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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–3486; Project Identifier MCAI–2026–00002–T; Amendment 39–23314; AD 2026–08–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for The Boeing Company Model 747–400 series airplanes modified by certain supplemental type certificates (STCs). This AD was prompted by a report of a ruptured crew oxygen bottle flexible hose and arcing damage on an adjacent cargo loading system wiring harness. This AD requires a detailed inspection of the crew oxygen bottle flexible hoses and adjacent wire harnesses for chafing and arcing damage and for a minimum clearance between the crew oxygen bottle flexible hoses and adjacent wiring harnesses, and applicable repairs. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 7, 2026.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 7, 2026.

The FAA must receive comments on this AD by June 8, 2026.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2026–3486; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For IAI-Aviation Group material identified in this AD, contact Israel Aerospace Industries, Ltd., Ben Gurion International Airport, Israel 7010000; telephone 972–3–9353090; email: *AOGBDK@iai.co.il.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2026–3486.

FOR FURTHER INFORMATION CONTACT: Narbeh Mardirosian, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 562–627–5354; email: *narbeh.mardirosian@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this final rule. Send your comments using a method listed under the **ADDRESSES** section. Include ''Docket No. FAA–2026–3486; Project Identifier MCAI–2026–00002–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Narbeh Mardirosian, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 562–627–5354; email: *narbeh.mardirosian@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The Civil Aviation Authority of Israel (CAAI), which is the aviation authority for Israel, has issued CAAI AD ISR I–35–26–01–01, dated January 1, 2026 (CAAI AD ISR I–35–26–01–01) (also referred to as the MCAI), to correct an unsafe condition on The Boeing Company Model 747–400 series airplanes converted to freighters in accordance with CAAI Supplemental Type Certificate (STC) SA–151 or validated equivalent, including FAA STC ST01676SE; or CAAI STC SA–152 or validated equivalent, including FAA STC ST01706SE. Only FAA STC ST01676SE and FAA STC ST01706SE are approved for U.S. operators.

The MCAI states that, on one converted airplane, the crew oxygen bottle flexible hose, part number (P/N) 96431–2, was found ruptured, and arcing damage was identified on an adjacent cargo loading system (CLS) wire harness, P/N W9914–301–12, near station (STA) 680. CAAI determined

that this condition was caused by chafing of the oxygen hose against the CLS wire harness.

The FAA is issuing this AD to address chafing, arcing damage, and insufficient clearance between the crew oxygen bottle flexible hoses and adjacent wire harnesses. The unsafe condition, if not addressed, could result in fire and loss of crew oxygen supply due to insufficient clearance between electrical wiring and the crew oxygen bottle flexible hose. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2026–3486.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Israel Aerospace Industry Ltd., Service Bulletin 366–35–157, dated January 2026. This material specifies procedures for a detailed inspection of the crew oxygen bottle flexible hoses and adjacent wire harnesses, near STA 680 for signs of chafing and arcing damage, and for a minimum clearance of 2 inches between the crew oxygen bottle flexible hose and the adjacent wire harnesses, and repair, as applicable.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

AD Requirements

This AD requires accomplishing the actions specified in the material already described.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because chafing, arcing damage, and insufficient clearance between the crew oxygen bottle flexible hoses and adjacent wire harnesses could result in fire, or loss of crew oxygen supply. Additionally, the compliance time in this AD is before further flight, which is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 5 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$425

The FAA has received no definitive data on which to base the cost estimates for the repairs specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2026–08–06 The Boeing Company: Amendment 39–23314; Docket No. FAA–2026–3486; Project Identifier MCAI–2026–00002–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 7, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 series airplanes, certificated in any category, that have been converted to a freighter configuration in accordance with Supplemental Type Certificate (STC) ST01676SE or converted to special freighter configuration in accordance with STC ST01706SE.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by a report of a ruptured crew oxygen bottle flexible hose and arcing damage on an adjacent cargo loading system (CLS) wiring harness near station (STA) 680. The FAA is issuing this AD to address chafing, arcing damage, and insufficient clearance between the crew oxygen bottle flexible hoses and adjacent wire harnesses. The unsafe condition, if not addressed, could result in fire and loss of crew oxygen supply.

(f) Compliance

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

(g) Required Actions

(1) Before further flight after the effective date of this AD, do a detailed inspection for chafing and arcing damage of the crew oxygen bottle flexible hoses and the adjacent wire harnesses, and for minimum clearance between the crew oxygen bottle flexible hose and the adjacent wire harnesses, in accordance with the Accomplishment Instructions of Israel Aerospace Industries Ltd. Service Bulletin 366–35–157, dated January 2026.

(2) If, during any inspection required by paragraph (g)(1) of this AD, any chafing or arcing damage is found, or the clearance is less than 2 inches, before further flight, repair using a method approved by the Manager, International Validation Branch, FAA; or the Civil Aviation Authority of Israel (CAAI); or the CAAI's authorized Designee. If approved by the CAAI Designee, the approval must include the Designee's authorized signature.

(h) No Reporting Requirement

Although Israel Aerospace Industries Ltd., Service Bulletin 366–35–157, dated January 2026, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(i) Special Flight Permits

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the corrective actions for insufficient clearance required by this AD can be performed, provided that there are no signs of wear or chafing on either the oxygen tubes or electrical wires or harnesses.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or the Civil Aviation Authority of Israel (CAAI); or the CAAI's authorized Designee. If approved by the CAAI Designee, the approval must include the Designee's authorized signature.

(k) Additional Information

For more information about this AD, contact Narbeh Mardirosian, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 562–627–5354; email: *narbeh.mardirosian@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) Israel Aerospace Industries Ltd., Service Bulletin 366–35–157, dated January 2026.

(ii) [Reserved]

(3) For IAI-Aviation Group material identified in this AD, contact Israel Aerospace Industries, Ltd., Ben Gurion International Airport, Israel 7010000; telephone 972–3–9353090; email: *AOGBDK@iai.co.il*.

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

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

Issued on April 13, 2026.

Steven W. Thompson,

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

[FR Doc. 2026–07808 Filed 4–20–26; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2025–0583; Airspace Docket No. 25–ASO–7]

RIN 2120–AA66

Establishment of Class E Airspace; Sparta, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Sparta, KY. This action supports new instrument procedures and instrument flight rule (IFR) 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.

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 establishes Class E airspace at the affected airport to support IFR operations.

History

The FAA published an NPRM for Docket No. FAA–2025–0583 in the **Federal Register** (90 FR 14219; March 31, 2025) proposing to establish Class E airspace at Sparta, KY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11K, 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 establishing Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius of Gallatin County Airport, Sparta, KY.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO KY E5 Sparta, KY [Establish]

Gallatin County Airport, KY
(Lat. 38°40′46″ N, long. 84°55′44″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Gallatin County Airport.

* * * * *

Issued in Fort Worth, Texas, on April 20, 2026.

Jerry J. Creecy,

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

[FR Doc. 2026–07795 Filed 4–21–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. FDA–2026–N–3900]

Medical Devices; Clinical Chemistry and Clinical Toxicology Devices; Classification of the Setmelanotide Eligibility Gene Variant Detection System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is classifying the setmelanotide eligibility gene variant detection system into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for classification of the setmelanotide eligibility gene variant detection system. We are taking this action because we have determined that classifying the device into class II will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective April 22, 2026. The classification was applicable on January 21, 2022.

FOR FURTHER INFORMATION CONTACT: Jessica Chu, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3524, Silver Spring, MD 20993–0002, 301–796–9056, *Jessica.Chu@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA (the Agency or we) has classified the setmelanotide eligibility gene variant detection system into class II (special controls), which we have determined will provide a reasonable assurance of safety and

effectiveness of the device. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified into, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo classification process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a premarket notification (510(k)) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On September 7, 2021, FDA received PreventionGenetics, LLC's request for De Novo classification of the POMC/PCSK1/LEPR CDx Panel. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness of the device, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see section 513(a)(1)(B) of the FD&C Act). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on January 21, 2022, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 862.1164.[1] We have named the generic type of device ''setmelanotide eligibility gene variant detection system,'' and it is identified as a qualitative in vitro diagnostic device intended to detect germline variants within genes isolated from human specimens for the purpose of identifying patients with obesity who may benefit from treatment with setmelanotide in accordance with the approved therapeutic product labeling.

FDA has identified the risks to health associated with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES FOR SETMELANOTIDE ELIGIBILITY GENE VARIANT DETECTION SYSTEM

Identified risks to health	Mitigation measures
Incorrect performance of the test leading to false positive results (causing patients to receive drug treatment inappropriately) or false negative results (causing patients to miss an opportunity for drug treatment).	Certain design verification and validation activities, including documentation of certain studies. Certain labeling information, including certain limiting statements and performance information.

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES FOR SETMELANOTIDE ELIGIBILITY GENE VARIANT DETECTION SYSTEM—Continued

Identified risks to health	Mitigation measures
Incorrect interpretation of genetic data leading to false positive results (causing patients to receive drug treatment inappropriately) or false negative results (causing patients to miss an opportunity for drug treatment).	Certain design verification and validation activities, including documentation of certain studies and variant interpretation and classification procedures. Certain labeling information, including certain limiting statements and performance information.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness of the device. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this final order.

Under the FD&C Act, submission of a premarket notification under section 510(k) (21 U.S.C. 360(k)) is required to reasonably assure the safety and effectiveness of class II devices unless FDA determines that the device type should be exempt under section 510(m) of the FD&C Act. At this time FDA has not made this determination for setmelanotide eligibility gene variant detection systems. This device is therefore subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not normally have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 regarding quality management system regulation have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 862

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 862 is amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

■ 1. The authority citation for part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 862.1164 to subpart B to read as follows:

§ 862.1164 Setmelanotide eligibility gene variant detection system.

(a) *Identification.* A setmelanotide eligibility gene variant detection system is a qualitative in vitro diagnostic device intended to detect germline variants within genes isolated from human specimens for the purpose of identifying patients with obesity who may benefit from treatment with setmelanotide in accordance with the approved therapeutic product labeling.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Design verification and validation must include:

(i) Detailed documentation of studies that provide data bridging the efficacy of setmelanotide in the clinical trial patient population identified by the clinical trial assay(s) to the efficacy of setmelanotide in the device intended use population identified by the device using the clinical trial samples, or through an alternative approach determined to be appropriate by FDA.

(ii) Detailed documentation of studies that provide data demonstrating the accuracy of the device using clinical specimens representing the intended use specimen type(s) and intended use variant type(s) from the intended use population, including the clinical trial samples, or through an alternative approach determined to be appropriate by FDA. Accuracy of the device must be evaluated at the variant level and sample level, through evaluation of variant and non-variant sequences at the nucleotide level as well as variant interpretation, by comparison to validated bidirectional Sanger sequencing methods or through other methods determined to be appropriate by FDA. If the device will be used at more than one site, the data must demonstrate accuracy across multiple intended use sites.

(iii) Detailed documentation of studies that provide data demonstrating the precision of the device for the intended use specimen type(s) and intended use variant type(s) from the intended use population. Precision must be evaluated at the variant level and sample level, through evaluation of variant and non-variant sequences at the nucleotide level as well as variant interpretation, using multiple reagent lots, operators, and instruments over multiple days, or through an alternative precision study design determined to be appropriate by FDA. If the device will be used at more than one site, data must demonstrate adequate, as determined by FDA, reproducibility across multiple intended use sites.

(iv) Detailed documentation of studies that provide data demonstrating the analytical specificity of the device for the intended use specimen type(s), including an evaluation of cross-reactivity and cross contamination.

(A) Cross-reactivity (*e.g.,* from homologous regions, paralogs, pseudogenes, repeated sequences, high GC (Guanine and Cytosine) content regions, segmental duplications, and other types of cross-reactive sequences) must be evaluated to assess the detection of unintended alleles or

incorrect calls in the target regions covered by the device; and

(B) Cross-contamination must be evaluated to detect carryover and co-mingling of input specimens throughout the process (*e.g.,* from sample collection and library preparation to variant interpretation).

(v) Detailed documentation of studies that provide data demonstrating adequate, as determined by FDA, stability of the specimens used in the design validation studies in paragraphs (b)(1)(i) through (iv) of this section, as applicable.

(vi) Detailed documentation of information demonstrating adequate, as determined by FDA, analytical quality metrics and thresholds.

(vii) Detailed documentation of information demonstrating adequate, as determined by FDA, procedures that will be performed for variant interpretation and classification, including the procedures that will be performed for variant interpretation and classification changes that may occur as new scientific information becomes available. The information must indicate how the personnel performing such interpretation and classification are trained.

(2) The labeling required under § 809.10(b) of this chapter and any test report generated must include:

(i) Limiting statements that:

(A) Explain that the classification and interpretation of variants identified reflects the current state of scientific understanding at the time the results are issued.

(B) Explain variants could change classification as new scientific information becomes available, which may impact patient eligibility for therapeutic treatment; and

(C) If applicable, explain sufficient scientific information is not available to assign pathogenicity to variants of uncertain significance (VUS).

(ii) A detailed summary of the performance testing, including results, required under paragraphs (b)(1)(i) through (iv) of this section.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–07863 Filed 4–21–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2026–N–3930]

Medical Devices; Immunology and Microbiology Devices; Classification of the Alzheimer's Disease Pathology Assessment Test

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is classifying the Alzheimer's disease pathology assessment test into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for classification of the Alzheimer's disease pathology assessment test. We are taking this action because we have determined that classifying the device into class II will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective April 22, 2026. The classification was applicable on May 4, 2022.

FOR FURTHER INFORMATION CONTACT: Woosung (David) Cho, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3461, Silver Spring, MD 20993–0002, 301–796–5998, *Woosung.Cho@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA (the Agency or we) has classified the Alzheimer's disease pathology assessment test into class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness of the device. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified into, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo classification process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a premarket notification (510(k)) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo

classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On November 20, 2020, FDA received Fujirebio Diagnostics, Inc.'s request for De Novo classification of the Lumipulse *G* β-Amyloid Ratio (1–42/1–40) device. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness of the device, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see section 513(a)(1)(B) of the FD&C Act). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on May 4, 2022, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 866.5840.[1] We have named the generic type of device ''Alzheimer's disease (AD) pathology assessment test,'' and it is identified as an in vitro diagnostic device intended to measure one or more analytes in human specimens to assess whether a patient presenting with cognitive impairment and being evaluated for AD and other causes of cognitive decline would test positive or negative for amyloid plaques or neurofibrillary tangles at the time of testing, as measured by FDA-approved positron emission tomography imaging agents. The device is intended to assess the underlying AD-associated pathology in conjunction with clinical assessment to increase diagnostic certainty.

FDA has identified the risks to health associated with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES FOR ALZHEIMER'S DISEASE PATHOLOGY ASSESSMENT TEST

Identified risks to health	Mitigation measures
Failure to correctly interpret test results can lead to false positive results (leading to workup and anxiety regarding a serious diagnosis that is incorrect) or false negative results (leading to delays in getting treatment and delays planning early in the course of this progressive disease).	Special controls (1) and (2).
Incorrect test results that provide false positive results (leading to workup and anxiety regarding a serious diagnosis that is incorrect) or false negative results (leading to delays in getting treatment and delays planning early in the course of this progressive disease).	Special controls (1) and (2).

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness of the device. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this final order.

Under the FD&C Act, submission of a premarket notification under section 510(k) (21 U.S.C. 360(k)) is required to reasonably assure the safety and effectiveness of class II devices unless FDA determines that the device type should be exempt under section 510(m) of the FD&C Act. At this time FDA has not made this determination for Alzheimer's disease pathology assessment tests. This device is therefore subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not normally have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 regarding quality management system regulation have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 866.5840 to subpart F to read as follows:

§ 866.5840 Alzheimer's disease pathology assessment test.

(a) *Identification.* An Alzheimer's disease (AD) pathology assessment test is an in vitro diagnostic device intended to measure one or more analytes in human specimens to assess whether a patient presenting with cognitive impairment and being evaluated for AD and other causes of cognitive decline would test positive or negative for amyloid plaques or neurofibrillary tangles at the time of testing, as measured by FDA-approved positron emission tomography (PET) imaging agents. The device is intended to assess the underlying AD-associated pathology in conjunction with clinical assessment to increase diagnostic certainty.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Design verification and validation must include:

(i) Detailed documentation of studies demonstrating analytical performance, including precision, linearity, assay interference, cross-reactivity, detection capability, specimen and reagent stability, and hook effect, as applicable. For devices measuring multiple analytes, the detailed documentation must include studies demonstrating the analytical performance of the device in regard to each individual analyte, including precision, linearity, assay interference, cross-reactivity, detection capability, specimen and reagent stability, and hook effect, as applicable.

