnings.

The Department would request that OMB discontinue 1845–0174 and 1845–0173 because the burden associated with those collections would be absorbed into 1845–0184. This NPRM also proposes amending 1845–0022 Student Assistance General Provisions.

The Department has also created a new collection, 1845–NEW Accountability Definitions. Burden for § 685.102 is found in 1845–0021 William D. Ford Federal Direct Loan Program (DL) Regulations. That collection, 1845–0021, is currently under review with the Reimagining and Improving Student Education (RISE) Notice of Proposed Rulemaking (NPRM). To accurately track the burden associated with the new regulations and definitions regarding these regulations at the same time as the RISE NPRM, the Department has established a new collection to track burden for accountability changes in § 685.102. Once both sets of regulations are final, the Department plans to merge the new collection with 1845–0021 William D. Ford Federal Direct Loan Program (DL) Regulations.

For each proposed regulation containing burden in this NPRM, we provide below our preliminary estimates for potential burden changes.

To estimate costs for institutions, we used the median hourly wage for Education Administrators, Postsecondary (11–9033) from the U.S. Bureau of Labor Statistics. In 2024 this was \$49.98. To account for overhead costs and benefits, the Department has multiplied by this wage by two, resulting in hourly costs of \$99.96.

Regulation	OMB Control #	Burden Hours	# of Responses	Costs
§ 668.2 General Definitions	1845 NEW Accountabil ity Definitions	288 X 5,626 1,620,288 total burden hours	5,626	\$161,963,988
§ 668.14 Program Participation Agreement	1845-0022 Student Assistance General Provisions	1,956 X 3 = 5,868	1,956	\$586,565
§ 668.16 Standards of administrative capability	1845-0022 Student Assistance General Provisions	1 hour X 5,626 institutions = 5,626 burden hours	5,626	\$562,374
§ 668.43 Institutional and programmatic information	1845-0022 Student Assistance General Provisions	-24.5 burden hours X 5,320 institutions = -130,750	5,320	-\$13,069,770
§ 668.401 Student tuition and transparency system scope and purpose	1845-0184 Earnings Accountabil ity Reporting, Disclosures , and Warnings	230 hours X 5,626 institutions = 1,293,980	5,626	\$129,346,240
§ 668.402 Student tuition and transparency system framework	1845-0184 Earnings Accountabil ity Reporting, Disclosures , and Warnings	272 hours X 5,626 = - 1,531,233	5,626	-\$153,062,050
§ 668.404 Process for obtaining data and calculating earnings premium measure Summary	1845-0184 Earnings Accountabil ity Reporting, Disclosures , and Warnings	4,501 X 3 hours = 13,503	4,501	\$1,349,759
§ 668.405 Determination of the earnings premium measure	1845-0184 Earnings Accountabil ity Reporting, Disclosures	2 hours X 5,626 = 11,252	5,626	\$1,124,750

Regulation	OMB Control #	Burden Hours	# of Responses	Costs
	, and Warnings			
§ 668.406 Reporting requirements	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	-77.82 X 5,626 = -437,801	5,626	-\$43,762,588
§ 668.601 Earnings accountability scope and purpose	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	208 hours x 5,626 institutions = 1,170,208 total burden hours	5,626	\$116,973,991
668.603 Low-earning outcome programs	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	2,608 X 46 hours = 119,968 burden hours	2,608	\$11,992,001
§ 668.605 Student Warnings	1845-0184 Earnings Accountability Reporting, Disclosures, and Warnings	16.6 hours X 5,626 = 93,392 burden hours	5,626	\$9,335,424
Total		2,234,301	37,501	\$223,340,684

Along with the two collections listed above, proposed §§ 600.10, 600.21, 685.300, 668.604 in this NPRM would

require the Department to update 1845-0012, Application for Approval to

Participate in Federal Student Aid Programs:

Regulation	OMB Control #	Burden hours	# of responses	Costs
§ 600.10 Date, extent, duration, and consequence of eligibility, § 600.21 Updating application information, § 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan program § 668.604 Certification requirements for GE programs and eligible non-GE programs	1845-0012 Application for Approval to Participate in Federal Student Aid Programs	The Department will assess the burden hours for proposed regulations with the form updates to 1845-0012	N/A	N/A

Form updates to 1845-0012 will be completed through the full clearance process prior to the date the regulations are effective.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number.

Notwithstanding any other provision of law, no person is required to comply with or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the

Executive Order is to foster an intergovernmental partnership and strengthen Federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Education Impact

In accordance with Section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on whether these final regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to provide meaningful and timely input by State and local elected officials in the development of regulatory policies that have Federalism implications.

“Federalism implications” means 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. The proposed regulations do not have Federalism implications.

Accessible Format: On request to the program contact person(s) listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects

34 CFR Part 600

Colleges and universities, Grant program—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant program—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Nicholas Kent,

Under Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend parts 600, 668, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Amend § 600.10 by revising paragraph (c)(3) to read as follows:

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) * * *

(3) For a gainful employment program or eligible non-GE program under 34 CFR part 668, subpart S, subject to any restrictions in 34 CFR 668.603 on

establishing or reestablishing the Direct Loan eligibility of the program, an eligible institution must update its application under § 600.21.

* * * * *

■ 3. Amend § 600.21 by revising paragraph (a)(11)(vi) to read as follows:

§ 600.21 Updating application information.

(a) * * *

(11) * * *

(vi) Updating the certification pursuant to 34 CFR 668.604(a).

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 4. The general authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c-1, 1221e-3, and 1231a, unless otherwise noted.

■ 5. Amend § 668.2(b) by:

■ a. Removing the definitions of “Annual debt-to-earnings rate (Annual D/E rate),” “Debt-to-earnings rates (D/E rates),” “Discretionary debt-to-earnings rate (discretionary D/E rate),” “Metropolitan statistical area,” “Poverty Guideline,” “Qualifying graduate program,” and “Substantially similar program.”

■ b. Adding, in alphabetical order, a definition of “Earnings.”

■ c. Revising the definitions of “Cohort period,” “Earnings premium,” “Earnings threshold,” “Eligible non-GE program,” “Federal agency with earnings data,” and “Institutional grants and scholarships.”

The addition and revisions read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Cohort period. The set of award years used to identify a cohort of students who completed a program and whose earnings outcomes are used to calculate the earnings premium measure under subpart Q of this part. The Secretary uses a single-year cohort period to calculate the earnings premium measure for a program when the number of students (after exclusions identified in § 668.403(c)) in the single-year cohort period is 30 or more. The Secretary sequentially expands the cohort period when the number of students completing the program in the single-year cohort period is fewer than 30. The cohort period includes award years that are—

(1) For the single-year cohort period, the fourth award year prior to the year for which the most recent data is

available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403.

(2) For the expanded cohort period, the Secretary will sequentially add prior award year data to the single-year cohort in the following order until the cohort equals or exceeds 30 students (unless the Secretary determines the data is unreliable, in which case the cohort size may be increased until the Secretary determines the data is statistically reliable)—

(i) Sequential prior award years within the same program—

(A) The fifth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(B) The sixth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(C) The seventh award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(D) The eighth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(ii) Sequential award years for all programs within the same 4-digit CIP code and credential level—

(A) The fourth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(B) The fifth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(C) The sixth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(D) The seventh award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(E) The eighth award year prior to the year for which the most recent data is

available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(iii) Sequential award years for all programs within the same 2-digit CIP code and credential level—

(A) The fourth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(B) The fifth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(C) The sixth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(D) The seventh award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403;

(E) The eighth award year prior to the year for which the most recent data is available from the Federal agency with earnings data at the time the earnings premium measure is calculated, pursuant to § 668.403.

* * * * *

Earnings. For the purposes of subparts Q and S of this part, wages, income as reported to the Internal Revenue Service, and other earned income, including from self-employment.

* * * * *

Earnings premium. The amount by which the median annual earnings of students who recently completed a program exceed the earnings threshold, as calculated under § 668.403. If the median annual earnings of recent completers is equal to the earnings threshold, the earnings premium is zero. If the median annual earnings of recent completers is less than the earnings threshold, the earnings premium is negative.

* * * * *

Earnings threshold. (1) For undergraduate programs offered by an eligible institution located in a State, based on data from the Census Bureau, the median earnings for working adults aged 25–34, with only a high school diploma (or recognized equivalent), who worked and were not enrolled in an eligible institution during the year of the associated measured earnings—

(i) In the State in which the institution is located; or

(ii) Nationally, if fewer than 50 percent of the students enrolled in the institution during the award year the calculations are made are from the State where the institution is located.

(2) For graduate programs offered by an eligible institution located in a State, based on data from the Census Bureau, the median earnings of working adults aged 25–34, with only a baccalaureate degree, who worked and were not enrolled in an eligible institution during the year of the associated measured earnings. The median earnings will be—

(i) The lowest of the median earnings of working adults—

(A) In the State in which the institution is located;

(B) In the same field of study under the two-digit CIP or four-digit CIP code, as such data is available and statistically reliable, in the State in which the institution is located; or

(C) Nationally in the same field of study under the two-digit CIP or four-digit CIP code, as such data is available and statistically reliable; or

(ii) If fewer than 50 percent of the students enrolled in the institution during the award year the calculations are made are from the State where the institution is located, the lowest of the median earnings of working adults—

(A) Nationally; or

(B) Nationally in the same field of study under the two-digit CIP or four-digit CIP code, as such data is available and statistically reliable.

(3) For States where the Census Bureau Data necessary to perform the calculations set forth in subsections (1) and (2) are not available, there will be no earnings threshold.

(4) For programs offered by eligible foreign institutions—

(i) For undergraduate programs at these institutions, based on data from the Census Bureau, the median earnings of working adults aged 25–34 in the United States, with only a high school diploma or recognized equivalent, who were not enrolled in an eligible institution during the year of the associated measured earnings; or

(ii) For graduate programs at these institutions, based on data from the Census Bureau, the median earnings of working adults aged 25–34, with only a baccalaureate degree, who were not enrolled in an eligible institution during the year of the associated measured earnings. The median earnings will be the lowest of the median earnings of working adults—

(A) Nationally in the United States; or

(B) Nationally in the United States in the same field of study under the two-digit CIP code or four-digit CIP code, as

such data is available and statistically reliable.

* * * * *

Eligible non-GE program. An educational program (other than a GE program) that is subject to HEA Section 454(c), offered by an institution and included in the institution's participation in the title IV, HEA programs, identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level. Includes all coursework associated with the program's credential level.

* * * * *

Federal agency with earnings data. A Federal agency with which the Department enters into an agreement to access earnings data for the earnings threshold or value-added earnings measure. The agency must have individual earnings data sufficient to match with title IV, HEA recipients who completed any eligible program during the cohort period and may include agencies such as the Treasury Department (including the Internal Revenue Service), the Social Security Administration (SSA), the Department of Health and Human Services (HHS), and the Census Bureau.