(ii) Detailed documentation of studies demonstrating clinical performance in the intended use patient population. All eligible subjects must meet the appropriate study inclusion and exclusion criteria that define the intended use population. Relevant demographic and patient characteristics must be documented, including the time from specimen collection for testing with the subject device to PET imaging acquisition; patient cognitive, neurological, and psychiatric assessments; Apolipoprotein E (APOE) carrier status; and patient education level. All specimens must be tested with the users of the subject device blinded to the disease status and PET scan results of the subject from whom the specimen was obtained. Each PET scan must use an FDA-approved PET tracer and must be independently evaluated in a blinded manner and interpreted according to the FDA-required labeling for the PET tracer. For banked specimens, details on storage conditions and storage period must be documented. In addition, documentation must include evidence to support the stability of the archived specimens for the duration of storage.

(iii) Detailed documentation of studies, which are performed using specimens from persons established to be cognitively normal, that establish the upper and lower limits of reference intervals for the output provided by the device. For banked specimens, the detailed documentation must include details on storage conditions and storage period. In addition, the detailed documentation must include evidence to support the stability of the archived specimens for the duration of storage.

(2) The labeling required under § 809.10(b) of this chapter must include:

(i) An intended use that provides a description of the measurand(s) (*i.e.,* AD pathology biomarker(s)) the device measures in the specified human specimens, the results provided to the user (including information to facilitate clinical interpretation of all device outputs), the clinical indications appropriate for test use, and the specific population(s) for which the device is intended.

(ii) Limiting statements indicating that:

(A) This device is not intended to be used as a stand-alone test and the test results must be interpreted in conjunction with other diagnostic tools and clinical information.

(B) The safety and effectiveness of the device have not been established for predicting development of dementia or other neurologic conditions or for monitoring the effect of any therapeutic product.

(C) A positive result is associated with the presence of amyloid plaques or neurofibrillary tangles in the brain but does not establish a diagnosis of AD as would be established by neuropathological examination.

(iii) A detailed summary of the performance testing, including results, required under paragraph (b)(1) of this section.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–07860 Filed 4–21–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. FDA–2026–N–3929]

Medical Devices; Anesthesiology Devices; Classification of the Device for Sleep Apnea Testing Based on Mandibular Movement

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the device for sleep apnea testing based on mandibular movement into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for classification of the device for sleep apnea testing based on mandibular movement. We are taking this action because we have determined that classifying the device into class II will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective April 22, 2026. The classification was applicable on January 7, 2022.

FOR FURTHER INFORMATION CONTACT: Farid Yaghouby, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1227, Silver Spring, MD 20993–0002, 240–402–2520, *Farid.Yaghouby@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the device for sleep apnea testing based on mandibular movement into class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness of the device. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing

the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified into, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo classification process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a premarket notification (510(k)) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On April 2, 2021, FDA received Sunrise SA's request for De Novo classification of the Sunrise Sleep Disorder Diagnostic Aid. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness of the device, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see section 513(a)(1)(B) of the FD&C Act). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on January 7, 2022, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 868.2376.[1] We have named the generic type of device ''device for sleep apnea testing based on mandibular movement,'' and it is identified as a prescription device intended to aid in evaluation of sleep apnea during sleep in patients suspected of having sleep breathing disorders by analyzing sensor readings of mandibular movement. The device is not intended as a substitute for full polysomnography nor intended to be used as an apnea monitor.

FDA has identified the risks to health associated with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES FOR DEVICE FOR SLEEP APNEA TESTING BASED ON MANDIBULAR MOVEMENT

Identified risks to health	Mitigation measures
Delayed or incorrect treatment due to erroneous output as a result of software malfunction or algorithm error.	Software verification, validation, and hazard analysis; Clinical performance testing; and Labeling.
Delayed or incorrect treatment due to user misinterpretation	Labeling.
Delayed or incorrect treatment due to sensor failing to provide inputs for software to adequately analyze.	Software verification, validation, and hazard analysis; Clinical performance testing; and Labeling.
Electrical shock, burn, or interference with other devices	Electrical safety testing; Electromagnetic compatibility testing; and Labeling.
Adverse tissue reaction	Biocompatibility evaluation.

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness of the device. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this final order.

At the time of classification, devices for sleep apnea testing based on mandibular movement are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met.

Under the FD&C Act, submission of a premarket notification under section 510(k) is required to reasonably assure the safety and effectiveness of class II devices unless FDA determines that the device type should be exempt under section 510(m) of the FD&C Act. At this time FDA has not made this determination for devices for sleep apnea testing based on mandibular movement. This device is therefore subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not normally have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 regarding quality management system regulation have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801 regarding labeling have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 868

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 868 is amended as follows:

PART 868—ANESTHESIOLOGY DEVICES

■ 1. The authority citation for part 868 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 868.2376 to subpart C to read as follows:

§ 868.2376 Device for sleep apnea testing based on mandibular movement.

(a) *Identification.* A device for sleep apnea testing based on mandibular movement is a prescription device intended to aid in evaluation of sleep apnea during sleep in patients suspected of having sleep breathing disorders by analyzing sensor readings of mandibular movement. The device is not intended as a substitute for full polysomnography nor intended to be used as an apnea monitor.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical data must be provided. This assessment must fulfill the following:

(i) The clinical data must be representative of the intended use population for the device. Any selection criteria or sample limitations must be fully described and justified.

(ii) The assessment must demonstrate output consistency using the expected range of data sources and data quality encountered in the intended use population and environment.

(iii) The assessment must compare device performance with a clinical comparator device (*e.g.,* polysomnography).

(2) The patient-contacting components of the device must be demonstrated to be biocompatible.

(3) The performance data must be provided to demonstrate the electromagnetic compatibility and electrical, mechanical, and thermal safety of the device.

(4) A software description and the results of verification and validation testing based on a comprehensive hazard analysis and risk assessment must include:

(i) A full characterization of the software technical parameters, including algorithms;

(ii) A description of the expected impact of all applicable sensor acquisition hardware characteristics and associated hardware specifications; and

(iii) A description of all mitigations for failure of any subsystem components (including signal detection, signal analysis, data display, and storage) on output accuracy.

(5) Labeling must include:

(i) A description of what the device measures and outputs to the user;

(ii) Warnings identifying sensor acquisition factors or subject conditions or characteristics (*e.g.,* conditions affecting the anatomy of the recording site, or subject conditions that may affect mandibular movement) that may impact measurement results;

(iii) Guidance for interpretation of the measurements, including a statement that the device is not intended as a substitute for full polysomnography nor intended to be used as an apnea monitor; and

(iv) The expected performance of the device for all intended use populations and environments.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–07862 Filed 4–21–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. FDA–2026–N–3928]

Medical Devices; Ophthalmic Devices; Classification of the Digital Therapy Device for Amblyopia

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is classifying the digital therapy device for amblyopia into class II (special controls). The special controls that apply to the device type are identified in this order and will be part

of the codified language for classification of the digital therapy device for amblyopia. We are taking this action because we have determined that classifying the device into class II will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective April 22, 2026. The classification was applicable on October 20, 2021.

FOR FURTHER INFORMATION CONTACT: Bradley Cunningham, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1414, Silver Spring, MD 20993–0002, 301–796–6484, *Bradley.Cunningham@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA (the Agency or we) has classified the digital therapy device for amblyopia into class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness of the device. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified into, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo classification process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a premarket notification (510(k)) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On March 1, 2021, FDA received Luminopia, Inc.'s request for De Novo classification of the Luminopia One. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness of the device, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see section 513(a)(1)(B) of the FD&C Act). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on October 20, 2021, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 886.5500.[1] We have named the generic type of device ''digital therapy device for amblyopia,'' and it is identified as a device that incorporates dichoptic presentations on visual displays through therapeutic algorithms to treat amblyopia or to improve visual acuity of patients with amblyopia.

FDA has identified the risks to health associated with this type of device and the measures required to mitigate these risks in table 1.

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES DIGITAL THERAPY DEVICE FOR AMBLYOPIA

Identified risks to health	Mitigation measures
Adverse events due to device treatment (e.g., headache, new or worsening heterotropia, worsened vision in either eye, eye strain, eye twitching, facial redness, increased night terrors, thermal injury, dizziness, seizure, nausea, or double vision).	Clinical performance testing, and Labeling.
Ineffective treatment leading to worsening of condition	Clinical performance testing; Software verification, validation, and hazard analysis; and Labeling.
Therapeutic effect not sustained leading to delay of treatment	Clinical performance testing, and Labeling.
Software malfunction leading to delay of treatment	Software verification, validation, and hazard analysis; and Labeling.
Improper use of the device including Head-Mounted Display or other visual display leading to ineffective treatment or adverse events.	Labeling, and Labeling comprehension testing.
Performance variations among different brands/models of visual displays leading to ineffective treatment and/or adverse events.	Clinical performance testing; Non-clinical performance testing; Labeling; and Software verification, validation, and hazard analysis.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness of the device. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this final order.

Under the FD&C Act, submission of a premarket notification under section 510(k) (21 U.S.C. 360(k)) is required to reasonably assure the safety and effectiveness of class II devices unless FDA determines that the device type should be exempt under section 510(m) of the FD&C Act. At this time FDA has not made this determination for digital therapy devices for amblyopia. This device is therefore subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not normally have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 regarding quality management system regulation have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801, regarding labeling have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 886 is amended as follows:

PART 886—OPHTHALMIC DEVICES

■ 1. The authority citation for part 886 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 886.5500 to subpart F to read as follows:

§ 886.5500 Digital therapy device for amblyopia.

(a) *Identification.* A digital therapy device for amblyopia is a device that incorporates dichoptic presentations on visual displays through therapeutic algorithms to treat amblyopia or to improve visual acuity of patients with amblyopia.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use with labeled compatible visual display devices, including evaluation of all adverse events and device performance to improve measures of visual function.

(2) Software verification, validation, and hazard analysis must be performed. Documentation must include characterizations of the technical specifications of the software.

(3) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. All visual displays intended for use must undergo compatibility testing to ensure adequate display resolution, luminance, contrast, field of view, image quality, appropriate optical image distance, and verify their compatibility with the software and intended user (such as appropriate interpupillary distance).

(4) Labeling must include the following:

(i) The minimum hardware and operating system requirements that support the software of the device;

(ii) The models of the visual displays validated to be compatible with this device;

(iii) The length of treatment and/or retreatment supported by clinical performance testing; and

(iv) A summary of the clinical performance testing conducted with the device.

(5) Labeling comprehension testing with intended users must be performed.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–07861 Filed 4–21–26; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–20–0534; FRL–12765–02–OCSPP]

RIN 2070–ZA16

Pesticide Tolerances; Implementing Registration Review Decisions for Certain Pesticides (Hydrogen Cyanide, et al.)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is finalizing several tolerance actions under the Federal Food, Drug, and Cosmetic Act (FFDCA) that the Agency previously determined were necessary or appropriate during the registration review conducted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). During registration review, EPA reviews all aspects of a pesticide case, including existing tolerances, to ensure that the pesticide continues to meet the standard for registration under FIFRA.

DATES: This rule is effective on April 22, 2026. Objections and requests for hearings must be received on or before June 22, 2026 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.D. of this document).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2024–0534, is available through *https://www.regulations.gov*. Additional information about dockets generally, along with instructions for visiting the docket in person, is available at *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Caleb Carr, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0636; email address: *carr.caleb@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

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

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

If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is finalizing several tolerance actions that the Agency proposed in the **Federal Register** of June 9, 2025 (90 FR 24259 (FRL–12765–01–OCSPP)), which EPA previously determined were necessary or appropriate during registration review of the following pesticide active ingredients: hydrogen cyanide (40 CFR 180.130; Case 8002; EPA–HQ–OPP–2010–0752), 1-naphthaleneacetic acid (40 CFR 180.155; Case 0379; EPA–HQ–OPP–2014–0773), carboxin (40 CFR 180.301; Case 0012; EPA–HQ–OPP–2015–0144), ethofumesate (40 CFR 180.345; Case 2265; EPA–HQ–OPP–2015–0406), thiobencarb (40 CFR 180.401; Case 2665; EPA–HQ–OPP–2011–0932), and propylene oxide (40 CFR 180.491; Case 2560; EPA–HQ–OPP–2013–0156). The tolerance actions for each pesticide active ingredient are described in detail in Unit III. of the proposed rule. This rulemaking finalizes the proposed actions and, where applicable, describes any changes and clarifications from the proposal.

The Agency received two comments on the proposed rule from two anonymous commenters. For a summary of the comments received and the Agency's response, see Unit II.

C. What is EPA's authority for taking this action?

FFDCA section 408(e), 21 U.S.C. 346a(e), authorizes EPA to establish, modify, or revoke tolerances or exemptions from the requirement of a tolerance on its own initiative. After providing a 60-day public comment period on a proposed rulemaking, EPA may finalize the rule.

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. If you fail to file an objection to the final rule within the time period specified in the final rule, you will have waived the right to raise any issues resolved in the final rule. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number of this final rule (EPA–HQ–OPP–2024–0534), and the chemical-specific docket ID number as provided in Unit III of the proposed rule (90 FR 24259) (FRL–12765–01–OCSPP) in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before June 22, 2026.

The EPA's Office of Administrative Law Judges (OALJ), in which the Hearing Clerk is housed, urges parties to file and serve documents by electronic means only, notwithstanding any other particular requirements set forth in other procedural rules governing those proceedings. *See* ''Order Urging Electronic Filing and Service,'' dated December 3, 2025, which can be found at *https://www.epa.gov/system/files/documents/2025-12/2025-12-03-order-urging-electronic-filing-and-service.pdf*. Although the EPA's regulations require submission via U.S. Mail or hand delivery, the EPA intends to treat submissions filed via electronic means as properly filed submissions; therefore, the EPA believes the preference for submission via electronic means will not be prejudicial. When submitting documents to the OALJ electronically, a person should utilize the OALJ e-filing system at *https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf*.

II. Public Comments

EPA provided a 60-day public comment period for the proposed rule, which closed on August 8, 2025. EPA received two comments from two anonymous commenters. One comment expressed concern about how the production, transportation, and use of pesticides contribute to greenhouse gas emissions and stated that fumigants, including hydrogen cyanide, may decompose or interact in the environment in ways that indirectly release or transform into greenhouse gases. The comment suggested that such impacts should be considered in future pesticide tolerance rulemakings and registration decisions. The other comment expressed general safety concerns.

The existing legal framework provided by section 408 of the FFDCA authorizes EPA to establish a tolerance when it determines that the tolerance is safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors that the FFDCA requires EPA to consider, EPA has determined that the tolerance actions finalized in this rule are safe. The commenters have made no contention that EPA has acted in violation of the statutory framework or that a safety determination cannot be supported. Thus, the Agency is not making any revisions to the proposed tolerance actions based on these comments.

III. Final Tolerance Actions

EPA is finalizing the tolerance actions described in Unit III. of the proposed rule, with the following changes and clarifications:

EPA is revising the date that certain tolerances expire for ethofumesate (40 CFR 180.345; Case 2265; Docket ID No. EPA–HQ–OPP–2015–0406) from December 8, 2025, to October 19, 2026. This date is consistent with EPA's proposal to add an expiration date of 180 days (approximately 6 months) after the date of publication of the final rule in the **Federal Register** for existing tolerances that are lowered or revoked by the final rule.

The 2025 proposed rule ((90 FR 24259 (FRL–12765–01–OCSPP) included proposed amendments to the current tolerances for 2,4-DB and flucarbazone-sodium. EPA plans to finalize the proposed actions for 2,4-DB (40 CFR 180.331; Case 0196; Docket ID No. EPA–HQ–OPP–2013–0661) and flucarbazone-sodium (40 CFR 180.562; Case 7251; Docket ID No. EPA–HQ–OPP–2013–0283) at a later date with a separate final rulemaking.

A. EPA's Safety Determination

As noted in Unit II.D. of the proposed rule and the supporting registration review documents, EPA has assessed the individual risks from exposure to the pesticide active ingredients identified in this rule. EPA is finalizing the safety findings contained in Unit III. of the proposed rule for each of the pesticide active ingredients identified in this rule.

For further information about pesticide-specific registration review safety findings, see the public docket that has been opened for each pesticide, which is available online at *https://www.regulations.gov* using the docket ID number listed in Unit I.B of this document.

B. Analytical Enforcement Methodology

Adequate enforcement methodology as described in the supporting registration review documents is available to enforce the tolerance expressions for each of the pesticide active ingredients identified in this rule.