* * * * *

Institutional grants and scholarships. Assistance that the institution or its affiliate controls or directs to reduce or offset the original amount of a student's institutional costs and that does not have to be repaid. Typically, an institutional grant or scholarship includes a grant, scholarship, fellowship, discount, or fee waiver, including a grant or scholarship which could convert to a loan if a student does not meet certain requirements. An institutional grant or scholarship does not include Federal education benefits; State, Tribal, local, or private grants and scholarships that the institution does not control or direct; the institutional share of Federal Campus-based programs; or assistance that must be repaid.

* * * * *

■ 6. Amend § 668.14 by:

■ a. Redesignating paragraphs (h), (i), (j), and (k) as paragraphs (i), (j), (k), and (l) respectively.

■ b. Adding new paragraph (h).

The addition reads as follows:

§ 668.14 Program participation agreement.

* * * * *

(h)(1) In addition to any other conditions that the Secretary may deem

appropriate, if an institution does not comply with the provisions of 34 CFR 668.16(t) (at time of enactment) in two out of any three consecutive award years, the institution will be placed on provisional status and the institution's low-earning outcome programs shall not qualify for title IV, HEA funds.

(2) The institution shall have the opportunity to appeal the Secretary's determination that the institution failed to meet the conditions in 34 CFR 668.16(t) in two out of any three consecutive award years under 34 CFR 668 Subpart G.

(i)(1) A program participation agreement becomes effective on the date that the Secretary signs the agreement.

(2) A new program participation agreement supersedes any prior program participation agreement between the Secretary and the institution.

(j)(1) Except as provided in paragraphs (g) and (h) of this section, the Secretary terminates a program participation agreement through the proceedings in subpart G of this part.

(2) An institution may terminate a program participation agreement.

(3) If the Secretary or the institution terminates a program participation agreement under paragraph (f) of this section, the Secretary establishes the termination date.

(k) An institution's program participation agreement automatically expires on the date that—

(1) The institution changes ownership that results in a change in control as determined by the Secretary under 34 CFR part 600; or

(2) The institution's participation ends under the provisions of § 668.26(a) (1), (2), (4), or (7).

(l) An institution's program participation agreement no longer applies to or covers a location of the institution as of the date on which that location ceases to be a part of the participating institution.

* * * * *

■ 7. Amend § 668.16 by revising paragraph (t) to read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(t) Demonstrates that at least half of the institution's recipients of title IV, HEA funds and at least half of the institution's total title IV, HEA funds are not from low-earning outcome programs under subpart S of this part;

* * * * *

■ 8. Amend § 668.43 by:

■ a. Revising paragraph (d)(1).

■ b. Removing paragraph (d)(1)(i)(H).

■ c. Redesignating paragraphs (d)(1)(i)(B), (C), (D), (E), (F), and (G) as

(d)(1)(i)(C), (D), (E), (F), (G), and (H) respectively.

■ d. Adding paragraph (d)(1)(i)(B).

■ e. Removing paragraph (d)(i)(ii)(E).

■ f. Revising paragraph (d)(2) to remove the word "academic."

The revisions read as follows:

§ 668.43 Institutional and programmatic information.

* * * * *

(d)(1) *Program information website.*

The Secretary will establish and maintain a website with information about institutions and their educational programs. For this purpose, an institution must provide to the Department such information about the institution and its programs as the Secretary prescribes through a notice published in the **Federal Register**. The Secretary may conduct consumer testing to inform the design of the website.

(i) The website must include, but is not limited to, the following items, to the extent reasonably available:

(A) The published length of the program in calendar time (*i.e.*, weeks, months, years).

(B) As calculated by the Secretary, the median length of calendar time (*i.e.*, weeks, months, years) taken for full-time and less-than-full-time students to complete the program's academic requirements and obtain the degree or credential awarded by the program.

(C) The total number of individuals enrolled in the program during the most recently completed award year.

(D) The total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the published length of the program.

(E) Of the individuals enrolled in the program during the most recently completed award year, the percentage who received a Direct Loan program loan, a private loan, or both for enrollment in the program.

(F) As calculated by the Secretary, the median loan debt of students who completed the program during the most recently completed award year or for all students who completed or withdrew from the program during that award year.

(G) As provided by the Secretary, the median earnings of students who completed the program as obtained under 34 CFR 668.404(c), or of all students who completed or withdrew from the program, during a period determined by the Secretary.

(H) Whether the program is programmatically accredited and the name of the accrediting agency, as reported to the Secretary.

(I) As calculated by the Secretary, the program's earnings premium measure.

(ii) The website may also include other information deemed appropriate by the Secretary, such as the following items:

(A) The primary occupations (by name, SOC code, or both) that the program prepares students to enter, along with links to occupational profiles on O*NET (www.onetonline.org) or its successor site.

(B) As reported to or calculated by the Secretary, the program or institution's completion rates and withdrawal rates for full-time and less-than-full-time students.

(C) As calculated by the Secretary, the medians of the total cost of tuition and fees, and the total cost of books, supplies, and equipment, and the total net cost of attendance paid by students completing the program.

(D) As calculated by the Secretary, the loan repayment rate for students or graduates who entered repayment on Direct Loan program loans during a period determined by the Secretary.

(2) *Program web pages.* The institution must provide a prominent link to, and any other needed information to access, the website maintained by the Secretary on any web page containing cost, financial aid, or admissions information about the program or institution. The Secretary may require the institution to modify a web page if the information is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.

(3) *Distribution to prospective students.* The institution must provide the relevant information to access the Website maintained by the Secretary to any prospective student, or a third party acting on behalf of the prospective student, before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.

(4) *Distribution to enrolled students.* The institution must provide the relevant information to access the website maintained by the Secretary to any enrolled title IV, HEA recipient prior to the start date of the first payment period associated with each subsequent award year in which the student continues enrollment at the institution.

* * * * *

■ 9. Amend § 668.91(a)(3)(vi) by revising to read as follows:

§ 668.91 Initial and final decisions.

(a) * * *

(3) * * *

(vi) In a termination action against a GE program or eligible non-GE program based upon the program's failure to meet the requirements in § 668.403, the

hearing official must terminate the program's eligibility unless the hearing official concludes that the Secretary erred in the applicable calculation.

* * * * *

■ 10. Rename Part 668 Subpart Q title from "Financial Value Transparency" to "Student Tuition and Transparency System"

■ 11. Amend § 668.401 by revising to read as follows:

§ 668.401 Student tuition and transparency system scope and purpose.

General. This subpart applies to a GE program or eligible non-GE program offered by an eligible institution, and establishes the rules and procedures under which—

(a) An institution reports information about the program to the Secretary; and

(b) The Secretary assesses the program's earnings outcomes.

* * * * *

■ 12. Amend § 668.402 by:

■ a. Revising paragraph (a).

■ b. Removing paragraphs (b) and (c).

■ c. Redesignating paragraphs (d) and (e) as (b) and (c) respectively.

■ d. Revising paragraphs (b) and (c).

The revisions read as follows:

§ 668.402 Student tuition and transparency system framework.

(a) *General.* The Secretary assesses the program's earnings outcomes using an earnings premium measure.

(b) *Earnings premium measure.* For each award year, the Secretary calculates the earnings premium measure for an eligible program, using the procedures in §§ 668.403 and 668.404.

(c) *Outcomes of the earnings premium measure.*

(1) A program passes the earnings premium measure if the median annual earnings of the students who completed the program equal or exceed the earnings threshold.

(2) A program fails the earnings premium measure if the median annual earnings of the students who completed the program are less than the earnings threshold.

(3) For programs which do not have an earnings threshold for the State, no earnings premium measure will be calculated if 50 percent or more of the students enrolled in the institution during the award year the calculations are made are from the State. In this circumstance, the Department will make earnings data for these programs publicly available.

* * * * *

■ 13. Remove § 668.403.

■ 14. Amend § 668.404 by:

■ a. Redesignating 668.404 as 668.403.

■ b. Revising paragraphs (a), (b), (c), and (d).

The redesignated and revised section reads as follows:

§ 668.403 Calculating earnings premium measure.

(a) *General.* Except as provided under paragraph (d) of this section, for each award year, the Secretary calculates the earnings premium measure for a program by determining whether the median annual earnings of the students who completed the program equal or exceed the earnings threshold.

(b) *Median annual earnings; earnings threshold.*

(1) The Secretary obtains from a Federal agency with earnings data, under § 668.404, the median annual earnings of the students who completed the program during the cohort period for the fourth tax year following program completion, who are working and are not excluded under paragraph (c) of this section; and

(2) The Secretary uses the median annual earnings of working adults using data from the Census Bureau to calculate the earnings threshold described in § 668.2.

(3) The Secretary determines the earnings thresholds and publishes the thresholds annually.

(c) *Exclusions.* The Secretary excludes a student from the earnings premium measure calculation if the Secretary determines that—

(1) One or more of the student's Direct Loan program loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402, or 685.212;

(2) The student was enrolled in any other educational program at the institution or at another eligible institution during the calendar year for which the Secretary obtains earnings information under paragraph (b)(1) of this section;

(3) For undergraduate programs, the student completed a higher credentialed undergraduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the earnings premium measure under this section;

(4) For graduate programs, the student completed a higher credentialed graduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the earnings premium measure under this section;

(5) The student is enrolled in an approved prison education program;

(6) The student is enrolled in a comprehensive transition and postsecondary program; or

(7) The student died.

(d) Earnings premium measures not issued. The Secretary does not issue the earnings premium measure for a program under § 668.405 if—

(1) After applying the exclusions in paragraph (c) of this section, fewer than 30 students completed the program during the fully expanded cohort period; or

(2) The Federal agency with earnings data does not provide the median earnings for the program as provided under paragraph (b) of this section.

* * * * *

■ 15. Amend § 668.405 by:

■ a. Redesignating § 668.405 to 668.404.

■ b. Revising section title to remove "D/E rates and".

■ c. Revising paragraphs (a), (b), (c), and (d).

The redesignated, renamed, and revised section reads as follows:

§ 668.404 Process for obtaining data and calculating earnings premium measure.

(a) *Administrative data.* In calculating the earnings premium measure for a program, the Secretary uses student enrollment, disbursement, and program data, or other data the institution is required to report to the Secretary to support its administration of, or participation in, the title IV, HEA programs. In accordance with procedures established by the Secretary, the institution must update or otherwise correct any reported data no later than 60 days after the end of an award year.

(b) *Process overview.* The Secretary uses the administrative data to—

(1) Compile a list of students who completed each program during the cohort period. The Secretary—

(i) Removes from those lists students who are excluded under § 668.403(c);

(ii) Provides the list to institutions; and

(iii) Allows the institution to correct the information reported by the institution on which the list was based, no later than 60 days after the date the Secretary provides the list to the institution;

(2) Obtain from a Federal agency with earnings data the median annual earnings of the students on each list, as provided in paragraph (c) of this section; and

(3) Calculate the earnings premium measure and provide it to the institution.

(c) *Obtaining earnings data.* For each list submitted to the Federal agency with earnings data, the agency returns to the Secretary the median annual

earnings of the students on the list who are working and whom the Federal agency with earnings data has matched to earnings data, in aggregate and not in individual form.

(d) *Calculating earnings premium measure.* If the Federal agency with earnings data includes reports from records of earnings on at least 16 students, the Secretary uses the median annual earnings provided by the Federal agency with earnings data to calculate the earnings premium measure for each program.

* * * *

■ 16. Amend § 668.406 by:

■ a. Redesignating § 668.406 to 668.405.

■ b. Revising the section title to remove “D/E rates and”.

■ c. Revising paragraphs (a) and (b).

The redesignated and revised section reads as follows:

§ 668.405 Determination of the earnings premium measure.

(a) For each award year for which the Secretary calculates the earnings premium measure for a program, the Secretary issues a notice of determination.

(b) The notice of determination informs the institution of the following:

(1) The earnings premium measure for each program as determined under § 668.403.

(2) The determination by the Secretary of whether each program is passing or failing, as described in § 668.402, and the consequences of that determination.

(3) Whether the institution is required to provide the student warning under § 668.605.

(4) Whether the program could become ineligible under subpart S of this part based on its final earnings premium measure for the next award year for which it is calculated for the program.

* * * *

■ 17. Remove § 668.407.

■ 18. Revise § 668.408 by:

■ a. Redesignating § 668.408 to § 668.406

■ b. Revising paragraphs (a) and (b).

■ c. Removing paragraph (c).

The redesignated and revised section reads as follows:

§ 668.406 Reporting requirements.

(a) *Data elements.* In accordance with procedures established by the Secretary, an institution offering any GE program or eligible non-GE program must report to the Department—

(1) For each GE program and eligible non-GE program, for its most recently completed award year—

(i) The name, CIP code, credential level, and length of the program;

(ii) Whether the program is programmatically accredited and, if so, the name of the accrediting agency;

(iii) Whether the program meets licensure requirements or prepares students to sit for a licensure examination in any State, and, consistent with the requirements in 34 CFR 668.43(a)(5)(v), a list of all States where the institution has determined the program meets such requirements, including as part of the institution's obligation under 34 CFR 668.14(b)(32); and

(iv) The total number of students enrolled in the program during the most recently completed award year, including both recipients and non-recipients of title IV, HEA funds.

(2) For each student—

(i) Information needed to identify the student and the institution;

(ii) The date the student initially enrolled in the program;

(iii) The student's total cost of attendance (COA) for the award year under HEA section 472;

(iv) The total actual tuition and fees assessed to the student for the award year;

(v) The student's residency tuition status by State or district, as applicable;

(vi) The student's total allowance for books, supplies, and equipment from their COA for the award year under HEA section 472;

(vii) The student's total allowance for housing and food from their COA for the award year under HEA section 472;

(viii) The amount of institutional grants and scholarships disbursed to the student for the award year;

(ix) The amount of other Federal, State, Tribal, or private grants disbursed to the student for the award year; and

(x) The amount of any private education loans disbursed to the student for the award year for enrollment in the program that the institution is, or should reasonably be, aware of, including private education loans made by the institution;

(3) If the student completed or withdrew from the program during the award year—

(i) The total amount the student received from private education loans, as defined in 34 CFR 601.2(b), for enrollment in the program that the institution is, or should reasonably be, aware of;

(ii) The total amount of tuition and fees assessed the student for the student's entire enrollment in the program;

(iii) The total amount of the allowances for books, supplies, and equipment included in the student's title IV, HEA COA for each award year

in which the student was enrolled in the program, or a higher amount if assessed the student by the institution for such expenses;

(iv) The total amount of institutional grants and scholarships provided for the student's entire enrollment in the program;

(v) The total amount of Federal, State, private, or other grants and scholarships provided for the student's entire enrollment in the program; and

(4) As described in a notice published by the Secretary in the **Federal Register** any other information the Secretary requires the institution to report.

(b) *Initial and annual reporting.*

(1) An eligible institution must report the information required under paragraph (a) of this section no later than—

(i) October 1, following the date these regulations take effect, for the two most recently completed award years prior to that date; and

(ii) For subsequent award years, October 1, following the end of the award year, unless the Secretary establishes different dates in a notice published in the **Federal Register**.

(2) For any award year, if an institution fails to provide all or some of the information required under paragraph (a) of this section, the institution must provide to the Secretary an explanation of why the institution failed to comply with any of the reporting requirements that is acceptable to the Secretary.

* * * *

■ 19. Redesignate § 668.409 to § 668.407, to read as follows:

§ 668.407 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the part and this subpart, and the application of this subpart's provisions to any other person, act, or practice, will not be affected thereby.

* * * *

■ 20. Revise Subpart S title from “Gainful Employment (GE)” to “Earnings Accountability”.

■ 21. Amend § 668.601 by:

■ a. Revising section title to remove “Gainful employment (GE)” and replace with “Earnings accountability”.

■ a. Revising paragraph (a).

■ b. Removing paragraph (b).

The revised section reads as follows:

§ 668.601 Earnings accountability scope and purpose.

(a) *General.* This subpart applies to an eligible non-GE program or a GE program offered by an eligible institution and establishes rules and

procedures under which the Secretary determines that the program is eligible for Direct Loan program funds.

* * * * *

■ 22. Amend § 668.602 by:

- a. Revising section title to remove “Gainful employment (GE)” and replace with “Earnings accountability”.
- b. Revising paragraph (a).
- c. Removing paragraphs (b) and (c).
- d. Redesignating paragraph (d) as paragraph (b)
- e. Removing paragraph (e).

The revised section reads as follows:

§ 668.602 Earnings accountability criteria.

(a) A GE program or eligible non-GE program provides training that leads to acceptable earnings outcomes if the program—

(1) Satisfies the applicable certification requirements in § 668.604; and

(2) Is not a failing program under the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program’s earnings premium measure is calculated.

(b) If the Secretary does not calculate or issue earnings premium measures for a program for an award year, the program receives no result under the earnings premium measure for that award year and remains in the same status under the earnings premium measure as the previous award year.

■ 23. Amend § 668.603 by:

- a. Revising section title to remove “Ineligible GE” and replace with “Low-earning outcome”.
- b. Revising paragraphs (a), (b), and (c).

The revised section reads as follows:

§ 668.603 Low-earning outcome programs.

(a) *Low-earning outcome programs.* If a GE program or eligible non-GE program is a failing program under the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program’s earnings premium measure is calculated, the program is a low-earning outcome program and its participation in the Direct Loan program ends upon the completion of a termination action of Direct Loan program eligibility under subpart G of this part.

(b) *Basis for appeal.* If the Secretary initiates an action under paragraph (a) of this section, the institution may initiate an appeal under subpart G of this part if it believes the Secretary erred in the calculation of the program’s earnings premium measure under § 668.403. Institutions may not dispute a program’s Direct Loan program ineligibility based upon its earnings premium measure except as described in this paragraph (b).

(c) *Restrictions.*

(1) *Direct Loan program ineligibility.* Except as provided in § 668.26(d), or as provided in paragraph (4), an institution may not disburse Direct Loan program funds to students enrolled in a low-earning outcome program.

(2) *Period of ineligibility.* An institution may not seek to reestablish the Direct Loan program eligibility of a failing program that it discontinued voluntarily either before or after the earnings premium measure is issued for that program, or reestablish the Direct Loan program eligibility of a program that is ineligible under the earnings premium measure, until two years following the earlier of the date the program loses eligibility under paragraph (a) of this section or the date the institution voluntarily discontinued the failing program.

(3) *Restoring eligibility.* A low-earning outcome program, or a failing program that an institution voluntarily discontinues, remains ineligible for Direct Loan program participation until the institution establishes the eligibility of that program under § 668.604(b).

(4) *Retaining eligibility during orderly program closure.*

(i) Notwithstanding paragraph (1), if the Secretary determines that a program has failed to satisfy the requirements of § 668.402, the program is not a low-earning outcome program, and the Secretary determines that it is in the best interest of students, the Secretary may allow such program to continue participation in the Direct Loan program. Such participation shall not exceed the lesser of 3 years or the full-time normal duration of the program. The Secretary permits the extension of eligibility if, within 120 days of the Secretary’s determination, the institution and the Secretary agree to add an amendment to the institution’s program participation agreement, that requires the institution to—

(A) Cease accepting new enrollments on or after the date of the agreement;

(B) Engage in an orderly closure of the program in which the institution provides an opportunity for enrolled individuals to complete their program regardless of their academic progress at the time of closure;

(C) Inform the institution’s State authorizing agency and accrediting agency and to meet any program discontinuation or closure requirements of those agencies;

(D) Acknowledge that the program has been voluntarily discontinued and subject to the requirements of 34 CFR 668.603(c)(2);

(E) Maintain the program under a warning status and provide warning

notice to students in accordance with the requirements set forth in 34 CFR 668.605, with the exception of (c)(1)(ii) of that section;

(F) Provide to students the academic and financial options to continue their education in another program to which the student’s academic credit would transfer that has not failed to satisfy the requirements of § 668.402, either at the same institution or a different institution;

(G) Agree not to restart the same program or to start a program that shares the same 4-digit CIP code for at least two award years following the completion of the orderly closure described under paragraph (B).

(ii) An institution may not add the addendum provided in 668.603(c)(4)(i) in cases where the program or the institution based upon the program’s compliance is subject to a probation or equivalent action by a recognized accrediting agency or State regulatory agency (including licensing Boards), or where the institution is subject to 34 CFR 668.162(c).

* * * * *

■ 24. Amend § 668.604 by:

- a. Revising section title to add “and eligible non-GE programs”.
- b. Removing paragraph (a).
- c. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c) respectively.
- d. Revising paragraphs (a), (b), and (c).

The retitled and revised section reads as follows:

§ 668.604 Certification requirements for GE programs and eligible non-GE programs.

(a) *Program participation agreement certification.*

As a condition of its continued participation in the title IV, HEA programs, an institution must certify in its program participation agreement with the Secretary under § 668.14 that each of its currently eligible GE programs and eligible non-GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (c) of this section. As provided under § 600.21(a)(11)(vi), an institution must update the certification within 10 days if there are any changes in the approvals for a program, or other changes for a program that render an existing certification no longer accurate.

(b) *Establishing eligibility and disbursing funds.*

(1) An institution establishes a program’s eligibility for Direct Loan program funds by updating the list of the institution’s Direct Loan-eligible programs maintained by the Department

to include that program, as provided under 34 CFR 600.21(a)(11)(i). By updating the list of the institution's Direct Loan-eligible programs, the institution affirms that the program satisfies the certification requirements in paragraph (c) of this section. Except as provided in paragraphs (b)(2) and (3) of this section, after the institution updates its list of Direct Loan-eligible programs, the institution may disburse Direct Loan program funds to students enrolled in that program.

(2) An institution may not update its list of Direct Loan-eligible programs to include a program sharing both the same 4-digit CIP code and any overlapping SOC codes according to the CIP SOC Crosswalk that is provided by a Federal agency as a failing program that the institution voluntarily discontinued or became ineligible as described in § 668.603(c), at the same credential level that was subject to the two-year loss of eligibility under § 668.603(c), until that period expires.