C. Conclusion

Except has otherwise noted in this Unit, EPA is finalizing the tolerance actions described in Unit III. of the proposed rule, with the changes and clarifications described in this rule.

IV. Effective and Expiration Date(s)

These tolerance actions are effective on the date of publication of the final rule in the **Federal Register**. For actions in the final rule that lower or revoke existing tolerances, EPA has set an expiration date for the existing tolerance of 180 days after the date of publication of the final rule in the **Federal Register** to allow a reasonable interval for producers in exporting members of the World Trade Organization's (WTO's) Sanitary and Phytosanitary (SPS) Measures Agreement to adapt to the requirements.

V. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review

This action is exempt from review under Executive Order 12866 (58 FR 51735, October 4, 1993), because it establishes or modifies a pesticide tolerance or a tolerance exemption under FFDCA section 408. This exemption also applies to tolerance revocations for which extraordinary circumstances do not exist. As such, this exemption applies to the tolerance revocations in this final rule because the Agency knows of no extraordinary circumstances that warrant reconsideration of this exemption for those tolerance revocations.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

Executive Order 14192 (90 FR 9065, February 6, 2025) does not apply because actions that establish a tolerance under FFDCA section 408 are exempted from review under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA 44 U.S.C. 3501 *et seq.,* because it does not contain any information collection activities.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, EPA concludes that the impact of concern for this action is any significant adverse economic impact on small entities and that the Agency is certifying that this action will not have a significant economic impact on a substantial number of small entities because the action has no net burden on small entities subject to this rulemaking. As discussed in the proposed rule, this determination takes into account several EPA analyses of potential small entity impacts for tolerance actions. EPA did not receive any comments about the Agency's determination for this rulemaking.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more (in 1995 dollars and adjusted annually for inflation) as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866 (See Unit V.A.), and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. However, EPA's 2026 *Policy on Children's Health* applies to this action.

This rule finalizes tolerance actions under the FFDCA, which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .'' (FFDCA 408(b)(2)(C)). The Agency's consideration is documented in the pesticide-specific registration review documents, located in each chemical docket at *https://www.regulations.gov.*

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

This action is not subject to Executive Order 13211 (66 FR 28355) (May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer Advancement Act (NTTAA)

This action does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action does not meet the criteria set forth in 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: April 16, 2026.

Edward Messina,

Director, Office of Pesticide Programs.

For the reasons set forth in the preamble, EPA is amending 40 CFR chapter I as follows:

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

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

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

■ 2. Amend § 180.130 by revising paragraph (a) to read as follows:

§ 180.130 Hydrogen Cyanide; tolerances for residues.

(a) *General.* Tolerances are established for residues of sodium cyanide, including its metabolites and degradates, in or on the commodities in Table 1 to this paragraph (a). Compliance with the tolerance level specified in Table 1 to this paragraph (a) is to be determined by measuring only hydrogen cyanide in or on the commodity.

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Fruit, citrus, group 10–10	50

* * * * *

■ 3. Amend § 180.155 by:
■ a. Adding table heading ''Table 1 to Paragraph (a)'' to the table in paragraph (a);
■ b. Revising the entry ''Rambutan''; and
■ c. Revising footnote 1 for ''Table 1 to Paragraph (a)''.

The revisions and additions read as follows:

§ 180.155 1-Naphthaleneacetic acid; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Rambutan	2
* * * * *	

TABLE 1 TO PARAGRAPH (a)—Continued

Commodity	Parts per million
* * * * *	

[1] There are no U.S. registrations for this commodity.

* * * * *

■ 4. Amend § 180.301 by:
■ a. Revising the introductory text of paragraph (a); and
■ b. In the table in paragraph (a):
■ i. Adding table heading ''Table 1 to Paragraph (a)'';
■ ii. Adding the entry ''Barley, hay'' in alphabetical order;
■ iii. Removing the entry ''Canola, seed''; and
■ iv. Adding entries ''Cotton, gin byproducts'', ''Oat, hay'', ''Rapeseed, seed'', and ''Wheat, hay'' in alphabetical order.

The revisions and additions read as follows:

§ 180.301 Carboxin; tolerances for residues.

(a) *General.* Tolerances are established for residues of carboxin, 5,6-dihydro-2-methyl-*N*-phenyl-1,4-oxathiin-3-carboxamide, including its metabolites and degradates, in or on the commodities in Table 1 to Paragraph (a). Compliance with the tolerance levels specified in Table 1 to Paragraph (a) is to be determined by measuring only those carboxin residues convertible to aniline, expressed as the stoichiometric equivalent of carboxin, in or on the commodities.

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Barley, hay	0.2
* * * * *	
Cotton, gin byproducts	3
* * * * *	
Oat, hay	0.2
* * * * *	
Rapeseed, seed	0.03
* * * * *	
Wheat, hay	0.2
* * * * *	

* * * * *

■ 5. Amend § 180.345 by:
■ a. In the table in paragraph (a):

■ i. Adding table heading ''Table 1 to Paragraph (a)'';
■ ii. Adding the entry ''Beet, garden, leaves'' in alphabetical order;
■ iii. Removing the entry ''Beet, garden, tops'';
■ iv. Revising the entries ''Beet, sugar, molasses'' and ''Beet, sugar, tops'';
■ v. Removing the entry ''Garlic'';
■ vi. Adding the entries ''Garlic, bulb'' and ''Grass, forage, fodder and hay, group 17, straw'' in alphabetical order; and
■ vii. Removing the entry ''Grass, straw'';
■ b. Revising the table in paragraph (c); and
■ c. Revising paragraph (d).

The revisions and additions read as follows:

§ 180.345 Ethofumesate; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Beet, garden, leaves	5
* * * * *	
Beet, sugar, molasses	2
* * * * *	
Beet, sugar, tops [1]	4
* * * * *	
Garlic, bulb	0.25
* * * * *	
Grass, forage, fodder and hay, group 17, straw	1
* * * * *	

[1] This tolerance expires on October 19, 2026.

* * * * *

(c) * * *

TABLE 2 TO PARAGRAPH (c)

Commodity	Parts per million
Carrot, roots	7

(d) *Indirect or inadvertent residues.* Tolerances are established for the combined indirect or inadvertent residues of the herbicide ethofumesate, including its metabolites and degradates, in or on the commodities in Table 3 to this paragraph (d). Compliance with the tolerance levels specified in Table 3 to this paragraph (d) is to be determined by measuring only the sum of ethofumesate, 2-ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate, and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate, and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranylmethanesulfonate, calculated as the stoichiometric equivalent of ethofumesate, in or on the commodity.

TABLE 3 TO PARAGRAPH (d)

Commodity	Parts per million
Animal feed, nongrass, group 18	1.5
Grain, cereal, forage, hay, stover, and straw, group 16–22	1.5
Vegetable, legume, forage and hay, group 7–22	0.5

■ 6. Amend § 180.401 by:
■ a. Revising the introductory text of paragraph (a);
■ b. In the table in paragraph (a):
■ i. Adding table heading ''Table 1 to Paragraph (a)''; and
■ ii. Adding entries for ''Celery'', ''Endive'', ''Lettuce, head'', and ''Lettuce, leaf'' in alphabetical order; and
■ c. Removing and reserving paragraph (c).

The revisions and additions read as follows:

§ 180.401 Thiobencarb; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide thiobencarb, including its metabolites and degradates, in or on the commodities in Table 1 to this paragraph (a). Compliance with the tolerance levels specified in Table 1 to this paragraph (a) is to be determined by measuring only the sum of thiobencarb and its metabolites containing the chlorobenzyl or chlorophenyl moieties, calculated as the stoichiometric equivalent of thiobencarb, in or on the commodity.

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Celery [1]	0.2
* * * * *	
Endive [1]	0.2
* * * * *	
Lettuce, head [1]	0.2
Lettuce, leaf [1]	0.2
* * * * *	

[1] There are no U.S. registrations for this commodity.

* * * * *

(c) [Reserved]

* * * * *

■ 7. Amend § 180.491 by revising paragraph (a) to read as follows:

§ 180.491 Propylene oxide; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fumigant propylene oxide, including its metabolites and its degradates, including the reaction products propylene chlorohydrin and propylene bromohydrin, in or on the commodities in Table 1 to this paragraph (a). Compliance with the tolerance levels specified in Table 1 to this paragraph (a) is to be determined by measuring only propylene oxide in or on the commodity.

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Cacao bean, cocoa powder	200
Cacao bean, dried bean	200
Fig, dried	3
Garlic, dried	300
Grape, raisin	1
Herbs and spices, group 19, dried	300
Nut, tree, group 14–12	300
Onion, dried	300
Plum, prune, dried	2

* * * * *

[FR Doc. 2026–07794 Filed 4–21–26; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230914–0219; RTID 0648–XF686]

Fisheries of the South Atlantic; 2026 Recreational Accountability Measure and Closure for Gag in the South Atlantic

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) and closure for the recreational harvest of gag in South Atlantic Federal waters. As a result of gag recreational landings exceeding the recreational annual catch limit (ACL) in 2025, NMFS reduces the

length of the gag 2026 recreational season to prevent landings from exceeding the recreational ACL in 2026. Accordingly, NMFS announces the gag 2026 recreational season in South Atlantic Federal waters will close on August 2, 2026.

DATES: This temporary rule is effective from 12:01 a.m. on August 2, 2026, until 12:01 a.m., local time, on January 1, 2027.

FOR FURTHER INFORMATION CONTACT: Nik Mehta, NMFS Southeast Regional Office, 727–824–5305, *nikhil.mehta@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes gag and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council, approved by the Secretary of Commerce, and implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). All weights in this temporary rule are in gutted weight.

For gag, the recreational ACL was 176,665 pounds (lb) (80,134 kilograms (kg)) in 2025, and is 220,030 lb (99,804 kg) in 2026 (50 CFR 622.193(c)(2)(i)). The gag recreational AM states that if recreational landings exceed the recreational ACL, then during the following fishing year, NMFS will reduce the length of the recreational fishing season to prevent recreational landings from exceeding the recreational ACL (50 CFR 622.193(c)(2)(ii)). In 2025, preliminary landings information shows that gag recreational landings were 187,751 lb (85,162 kg), exceeding the 2025 recreational ACL by 11,086 lb (5,029 kg). Therefore, consistent with the recreational AM, NMFS is reducing the length of the 2026 recreational season by the amount necessary to prevent the 2026 recreational ACL from being exceeded.

The fishing year for gag is from January 1 through December 31, annually (50 CFR 622.7). However, the recreational sector for gag is closed annually from January 1 through April 30 (50 CFR 622.183(b)(1)). Data from the NMFS Southeast Fisheries Science Center have informed NMFS' 2026 season length projection that recreational landings will reach the recreational ACL by August 2, 2026. Therefore, NMFS announces that the gag recreational sector in South Atlantic Federal waters will close at 12:01 a.m., local time, August 2, 2026, until 12:01 a.m., local time, on January 1, 2027. During the recreational closure, the bag and possession limits for gag in or from South Atlantic Federal waters are zero. The next recreational fishing season for gag begins on May 1, 2027.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.193(c)(2)(ii), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary. Such procedure is unnecessary because the rule that established the recreational AM for gag has already been subject to public notice and comment, and all that remains is to notify the public of the end date of the recreational season. Prior notice and opportunity for public comment on this action is contrary to the public interest because of the need to protect the South Atlantic gag resource. Additionally, since the recreational fishing season begins on May 1, 2026, announcing the length of the season prior to that date allows recreational sector participants and businesses to better plan their activities to harvest gag.

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

Dated: April 17, 2026.

Kelly Denit,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2026–07792 Filed 4–21–26; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 91, No. 77
Wednesday, April 22, 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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

RIN 3133–AG02

Bank Conversions and Mergers, Subpart C—Merger of Insured Credit Unions Into Banks

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) is proposing to amend its regulations governing the merger of insured credit unions into banks. The Board proposes to eliminate certain prescriptive procedural, disclosure, and communication requirements. This action is necessary to reduce unnecessary regulatory burdens and provide credit union boards of directors with greater flexibility to exercise their business judgment. The intended effect of these changes is to ensure members receive clear and effective disclosures while simplifying compliance for credit unions, reducing administrative costs, and modernizing the conversion process.

DATES: Comments must be received on or before June 22, 2026.

ADDRESSES: Comments may be submitted in one of the following ways. (Please send comments by one method only):

- *Federal eRulemaking Portal: https://www.regulations.gov.* The docket number for this proposed rule is NCUA–2026–0982. Follow the ''Submit a comment'' instructions. If you are reading this document on *federalregister.gov,* you may use the green ''SUBMIT A PUBLIC COMMENT'' button beneath this rulemaking's title to submit a comment to the *regulations.gov* docket. A plain language summary of the proposed rule is also available on the docket website.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mailing address.

Mailed and hand-delivered comments must be received by the close of the comment period.

Public inspection: Please follow the search instructions on *https://www.regulations.gov* to view the public comments. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are public records; they are publicly displayed exactly as received and will not be deleted, modified, or redacted. Comments may be submitted anonymously. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Ariel Woodard-Stephens, Staff Attorney, National Credit Union Administration, at 1775 Duke Street, Alexandria, Virginia 22314 or by telephone at (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Board proposes to amend its regulations at 12 CFR part 708a, subpart C, which governs the merger of insured credit unions into banks. The regulations at part 708a were established under the authority of the Federal Credit Union Act (FCU Act) to provide a procedural framework for transactions that fundamentally alter a credit union's charter or structure. On December 28, 2010, the Board established the regulations at 12 CFR part 708a, subpart C.[1] The primary objective of subpart C was to establish specific procedural and substantive requirements to protect the interests of credit union members during such mergers. Key provisions included the mandatory determination of the credit union's ''merger value,'' comprehensive disclosure requirements to members, and a structured voting process, all under the NCUA's oversight to ensure the transaction serves the convenience and needs of the members.

Section 708a.301 provides definitions for key terms used throughout the subpart, such as *Bank, Merger, Merger value,* and *Qualified appraisal entity,* which establish the specific meaning and scope of the rule's provisions. Section 708a.303 outlines the initial duties of a credit union's board of directors, requiring it to determine the merger value of the credit union through an auction or appraisal and to provide advance notice to members for comment before the board votes to approve a merger proposal. Section 708a.304 details the process for notifying the NCUA of an intended merger by submitting a ''Notice of its Intent to Merge and Request for NCUA Authorization'' (NIMRA), which includes the merger plan, director certifications, and due diligence materials for agency review. Section 708a.305 mandates specific disclosures that must be provided to all eligible members at 90-day and 30-day intervals before a vote, ensuring they are informed about the loss of ownership interests, changes to voting rights, and any compensation arrangements for directors or senior management. Finally, § 708a.312 provides a set of non-binding voting guidelines to assist credit unions in conducting a fair and legal member vote, with suggestions covering state law applicability, member eligibility, and the use of voting incentives.

B. Legal Authority

The FCU Act provides the Board a broad mandate to issue regulations governing both insured federal credit unions and federally insured state-chartered credit unions. Section 120 of the FCU Act is a general grant of regulatory authority, and it authorizes the Board to prescribe rules and regulations for the administration of the FCU Act. Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all insured credit unions. Finally, the Board is required to issue regulations regarding the conversion of insured credit unions to mutual savings banks.[2]

[1] 75 FR 81387 (Dec. 28, 2010).

[2] 12 U.S.C. 1785.

II. Proposed Rule

The Board is proposing several amendments to subpart C of 12 CFR part 708a to reduce unnecessary regulatory burdens.

The Board proposes to eliminate several provisions that are overly prescriptive and impose burdens on a credit union's board of directors during merger deliberations. These changes are intended to restore the board's role in exercising its fiduciary duties and business judgment, gravitating away from a rigid, agency-defined process. These proposed changes are intended to ensure members receive clear and effective disclosures to support informed decisions while providing credit union boards of directors with greater flexibility to exercise their business judgment.

A. Streamlining Board of Directors' Duties and Pre-Voting Procedures in Mergers

In subpart C, the Board proposes to remove the definition of ''clear and conspicuous'' from § 708a.301, which is repeated from § 708a.101 in subpart A. This definition mandates specific formatting, such as bold type and a minimum 12-point font size. The Board believes this level of prescription is unnecessary and can hinder effective communication. It locks credit unions into a rigid standard that may not be optimal across different media, such as print and digital formats, and prevents them from using design principles that could more effectively draw member attention to key disclosures. While the FCU Act requires member notice, they are silent on specific formatting. This definition creates a legal test that is not based on the best reading of the statute. Removing this definition will allow credit unions the flexibility to design disclosures that are effective and clear for their members.