(3) An institution may not update its list of Direct Loan-eligible programs to include a program that was subject to the two-year loss of eligibility under 34 CFR 668.603(c) and is a failing program under 34 CFR 668.402 in either of the two most recent award years, or a program sharing the same 4-digit CIP code and any overlapping SOC codes according to the CIP SOC Crosswalk that is provided by a Federal agency at the same credential level as a program that was both subject to the two-year loss of eligibility under 34 CFR 668.603(c) and is a failing program under 34 CFR 668.402 in either of the two most recent award years.

(c) *Direct Loan program eligibility certifications.* An institution certifies for each Direct Loan-eligible program included on its Eligibility and Certification Approval Report, at the time and in the form specified in this section, that—

(1) The institution agrees to comply with the requirements of subparts Q and S of this part; and

(2) Such program is approved by a recognized accrediting agency or is otherwise included in the institution's accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation.

* * * * *

■ 25. Amend § 668.605 by:

- a. Revising paragraphs (a), (b), and (c).
- b. Removing paragraph (d).

■ c. Redesignating paragraphs (e), (f), (g), and (h) as paragraph (d), (e), (f), and (g) respectively.

■ d. Revising paragraphs (d), (e), (f), and (g).

The revised section reads as follows:

§ 668.605 Student warnings.

(a) *Events requiring a warning to students and prospective students.* The institution must provide a warning with respect to a GE program or eligible non-GE program to students and prospective students for any year for which the Secretary notifies an institution that the program could become ineligible for the Direct Loan program under this subpart based on its final earnings premium measure for the next award year for which it is calculated for the program.

(b) *Subsequent warning.* If a student or prospective student receives a warning under paragraph (a) of this section, but does not seek to enroll until more than 12 months after receiving the warning, the institution must again provide the warning to the student or prospective student, unless, since providing the initial warning, the program has passed the earnings premium measure for the two most recent consecutive award years in which the metric was calculated for the program.

(c) *Content of warning.* The institution must provide in the warning—

(1) A warning, as specified by the Secretary in a notice published in the **Federal Register** that—

(i) The program has not passed standards established by the U.S. Department of Education based on the reported earnings of program graduates; and

(ii) The program could lose access to Direct Loans based on the next calculated program metrics;

(2) The relevant information to access the program information website maintained by the Secretary described in § 668.43(d);

(3) A statement that the student must acknowledge having viewed the warning before the institution may disburse any title IV, HEA funds to the student; and

(4) For a student who is eligible for Pell Grant funds, a description of the student's remaining lifetime eligibility for Pell Grant funds and an explanation that all Pell Grant funds received for enrollment in the program count against the student's future lifetime eligibility.

(d) *Delivery to enrolled students.*

(1) An institution must provide the warning required under this section in writing, by hand delivery, mail, or electronic means, to each student enrolled in the program no later than 30

days after the date of the Secretary's notice of determination under § 668.405 and maintain documentation of its efforts to provide that warning.

(2) The warning must be the only substantive content contained in these written communications.

(3) The warning regarding the student's remaining Pell Grant eligibility under 34 CFR 668.605(c)(4) must be provided to an enrolled student at the time that the institution makes a disbursement of Pell Grant funds to that student.

(e) *Delivery to prospective students.*

(1) An institution must provide the warning as required under this section to each prospective student or to each third party acting on behalf of the prospective student at the first contact about the program between the institution and the student or the third party acting on behalf of the student by—

(i) Hand-delivering the warning as a separate document to the prospective student or third party, individually or as part of a group presentation;

(ii) Sending the warning to the primary email address used by the institution for communicating with the prospective student or third party about the program, provided that the warning is the only substantive content in the email and that the warning is sent by a different method of delivery if the institution receives a response that the email could not be delivered; or

(iii) Providing the warning orally to the student or third party if the contact is by telephone.

(2) An institution may not enroll, register, or enter into a financial commitment with the prospective student with respect to the program earlier than three business days after the institution delivers the warning as described in paragraph (f) of this section.

(f) *Acknowledgment prior to enrollment and disbursement.* An institution may not allow a prospective student seeking title IV, HEA assistance to sign an enrollment agreement, complete registration, or make a financial commitment to the institution, or disburse title IV, HEA funds to the student until the student or prospective student completes the acknowledgment described in paragraph (b)(3) of this section.

(g) *Discharge claims.* The provision of a student warning or the acknowledgment described in paragraph (b)(3) of this section does not mitigate the institution's responsibility to provide accurate information to students concerning program status, nor will it be considered as dispositive

evidence against a student's claim if applying for a loan discharge.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 26. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.*, unless otherwise noted.

■ 27. Amend § 685.102(a)(1) to add, in alphabetical order, “Eligible non-GE program” and “Gainful employment program (GE program)”.

The revisions read as follows:

§ 685.102 Definitions.

(a)

(1) The definitions of the following terms used in this part are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Campus-based programs
Dependent student
Disbursement
Eligible program
Eligible non-GE program
Eligible student

Enrolled
Expected family contribution (EFC)
Federal Consolidation Loan Program
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal Supplemental Educational Opportunity Grant Program
Federal Work-Study Program
Full-time student
Gainful employment program (GE program)
Graduate or professional student
Half-time student
Independent student
One-third of an academic year
Parent
Payment period
Teacher Education Assistance for College and Higher Education (TEACH) Grant Program
TEACH Grant
Two-thirds of an academic year
Undergraduate student
U.S. citizen or national
William D. Ford Federal Direct Loan (Direct Loan) Program
* * * * *

■ 28. Amend § 685.300(a) by revising to read as follows:

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan program.

(a) *General.* Participation of a school in the Direct Loan program means that eligible students at the school may receive Direct Loans. To participate in the Direct Loan program, a school must—

(1) Demonstrate to the satisfaction of the Secretary that the school meets the requirements for eligibility under the Act and applicable regulations;

(2) Enter into a written program participation agreement with the Secretary; and

(3) As part of such agreement, in order to maintain eligibility for a GE program or an eligible non-GE program to participate in the Direct Loan program, show that such program meets the student tuition and transparency system requirements under 34 CFR part 668, subpart Q, and the earnings accountability requirements under 34 CFR part 668, subpart S.

* * * * *

[FR Doc. 2026–07666 Filed 4–17–26; 8:45 am]

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Part III

The President

Presidential Permit of April 15, 2026—Authorizing Bakken Pipeline Company LP To Construct, Connect, Operate, and Maintain Pipeline Facilities at Burke County, North Dakota, at the International Boundary Between the United States and Canada

Presidential Permit of April 15, 2026—Authorizing Bakken Pipeline Company LP To Operate and Maintain Existing Pipeline Facilities at Burke County, North Dakota, at the International Boundary Between the United States and Canada

Presidential Permit of April 15, 2026—Authorizing Enbridge Energy Company, Inc. To Operate and Maintain Existing Pipeline Facilities at St. Clair County, Michigan, at the International Boundary Between the United States and Canada

Presidential Permit of April 15, 2026—Authorizing Enbridge Energy, Limited Partnership To Operate and Maintain Existing Pipeline Facilities at Pembina County, North Dakota, at the International Boundary Between the United States and Canada

Presidential Permit of April 15, 2026—Authorizing Enbridge Energy, Limited Partnership To Operate and Maintain Existing Pipeline Facilities at Pembina County, North Dakota, at the International Boundary Between the United States and Canada

Presidential Permit of April 15, 2026—Authorizing Enbridge Energy, Limited

Partnership To Operate and Maintain Existing Pipeline Facilities at Pembina County, North Dakota, at the International Boundary Between the United States and Canada

Presidential Permit of April 15, 2026—Authorizing Enbridge Energy, Limited Partnership To Operate and Maintain Three Existing Pipeline Facilities at Pembina County, North Dakota, at the International Boundary Between the United States and Canada

Presidential Permit of April 15, 2026—Authorizing Enbridge Energy, Limited Partnership To Operate and Maintain Existing Pipeline Facilities at St. Clair County, Michigan, at the International Boundary Between the United States and Canada

Presidential Permit of April 15, 2026—Authorizing Enbridge Pipelines (Southern Lights) L.L.C. To Operate and Maintain Existing Pipeline Facilities at Pembina County, North Dakota, at the International Boundary Between the United States and Canada

Presidential Documents

Title 3—

The President

Presidential Permit of April 15, 2026

Authorizing Bakken Pipeline Company LP To Construct, Connect, Operate, and Maintain Pipeline Facilities at Burke County, North Dakota, at the International Boundary Between the United States and Canada

By virtue of the authority vested in me as President of the United States of America (the “President”), I hereby grant this Presidential permit, subject to the conditions herein set forth to Bakken Pipeline Company LP. (the “permittee”). The permittee is a limited partnership organized under the laws of the State of Delaware and is a subsidiary of Enbridge Inc., a corporation organized under the laws of Canada. Permission is hereby granted to the permittee to construct, connect, operate, and maintain pipeline Border facilities, as described herein, at the international border of the United States and Canada near Portal, North Dakota, for the transport between the United States and Canada of crude oil and petroleum products of every description, refined or unrefined (inclusive of, but not limited to, naphtha, liquefied petroleum gas, natural gas liquids, jet fuel, gasoline, kerosene, and diesel), but not including natural gas subject to section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b).

This permit does not affect the applicability of any otherwise-relevant laws and regulations. As confirmed in Article 2 of this permit, the Border facilities shall remain subject to all such laws and regulations.

The term “Facilities” as used in this permit means the portion in the United States of the international pipeline project associated with the permittee’s January 16, 2026, application for a new permit, and any land, structures, installations, or equipment appurtenant thereto.

The term “Border facilities” as used in this permit means those parts of the Facilities consisting of a 24-inch diameter pipeline extending from the international border between the United States and Canada near Portal, North Dakota, to and including the first mainline shut-off valve or pumping station in the United States located less than 1 mile from the international border, and any land, structures, installations, or equipment appurtenant thereto.

This permit is subject to the following conditions:

Article 1. The Border facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. The permittee shall make no substantial change in the Border facilities, in the location of the Border facilities, or in the operation authorized by this permit unless the President has approved the change in an amendment to this permit or in a new permit. Such substantial changes do not include, and the permittee may make, changes to the average daily throughput capacity of the Border facilities to any volume of products that is achievable through the Border facilities, and to the directional flow of any such products.

Article 2. The standards for, and the manner of, construction, connection, operation, and maintenance of the Border facilities shall be subject to inspection by the representatives of appropriate Federal, State, and local agencies. Officers and employees of such agencies who are duly authorized and performing their official duties shall be granted free and unrestricted access to the Border facilities by the permittee. The Border facilities, including

the construction, connection, operation, and maintenance of the Border facilities, shall be subject to all applicable laws and regulations, including pipeline safety laws and regulations issued or administered by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation. The permittee shall obtain requisite permits from relevant State and local governmental entities, and relevant Federal agencies.

Article 3. Upon the termination, revocation, or surrender of this permit, unless otherwise decided by the President, the permittee, at its own expense, shall remove the Border facilities within such time as the President may specify. If the permittee fails to comply with an order to remove, or to take such other appropriate action with respect to, the Border facilities, the President may direct an appropriate official or agency to take possession of the Border facilities—or to remove the Border facilities or take other action—at the expense of the permittee. The permittee shall have no claim for damages caused by any such possession, removal, or other action.