The Board also proposes to revise the pre-board-vote notice requirements contained in § 708a.303(b)(1), which mandates credit unions to publish a notice in a general circulation newspaper. The requirement to publish notice in a newspaper may no longer be one of the more effective methods for communicating with members in the digital age, while imposing unnecessary costs. The proposal would require the notice to appear on the member home banking landing page, if the credit union has one.

Finally, the Board proposes a minor revision to the due diligence reporting requirements in § 708a.304(d). The proposal would remove the requirement for the board to describe how the board located the merger partner and negotiated the merger agreement in its submission to the NCUA. The Board believes that requiring a narrative on these specific internal processes is overly intrusive and micromanages the board's deliberative functions. The critical regulatory objective is to ensure the board has conducted sufficient due diligence to conclude that a merger serves the members' best interests. The focus of the Board's review should be on the justification for that conclusion, not the step-by-step procedural history of the negotiations. This change streamlines the reporting requirements, focusing on the substantive outcome of the board's decision-making process.

The Board invites public comment on these proposed changes. Specifically, the Board seeks comment on whether the elimination of these provisions provides boards with appropriate flexibility while still protecting member interests. The Board also seeks comment about whether the credit union's Supervisory Committee should supplement the review of the merger to ensure the members' best interests are served.

B. Modernizing and Simplifying Member Communications and Disclosures in Mergers

The Board is proposing several amendments to modernize regulations governing communications and disclosures to members, eliminating overly prescriptive, inflexible, and unnecessary requirements.

The Board proposes to remove the highly prescriptive formatting requirements in § 708a.305(e)(2). This provision dictates that certain text must be placed in a box on the front of a single, otherwise blank piece of paper and placed at a specific point in the notice package. Such prescriptive measures will not necessarily result in better member comprehension, and the Board believes that eliminating these specific formatting rules will reduce administrative burden.

The Board also proposes to make a minor technical amendment to § 708a.305(f) by removing redundant language. The rule currently requires communications to be written ''in a manner that is simple and easy to understand. Simple and easy to understand means the communications are written in plain language . . .'' This proposal would remove specific plain language requirements. This change improves the clarity and conciseness of the regulation.

The Board invites public comment on these proposed changes. The Board is particularly interested in comments on whether removing the prescriptive definitions and formatting requirements would allow credit unions to provide more effective disclosures to members.

C. Elimination of Non-Regulatory Guidance in Mergers

Finally, the Board proposes to improve the clarity and function of its regulations by removing another section that only provides non-binding guidance. The Board proposes to eliminate § 708a.312, ''Voting guidelines,'' in its entirety.

This section does not establish any mandatory requirements; rather, it explicitly states that its contents are ''guidelines as suggestions to help a credit union obtain a fair and legal vote.'' It offers advice on matters such as the applicability of state law, determining voter eligibility, and scheduling meetings. The provision itself acknowledges its advisory nature and, while such guidance can be helpful, the presence of non-binding guidance within a body of mandatory rules can create confusion for regulated entities, blurring the line between what is required and what is merely recommended. Removing this section will streamline the regulatory text, making it clearer for credit unions to understand their legal duties.

The Board seeks public comment on the proposed removal of § 708a.312. Specifically, the Board asks whether removing these non-binding guidelines from the regulation would improve clarity and whether this information would be more effectively communicated through other, non-regulatory channels.

III. Regulatory Procedures

A. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (5 U.S.C. 553(b)(4)) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note) (commonly known as *regulations.gov*).

In summary, the Board is proposing to amend its regulations governing the merger of insured credit unions into banks. This proposed rule would eliminate certain prescriptive procedural, disclosure, and communication requirements. This action is necessary to reduce unnecessary regulatory burdens and

provide credit union boards of directors with greater flexibility to exercise their business judgment. The intended effect of these changes is to simplify compliance for credit unions, reduce administrative costs, and modernize the merger process, while ensuring members receive clear and effective disclosures.

B. Executive Order 12866, 13563, and 14192

Pursuant to Executive Order 12866 (''Regulatory Planning and Review''), a determination must be made whether a regulatory action is significant and therefore subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Executive Order.[3] Executive Order 13563 (''Improving Regulation and Regulatory Review'') supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866.[4] OMB has determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866. The NCUA expects the proposed rule to produce modest cost savings and, if finalized as proposed, is expected to be a deregulatory action for the purposes of Executive Order 14192.

C. The Regulatory Flexibility Act

The Regulatory Flexibility Act[5] generally requires preparation of an initial regulatory flexibility analysis and a final regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The NCUA reviewed this regulation under the provisions of the Regulatory Flexibility Act. This rule is narrow in scope and purely deregulatory. Therefore, the NCUA certifies that this rule, if finalized, would not have a ''significant economic impact on a substantial number of small entities.''

D. The Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (PRA) generally provides that an agency may not conduct or sponsor, and not withstanding any other provision of law, a person is not required to respond to a collection of information, unless it displays a currently valid Office of Management and Budget (OMB) control number. The PRA applies to rulemakings in which an agency creates a new or amends existing information collection requirements. For purposes of the PRA, an information-collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. OMB Control Number 3133–0182 is the collection assigned for merger transactions. The NCUA has determined that the changes described in this notice do not revise the information collection as defined by the PRA.

E. Executive Order 13132 on Federalism

Executive Order 13132 encourages certain agencies to consider the impact of their actions on state and local interests. The NCUA, an agency as defined in 44 U.S.C. 3502(5), complies with the executive order to adhere to fundamental federalism principles. The proposed rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposed rule would remove targeted prescriptive requirements that apply to merging federally insured credit unions, including federally insured, state-chartered credit unions. The proposal would not change the fundamental requirements of member notice or impose new requirements on state-chartered credit unions or state regulatory agencies. The NCUA has therefore determined that this proposed rule will not constitute a policy that has federalism implications for purposes of the executive order.

F. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act.[5] The proposed rule would apply to notices provided to consumers but is not intended to change fundamental member rights. Therefore, any effect on family well-being, including financial well-being, is expected to be indirect, at most.

List of Subjects in 12 CFR Part 708a

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board, this 20th day of April 2026.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 708a as follows:

PART 708a—BANK CONVERSIONS AND MERGERS

■ 1. The authority citation for part 708a continues to read as follows:

Authority: 12 U.S.C. 1766, 1785(b), and 1785(c).

§ 708a.301 [Amended]

■ 2. Revise § 708a.301 by removing ''*Clear and conspicuous* means text in bold type in a font size at least one size larger than any other text used in the document (exclusive of headings), but in no event smaller than 12 point.''

§ 708a.303 [Amended]

■ 3. Revise § 708a.303(b)(1) to read as follows:

(b) * * *

(1) No later than 30 days before a board of directors votes on a proposal to merge, it must post a notice in a clear and conspicuous fashion in the lobby of the credit union's home and branch offices and on the credit union's website and a member's home banking landing page, if it has one. If the notice is not on the home page of the website, the home page must have a clear and conspicuous link, visible on a standard monitor without scrolling, to the notice.

■ 4. Revise and republish § 708a.304(d) to read as follows:

§ 708a.304 Notice to NCUA and request to proceed with member vote.

* * * * *

(d) *Due diligence.* The NIMRA must include a description of all the credit union's due diligence in determining that the merger satisfies the factors contained in section 205(c) of the Act. In particular, the NIMRA must describe how the board determined that this merger was in the best interests of the credit union's members. The description must include all information relied upon by the credit union in determining the merger value of the credit union, the amount of any payment to be made by the bank to the credit union's members (the ''merger payment''), and, if that merger payment is less than the merger value of the credit union, an explanation why the merger and the merger partner selected is in the best interests of the members. The description must include an explanation of the distribution formula by which the

[3] 58 FR 51735 (Oct. 4, 1993).

[4] 76 FR 3821 (Jan. 21, 2011).

[5] 5 U.S.C. 601 *et seq.*

merger payment will be distributed among the credit union's members.

* * * * *

■ 5. Amend § 708a.305 by:

■ a. Removing and reserving subparagraph (e)(2); and

■ b. Revising subparagraph (f).

The revisions read as follows:

§ 708a.305 Disclosures and communications to members.

* * * * *

(e)

(1) * * *

(2) [Removed and reserved]

(f) All written communications from a merging credit union to its members regarding the merger must be written in a manner that is simple and easy to understand. Simple and easy to understand means the communications are written in plain language designed to be understood by ordinary consumers, and uses clear and concise sentences.

* * * * *

§ 708a.312 [Removed]

■ 6. Remove § 708a.312.

[FR Doc. 2026–07806 Filed 4–21–26; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2026–4171; Airspace Docket No. 26–ASW–10]

RIN 2120–AA66

Establishment of Class E Airspace; Barksdale, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Cedar Creek Ranch Airport, Barksdale, TX. The FAA is proposing this action to support new instrument procedures and instrument flight rule (IFR) operations.

DATES: Comments must be received on or before June 8, 2026.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2026–4171 and Airspace Docket No. 26–ASW–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 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: Raul Garza Jr., Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, OH 76177; telephone (817) 222–5874.

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 would establish Class E airspace extending upward from 700 feet above the surface at Cedar Creek Ranch Airport, Barksdale, TX, to support IFR operations at this airport.

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 received 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–14FDMS), 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 Office (see the **ADDRESSES** section for the address, phone number, and hours of operation). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, OH 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and

Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These updates would be published subsequently 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 Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would establish Class E airspace extending upward from 700 feet above the surface within a 7-mile radius of Cedar Creek Ranch Airport, Barksdale, TX.

This action is the result of instrument procedures being developed for this airport to support IFR operations.

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

* * * * *

ASW TX E5 Barksdale, TX [Establish]

Cedar Creek Ranch Airport, TX
(Lat. 29°46′19″ N, long. 100°09′27″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Cedar Creek Ranch Airport, and within 2.2 miles each side of the 053° bearing from the airport extending from the 7-mile radius to 9.5 miles northeast of the airport.

* * * * *

Issued in Fort Worth, Texas, on April 20, 2026.

Jerry J. Creecy,

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

[FR Doc. 2026–07830 Filed 4–21–26; 8:45 am]

BILLING CODE 4910–13–P

Notices

Federal Register

Vol. 91, No. 77

Wednesday, April 22, 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

Agricultural Marketing Service

[Doc. No. AMS–SC–26–0232]

Christmas Tree Promotion, Research, and Information Order; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notification of referendum.

SUMMARY: This notice directs that a referendum be conducted among eligible producers and importers of Christmas trees to determine whether they favor continuance of the Agricultural Marketing Service's (AMS) regulations regarding the National Christmas tree research and promotion program.

DATES: This referendum will be conducted by mail and electronic ballot from May 22, 2026 through June 2, 2026. Ballots delivered to AMS via express mail or electronic ballot must show proof of delivery by no later than 11:59 p.m. Eastern Time on June 2, 2026. Eligible persons will receive a ballot through the mail and may cast it either through mail or electronic ballot. To be eligible to vote, domestic producers and importers must have produced or imported 500 or more Christmas trees from September 1, 2025, through March 15, 2026, and must be subject to assessment under the Christmas Tree Promotion, Research, and Information Order (Order).

ADDRESSES: Copies of the Order may be obtained from: Referendum Agent, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244; via telephone: (202) 720–8085; or by contacting George Webster via electronic mail: *George.Webster@usda.gov.*

FOR FURTHER INFORMATION CONTACT: George Webster, Marketing Specialist, or Alexandra Caryl, Branch Chief, Mid-Atlantic Region Branch, Market Development Division, Specialty Crops Program; telephone: (202) 720–8085; email: *George.Webster@usda.gov* or *Alexandra.Caryl@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425) (Act), it is hereby directed that a referendum be conducted to ascertain whether continuance of the Christmas Tree Promotion, Research, and Information Order (Order) (7 CFR part 1214) is favored by a majority of eligible domestic producers and importers covered under the program.

The representative period for establishing voter eligibility is September 1, 2025, through March 31, 2026. Producers who domestically produced 500 or more Christmas trees and importers who imported 500 or more Christmas trees into the United States during the representative period are eligible to vote. Persons who received an exemption from assessments pursuant to § 1214.53 for the entire representative period are ineligible to vote. The referendum will be conducted by express mail and electronic ballot from May 22, 2026 through June 2, 2026. Further details will be provided in the ballot instructions.

Section 518 of the Act (7 U.S.C. 7417) authorizes continuance referenda. Under § 1214.81(b) of the Order, USDA must conduct a referendum every seven years, at the request of the Board established in the Order, 10 percent or more of the number of persons eligible to vote in a referendum, or at any time as determined by the Secretary. The program's last continuance referendum was conducted in 2019; therefore, a referendum must be held in 2026 to comply with the Order.

USDA would continue the Order if it is favored by a majority of eligible domestic producers and importers voting in the referendum. If not favored, USDA would comply with the suspension and termination procedures at § 1214.82 and conduct appropriate rulemaking in accordance with the Order.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0268. Approximately 1,200 persons will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

George Webster, Marketing Specialist, and Alexandra Caryl, Branch Chief, Mid-Atlantic Region Branch, Market Development Division, SCP, AMS, USDA, Stop 0244, Room 1406–S, 1400 Independence Avenue SW, Washington, DC 20250–0244, are designated as the referendum agents to conduct this referendum. The referendum procedures at §§ 1214.100 through 1214.108 of the Order, which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agents will mail ballots and voting instructions, including how to vote electronically, to all known, eligible domestic producers and importers prior to the first day of the voting period. Any eligible domestic producer or importer who does not receive a ballot should contact a referendum agent no later than three days before the end of the voting period. Ballots delivered to AMS via express mail or electronic ballot must show proof of delivery by no later than 11:59 p.m. Eastern Time on June 2, 2026 to be included in the vote tabulation.

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Erin Morris,

Administrator, Agricultural Marketing Service.

[FR Doc. 2026–07828 Filed 4–21–26; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Electronic Benefits Transfer for Children Program; 2026 Benefit Levels

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the levels of monthly benefits in the Summer Electronic Benefits Transfer for Children

(Summer EBT) Program. These adjustments reflect changes in the Thrifty Food Plan (TFP), as required under the Richard B. Russell National School Lunch Act.

DATES: These benefit levels are in effect January 1, 2026, through December 31, 2026.

FOR FURTHER INFORMATION CONTACT: Anne Fiala, Director, Summer EBT Program Division, Child Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, 1320 Braddock Place, Suite 401, Alexandria, Virginia 22314, (703) 305–2590.

SUPPLEMENTARY INFORMATION: The Summer EBT Program is listed in the Assistance Listings under Number 10.646. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601–612, and thus is exempt from the provisions of that Act. Additionally, this notice has been determined to be exempt from formal review by the Office of Management and Budget under Executive Order 12866.

Summary

Section 13A of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1762, established the value of Summer EBT benefits in 2024 at $40 per child for each month of the summer and requires the Secretary to annually adjust the Summer EBT benefit amounts beginning in calendar year 2025, to reflect changes in the cost of food as measured by the TFP rounded down to the nearest dollar increment.

USDA adjusted the Summer EBT benefit levels to reflect the differences between the costs of providing meals and supplements in the outlying areas (Hawaii, Alaska, Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands) and the 48 states, the District of Columbia, and Indian Tribal Organizations administering the Program within the contiguous states, as consistent with law and other nutrition assistance programs. The benefit levels for the outlying areas were established in 2024 and are also annually adjusted.

This notice provides the 2026 Summer EBT monthly and total summer benefit levels. The law requires the adjusted level to be rounded down to the nearest dollar amount. The total summer benefit level is the rounded down monthly level multiplied by three.

Calculation of Benefit Levels

Contiguous States and Indian Tribal Organizations: The adjustment is based on the monthly TFP cost for a reference family of four. The change for the 12-month period ending on November 30th of the preceding calendar year is used to adjust the benefit level from the previous year. The November 2024 to November 2025 percent change is .49 percent, which results in no change in monthly benefit levels for 2026. The benefits for 2026 remain at $40 (rounded down from $40.82) monthly and $120 total.

Alaska: The adjustments are based on the Alaska monthly TFP cost for a reference family of four. The change for the 12-month period ending on November 30th of the preceding calendar year is used to adjust the benefit levels from the previous year for the three Alaska geographic areas. The November 2024 to November 2025 percent change is 3.30 percent. This percentage change is applied to the Urban, Rural I, and Rural II benefit levels from the prior year and rounded down to the nearest dollar increment. The adjusted 2026 monthly benefit for Urban Alaska is $54 (rounded down from $54.24), for Rural 1 Alaska is $69 (rounded down from $69.17), and for Rural 2 Alaska is $84 (rounded down from $84.18). The 2026 total summer benefits for Urban Alaska increase to $162, for Rural I increase to $207, and for Rural II increase to $252.

Hawaii: The adjustment is based on the Hawaii monthly TFP cost for a reference family of four. The change for the 12-month period ending on November 30th of the preceding calendar year is used to adjust the benefit level from the previous year. The November 2024 to November 2025 percent change is 6.20 percent. The 2026 monthly benefit of $63 (rounded down from $63.41) and 2026 total summer benefits of $189 have increased from 2025.

U.S. Territories (Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands): Monthly TFP costs for Guam and the U.S. Virgin Islands are not currently produced and Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands do not participate in the Supplemental Nutrition Assistance Program (SNAP). Therefore, the benefit amount is based on the percent difference between maximum SNAP allotment in the contiguous States and Guam. This results in annual changes that are the same as the contiguous States for a reference family of four, which is .49 percent in 2026. This results in a final Territorial adjustment factor of 1.47 for 2026. The 2026 monthly benefit increased by one dollar to $60 (rounded down from $60.16) and 2026 total summer benefits of $180 have increased from 2025.

The 2026 benefit levels are presented below, along with the 2025 benefit levels.

TABLE OF 2026 BENEFIT LEVELS

	2025 Monthly	2026 Monthly	2025 Summer	2026 Summer
48 States and the District of Columbia	$40	$40	$120	$120
Alaska:				
Urban	52	54	156	162
Rural 1	66	69	198	207
Rural 2	81	84	243	252
Hawaii	59	63	177	189
Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands	59	60	177	180

Patrick A. Penn,

Deputy Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 2026–07843 Filed 4–21–26; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket No. RBS–26–BUSINESS–0166]

Agency Information Collection Activities: Revision of a Currently Approved Information Collection; Comments Request; Rural Development Loan Servicing

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBCS) intention to request a revision of a currently approved information collection in support of Rural Development Loan Servicing for the Intermediary Relending Program.

DATES: Comments on this notice must be received by June 22, 2026.

FOR FURTHER INFORMATION CONTACT: Crystal Pemberton, Management Analyst, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522; email: *Crystal.Pemberton@usda.gov.*

SUPPLEMENTARY INFORMATION:

The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see, 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for revision.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) The accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search'' box, type in the ''RBS–26–BUSINESS–0166.'' A link to the Notice will appear. You may submit a comment here by selecting the ''Comment'' button or you can access the ''Docket'' tab, select the ''Notice,'' and go to the ''Browse & Comment on Documents'' Tab. Here you may view comments that have been submitted as well as submit a comment. 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 through the site's ''FAQ'' link at the bottom. Comments on this information collection must be received by June 22, 2026.

Title: Rural Development Loan Servicing.

OMB Number: 0570–0015.

Expiration Date of Approval: October 31, 2026.

Type of Request: Revision of a currently approved information collection.

Abstract: Subpart R of 7 CFR part 1951 contains regulations for servicing and liquidating loans made by Rural Development under the Intermediary Relending Program (IRP) and the Rural Microentrepreneur Assistance Program (RMAP) to eligible intermediaries and applies to ultimate recipients and other involved parties. The information requested is vital to RBS for prudent loan servicing, credit decisions, and reasonable program monitoring.

Rural Development has determined that the financial reporting requirements are necessary to provide the Agency with current information in order to monitor the program, to make various reporting requirements to Congress, and for program innovation and expansion under the Government's Performance Review.

Servicing of the IRP is administered by RBCS in Washington, DC, which will be the primary user of the information collected. Under the Freedom of Information Act (FOIA), the general public can request the majority of the data by the Agency from the intermediaries, except for information that is classified as confidential.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 8,000 hours.

Copies of this information collection can be obtained from Crystal Pemberton, Innovation Center—Regulations Management Division, at (202) 260–8621.

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.

Jeremy Claeys,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2026–07842 Filed 4–21–26; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 24, 2026, 10:00 a.m. EST.

ADDRESSES: Meeting to take place in person and is open to the public.

U.S. Commission on Civil Rights, 1331 Pennsylvania Ave. NW, Suite 1150, Washington, DC 20425.

It will also be livestreamed on the Commission's YouTube page: *https://www.youtube.com/user/USCCR/videos.*

FOR FURTHER INFORMATION CONTACT: Joe Kim: 202–499–0263; *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Government in Sunshine Act (5 U.S.C. 552b), the Commission on Civil Rights is holding a meeting to discuss the Commission's business for the month of April. This business meeting is open to the public. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, April 24, 2026, is *https://www.streamtext.net/player?event=USCCR.* Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

Meeting Agenda

I. Approval of Agenda
II. Business Meeting
  A. Presentations from State Advisory Committees

B. Discussion and Vote on State Advisory Committee Appointments
C. Management and Operations
• Staff Director's Report
III. Adjourn Meeting

Dated: April 20, 2026.

Hyung Kim,

USCCR Public Affairs Specialist.

[FR Doc. 2026–07819 Filed 4–20–26; 4:15 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Maryland Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Maryland Advisory Committee (Committee) to the Commission will hold public meetings via Zoom. The purpose is for the committee to begin briefing planning on the chosen topic of artificial intelligence and its application in voting administration.

DATES:

• Wednesday, May 27, 2026, at 11:00 a.m. (ET).
• Wednesday, July 1, 2026, at 11:00 a.m. (ET).
• Wednesday, July 29, 2026, at 11:00 a.m. (ET).

Registration Links (Audio/Visual): The meetings will be held via Zoom.

• 5/27/26: *https://www.zoomgov.com/webinar/register/WN_BNo27rCmS5iZj4_VfANVrQ.*
• 7/1/26: *https://www.zoomgov.com/webinar/register/WN_Zr-O8I1HQ0-RdmBmmluW7Q.*
• 7/29/26: *https://www.zoomgov.com/webinar/register/WN_opbyBC14RMGhoJZbiCDrrg.*

To Join By Phone (Audio Only): for all meetings, dial: 1–833–435–1820 USA Toll-Free.

• 5/27/26: Webinar ID—160 451 4840 # #.
• 7/1/26: Webinar ID—161 773 8286 #.
• 7/29/26: Webinar ID—160 583 9146 #.

Agendas (note: final meeting agendas will be available prior to each meeting date):.

• 5/27/26 Agenda: *https://usccr.box.com/s/nsuuqxxus447ubew7m2azfid2zka8305.*
• 7/1/26 Agenda: *https://usccr.box.com/s/ibj8dfg0kv0t4b4ebg9nm1p5lszjvdby.*
• 7/29/26 Agenda: *https://usccr.box.com/s/ibj8dfg0kv0t4b4ebg9nm1p5lszjvdby.*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer, at *bpeery@usccr.gov* or 1–202–701–1376.

SUPPLEMENTARY INFORMATION: These virtual committee meetings are available to the public through the registration links above. Any interested member of the public may join at the links to listen to this meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meetings will include a list of persons who are present at the meetings. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the Zoom meeting platform. To request additional accommodations, please email *ebohor@usccr.gov* at least 10 business days prior to each meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809–9618.

Records generated from these meetings may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meetings. Records of the meetings will be available via the file sharing website: *https://tinyurl.com/mnshz8n9* as well as at: *www.facadatabase.gov* under the Commission on Civil Rights, selecting the Advisory Committee of interest. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *ebohor@usccr.gov.*

Dated: April 20, 2026.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2026–07809 Filed 4–21–26; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Oklahoma Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business/briefing meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Oklahoma Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold virtual business/briefing meetings via ZoomGov on Tuesday, May 5th, Monday, May 18th and Monday, June 8, 2026 from 2:00 p.m.–3:00 p.m. CT. For the purpose of planning their upcoming panels on the death penalty and hearing from Panel I.

DATES: The meetings will take place on Tuesday, May 5, 2026 from 2:00 p.m.–3:00 p.m. CT; Monday, May 18, 2026 from 2:00 p.m.–4:00 p.m. CT and Monday, June 8, from 2:00 p.m.–3:00 p.m. CT.

Tuesday, May 5, 2026 (Business Meeting)

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_4ALaw1dqQAibQiMqaCKCcA.

• *Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: # 160 924 9937.

Monday, May 18, 2026 (Briefing Panel I Meeting)

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_VbAfSxrqR1qDl-ayN6ynbg.

• *Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: # 161 936 8006.

Monday, June 8, 2026 (Debriefing Meeting)

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_UBGsdVlRTYq7DDAM2oML2w.

• *Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: # 160 075 3243.

Agendas: (*note: final meeting agendas will be available prior to the meeting dates).*

https://usccr.box.com/s/1zm7k38cxtgiwj8aaayz30hghu62aap9 (May 5, 2026)
https://usccr.box.com/s/ezud0vqlfw5flpm60f4028mdweotz9er (May 18, 2026)
https://usccr.box.com/s/mgfg104r6xi4x6dcuks95q0zojtnw7xp (June 8, 2026)

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Corrine Sanders, Support Services Specialist, *csanders@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments can be sent via email to Brooke Peery (DFO) at *bpeery@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Oklahoma Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *csanders@usccr.gov.*

Dated: April 20, 2026.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2026–07810 Filed 4–21–26; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF594]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Sparrows Point Container Terminal Project in Baltimore County, Maryland

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

ACTION: Notice; proposed incidental harassment authorizations; request for comments on proposed authorizations and possible renewal.

SUMMARY: NMFS has received a request from Tradepoint TiL Terminal, LLC (TTT) for authorization to take marine mammals incidental to the Sparrows Point Container Terminal (SPCT) Project in Baltimore, MD. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two consecutive incidental harassment authorizations (IHAs) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on possible one-time, 1-year renewals that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 22, 2026.

ADDRESSES: Comments should be addressed to the Permits and Conservation Division, Office of Protected Resources, NMFS and should be submitted via email to *ITP.Hotchkin@noaa.gov.* Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Cara Hotchkin, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking; other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as ''mitigation''); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms used above are included in the relevant sections below (*see also* 16 U.S.C. 1362; 50 CFR 216.3, 216.103).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an

IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHAs qualifies to be categorically excluded from further NEPA review.

Fixing America's Surface Transportation Act

This project is published on the Federal Permitting Dashboard as a Department of Transportation project. Requirements for tracking on the Federal Permitting Dashboard include a suite of provisions designed to expedite the environmental review for covered infrastructure projects, including enhanced interagency coordination as well as milestone tracking. The SPCT project page, including milestones and schedules related to the environmental review and permitting for the project can be found at: *https://www.permits.performance.gov/permitting-project/fast-41-covered-projects/sparrows-point-container-terminal.*

Summary of Request

On December 23, 2025, NMFS received a request from TTT for issuance of two consecutive IHAs to take marine mammals incidental to construction activities necessary for the SPCT project in Baltimore County, MD. Following NMFS' review of the application, TTT submitted a revised version on February 4, 2026. The application was deemed adequate and complete on March 26, 2026. TTT's request is for take of Tamanend's bottlenose dolphins (*Tursiops erebennus*), by Level B harassment only. Neither TTT nor NMFS expect serious injury or mortality to result from this activity and, therefore, IHAs are appropriate.

Description of Proposed Activity

Overview

Tradepoint TiL Terminals, LLC (a joint venture between Tradepoint Atlantic and Terminal Investment Limited) proposes to construct a new terminal on the east side of the Coke Point peninsula on the north side of the lower Patapsco River, in Baltimore County, Maryland, to address the needs for increasing container capacity at the Port of Baltimore. The completed facility will consist of an approximately 3,000-foot (ft) (914 meter (m)) wharf with cranes, a container yard, gate complex, Intermodal/Rail Yard, and various support structures. To provide container vessel access to the wharf, the project also includes dredging and placement of an anticipated 4.2 million cubic yards (3.2 million cubic meters) of dredged material for the required widening and deepening of the existing Sparrows Point access channel and turning basin. Construction activities will consist of dredging and pile driving (vibratory and impact) of steel pipe piles with diameters ranging from 30 inches (in) (76 centimeters (cm)) to 48 in (120 cm).

Dates and Duration

Construction is proposed between June 1, 2026, and May 31, 2028; thus, TTT has requested issuance of two sequential IHAs that would be effective from June 1, 2026, through May 31, 2027, and from June 1, 2027, through May 31, 2028, respectively. However, project delays may occur due to a number of factors, including availability of equipment and/or materials, weather-related delays, equipment maintenance and/or repair, and other contingencies.

A total of approximately 760 piles would be installed during Year 1 (454 30-in; 228 36-in; and 77 48-in), requiring approximately 253 in-water workdays. Approximately 760 piles would be installed during Year 2 (454 30-in; 228 36-in; and 77 48-in), requiring approximately 253 in-water workdays. All work would generally be limited to daylight construction; no pile installation would be initiated during nighttime hours, though driving may continue until a pile started in daylight is complete.

Specific Geographic Region

The proposed project will occur within portions of the Patapsco River and Chesapeake Bay near the Port of Baltimore (figure 1). The Patapsco River is approximately 1 mile (1.6 kilometers (km)) wide (between Hawkins Point and Sollers Point). The Sparrows Point Channel, which is adjacent to the marginal wharf, connects to the Brewerton Channel within the centerline of the river, which is a federally maintained channel with a width of 700 ft (213 m) and a depth of –50 ft (-15 m) mean lower low water.

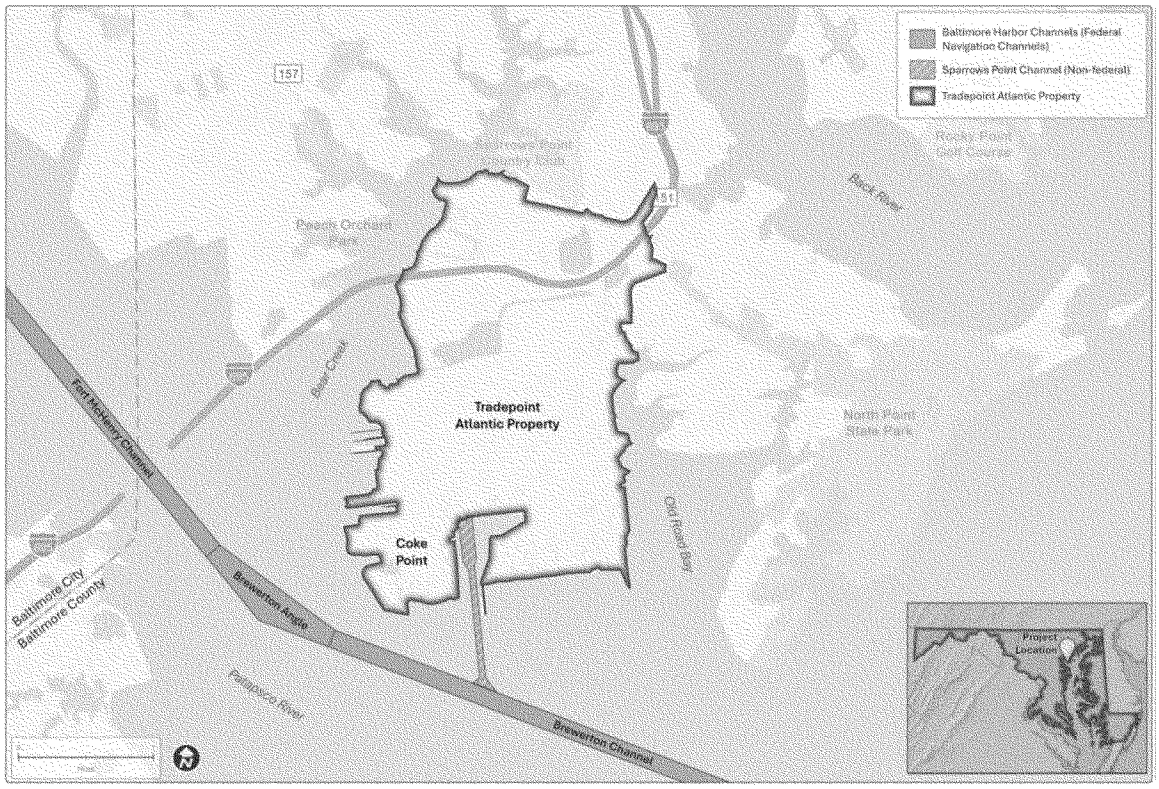

Figure 1 – Map of the SPCT Project Vicinity

Detailed Description of the Specified Activity

The project involves in-water pile driving and dredging within the Patapsco River where the northern range of Tamanend's bottlenose dolphins overlap the project area. The marine structure design includes an open-type (hollow steel pipe pile-supported) marginal wharf structure approximately 3,000 ft (914 m) long by 158 ft (48 m) wide, consisting of a pile-supported relieving platform integral to the wharf. The wharf structure is referenced as rows A through H for width, and columns (bents) 1 through 149 for length (see appendix A of TTT's IHA application for more details). Six modeling locations (S1 through S6) were designated along the wharf from north to south. Table 1 shows proposed pile quantities, sizes, and installation location on the wharf structure.