Article 4. When, in the judgment of the President, ensuring the national security of the United States requires entering upon and taking possession of any of the Border facilities or parts thereof, and retaining possession, management, or control thereof for such a length of time as the President may deem necessary, the United States shall have the right to do so, provided that the President or his designee has given due notice to the permittee. The United States shall also have the right thereafter to restore possession and control to the permittee. In the event that the United States exercises the rights described in this article, it shall pay to the permittee just and fair compensation for the use of such Border facilities, upon the basis of a reasonable profit in normal conditions, and shall bear the cost of restoring the Border facilities to their previous condition, less the reasonable value of any improvements that may have been made by the United States.

Article 5. Any transfer of ownership or control of the Border facilities, or any part thereof, or any changes to the name of the permittee, shall be immediately communicated in writing to the President or his designee, and shall include information identifying any transferee. Notwithstanding any such transfers or changes, this permit shall remain in force subject to all of its conditions, permissions, and requirements, and any amendments thereto.

Article 6. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate.

(2) The permittee shall hold harmless and indemnify the United States from any claimed or adjudged liability arising out of construction, connection, operation, or maintenance of the Border facilities, including environmental contamination from the release, threatened release, or discharge of hazardous substances or hazardous waste.

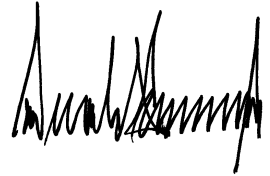
(3) To ensure the safe operation of the Border facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law.

Article 7. The permittee shall file with the President or his designee, and with appropriate agencies, such sworn statements or reports with respect to the Border facilities, or the permittee's activities and operations in connection therewith, as are now, or may hereafter, be required under any law or regulation of the United States Government or its agencies. These reporting obligations do not alter the intent that this permit be operative as a directive issued by the President alone.

Article 8. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Border facilities. Such requests could include information concerning current conditions or anticipated changes in ownership or control, construction, connection, operation, or maintenance of the Border facilities.

Article 9. This permit 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.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fiftieth.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the lower right quadrant of the page.

Presidential Documents

Presidential Permit of April 15, 2026

Authorizing Bakken Pipeline Company LP To Operate and Maintain Existing Pipeline Facilities at Burke County, North Dakota, at the International Boundary Between the United States and Canada

By virtue of the authority vested in me as President of the United States of America (the “President”), I hereby grant this Presidential permit, subject to the conditions herein set forth to Bakken Pipeline Company LP. (the “permittee”). The permittee is a limited partnership organized under the laws of the State of Delaware and is a subsidiary of Enbridge Inc., a corporation organized under the laws of Canada. Permission is hereby granted to the permittee to operate and maintain pipeline Border facilities, as described herein, at the international border of the United States and Canada near Portal, North Dakota, for the transport between the United States and Canada of crude oil and petroleum products of every description, refined or unrefined (inclusive of, but not limited to, naphtha, liquefied petroleum gas, natural gas liquids, jet fuel, gasoline, kerosene, and diesel), but not including natural gas subject to section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b).

This permit supersedes and revokes the Presidential permit issued previously, dated April 8, 1996.

This permit does not affect the applicability of any otherwise-relevant laws and regulations. As confirmed in Article 2 of this permit, the Border facilities shall remain subject to all such laws and regulations.

The term “Facilities” as used in this permit means the portion in the United States of the international pipeline project associated with the permittee’s January 16, 2026, application for an amendment to its existing permit, and any land, structures, installations, or equipment appurtenant thereto.

The term “Border facilities” as used in this permit means those parts of the Facilities consisting of a 12-inch diameter pipeline in existence at the time of this permit extending from the international border between the United States and Canada near Portal, North Dakota, to and including the first mainline shut-off valve or pumping station in the United States located approximately 0.5 miles from the international border, and any land, structures, installations, or equipment appurtenant thereto.

This permit is subject to the following conditions:

Article 1. The Border facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. The permittee shall make no substantial change in the Border facilities, in the location of the Border facilities, or in the operation authorized by this permit unless the President has approved the change in an amendment to this permit or in a new permit. Such substantial changes do not include, and the permittee may make, changes to the average daily throughput capacity of the Border facilities to any volume of products that is achievable through the Border facilities, and to the directional flow of any such products.

Article 2. The standards for, and the manner of, operation and maintenance of the Border facilities shall be subject to inspection by the representatives of appropriate Federal, State, and local agencies. Officers and employees

of such agencies who are duly authorized and performing their official duties shall be granted free and unrestricted access to the Border facilities by the permittee. The Border facilities, including the operation and maintenance of the Border facilities, shall be subject to all applicable laws and regulations, including pipeline safety laws and regulations issued or administered by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation. The permittee shall obtain requisite permits from relevant State and local governmental entities, and relevant Federal agencies.

Article 3. Upon the termination, revocation, or surrender of this permit, unless otherwise decided by the President, the permittee, at its own expense, shall remove the Border facilities within such time as the President may specify. If the permittee fails to comply with an order to remove, or to take such other appropriate action with respect to, the Border facilities, the President may direct an appropriate official or agency to take possession of the Border facilities—or to remove the Border facilities or take other action—at the expense of the permittee. The permittee shall have no claim for damages caused by any such possession, removal, or other action.

Article 4. When, in the judgment of the President, ensuring the national security of the United States requires entering upon and taking possession of any of the Border facilities or parts thereof, and retaining possession, management, or control thereof for such a length of time as the President may deem necessary, the United States shall have the right to do so, provided that the President or his designee has given due notice to the permittee. The United States shall also have the right thereafter to restore possession and control to the permittee. In the event that the United States exercises the rights described in this article, it shall pay to the permittee just and fair compensation for the use of such Border facilities, upon the basis of a reasonable profit in normal conditions, and shall bear the cost of restoring the Border facilities to their previous condition, less the reasonable value of any improvements that may have been made by the United States.

Article 5. Any transfer of ownership or control of the Border facilities, or any part thereof, or any changes to the name of the permittee, shall be immediately communicated in writing to the President or his designee, and shall include information identifying any transferee. Notwithstanding any such transfers or changes, this permit shall remain in force subject to all of its conditions, permissions, and requirements, and any amendments thereto.

Article 6. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate.

(2) The permittee shall hold harmless and indemnify the United States from any claimed or adjudged liability arising out of operation or maintenance of the Border facilities, including environmental contamination from the release, threatened release, or discharge of hazardous substances or hazardous waste.

(3) To ensure the safe operation of the Border facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law.

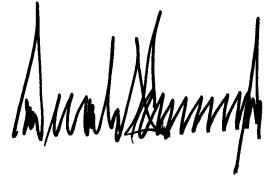
Article 7. The permittee shall file with the President or his designee, and with appropriate agencies, such sworn statements or reports with respect to the Border facilities, or the permittee's activities and operations in connection therewith, as are now, or may hereafter, be required under any law or regulation of the United States Government or its agencies. These reporting obligations do not alter the intent that this permit be operative as a directive issued by the President alone.

Article 8. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Border facilities. Such

requests could include, for example, information concerning current conditions or anticipated changes in ownership or control, operation, or maintenance of the Border facilities.

Article 9. This permit 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.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fiftieth.

A handwritten signature in black ink, appearing to be 'Donald Trump', located at the bottom right of the page.

Presidential Documents

Presidential Permit of April 15, 2026

Authorizing Enbridge Energy Company, Inc. To Operate and Maintain Existing Pipeline Facilities at St. Clair County, Michigan, at the International Boundary Between the United States and Canada

By virtue of the authority vested in me as President of the United States of America (the “President”), I hereby grant this Presidential permit, subject to the conditions herein set forth to Enbridge Energy Company, Inc. (the “permittee”). The permittee is a company formed under the laws of the State of Delaware and is a subsidiary of Enbridge Inc., a corporation organized under the laws of Canada. Permission is hereby granted to the permittee to operate and maintain existing pipeline Border facilities, as described herein, at the international border of the United States and Canada in St. Clair County, Michigan between the cities of Port Huron and Marysville, Michigan, for the transport between the United States and Canada of crude oil and petroleum products of every description, refined or unrefined (inclusive of, but not limited to, naphtha, liquefied petroleum gas, natural gas liquids, jet fuel, gasoline, kerosene, and diesel), but not including natural gas subject to section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b).

This permit supersedes and revokes the Presidential permit issued previously, dated April 28, 1953.

This permit does not affect the applicability of any otherwise-relevant laws and regulations. As confirmed in Article 2 of this permit, the Border facilities shall remain subject to all such laws and regulations.

The term “Facilities” as used in this permit means the portion in the United States of the international pipeline project associated with the permittee’s January 16, 2026, application for an amendment to its existing permit, and any land, structures, installations, or equipment appurtenant thereto.

The term “Border facilities” as used in this permit means those parts of the Facilities consisting of a 30-inch diameter in existence at the time of this permit’s issuance extending from a point between the cities of Port Huron and Marysville, Michigan, to a point in the St. Clair River on the international boundary between the United States and Canada, to and including the first mainline shut-off valve or pumping station in the United States located approximately 1.5 miles from the international border, and any land, structures, installations, or equipment appurtenant thereto.

This permit is subject to the following conditions:

Article 1. The Border facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. The permittee shall make no substantial change in the Border facilities, in the location of the Border facilities, or in the operation authorized by this permit unless the President has approved the change in an amendment to this permit or in a new permit. Such substantial changes do not include, and the permittee may make, changes to the average daily throughput capacity of the Border facilities to any volume of products that is achievable through the Border facilities, and to the directional flow of any such products.

Article 2. The standards for, and the manner of, operation and maintenance of the Border facilities shall be subject to inspection by the representatives of appropriate Federal, State, and local agencies. Officers and employees of such agencies who are duly authorized and performing their official duties shall be granted free and unrestricted access to the Border facilities by the permittee. The Border facilities, including the operation and maintenance of the Border facilities, shall be subject to all applicable laws and regulations, including pipeline safety laws and regulations issued or administered by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation. The permittee shall obtain requisite permits from relevant State and local governmental entities, and relevant Federal agencies.

Article 3. Upon the termination, revocation, or surrender of this permit, unless otherwise decided by the President, the permittee, at its own expense, shall remove the Border facilities within such time as the President may specify. If the permittee fails to comply with an order to remove, or to take such other appropriate action with respect to, the Border facilities, the President may direct an appropriate official or agency to take possession of the Border facilities—or to remove the Border facilities or take other action—at the expense of the permittee. The permittee shall have no claim for damages caused by any such possession, removal, or other action.

Article 4. When, in the judgment of the President, ensuring the national security of the United States requires entering upon and taking possession of any of the Border facilities or parts thereof, and retaining possession, management, or control thereof for such a length of time as the President may deem necessary, the United States shall have the right to do so, provided that the President or his designee has given due notice to the permittee. The United States shall also have the right thereafter to restore possession and control to the permittee. In the event that the United States exercises the rights described in this article, it shall pay to the permittee just and fair compensation for the use of such Border facilities, upon the basis of a reasonable profit in normal conditions, and shall bear the cost of restoring the Border facilities to their previous condition, less the reasonable value of any improvements that may have been made by the United States.