TABLE 1—PILE QUANTITIES, SIZES, AND ROWS FOR YEARS 1 AND 2

Wharf location (rows)	Year 1			Year 2		
	30-in	36-in	48-in	30-in	36-in	48-in
G/H	375	0	0	76	0	0
D/E/F	152	150	0	154	151	0
A/B/C	51	51	51	102	102	102

The wharf would be constructed in segments moving from north to south along the shoreline of the turning basin. The general sequence of construction for each constructed segment of the wharf is as follows:

- The existing slag material would be removed via excavation from land to establish the revetment slope beneath the marginal wharf.
- The first set of piles for the marginal wharf (Rows D, E, F, G, and H) would be installed after the slag removal has established the revetment slope beneath the marginal wharf.
- After the first phase of the pile-supported wharf is completed, the waterside dredging adjacent to the wharf would be completed to establish the remaining depth of the revetment slope.
- The second set of open wharf foundation piles (Rows A, B, and C) would be installed after the completion of underwater excavation and dredging that would be conducted to establish the revetment slope.
- Slope protection (stone and concrete) would be installed after the installation of the open wharf foundation piles.

Pile driving would start at the north end of the marginal wharf (Site S1, bent 1) and continue southward towards S6 (bent 149). Piles would be spaced approximately every 20 ft (6.1 m) along the wharf's length and every 25 ft (7.6 m) along its width. Each pile would be driven first by vibratory pile driving and then by impact pile driving. The pile driving would be conducted for approximately 12 hours per day, 7 days a week. On average, three piles would be driven each day.

Pile driving operations would consist of three separate ''setups''. Each setup consists of two crews and hammers (one vibratory and one impact). Operations would begin with the first crew using a vibratory hammer to initially install the pipe pile to resistance. Then a second pile driving crew would utilize a diesel impact hammer to drive the pile to refusal so that it reaches target design elevation. Up to six total hammers (three impact and three vibratory) may be functioning on site on a given day.

Concurrent driving is anticipated at up to three locations on any given day, with any combination of hammers. The most impactful concurrent scenarios include: C1—three impact hammers; C2—three vibratory hammers; and C3—two impact hammers and one vibratory hammer.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species).*

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual mortality and serious injury (M/SI) from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs. All values presented in table 2 are the most recent available at the time of publication (including from the draft 2024 SARs) and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 2—SPECIES, STOCKS, AND THE STATUS OF MARINE MAMMALS WITH ESTIMATED TAKE FROM THE SPECIFIED ACTIVITIES

Common name	Scientific name	MMPA stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance N_{best}, (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Odontoceti (toothed whales, dolphins, and porpoises)						
Family *Delphinidae:*						
Bottlenose Dolphin [4]	*Tursiops erebennus*	Northern Migratory Coastal ..	-, D, Y	6,639 (0.41, 4,759, 2016)	48	12.2–21.5
		Southern Migratory Coastal ..	-, D, Y	3,751 (0.6, 2,353, 2016)	24	0–18.3

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*).

[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[4] Coastal bottlenose dolphins along the Eastern U.S. have been genetically identified as a separate species (Tamanend's bottlenose dolphin (*T. erebennus*)) (Costa *et al.* 2022); however, this is not yet reflected in the SARs. Here we present the most recent SAR for the two relevant stocks, both of which are now considered *T. erebennus.*

As indicated above, the only species (with two managed stocks) in table 2 which temporally and spatially co-occurs with the activity to the degree that take is reasonably likely to occur is the bottlenose dolphin. While fin whales (*Balaenoptera physalus*), minke whales (*Balaenoptera acutorostrata*), humpback whales (*Megaptera novaeangliae*), sei whales (*Balaenoptera borealis*), harbor porpoise (*Phocoena phocoena*), and harbor (*Phoca vitulina*) and grey seals (*Halichoerus grypus*) have been documented in Lower Chesapeake Bay or the waters of coastal Maryland, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. All of these species are considered extralimital in the waters of the upper bay and the Patapsco River. Additionally, single individuals of Risso's dolphin (*Grampus griseus*) have been found stranded in the Baltimore area; however, these species are also considered extralimital.

Bottlenose dolphins are expected to occur on a regular basis in the waters of the upper Chesapeake Bay and Patapsco River. Atlantic coastal bottlenose dolphins have recently been recategorized as Tamanend's bottlenose dolphins (*Tursiops erebennus*) by Costa *et al.* (2022). Tamanend's bottlenose dolphins within the area of the SPCT project likely belong to either the Western North Atlantic Northern Migratory Coastal Stock (NMCS) or the Western North Atlantic Southern Migratory Coastal Stock (SMCS).

Tamanend's bottlenose dolphins are seasonally transient in the lower Patapsco River (Rodriguez et *al.,* 2021). They have a higher likelihood of occurrence along the middle and lower Chesapeake Bay, outside the area of the project area. Tamanend's bottlenose

dolphins primarily use the lower Chesapeake Bay in summer with most usage near the James and Elizabeth Rivers in Virginia. They are seen annually in Virginia from April through November with approximately 65 strandings occurring each year (Barco and Swingle, 2014; Engelhaupt *et al.,* 2016). Dolphins are more commonly sighted in areas far south of Baltimore Harbor including the mouths of the Potomac and Rappahannock Rivers (Bay Journal, 2021).

Sighting data within the proximity of the project area near the mouth of the Patapsco River and within the entire Chesapeake Bay, are based on 'citizen science', where reports are logged via the Dolphin Watch app (*chesapeakedolphinwatch.org*) supported by University of Maryland, Center for Environmental Science. These data are available from 2017 through 2022. Logged sightings are less frequent farther north in the Patapsco River and Baltimore Harbor areas and typically occur in the summer. Recent reported observations near the immediate area of the project include a dolphin sighted using waters in the Inner Harbor (14.5 km (9 miles) north of the Key Bridge; ABC Baltimore 2023) and a dolphin sighted using waters at the mouth of the Patapsco River (approximately 8 km (5 miles) south of the Key Bridge; The Washington Post, 2018).

Rodriguez et al. (2021) synthesizes 3 consecutive years (2017, 2018, and 2019) of data from the DolphinWatch app. Overall, the highest dolphin sightings are correlated with water temperatures between 24 and 30 degrees Celsius (75.2 to 86 degrees Fahrenheit). Salinity and tidal state also influence the spatiotemporal patterns of bottlenose dolphins. Dolphins were sighted most in the summer. The highest number of documented dolphin sightings from these data was in July of each year, when water temperatures are high and provide nursery habitat for dolphin prey fish species (Gannon and Waples, 2004). During September and October, dolphins were primarily sighted in the lower and southern middle portions of the Chesapeake Bay while during the summer, dolphins occurred in the upper, middle, and lower portions of the bay. No dolphins were sighted in the upper bay during September and October of 2018. Considering data synthesized in this report and global sea temperature data for the Upper Chesapeake Bay, it is expected that bottlenose dolphins would most likely be present within the vicinity of the SPCT project between June 1 and September 30 of any given year. Reduced presence is possible in spring and fall when water temperatures are above 20 degrees Celsius, and no dolphins are expected to be present in the project location during winter months.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007; 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from composite audiograms, previous analyses in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019). We note that the names of two hearing groups and the generalized hearing ranges of all marine mammal hearing groups have been recently updated (NMFS, 2024) as reflected below in table 3. Tamanend's bottlenose dolphins are considered high-frequency (HF) cetaceans.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2024]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 36 kHz.
High-frequency (HF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
Very High-frequency (VHF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	200 Hz to 165 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	40 Hz to 90 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 68 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges may not be as broad. Generalized hearing range chosen based on approximately 65 dB threshold from composite audiogram, previous analysis in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019). Additionally, animals are able to detect very loud sounds above and below that ''generalized'' hearing range.

For more detail concerning these groups and associated frequency ranges, please see NMFS (2024) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activity are expected to potentially occur from vibratory and impact pile driving. The effects of underwater noise from TTT's proposed activities have the potential to result in Level B harassment of marine mammals in the action area.

The proposed activities would result in the placement of 831 steel pipe piles with diameters of 30-, 36-, and 48-in in

year 1 and 686 piles in year 2 (see table 1 for details). There are a variety of types and degrees of effects on marine mammals, prey species, and habitat that could occur as a result of the SPCT project. Below we provide a brief description of the types of sound sources that would be generated by the project, the general impacts from these types of activities, and an analysis of the anticipated impacts on marine mammals from the project, with consideration of the proposed mitigation measures.

Description of Sound Sources for the Specified Activities

Activities associated with the project that have the potential to incidentally take marine mammals though exposure to sound would include vibratory and impact pile driving during the construction of the wharf.

Impact hammers typically operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is impulsive, characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the substrate. Vibratory hammers typically produce less sound (*i.e.,* lower levels) than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009; California Department of Transportation (CALTRANS), 2015, 2020). Sounds produced by vibratory hammers are non-impulsive; compared to sounds produced by impact hammers, the rise time is slower, reducing the probability and severity of injury, and the sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

The likely or possible impacts of TTT's proposed activities on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, visual and other non-acoustic stressors would be limited, and any impacts to marine mammals are expected to primarily be acoustic in nature.

Potential Effects of Underwater Sound on Marine Mammals

The introduction of anthropogenic noise into the aquatic environment from impact and vibratory pile driving is the primary means by which marine mammals may be harassed from TTT's specified activity. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life from none or minor to potentially severe responses depending on received levels, duration of exposure, behavioral context, and various other factors. Broadly, underwater sound from active acoustic sources, such as those in the SPCT project, can potentially result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009).

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly as we do not expect that use of impact driving is reasonably likely to result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The specified activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007, 2019). Exposure to anthropogenic noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). It can also lead to non-observable physiological responses, such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions, such as communication and predator and prey detection.

The degree of effect of an acoustic exposure on marine mammals is dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), signal characteristics, the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the noise source and the animal, received levels, behavioral state at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). In general, sudden, high-intensity sounds can cause hearing loss as can longer exposures to lower-intensity sounds. Moreover, any temporary or permanent loss of hearing, if it occurs at all, will occur almost exclusively for noise within an animal's hearing range. We describe below the specific manifestations of acoustic effects that may occur based on the activities proposed by TTT.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur in relation to distance from a source and assuming that the signal is within an animal's hearing range. First (at the greatest distance) is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone (closer to the receiving animal) corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. The third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

Below, we provide additional detail regarding potential impacts on marine mammals and their habitat from noise in general, starting with hearing impairment, as well as from the specific activities TTT plans to conduct, to the degree it is available.

Hearing Threshold Shifts. NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018, 2024). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As

described in NMFS (2018, 2024) there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Auditory Injury (AUD INJ). NMFS (2024) defines AUD INJ as damage to the inner ear that can result in destruction of tissue, such as the loss of cochlear neuron synapses or auditory neuropathy (Houser 2021; Finneran 2024). AUD INJ may or may not result in a permanent threshold shift (PTS). PTS is subsequently defined as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2024). PTS does not generally affect more than a limited frequency range, and an animal that has incurred PTS has some level of hearing loss at the relevant frequencies; typically animals with PTS or other AUD INJ are not functionally deaf (Au and Hastings, 2008; Finneran, 2016). Available data from humans and other terrestrial mammals indicate that a 40-dB threshold shift approximates AUD INJ onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). AUD INJ levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (*Phoca vitulina*) (Kastak *et al.,* 2008), there are no empirical data measuring AUD INJ in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing AUD INJ are not typically pursued or authorized (NMFS, 2024).

Temporary Threshold Shift (TTS). TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2024), and is not considered an AUD INJ. Based on data from marine mammal TTS measurements (see Southall *et al.,* 2007, 2019), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Finneran *et al.,* 2000, 2002; Schlundt *et al.,* 2000). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with the 24-hour cumulative sound exposure level (SEL_{24}) in an accelerating fashion: at low exposures with lower SEL_{24}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{24}, the growth curves become steeper and approach linear relationships with the sound exposure level (SEL).

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to more impactful (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more severe impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 2013). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS) (Finneran, 2015). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. For cetaceans, published data on the onset of TTS are limited to captive bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*) (Southall *et al.,* 2019). For pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), bearded seals (*Erignathus barbatus*) and California sea lions (*Zalophus californianus*) (Kastak *et al.,* 1999, 2007; Kastelein *et al.,* 2019b, 2019c, 2021, 2022a, 2022b; Reichmuth *et al.,* 2019; Sills *et al.,* 2020). TTS was not observed in spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to single airgun impulse sounds at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). These studies examine hearing thresholds measured in marine mammals before and after exposure to intense or long-duration sound exposures. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times.

The amount and onset of TTS depends on the exposure frequency. Sounds below the region of best sensitivity for a species or hearing group are less hazardous than those near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.,* 2019a, 2019c). Note that in general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Mooney *et al.,* 2009; Finneran *et al.,* 2010; Kastelein *et al.,* 2014, 2015). This means that TTS predictions based on the total, SEL_{24} will overestimate the amount of TTS from intermittent exposures, such as sonars and impulsive sources. Nachtigall *et al.* (2018) describe measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including

odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.,* 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2024). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species.

Relationships between TTS and AUD INJ thresholds have not been studied in marine mammals, and there are no measured PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. AUD INJ typically occurs at exposure levels at least several dB above that inducing mild TTS (*e.g.,* a 40-dB threshold shift approximates AUD INJ onset (Kryter *et al.,* 1966; Miller, 1974), while a 6-dB threshold shift approximates TTS onset (Southall *et al.,* 2007, 2019). Based on data from terrestrial mammals, a precautionary assumption is that the AUD INJ thresholds for impulsive sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and AUD INJ cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007, 2019). Given the higher level of sound or longer exposure duration necessary to cause AUD INJ as compared with TTS, it is considerably less likely that AUD INJ could occur.

Behavioral Effects. Exposure to noise also has the potential to behaviorally disturb marine mammals to a level that rises to the definition of harassment under the MMPA. Generally speaking, NMFS considers a behavioral disturbance that rises to the level of harassment under the MMPA a non-minor response—in other words, not every response qualifies as behavioral disturbance, and for responses that do, those of a higher level, or accrued across a longer duration, have the potential to affect foraging, reproduction, or survival. Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses may include changing durations of surfacing and dives, changing direction and/or speed; reducing/increasing vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); eliciting a visible startle response or aggressive behavior (such as tail/fin slapping or jaw clapping); and avoidance of areas where sound sources are located. In addition, pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007, 2019; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see appendices B and C of Southall *et al.* (2007) and Gomez *et al.* (2016) for reviews of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2004). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

As noted above, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; National Research Council (NRC), 2005). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (*e.g.,* seismic airguns) have been varied but often consist of avoidance behavior or other behavioral changes (Richardson *et al.,* 1995; Morton and Symonds, 2002; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal (*e.g.,* Erbe *et al.,* 2019). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. If a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Avoidance and displacement—Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a, 2013b; Blair *et al.,* 2016). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. Acoustic and movement biologging tools also have been used in some cases to infer responses to

anthropogenic noise. For example, Blair *et al.* (2015) reported significant effects on humpback whale (*Megaptera novaeangliae*) foraging behavior in Stellwagen Bank in response to ship noise including slower descent rates, and fewer side-rolling events per dive with increasing ship nose. In addition, Wisniewska *et al.* (2018) reported that tagged harbor porpoises demonstrated fewer prey capture attempts when encountering occasional high-noise levels resulting from vessel noise as well as more vigorous fluking, interrupted foraging, and cessation of echolocation signals observed in response to some high-noise vessel passes. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Respiration rates vary naturally with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001; 2005; 2006; Gailey *et al.,* 2007). For example, harbor porpoise respiration rates increased in response to pile driving sounds at and above a received broadband SPL of 136 dB (zero-peak SPL: 151 dB (referenced to 1 micropascal (re 1 µPa); SEL of a single strike (SEL_{ss}): 127 dB re 1 μPa^2-s) (Kastelein *et al.,* 2013).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales (*Eschrictius robustus*) are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Harbor porpoises, Atlantic white-sided dolphins (*Lagenorhynchus actusus*), and minke whales have demonstrated avoidance in response to vessels during line transect surveys (Palka and Hammond, 2001). In addition, beluga whales in the St. Lawrence Estuary in Canada have been reported to increase levels of avoidance with increased boat presence by way of increased dive durations and swim speeds, decreased surfacing intervals, and by bunching together into groups (Blane and Jaakson, 1994). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996; Bowers *et al.,* 2018). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (England *et al.,* 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fishes and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive (*i.e.,* meaningful) behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Physiological stress responses. An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Selye, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress, including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in

the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Ayres *et al.,* 2012; Yang *et al.,* 2022). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. In addition, Lemos *et al.* (2022) observed a correlation between higher levels of fecal glucocorticoid metabolite concentrations (indicative of a stress response) and vessel traffic in gray whales. Yang *et al.* (2022) studied behavioral and physiological responses in captive bottlenose dolphins exposed to playbacks of ''pile-driving-like'' impulsive sounds, finding significant changes in cortisol and other physiological indicators but only minor behavioral changes. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2005), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar construction projects.

Norman (2011) reviewed environmental and anthropogenic stressors for Cook Inlet beluga whales. Lyamin *et al.* (2011) determined that the heart rate of a beluga whale increases in response to noise, depending on the frequency and intensity. Acceleration of heart rate in the beluga whale is the first component of the ''acoustic startle response.'' Romano *et al.* (2004) demonstrated that captive beluga whales exposed to high-level impulsive sounds (*i.e.,* seismic airgun and/or single pure tones up to 201 dB Root Mean Square (RMS)) resembling sonar pings showed increased stress hormone levels of norepinephrine, epinephrine, and dopamine when TTS was reached. Thomas *et al.* (1990) exposed beluga whales to playbacks of an oil-drilling platform in operation (''Sedco 708,'' 40 Hz–20 kHz; source level 153 dB). Ambient SPL at ambient conditions in the pool before playbacks was 106 dB and 134 to 137 dB RMS during playbacks at the monitoring hydrophone across the pool. All cell and platelet counts and 21 different blood chemicals, including epinephrine and norepinephrine, were within normal limits throughout baseline and playback periods, and stress response hormone levels did not increase immediately after playbacks. The difference between the Romano *et al.* (2004) and Thomas *et al.* (1990) studies could be the differences in the type of sound (seismic airgun and/or tone versus oil drilling), the intensity and duration of the sound, the individual's response, and the surrounding circumstances of the individual's environment. The sounds in the Thomas *et al.* (1990) study would be more similar to those anticipated by the TTT's activities; therefore, no more than short-term, low-hormone stress responses, if any, are expected as a result of exposure to noise from the proposed activities.

Vocalizations and Auditory Masking. Since many marine mammals rely on sound to find prey, moderate social interactions, and facilitate mating (Tyack, 2008), noise from anthropogenic sound sources can interfere with these functions, but only if the noise spectrum overlaps with the hearing sensitivity of the receiving marine mammal (Southall *et al.,* 2007; Clark *et al.,* 2009; Hatch *et al.,* 2012). Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere with an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age, or hearing loss), and existing ambient noise and propagation conditions (Hotchkin and Parks, 2013).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales (*Orcinus orca*) have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003) or vocalizations (Foote *et al.,* 2004), respectively, while North Atlantic right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). Fin whales (*Balaenoptera physalus*) have also been documented lowering the bandwidth, peak frequency, and center frequency of their vocalizations under increased levels of background noise from large vessels (Castellote *et al.,* 2012). Other alterations to communication signals have also been observed. For example, gray whales, in response to playback experiments exposing them to vessel noise, have been observed increasing their vocalization rate and producing louder signals at times of increased outboard engine noise (Dahlheim and Castellote, 2016). Alternatively, in some cases,

animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994, Wisniewska *et al.,* 2018).

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is human-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect (though not necessarily one that would be associated with harassment).

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2010; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors, including modifications of the acoustic properties of the signal or the signaling behavior (Hotchkin and Parks, 2013). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking occurs in the frequency band that the animals utilize and is more likely to occur in the presence of broadband, relatively continuous noise sources such as vibratory pile driving. Energy distribution of vibratory pile driving sound covers a broad frequency spectrum and is anticipated to be within the audible range of marine mammals present in the proposed action area. Since noises generated from the proposed construction activities are mostly concentrated at low frequencies (<2 kHz), these activities likely have less effect on mid-frequency echolocation sounds produced by odontocetes (toothed whales). However, lower frequency noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. Low-frequency noise may also affect communication signals when they occur near the frequency band for noise and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Holt *et al.,* 2009). Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, in addition to individual levels. Masking affects both senders and receivers of the signals, and at higher levels for longer durations, could have long-term chronic effects on marine mammal species and populations. However, the noise generated by the TTT's proposed activities will only occur intermittently, across an estimated 277 days in year one and 129 days in year two during the authorization period in a relatively small area focused around the proposed construction site. Thus, while the TTT's proposed activities may mask some acoustic signals that are relevant to the daily behavior of marine mammals, the short-term duration and limited areas affected make it very unlikely that the fitness of individual marine mammals would be impacted.

Potential Effects on Marine Mammal Habitat

The TTT's proposed activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water SPLs. Increased noise levels may affect acoustic habitat and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). Elevated levels of underwater noise would ensonify the project areas where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during the proposed construction activities; however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

The total area likely impacted by the TTT's activities is relatively small compared to the available habitat in upper Chesapeake Bay and the Patapsco River. Avoidance by potential prey (*i.e.,* fish) of the immediate area due to increased noise is possible. The duration of fish and marine mammal avoidance of this area after pile installation and associated activities stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by fish or marine mammals of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

The proposed project will occur within the same footprint as existing marine infrastructure. The nearshore and intertidal habitat where the proposed project will occur is an area of relatively high marine vessel traffic. Most marine mammals do not generally use the area within the footprint of the project area. Temporary, intermittent, and short-term habitat alteration may result from increased noise levels during the proposed construction activities. Effects on marine mammals will be limited to temporary displacement from pile installation and removal noise, and effects on prey species will be similarly limited in time and space.

Water quality—Temporary and localized reduction in water quality will occur as a result of in-water construction activities. Most of this effect would occur during the installation and removal of piles when bottom sediments are disturbed. The installation and removal of piles would disturb bottom sediments and may cause a temporary increase in suspended sediment in the project area. During pile extraction (if necessary), sediment attached to the pile moves vertically through the water column until gravitational forces cause it to slough off under its own weight. The small resulting sediment plume is expected to settle out of the water column within a few hours. Studies of the effects of turbid water on fish (marine mammal prey) suggest that concentrations of suspended sediment can reach thousands of milligrams per liter before an acute toxic reaction is expected (Burton, 1993).

Effects to turbidity and sedimentation are expected to be short-term, minor, and localized. Since the currents are so strong in the area, following the completion of sediment-disturbing activities, suspended sediments in the water column should dissipate and quickly return to background levels in all construction scenarios. Turbidity within the water column has the potential to reduce the level of oxygen

in the water and irritate the gills of prey fish species in the proposed project area. However, turbidity plumes associated with the project would be temporary and localized, and fish in the proposed project area would be able to move away from and avoid the areas where plumes may occur. Therefore, it is expected that the impacts on prey fish species from turbidity, and therefore on marine mammals, would be minimal and temporary. In general, the area likely impacted by the proposed construction activities is relatively small compared to the available marine mammal habitat in the upper Chesapeake Bay and Patapsco River.

Potential Effects on Prey. Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fishes, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Studies regarding the effects of noise on known marine mammal prey are described here.

Fishes utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds that are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fishes (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Peña *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fishes are temporary.

SPLs of sufficient strength have been known to cause injury to fishes and fish mortality (summarized in Popper *et al.,* 2014). However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012b) showed that a TTS of 4 to 6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012a; Casper *et al.,* 2013, 2017).

Fish populations in the proposed project area that serve as marine mammal prey could be temporarily affected by noise from pile installation and removal. The frequency range in which fishes generally perceive underwater sounds is 50 to 2,000 Hz, with peak sensitivities below 800 Hz (Popper and Hastings, 2009). Fish behavior or distribution may change, especially with strong and/or intermittent sounds that could harm fishes. High underwater SPLs have been documented to alter behavior, cause hearing loss, and injure or kill individual fish by causing serious internal injury (Hastings and Popper, 2005).

Zooplankton is a food source for several marine mammal species, as well as a food source for fish that are then preyed upon by marine mammals. Population effects on zooplankton could have indirect effects on marine mammals. Data are limited on the effects of underwater sound on zooplankton species, particularly sound from construction (Erbe *et al.,* 2019). Popper and Hastings (2009) reviewed information on the effects of human-generated sound and concluded that no substantive data are available on whether the sound levels from pile driving, seismic activity, or any human-made sound would have physiological effects on invertebrates. Any such effects would be limited to the area very near (1 to 5 m) the sound source and would result in no population effects because of the relatively small area affected at any one time and the reproductive strategy of most zooplankton species (short generation, high fecundity, and very high natural mortality). No adverse impact on zooplankton populations is expected to occur from the specified activity due, in part, to large reproductive capacities and naturally high levels of predation and mortality of these populations. Any mortalities or impacts that might occur would be negligible.

The greatest potential impact to marine mammal prey during construction would occur during impact pile driving. In-water construction activities would only be initiated during daylight hours, allowing fish to forage and transit the project area in the evening. Vibratory pile driving may elicit behavioral reactions from fishes such as temporary avoidance of the area but is unlikely to cause injuries to fishes or have persistent effects on local fish populations. Construction would have minimal permanent and temporary impacts on benthic invertebrate species, a marine mammal prey source. In addition, it should be noted that the area in question is low-quality habitat since it is already highly developed and experiences a high level of anthropogenic noise from normal operations and other vessel traffic.

Potential Effects on Foraging Habitat

The SPCT project is not expected to result in any habitat-related effects that could cause significant or long-term negative consequences for individual marine mammals or their populations, since installation and removal of in-water piles would be temporary and intermittent. The total seafloor area affected by pile installation and removal is a very small area compared to the vast foraging area available to marine mammals outside this project area. SPCT turning basin is an industrialized area that does not provide high-quality habitat for prey species. The area impacted by the project is relatively small compared to the available habitat just outside the project area, and there are no areas of particular importance that would be impacted by this project. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for the TTT's construction to affect the availability of

prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant. Therefore, impacts of the project are not likely to have adverse effects on marine mammal foraging habitat in the proposed project area.

In summary, given the relatively small areas being affected, as well as the temporary and mostly transitory nature of the proposed construction activities, any adverse effects from the TTT's activities on prey habitat or prey populations are expected to be minor and temporary. The most likely impact to fishes at the project site would be temporary avoidance of the area. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we preliminarily conclude that impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform NMFS' consideration of ''small numbers,'' the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, as pile driving has the potential to result in disruption of behavioral patterns and/or TTS for individual marine mammals. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown zones and bubble curtains) discussed in detail below in the Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic criteria above which NMFS believes there is some reasonable potential for marine mammals to be behaviorally harassed or incur some degree of AUD INJ; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Criteria

NMFS recommends the use of acoustic criteria that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur AUD INJ of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007; Southall *et al.,* 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared sound pressure received levels (RMS SPL) of 120 dB re 1 µPa) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 µPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

TTT's proposed activity includes the use of continuous non-impulsive and impulsive sources, and therefore the RMS SPL thresholds of 120 dB and 160 dB re 1 µPa are applicable.

Level A harassment—NMFS' Updated Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 3.0) (Updated Technical Guidance, 2024) identifies dual criteria to assess AUD INJ (Level A harassment) to five different underwater marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). TTT's proposed activity includes the use of impulsive (impact driving) and non-impulsive (vibratory driving) sources.

The 2024 Updated Technical Guidance criteria include both updated thresholds and updated weighting functions for each hearing group. The thresholds are provided in table 4, below. The references, analysis, and methodology used in the development of the criteria are described in NMFS' 2024 Updated Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance-other-acoustic-tools.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF AUDITORY INJURY

Hearing group	AUD INJ onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 222 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 197 dB.
High-Frequency (HF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,HF,24h}$: 193 dB	*Cell 4:* $L_{E,HF,24h}$: 201 dB.
Very High-Frequency (VHF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,VHF,24h}$: 159 dB	*Cell 6:* $L_{E,VHF,24h}$: 181 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 223 dB; $L_{E,PW,24h}$: 183 dB	*Cell 8:* $L_{E,PW,24h}$: 195 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 230 dB; $L_{E,OW,24h}$: 185 dB	*Cell 10:* $L_{EOW,24h}$: 199 dB.

* Dual metric criteria for impulsive sounds: Use whichever criteria results in the larger isopleth for calculating AUD INJ onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level criteria associated with impulsive sounds, the PK SPL criteria are recommended for consideration for non-impulsive sources.

Note: Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 µPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1 μPa^2s. In this table, criteria are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript ''flat'' is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals underwater (*i.e.,* 7 Hz to 165 kHz). The subscript associated with cumulative sound exposure level criteria indicates the designated marine mammal auditory weighting function (LF, HF, and VHF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level criteria could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these criteria will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The ensonified areas associated with the proposed pile driving activities were modeled by TTT and JASCO Applied Sciences (JASCO) during the application preparation process; details and the resulting predictions are shown in the modeling report included as appendix B of TTT's IHA application. Briefly, forcing functions for both impact and vibratory pile driving were calculated using the model GRLWEAP14. These functions served as inputs to JASCO's proprietary pile driving source model (PDSM), which is used to estimate an equivalent acoustic source represented by a linear array of monopoles evenly distributed along the pile. The pile sound was simulated as an array of point sources radiating into the environment and the propagation of synthetic pressure waveforms were computed using JASCO's acoustic propagation model, FWRAM (Full Waveform Range-dependent Acoustic Model), which incorporates site-specific environmental data including bathymetry, sound speed in the water column, and seabed geoacoustics. Resulting model-produced source values are shown in table 5.

TABLE 5—MODELED SOURCE VALUES FOR ALL PILE TYPES FOR IMPACT AND VIBRATORY PILE DRIVING

Method	Pile diameter (inches)	SEL (dB re 1μPa^2-sec)
Impact	30	174.8
	36	182.1
	48	188.9
Vibratory	30	164
	36	170.6
	48	175.3

Two modeling locations were selected, one at either end of the wharf. The northernmost location (S1) and southernmost location (S6) were chosen to demonstrate the extremes of expected sound propagation (see figure 4 of TTT's IHA application). Scenarios were modeled during spring and fall seasons at both locations to account for seasonal changes in water temperature and salinity; average sound speed profiles during these seasons showed the strongest refracting profiles leading to the longest propagation ranges. Winter and summer sound propagation was not modeled.

A total of 14 pile driving scenarios were modeled—8 single-activity scenarios consisting of either impact or vibratory driving at both S1 and S6 during spring and fall. Concurrent scenarios C1, C2, and C3 were all modeled at location S6 during spring and fall. The calculated isopleth distances and areas are shown in tables 6 and 7.

TABLE 6—MODELED ISOPLETHS AND AREAS ENSONIFIED FOR SINGLE-ACTIVITY SCENARIOS AT SITES S1 AND S6 IN BOTH SPRING AND FALL

Pile diameter (in.)	Method	Site 1				Site 6			
		Level A		Level B		Level A		Level B	
		Isopleth (km)	Area (km^2)	Isopleth (km)	Area (km^2)	Isopleth (km)	Area (km^2)	Isopleth (km)	Area (km^2)
Spring									
30	Impact			0.34	0.1134			0.34	0.181

TABLE 6—MODELED ISOPLETHS AND AREAS ENSONIFIED FOR SINGLE-ACTIVITY SCENARIOS AT SITES S1 AND S6 IN BOTH SPRING AND FALL—Continued

Pile diameter (in.)	Method	Site 1				Site 6			
		Level A		Level B		Level A		Level B	
		Isopleth (km)	Area (km^2)	Isopleth (km)	Area (km^2)	Isopleth (km)	Area (km^2)	Isopleth (km)	Area (km^2)
36				0.79	0.2642			0.8	0.5809
48		0.03	0.0013	1.33	0.5281	0.03	0.0028	1.31	1.0207
30	Vibratory			2.12	0.9503			1.81	1.6742
36				2.55	1.4527			2039	2.8353
48				2.66	1.5837			2.66	3.3329
Fall									
30	Impact			0.35	0.1134			0.35	0.1963
36				0.81	0.2642			0.81	0.5809
48		0.03	0.0028	1.36	0.5281	0.03	0.0028	1.35	1.0568
30	Vibratory			2.11	0.9161			1.81	1.6742
36				2.55	1.4527			2.39	2.8953
48				2.66	1.5837			2.66	3.3979

TABLE 7—MODELED ISOPLETHS AND AREAS ENSONIFIED FOR CONCURRENT SCENARIOS AT SITE S6 IN BOTH SPRING AND FALL

Scenario	Level A		Level B	
	Isopleth (km)	Area (km^2)	Isopleth (km)	Area (km^2)
Spring				
C1	0.04	0.0028	3.89	1.131
C2		0	2.83	3.3979
C3	0.04	0.0028	3.89	9.7314
Fall				
C1	0.04	0.0028	3.89	1.131
C2		0	2.83	3.3979
C3	0.04	0.0028	3.89	10.1788

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations. Rodriguez *et. al.* (2021) synthesizes three consecutive years (2017, 2018, and 2019) of data from the DolphinWatch app collected between the months of April and October. Overall, the highest dolphin sightings were correlated with water temperatures between 24 and 30 degrees Celsius (75.2 to 86 degrees Fahrenheit). Dolphins were sighted most in the summer, peaking in July of each year. Salinity and tidal state also influenced the spatiotemporal occurrence of bottlenose dolphins.