Article 5. Any transfer of ownership or control of the Border facilities, or any part thereof, or any changes to the name of the permittee, shall be immediately communicated in writing to the President or his designee, and shall include information identifying any transferee. Notwithstanding any such transfers or changes, this permit shall remain in force subject to all of its conditions, permissions, and requirements, and any amendments thereto.

Article 6. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate.

(2) The permittee shall hold harmless and indemnify the United States from any claimed or adjudged liability arising out of operation or maintenance of the Border facilities, including environmental contamination from the release, threatened release, or discharge of hazardous substances or hazardous waste.

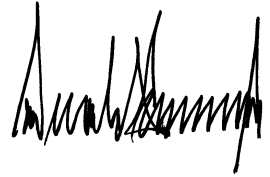
(3) To ensure the safe operation of the Border facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law.

Article 7. The permittee shall file with the President or his designee, and with appropriate agencies, such sworn statements or reports with respect to the Border facilities, or the permittee's activities and operations in connection therewith, as are now, or may hereafter, be required under any law or regulation of the United States Government or its agencies. These reporting obligations do not alter the intent that this permit be operative as a directive issued by the President alone.

Article 8. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Border facilities. Such requests could include information concerning current conditions or anticipated changes in ownership or control, operation, or maintenance of the Border facilities.

Article 9. This permit 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.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fiftieth.



Presidential Documents

Presidential Permit of April 15, 2026

Authorizing Enbridge Energy, Limited Partnership To Operate and Maintain Existing Pipeline Facilities at Pembina County, North Dakota, at the International Boundary Between the United States and Canada

By virtue of the authority vested in me as President of the United States of America (the “President”), I hereby grant this Presidential permit, subject to the conditions herein set forth to Enbridge Energy, Limited Partnership (the “permittee”). The permittee is a limited partnership organized under the laws of the State of Delaware and is an indirect subsidiary of Enbridge Inc., a corporation organized under the laws of Canada. Permission is hereby granted to the permittee to operate and maintain existing pipeline Border facilities, as described herein, at the international border of the United States and Canada in Pembina County, North Dakota, for the transport between the United States and Canada of crude oil and petroleum products of every description, refined or unrefined (inclusive of, but not limited to, naphtha, liquefied petroleum gas, natural gas liquids, jet fuel, gasoline, kerosene, and diesel), but not including natural gas subject to section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b).

This permit supersedes and revokes the Presidential permit issued previously, dated June 16, 1994.

This permit does not affect the applicability of any otherwise-relevant laws and regulations. As confirmed in Article 2 of this permit, the Border facilities shall remain subject to all such laws and regulations.

The term “Facilities” as used in this permit means the portion in the United States of the international pipeline project associated with the permittee’s January 16, 2026, application for an amendment to its existing permit, and any land, structures, installations, or equipment appurtenant thereto.

The term “Border facilities” as used in this permit means those parts of the Facilities consisting of a 20-inch diameter pipeline in existence at the time of this permit’s issuance extending from the international border between the United States and Canada in Pembina County, North Dakota, to and including the first mainline shut-off valve or pumping station in the United States located approximately 15.5 miles from the international border, and any land, structures, installations, or equipment appurtenant thereto.

This permit is subject to the following conditions:

Article 1. The Border facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. The permittee shall make no substantial change in the Border facilities, in the location of the Border facilities, or in the operation authorized by this permit unless the President has approved the change in an amendment to this permit or in a new permit. Such substantial changes do not include, and the permittee may make, changes to the average daily throughput capacity of the Border facilities to any volume of products that is achievable through the Border facilities, and to the directional flow of any such products.

Article 2. The standards for, and the manner of, operation and maintenance of the Border facilities shall be subject to inspection by the representatives

of appropriate Federal, State, and local agencies. Officers and employees of such agencies who are duly authorized and performing their official duties shall be granted free and unrestricted access to the Border facilities by the permittee. The Border facilities, including the operation and maintenance of the Border facilities, shall be subject to all applicable laws and regulations, including pipeline safety laws and regulations issued or administered by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation. The permittee shall obtain requisite permits from relevant State and local governmental entities, and relevant Federal agencies.

Article 3. Upon the termination, revocation, or surrender of this permit, unless otherwise decided by the President, the permittee, at its own expense, shall remove the Border facilities within such time as the President may specify. If the permittee fails to comply with an order to remove, or to take such other appropriate action with respect to, the Border facilities, the President may direct an appropriate official or agency to take possession of the Border facilities—or to remove the Border facilities or take other action—at the expense of the permittee. The permittee shall have no claim for damages caused by any such possession, removal, or other action.

Article 4. When, in the judgment of the President, ensuring the national security of the United States requires entering upon and taking possession of any of the Border facilities or parts thereof, and retaining possession, management, or control thereof for such a length of time as the President may deem necessary, the United States shall have the right to do so, provided that the President or his designee has given due notice to the permittee. The United States shall also have the right thereafter to restore possession and control to the permittee. In the event that the United States exercises the rights described in this article, it shall pay to the permittee just and fair compensation for the use of such Border facilities, upon the basis of a reasonable profit in normal conditions, and shall bear the cost of restoring the Border facilities to their previous condition, less the reasonable value of any improvements that may have been made by the United States.

Article 5. Any transfer of ownership or control of the Border facilities, or any part thereof, or any changes to the name of the permittee, shall be immediately communicated in writing to the President or his designee, and shall include information identifying any transferee. Notwithstanding any such transfers or changes, this permit shall remain in force subject to all of its conditions, permissions, and requirements, and any amendments thereto, unless subsequently terminated, revoked, or amended by the President.

Article 6. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate.

(2) The permittee shall hold harmless and indemnify the United States from any claimed or adjudged liability arising out of operation or maintenance of the Border facilities, including environmental contamination from the release, threatened release, or discharge of hazardous substances or hazardous waste.

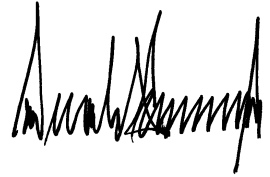
(3) To ensure the safe operation of the Border facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law.

Article 7. The permittee shall file with the President or his designee, and with appropriate agencies, such sworn statements or reports with respect to the Border facilities, or the permittee's activities and operations in connection therewith, as are now, or may hereafter, be required under any law or regulation of the United States Government or its agencies. These reporting obligations do not alter the intent that this permit be operative as a directive issued by the President alone.

Article 8. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Border facilities. Such requests could include information concerning current conditions or anticipated changes in ownership or control, operation, or maintenance of the Border facilities.

Article 9. This permit 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.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fiftieth.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the lower right quadrant of the page.

Presidential Documents

Presidential Permit of April 15, 2026

Authorizing Enbridge Energy, Limited Partnership To Operate and Maintain Existing Pipeline Facilities at Pembina County, North Dakota, at the International Boundary Between the United States and Canada

By virtue of the authority vested in me as President of the United States of America (the “President”), I hereby grant this Presidential permit, subject to the conditions herein set forth to Enbridge Energy, Limited Partnership (the “permittee”). The permittee is a limited partnership organized under the laws of the State of Delaware and is an indirect subsidiary of Enbridge Inc., a corporation organized under the laws of Canada. Permission is hereby granted to the permittee to operate and maintain existing pipeline Border facilities, as described herein, at the international border of the United States and Canada in Pembina County, North Dakota, near Neche, North Dakota, for the transport between the United States and Canada of crude oil and petroleum products of every description, refined or unrefined (inclusive of, but not limited to, naphtha, liquefied petroleum gas, natural gas liquids, jet fuel, gasoline, kerosene, and diesel), but not including natural gas subject to section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b).

This permit supersedes and revokes the Presidential permit issued previously, dated July 23, 1998.

This permit does not affect the applicability of any otherwise-relevant laws and regulations. As confirmed in Article 2 of this permit, the Border facilities shall remain subject to all such laws and regulations.

The term “Facilities” as used in this permit means the portion in the United States of the international pipeline project associated with the permittee’s January 16, 2026, application for an amendment to its existing permit, and any land, structures, installations, or equipment appurtenant thereto.

The term “Border facilities” as used in this permit means those parts of the Facilities consisting of a 36-inch diameter pipeline in existence at the time of this permit’s issuance extending from the international border between the United States and Canada at Pembina County, North Dakota, to and including the first mainline shut-off valve or pumping station in the United States located approximately 18 miles from the international border, and any land, structures, installations, or equipment appurtenant thereto.

This permit is subject to the following conditions:

Article 1. The Border facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. The permittee shall make no substantial change in the Border facilities, in the location of the Border facilities, or in the operation authorized by this permit unless the President has approved the change in an amendment to this permit or in a new permit. Such substantial changes do not include, and the permittee may make, changes to the average daily throughput capacity of the Border facilities to any volume of products that is achievable through the Border facilities, and to the directional flow of any such products.

Article 2. The standards for, and the manner of, operation and maintenance of the Border facilities shall be subject to inspection by the representatives of appropriate Federal, State, and local agencies. Officers and employees of such agencies who are duly authorized and performing their official duties shall be granted free and unrestricted access to the Border facilities by the permittee. The Border facilities, including the operation and maintenance of the Border facilities, shall be subject to all applicable laws and regulations, including pipeline safety laws and regulations issued or administered by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation. The permittee shall obtain requisite permits from relevant State and local governmental entities, and relevant Federal agencies.

Article 3. Upon the termination, revocation, or surrender of this permit, unless otherwise decided by the President, the permittee, at its own expense, shall remove the Border facilities within such time as the President may specify. If the permittee fails to comply with an order to remove, or to take such other appropriate action with respect to, the Border facilities, the President may direct an appropriate official or agency to take possession of the Border facilities—or to remove the Border facilities or take other action—at the expense of the permittee. The permittee shall have no claim for damages caused by any such possession, removal, or other action.

Article 4. When, in the judgment of the President, ensuring the national security of the United States requires entering upon and taking possession of any of the Border facilities or parts thereof, and retaining possession, management, or control thereof for such a length of time as the President may deem necessary, the United States shall have the right to do so, provided that the President or his designee has given due notice to the permittee. The United States shall also have the right thereafter to restore possession and control to the permittee. In the event that the United States exercises the rights described in this article, it shall pay to the permittee just and fair compensation for the use of such Border facilities, upon the basis of a reasonable profit in normal conditions, and shall bear the cost of restoring the Border facilities to their previous condition, less the reasonable value of any improvements that may have been made by the United States.

Article 5. Any transfer of ownership or control of the Border facilities, or any part thereof, or any changes to the name of the permittee, shall be immediately communicated in writing to the President or his designee, and shall include information identifying any transferee. Notwithstanding any such transfers or changes, this permit shall remain in force subject to all of its conditions, permissions, and requirements, and any amendments thereto, unless subsequently terminated, revoked, or amended by the President.

Article 6. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate.

(2) The permittee shall hold harmless and indemnify the United States from any claimed or adjudged liability arising out of operation or maintenance of the Border facilities, including environmental contamination from the release, threatened release, or discharge of hazardous substances or hazardous waste.

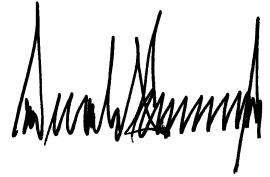
(3) To ensure the safe operation of the Border facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law.

Article 7. The permittee shall file with the President or his designee, and with appropriate agencies, such sworn statements or reports with respect to the Border facilities, or the permittee's activities and operations in connection therewith, as are now, or may hereafter, be required under any law or regulation of the United States Government or its agencies. These reporting obligations do not alter the intent that this permit be operative as a directive issued by the President alone.

Article 8. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Border facilities. Such requests could include information concerning current conditions or anticipated changes in ownership or control, operation, or maintenance of the Border facilities.

Article 9. This permit 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.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fiftieth.



Presidential Documents

Presidential Permit of April 15, 2026

Authorizing Enbridge Energy, Limited Partnership To Operate and Maintain Existing Pipeline Facilities at Pembina County, North Dakota, at the International Boundary Between the United States and Canada

By virtue of the authority vested in me as President of the United States of America (the “President”), I hereby grant this Presidential permit, subject to the conditions herein set forth to Enbridge Energy, Limited Partnership (the “permittee”). The permittee is a limited partnership organized under the laws of the State of Delaware and is an indirect subsidiary of Enbridge Inc., a corporation organized under the laws of Canada. Permission is hereby granted to the permittee to operate and maintain existing pipeline Border facilities, as described herein, at the international border of the United States and Canada near Neche, Pembina County, North Dakota, for the transport between the United States and Canada of crude oil and petroleum products of every description, refined or unrefined (inclusive of, but not limited to, naphtha, liquefied petroleum gas, natural gas liquids, jet fuel, gasoline, kerosene, and diesel), but not including natural gas subject to section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b).

This permit supersedes and revokes the Presidential permit issued previously, dated October 13, 2017. *See* 82 *Fed. Reg.* 53553 (Nov. 16, 2017) (Notice of Issuance of a Presidential Permit to Enbridge Energy, Limited Partnership).

This permit does not affect the applicability of any otherwise-relevant laws and regulations. As confirmed in Article 2 of this permit, the Border facilities shall remain subject to all such laws and regulations.

The term “Facilities” as used in this permit means the portion in the United States of the international pipeline project associated with the permittee’s January 16, 2026, application for an amendment to its existing permit, and any land, structures, installations, or equipment appurtenant thereto.

The term “Border facilities” as used in this permit means those parts of the Facilities consisting of a 36-inch diameter pipeline in existence at the time of this permit’s issuance extending from the international border between the United States and Canada near Neche, Pembina County, North Dakota, to and including the first mainline shut-off valve or pumping station in the United States located approximately 3 miles from the international border, and any land, structures, installations, or equipment appurtenant thereto.

This permit is subject to the following conditions:

Article 1. The Border facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. The permittee shall make no substantial change in the Border facilities, in the location of the Border facilities, or in the operation authorized by this permit unless the President has approved the change in an amendment to this permit or in a new permit. Such substantial changes do not include, and the permittee may make, changes to the average daily throughput capacity of the Border facilities to any volume of products that is achievable through the Border facilities, and to the directional flow of any such products.

Article 2. The standards for, and the manner of, operation and maintenance of the Border facilities shall be subject to inspection by the representatives of appropriate Federal, State, and local agencies. Officers and employees of such agencies who are duly authorized and performing their official duties shall be granted free and unrestricted access to the Border facilities by the permittee. The Border facilities, including the operation and maintenance of the Border facilities, shall be subject to all applicable laws and regulations, including pipeline safety laws and regulations issued or administered by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation. The permittee shall obtain requisite permits from relevant State and local governmental entities, and relevant Federal agencies.

Article 3. Upon the termination, revocation, or surrender of this permit, unless otherwise decided by the President, the permittee, at its own expense, shall remove the Border facilities within such time as the President may specify. If the permittee fails to comply with an order to remove, or to take such other appropriate action with respect to, the Border facilities, the President may direct an appropriate official or agency to take possession of the Border facilities—or to remove the Border facilities or take other action—at the expense of the permittee. The permittee shall have no claim for damages caused by any such possession, removal, or other action.

Article 4. When, in the judgment of the President, ensuring the national security of the United States requires entering upon and taking possession of any of the Border facilities or parts thereof, and retaining possession, management, or control thereof for such a length of time as the President may deem necessary, the United States shall have the right to do so, provided that the President or his designee has given due notice to the permittee. The United States shall also have the right thereafter to restore possession and control to the permittee. In the event that the United States exercises the rights described in this article, it shall pay to the permittee just and fair compensation for the use of such Border facilities, upon the basis of a reasonable profit in normal conditions, and shall bear the cost of restoring the Border facilities to their previous condition, less the reasonable value of any improvements that may have been made by the United States.

Article 5. Any transfer of ownership or control of the Border facilities, or any part thereof, or any changes to the name of the permittee, shall be immediately communicated in writing to the President or his designee, and shall include information identifying any transferee. Notwithstanding any such transfers or changes, this permit shall remain in force subject to all of its conditions, permissions, and requirements, and any amendments thereto, unless subsequently terminated, revoked, or amended by the President.

Article 6. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate.

(2) The permittee shall hold harmless and indemnify the United States from any claimed or adjudged liability arising out of operation or maintenance of the Border facilities, including environmental contamination from the release, threatened release, or discharge of hazardous substances or hazardous waste.

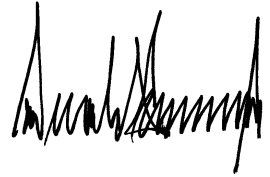
(3) To ensure the safe operation of the Border facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law.

Article 7. The permittee shall file with the President or his designee, and with appropriate agencies, such sworn statements or reports with respect to the Border facilities, or the permittee's activities and operations in connection therewith, as are now, or may hereafter, be required under any law or regulation of the United States Government or its agencies. These reporting obligations do not alter the intent that this permit be operative as a directive issued by the President alone.

Article 8. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Border facilities. Such requests could include information concerning current conditions or anticipated changes in ownership or control, operation, or maintenance of the Border facilities.

Article 9. This permit 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.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fiftieth.



Presidential Documents

Presidential Permit of April 15, 2026

Authorizing Enbridge Energy, Limited Partnership To Operate and Maintain Three Existing Pipeline Facilities at Pembina County, North Dakota, at the International Boundary Between the United States and Canada

By virtue of the authority vested in me as President of the United States of America (the “President”), I hereby grant this Presidential permit, subject to the conditions herein set forth to Enbridge Energy, Limited Partnership (the “permittee”). The permittee is a limited partnership organized under the laws of the State of Delaware and is an indirect subsidiary of Enbridge Inc., a corporation organized under the laws of Canada. Permission is hereby granted to the permittee to operate and maintain existing pipeline Border facilities, as described herein, at the international border of the United States and Canada in Pembina County, North Dakota, for the transport between the United States and Canada of crude oil and petroleum products of every description, refined or unrefined (inclusive of, but not limited to, naphtha, liquefied petroleum gas, natural gas liquids, jet fuel, gasoline, kerosene, and diesel), but not including natural gas subject to section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b).

This permit supersedes and revokes the Presidential permit issued previously, dated December 12, 1991.

This permit does not affect the applicability of any otherwise-relevant laws and regulations. As confirmed in Article 2 of this permit, the Border facilities shall remain subject to all such laws and regulations.

The term “Facilities” as used in this permit means the portion in the United States of the international pipeline project associated with the permittee’s January 16, 2026, application for an amendment to its existing permit, and any land, structures, installations, or equipment appurtenant thereto.

The term “Border facilities” as used in this permit means those parts of the Facilities consisting of 26-inch, 34-inch, and 18-inch diameter pipelines in existence at the time of this permit’s issuance extending from the international border between the United States and Canada in Pembina County, North Dakota, to and including the first mainline shut-off valve or pumping station in the United States located, respectively, approximately 25, 0.75, and 18 miles from the international border, and any land, structures, installations, or equipment appurtenant thereto.

This permit is subject to the following conditions:

Article 1. The Border facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. The permittee shall make no substantial change in the Border facilities, in the location of the Border facilities, or in the operation authorized by this permit unless the President has approved the change in an amendment to this permit or in a new permit. Such substantial changes do not include, and the permittee may make, changes to the average daily throughput capacity of the Border facilities to any volume of products that is achievable through the Border facilities, and to the directional flow of any such products.

Article 2. The standards for, and the manner of, operation and maintenance of the Border facilities shall be subject to inspection by the representatives

of appropriate Federal, State, and local agencies. Officers and employees of such agencies who are duly authorized and performing their official duties shall be granted free and unrestricted access to the Border facilities by the permittee. The Border facilities, including the operation and maintenance of the Border facilities, shall be subject to all applicable laws and regulations, including pipeline safety laws and regulations issued or administered by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation. The permittee shall obtain requisite permits from relevant State and local governmental entities, and relevant Federal agencies.

Article 3. Upon the termination, revocation, or surrender of this permit, unless otherwise decided by the President, the permittee, at its own expense, shall remove the Border facilities within such time as the President may specify. If the permittee fails to comply with an order to remove, or to take such other appropriate action with respect to, the Border facilities, the President may direct an appropriate official or agency to take possession of the Border facilities—or to remove the Border facilities or take other action—at the expense of the permittee. The permittee shall have no claim for damages caused by any such possession, removal, or other action.

Article 4. When, in the judgment of the President, ensuring the national security of the United States requires entering upon and taking possession of any of the Border facilities or parts thereof, and retaining possession, management, or control thereof for such a length of time as the President may deem necessary, the United States shall have the right to do so, provided that the President or his designee has given due notice to the permittee. The United States shall also have the right thereafter to restore possession and control to the permittee. In the event that the United States exercises the rights described in this article, it shall pay to the permittee just and fair compensation for the use of such Border facilities, upon the basis of a reasonable profit in normal conditions, and shall bear the cost of restoring the Border facilities to their previous condition, less the reasonable value of any improvements that may have been made by the United States.

Article 5. Any transfer of ownership or control of the Border facilities, or any part thereof, or any changes to the name of the permittee, shall be immediately communicated in writing to the President or his designee, and shall include information identifying any transferee. Notwithstanding any such transfers or changes, this permit shall remain in force subject to all of its conditions, permissions, and requirements, and any amendments thereto, unless subsequently terminated, revoked, or amended by the President.

Article 6. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate.

(2) The permittee shall hold harmless and indemnify the United States from any claimed or adjudged liability arising out of operation or maintenance of the Border facilities, including environmental contamination from the release, threatened release, or discharge of hazardous substances or hazardous waste.

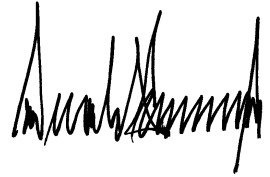
(3) To ensure the safe operation of the Border facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law.

Article 7. The permittee shall file with the President or his designee, and with appropriate agencies, such sworn statements or reports with respect to the Border facilities, or the permittee's activities and operations in connection therewith, as are now, or may hereafter, be required under any law or regulation of the United States Government or its agencies. These reporting obligations do not alter the intent that this permit be operative as a directive issued by the President alone.

Article 8. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Border facilities. Such requests could include information concerning current conditions or anticipated changes in ownership or control, operation, or maintenance of the Border facilities.

Article 9. This permit 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.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fiftieth.



Presidential Documents

Presidential Permit of April 15, 2026

Authorizing Enbridge Energy, Limited Partnership To Operate and Maintain Existing Pipeline Facilities at St. Clair County, Michigan, at the International Boundary Between the United States and Canada

By virtue of the authority vested in me as President of the United States of America (the “President”), I hereby grant this Presidential permit, subject to the conditions herein set forth to Enbridge Energy, Limited Partnership (the “permittee”). The permittee is a limited partnership organized under the laws of the State of Delaware and is an indirect subsidiary of Enbridge Inc., a corporation organized under the laws of Canada. Permission is hereby granted to the permittee to operate and maintain existing pipeline Border facilities, as described herein, at the international border of the United States and Canada in St. Clair County, Michigan, for the transport between the United States and Canada of crude oil and petroleum products of every description, refined or unrefined (inclusive of, but not limited to, naphtha, liquefied petroleum gas, natural gas liquids, jet fuel, gasoline, kerosene, and diesel), but not including natural gas subject to section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b).

This permit supersedes and revokes the Presidential permit issued previously, dated December 12, 1991.

This permit does not affect the applicability of any otherwise-relevant laws and regulations. As confirmed in Article 2 of this permit, the Border facilities shall remain subject to all such laws and regulations.

The term “Facilities” as used in this permit means the portion in the United States of the international pipeline project associated with the permittee’s January 16, 2026, application for an amendment to its existing permit, and any land, structures, installations, or equipment appurtenant thereto.

The term “Border facilities” as used in this permit means those parts of the Facilities consisting of a 30-inch diameter pipeline in existence at the time of this permit’s issuance extending from the international border between the United States and Canada in St. Clair County, Michigan, to and including the first mainline shut-off valve or pumping station in the United States located approximately 0.3 miles from the international border, and any land, structures, installations, or equipment appurtenant thereto.

This permit is subject to the following conditions:

Article 1. The Border facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. The permittee shall make no substantial change in the Border facilities, in the location of the Border facilities, or in the operation authorized by this permit unless the President has approved the change in an amendment to this permit or in a new permit. Such substantial changes do not include, and the permittee may make, changes to the average daily throughput capacity of the Border facilities to any volume of products that is achievable through the Border facilities, and to the directional flow of any such products.

Article 2. The standards for, and the manner of, operation and maintenance of the Border facilities shall be subject to inspection by the representatives of appropriate Federal, State, and local agencies. Officers and employees

of such agencies who are duly authorized and performing their official duties shall be granted free and unrestricted access to the Border facilities by the permittee. The Border facilities, including the operation and maintenance of the Border facilities, shall be subject to all applicable laws and regulations, including pipeline safety laws and regulations issued or administered by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation. The permittee shall obtain requisite permits from relevant State and local governmental entities, and relevant Federal agencies.

Article 3. Upon the termination, revocation, or surrender of this permit, unless otherwise decided by the President, the permittee, at its own expense, shall remove the Border facilities within such time as the President may specify. If the permittee fails to comply with an order to remove, or to take such other appropriate action with respect to, the Border facilities, the President may direct an appropriate official or agency to take possession of the Border facilities—or to remove the Border facilities or take other action—at the expense of the permittee. The permittee shall have no claim for damages caused by any such possession, removal, or other action.

Article 4. When, in the judgment of the President, ensuring the national security of the United States requires entering upon and taking possession of any of the Border facilities or parts thereof, and retaining possession, management, or control thereof for such a length of time as the President may deem necessary, the United States shall have the right to do so, provided that the President or his designee has given due notice to the permittee. The United States shall also have the right thereafter to restore possession and control to the permittee. In the event that the United States exercises the rights described in this article, it shall pay to the permittee just and fair compensation for the use of such Border facilities, upon the basis of a reasonable profit in normal conditions, and shall bear the cost of restoring the Border facilities to their previous condition, less the reasonable value of any improvements that may have been made by the United States.

Article 5. Any transfer of ownership or control of the Border facilities, or any part thereof, or any changes to the name of the permittee, shall be immediately communicated in writing to the President or his designee, and shall include information identifying any transferee. Notwithstanding any such transfers or changes, this permit shall remain in force subject to all of its conditions, permissions, and requirements, and any amendments thereto, unless subsequently terminated, revoked, or amended by the President.

Article 6. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate.

(2) The permittee shall hold harmless and indemnify the United States from any claimed or adjudged liability arising out of operation or maintenance of the Border facilities, including environmental contamination from the release, threatened release, or discharge of hazardous substances or hazardous waste.

(3) To ensure the safe operation of the Border facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law.

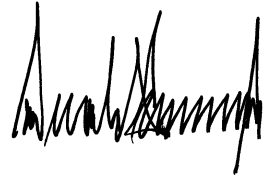
Article 7. The permittee shall file with the President or his designee, and with appropriate agencies, such sworn statements or reports with respect to the Border facilities, or the permittee's activities and operations in connection therewith, as are now, or may hereafter, be required under any law or regulation of the United States Government or its agencies. These reporting obligations do not alter the intent that this permit be operative as a directive issued by the President alone.

Article 8. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Border facilities. Such

requests could include information concerning current conditions or anticipated changes in ownership or control, operation, or maintenance of the Border facilities.

Article 9. This permit 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.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fiftieth.

A handwritten signature in black ink, appearing to be a stylized representation of a name, possibly 'Donald Trump', with a long, sweeping horizontal stroke at the bottom.

Presidential Documents

Presidential Permit of April 15, 2026

Authorizing Enbridge Pipelines (Southern Lights) L.L.C. To Operate and Maintain Existing Pipeline Facilities at Pembina County, North Dakota, at the International Boundary Between the United States and Canada

By virtue of the authority vested in me as President of the United States of America (the “President”), I hereby grant this Presidential permit, subject to the conditions herein set forth to Enbridge Pipelines (Southern Lights) L.L.C. (the “permittee”). The permittee is a limited liability company, organized under the laws of the State of Delaware and an indirectly owned subsidiary of Enbridge Inc., a corporation organized under the laws of Canada. Permission is hereby granted to the permittee to operate and maintain existing pipeline Border facilities, as described herein, at the international border of the United States and Canada in Neche, Pembina County, North Dakota, for the transport between the United States and Canada of crude oil and petroleum products of every description, refined or unrefined (inclusive of, but not limited to, naphtha, liquefied petroleum gas, natural gas liquids, jet fuel, gasoline, kerosene, and diesel), but not including natural gas subject to section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b).

This permit supersedes and revokes the Presidential permit issued previously, dated June 10, 2008.

This permit does not affect the applicability of any otherwise-relevant laws and regulations. As confirmed in Article 2 of this permit, the Border facilities shall remain subject to all such laws and regulations.

The term “Facilities” as used in this permit means the portion in the United States of the international pipeline project associated with the permittee’s January 16, 2026, application for an amendment to its existing permit, and any land, structures, installations, or equipment appurtenant thereto.

The term “Border facilities” as used in this permit means those parts of the Facilities consisting of a 20-inch diameter pipeline in existence at the time of this permit’s issuance extending from the international border between the United States and Canada at Neche, Pembina County, North Dakota, to and including the first mainline shut-off valve or pumping station in the United States located approximately 3 miles from the international border, and any land, structures, installations, or equipment appurtenant thereto.

This permit is subject to the following conditions:

Article 1. The Border facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. The permittee shall make no substantial change in the Border facilities, in the location of the Border facilities, or in the operation authorized by this permit unless the President has approved the change in an amendment to this permit or in a new permit. Such substantial changes do not include, and the permittee may make, changes to the average daily throughput capacity of the Border facilities to any volume of products that is achievable through the Border facilities, and to the directional flow of any such products.

Article 2. The standards for, and the manner of, operation and maintenance of the Border facilities shall be subject to inspection by the representatives

of appropriate Federal, State, and local agencies. Officers and employees of such agencies who are duly authorized and performing their official duties shall be granted free and unrestricted access to the Border facilities by the permittee. The Border facilities, including the operation and maintenance of the Border facilities, shall be subject to all applicable laws and regulations, including pipeline safety laws and regulations issued or administered by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation. The permittee shall obtain requisite permits from relevant State and local governmental entities, and relevant Federal agencies.

Article 3. Upon the termination, revocation, or surrender of this permit, unless otherwise decided by the President, the permittee, at its own expense, shall remove the Border facilities within such time as the President may specify. If the permittee fails to comply with an order to remove, or to take such other appropriate action with respect to, the Border facilities, the President may direct an appropriate official or agency to take possession of the Border facilities—or to remove the Border facilities or take other action—at the expense of the permittee. The permittee shall have no claim for damages caused by any such possession, removal, or other action.

Article 4. When, in the judgment of the President, ensuring the national security of the United States requires entering upon and taking possession of any of the Border facilities or parts thereof, and retaining possession, management, or control thereof for such a length of time as the President may deem necessary, the United States shall have the right to do so, provided that the President or his designee has given due notice to the permittee. The United States shall also have the right thereafter to restore possession and control to the permittee. In the event that the United States exercises the rights described in this article, it shall pay to the permittee just and fair compensation for the use of such Border facilities, upon the basis of a reasonable profit in normal conditions, and shall bear the cost of restoring the Border facilities to their previous condition, less the reasonable value of any improvements that may have been made by the United States.

Article 5. Any transfer of ownership or control of the Border facilities, or any part thereof, or any changes to the name of the permittee, shall be immediately communicated in writing to the President or his designee, and shall include information identifying any transferee. Notwithstanding any such transfers or changes, this permit shall remain in force subject to all of its conditions, permissions, and requirements, and any amendments thereto, unless subsequently terminated, revoked, or amended by the President.

Article 6. (1) The permittee is responsible for acquiring any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate.

(2) The permittee shall hold harmless and indemnify the United States from any claimed or adjudged liability arising out of operation or maintenance of the Border facilities, including environmental contamination from the release, threatened release, or discharge of hazardous substances or hazardous waste.

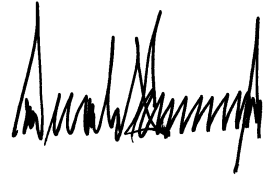
(3) To ensure the safe operation of the Border facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law.

Article 7. The permittee shall file with the President or his designee, and with appropriate agencies, such sworn statements or reports with respect to the Border facilities, or the permittee's activities and operations in connection therewith, as are now, or may hereafter, be required under any law or regulation of the United States Government or its agencies. These reporting obligations do not alter the intent that this permit be operative as a directive issued by the President alone.

Article 8. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Border facilities. Such requests could include information concerning current conditions or anticipated changes in ownership or control, operation, or maintenance of the Border facilities.

Article 9. This permit 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.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fiftieth.



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