Density estimates for the upper Chesapeake Bay region were compiled for each year (table 8) and the geometric mean of all 3 years was used to estimate peak-season (summer) dolphin densities for the purpose of this analysis.

TABLE 8—DOLPHIN DENSITY BASED ON RODRIGUEZ ET AL. 2021

Year	Yearly (March–November) average density (per km^2)	Geometric mean density (per km^2)
2017	0.015	0.019
2018	0.026	
2019	0.017	

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

Estimated take by Level B harassment was calculated based on the ensonified areas multiplied by the seasonal density estimates and the number of in-water work days each year. For single hammer scenarios (table 9), site- and season-specific daily exposures were calculated for both sites in both seasons by multiplying the relevant ensonified area by the density, and then averaged seasonally at S1 and S6. Average daily exposures for all pile types were calculated by taking the average of the S1 and S6 seasonal averages. This was

then multiplied by the estimated number of work days and summed across pile types to determine total estimated take by Level B harassment.

TABLE 9—PROPOSED TAKE CALCULATIONS FOR SINGLE HAMMER SCENARIOS FOR YEARS 1 AND 2*

Pile diameter (in.)	Seasonal average of daily exposures		Average daily exposures	# days	Estimated exposures per pile type	Annual estimated exposures	
	S1	S6				Year 1	Year 2
Impact							
30	0.0022	0.0036	0.0029	151.5	0.43	1	1
36	0.0050	0.0110	0.0080	76	0.61		
48	0.0100	0.0197	0.0149	25.5	0.38		
Vibratory							
30	0.018	0.032	0.025	151.5	3.75	8	8
36	0.028	0.054	0.041	76	3.12		
48	0.030	0.064	0.047	25.5	1.20		

*Proposed activities for years 1 and 2 are identical; estimated exposure calculations are therefore identical and results for each year are shown separately.

For concurrent hammering scenarios (table 10), estimated take was calculated using the fall propagation modeling at S6. Concurrent driving scenarios already included all three pile types, so no summing of exposures over the three pile types was necessary. Scenario C3 had the highest potential take in both years and estimated take proposed for authorization is therefore based on this scenario.

TABLE 10—PROPOSED TAKE CALCULATIONS FOR CONCURRENT HAMMERING SCENARIOS FOR YEARS 1 AND 2

Scenario	Fall exposures (dolphins per day)	Fall days	Annual estimated exposures	
			Year 1	Year 2
C1	0.0215	253	5	5
C2	0.0646	253	16	16
C3	0.1934	253	49	49

*Proposed activities for years 1 and 2 are identical; estimated exposure calculations are therefore identical and results for each year are shown separately.

An estimate of take by Level A harassment was performed in the same manner for days with impact pile driving. The maximum estimated Level A harassment area was 0.0028 km^2 for impact hammering of 48-in piles under scenario C3. AUD INJ onset thresholds were not reached during modeling of vibratory driving of any size pile. Using the same number of days as shown in table 9, the estimated take by Level A harassment during scenario C3 was 0.01 animals per year. Thus, TTT did not request any take by Level A harassment, and none is proposed for authorization. Tables 11 and 12 show the amount of take proposed for authorization under the Year 1 and Year 2 IHAs, respectively.

TABLE 11—ESTIMATED PROPOSED TAKE BY LEVEL A AND LEVEL B HARASSMENT AND PERCENT OF STOCKS TAKEN FOR YEAR 1

Species	Stock	Level A	Level B	Total	Stock abundance	Percent of stock
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal Stock.	0	49	49	6,639	0.74
	Western North Atlantic Southern Migratory Coastal Stock.				3,751	1.3

TABLE 12—ESTIMATED PROPOSED TAKE BY LEVEL A AND LEVEL B HARASSMENT AND PERCENT OF STOCKS TAKEN FOR YEAR 2

Species	Stock	Level A	Level B	Total	Stock abundance	Percent of stock
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal Stock.	0	49	49	6,639	0.74
	Western North Atlantic Southern Migratory Coastal Stock.				3,751	1.3

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

The mitigation requirements described in the following were proposed by TTT in its adequate and complete application or are the result of subsequent coordination between NMFS and TTT. TTT has agreed that all of the mitigation measures are practicable. NMFS has fully reviewed the specified activities and the mitigation measures to determine if the mitigation measures would result in the least practicable adverse impact on marine mammals and their habitat, as required by the MMPA, and has determined the proposed measures are appropriate. NMFS describes these below as proposed mitigation requirements, and has included them in the proposed IHAs.

In addition to the measures described later in this section, the TTT would follow these general mitigation measures:

- Takes proposed for authorization, by Level B harassment only, would be limited to the species and numbers listed in tables 11 and 12. Construction activities must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or is within the harassment zone.
- The taking by serious injury or death of any of the species listed in tables 11 and 12 or any taking of any other species of marine mammal would be prohibited and would result in the modification, suspension, or revocation of the IHAs, if issued. Any taking exceeding the authorized amounts listed in in tables 11 and 12 would be prohibited and would result in the modification, suspension, or revocation of the IHA, if issued.
- Ensure that construction supervisors and crews, the marine mammal monitoring team, and relevant TTT staff are trained prior to the start of all construction activities, so that responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;
- The TTT, construction supervisors and crews, Protected Species Observers (PSOs), Designated Visual Observers (DVOs), and relevant TTT staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.
- Employ PSOs (or DVOs when appropriate) and establish monitoring locations as described in section 5 of the IHA and the TTT Marine Mammal Monitoring and Mitigation Plan. The TTT must monitor the project area to the maximum extent possible based on the required number of PSOs or DVOs, required monitoring locations, and environmental conditions.

Additionally, the following mitigation measures apply to the TTT's in-water construction activities:

Establishment of Shutdown Zones—The TTT would establish shutdown zones with radial distances as identified in table 13 for all construction activities. If a marine mammal is observed entering or within the shutdown zones indicated in table 13, pile driving activity must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zones or 15 minutes have passed without re-detection of the animal.

TABLE 13—PROPOSED SHUTDOWN ZONES DURING PROJECT ACTIVITIES

Activity	Shutdown zone (m)	Clearance zone (m)
Impact Installation	40	1,190
Vibratory installation	10	2,860

Pre- and Post-Activity Monitoring—When PSOs or DVOs are present, monitoring would take place from 30 minutes prior to initiation of pile driving activity (*i.e.,* pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity. In addition, monitoring for 30 minutes would take place whenever a break in the specified activity (*i.e.,* impact pile driving, vibratory pile driving) of 30 minutes or longer occurs. Pre-start clearance monitoring would be conducted during periods of visibility sufficient for the PSO or DVO to determine that the shutdown zones indicated in table 12 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals.

Pile driving activities would be initiated only during daylight hours when PSOs or DVOs (when present) can visually monitor for the presence of marine mammals. In the event that pile

driving continues after dusk (to complete the installation of a pile in progress), night vision equipment (handheld night vision devices or handheld thermal imagers) would be used.

Soft Start—TTT would use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. Soft starts would not be required for infrequently occurring pile restrikes (short duration events with low blow counts) due to technical conflicts with hammer energy.

Hydroacoustic Monitoring—TTT would conduct sound field verification to ground truth the zones over which effects to marine mammals are expected. An acoustic monitoring plan would be submitted to NMFS no later than 30 days prior to the beginning of pile driving for approval. Monitoring would be conducted for 1 week starting with the initial pile of each diameter/group, for 1 week (5 days) at least once during concurrent piling, and for one week during the predicted most impactful concurrent piling.

Data would be collected using autonomous acoustic recorders at three fixed ranges from each monitored pile along a fixed azimuth. Underwater noise data will be collected at near-field, intermediate, and far-field locations to monitor noise associated with the active pile.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. NMFS conducted an independent evaluation of the proposed measures, and has preliminarily determined for each of the proposed IHAs that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

The monitoring and reporting requirements described in the following were proposed by TTT in its adequate and complete application and/or are the result of subsequent coordination between NMFS and TTT. TTT has agreed to the requirements. NMFS describes these below as requirements and has included them in the proposed IHA.

Visual Monitoring—Monitoring must be conducted by qualified, NMFS-approved PSOs between May 15 and September 30. A minimum of one NMFS-approved PSO will be on duty during pile driving activities between 1 June and 15 September to monitor the Shutdown Zone and Clearance Zone. Between May 15 and May 30, and between September 15 and September 30, a minimum of one PSO must be on duty during 2 of every 7 calendar days during pile driving. Between October 1 and May 14, monitoring must be conducted for 1 of every 7 calendar days during pile driving. During this time, monitoring may be conducted by either NMFS-approved PSOs or by DVOs.

PSOs and DVOs would have similar qualifications, with some differences. PSOs would be independent of the activity contractor (for example, employed by a subcontractor), while DVOs may be a member of the activity contractor team. Both PSOs and DVOs must have no other assigned tasks during monitoring periods. At least one PSO would have prior experience performing the duties of a PSO during an activity pursuant to a NMFS-issued Incidental Take Authorization (ITA) or Letter of Concurrence (LOC). Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization. PSOs would have experience or training in the field identification of marine mammals, including the identification of behaviors. DVOs do not need prior experience; they would be provided training sufficient to identify marine mammals in the field, but not to identify specific behaviors.

PSOs and DVOs would also have the following additional qualifications:

- The ability to conduct field observations and collect data according to assigned protocols;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to: (1) the number and species of marine mammals observed; (2) dates and times when in-water construction activities were conducted; (3) dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and (4) marine mammal behavior; and

• The ability to communicate orally, by radio or in person, with Project personnel to provide real-time information on marine mammals observed in the area as necessary.

TTT must establish monitoring locations as described in the Marine Mammal Monitoring and Mitigation Plan (see appendix C of TTT's application). When monitoring is required, PSOs and DVOs would record all observations of marine mammals, regardless of distance from the pile being driven, as well as the additional data indicated below and in section 6 of the IHAs, if issued.

Reporting—TTT would be required to submit an annual draft summary report on all construction activities and marine mammal monitoring results to NMFS within 90 days following the end of each construction year or 60 calendar days prior to the requested issuance of any subsequent IHA for similar activity at the same location, whichever comes first. The draft summary report would include an overall description of construction work completed, a narrative regarding marine mammal sightings, and associated raw PSO and DVO data sheets (in electronic spreadsheet format). Specifically, the report must include:

• Dates and times (begin and end) of all marine mammal monitoring;

• Construction activities occurring during each daily observation period, including: (a) how many and what type of piles were driven or removed and the method (*i.e.,* impact or vibratory); and (b) the total duration of time for each pile (vibratory driving) or number of strikes for each pile (impact driving);

• PSO and DVO locations during marine mammal monitoring; and

• Environmental conditions during monitoring periods (at beginning and end of PSO and DVO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

• Upon observation of a marine mammal the following information must be reported:

• Name of PSO or DVO who sighted the animal(s) and PSO or DVO location and activity at the time of the sighting;

• Time of the sighting;

• Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO or DVO confidence in identification, and the composition of the group if there is a mix of species;

• Distance and bearing of each observed marine mammal relative to the pile being driven or removed for each sighting;

• Estimated number of animals (min/max/best estimate);

• Estimated number of animals by cohort (*e.g.,* adults, juveniles, neonates, group composition, *etc.*);

• Animal's closest point of approach and estimated time spent within the estimated harassment zone(s);

• Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

• Number of marine mammals detected within the estimated harassment zones, by species; and

• Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specified actions that ensued, and resulting changes in behavior of the animal(s), if any.

Acoustic monitoring report(s) must be submitted on the same schedule as visual monitoring reports (*i.e.,* within 90 days following the completion of construction). The acoustic monitoring report must contain the informational elements described in the Acoustic Monitoring Plan and, at minimum, must include:

• Hydrophone equipment and methods: (1) recording device, sampling rate, calibration details, distance (m) from the pile where recordings were made; and (2) the depth of water and recording device(s);

• Location, identifier, orientation (*e.g.,* vertical, battered), material, and geometry (shape, diameter, thickness, length) of pile being driven, substrate type, method of driving during recordings (*e.g.,* hammer model and energy), and total pile driving duration;

• Whether a sound attenuation device is used and, if so, a detailed description of the device used, its distance from the pile and hydrophone, and the duration of its use per pile;

• For impact pile driving: (1) number of strikes per day and per pile and strike rate; (2) depth of substrate to penetrate; (3) decidecade (one-third octave) band spectra in tabular and figure formats computed on a per-pulse basis, including the arithmetic mean or median for all computed spectra; (4) pulse duration and median, mean, maximum, minimum, and number of samples (where relevant) of the following sound level metrics: (5) RMS SPL; (6) SEL_{24}, Peak (PK) SPL, and SEL_{ss}; and

• For vibratory driving/removal: (1) duration of driving per pile; (2) vibratory hammer operating frequency; (3) decidecade (one-third octave) band spectra in tabular and figure formats for 1-second windows, including the arithmetic mean or median for all computed spectra; and (2) median, mean, maximum, minimum, and number of samples (where relevant) of the following sound level metrics: 1-sec RMS SPL, SEL_{24} (and timeframe over which the sound is averaged).

If no comments are received from NMFS within 30 days after the submission of the draft summary report, the draft report would constitute the final report. If TTT received comments from NMFS, a final summary report addressing NMFS' comments would be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals—In the event that personnel involved in TTT's activities discover an injured or dead marine mammal, TTT would report the incident to the NMFS Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov, ITP.hotchkin@noaa.gov*) and to the GARFO Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, TTT would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the IHA. TTT would not resume their activities until notified by NMFS. The report would include the following information:

• Description of the incident;

• Environmental conditions (*e.g.,* Beaufort sea state, visibility);

• Description of all marine mammal observations in the 24 hours preceding the incident;

• Photographs or video footage of the animal(s) (if equipment is available).

• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

• Species identification (if known) or description of the animal(s) involved;

• Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive; and

• General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

NMFS has identified key factors which may be employed to assess the level of analysis necessary to conclude whether potential impacts associated with a specified activity should be considered negligible. These include, but are not limited to, the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect to the species or stock, and the status of the species or stock. The potential effects of the specified activities on Tamanend's bottlenose dolphins are discussed below.

Pile driving associated with the SPCT project, as outlined previously, has the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment only from underwater sounds generated by pile driving. Potential takes could occur if dolphins are present in zones ensonified above the threshold for Level B harassment identified above while activities are underway.

TTT's proposed activities and associated impacts would occur within a limited, confined area of the stocks' range. The work would occur in the vicinity of the Sparrows Point Container Terminal site, and sound from the specified activities would be blocked by the shorelines of the turning basin, Patapsco River, and Chesapeake Bay. The intensity and duration of take by Level B harassment would be minimized through use of mitigation measures described herein. Further, the presence of dolphins in the area is limited and typically seasonal as animals move through the area chasing prey associated with changing water temperatures, thereby reducing the potential for prolonged exposure or behavioral disturbance. In addition, NMFS does not anticipate that serious injury or mortality will occur as a result of the TTT's proposed activity given the nature of the activity, even in the absence of required mitigation.

Exposures to elevated sound levels produced during pile driving may cause the behavioral disturbance of some individuals. Behavioral responses of marine mammals to pile driving at the SPCT project site are expected to be mild, short term, and temporary. Effects on individuals that are taken by Level B harassment, as enumerated in the Estimated Take section, on the basis of reports in the literature as well as monitoring from other similar activities elsewhere, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging if such activity were occurring (*e.g.,* Ridgway *et al.,* 1997; Nowacek *et al.,* 2007; Thorson and Reyff, 2006; Kendall and Cornick, 2015; Goldbogen *et al.,* 2013b; Blair *et al.,* 2016; Wisniewska *et al.,* 2018; Piwetz *et al.,* 2021). Marine mammals within the Level B harassment zones may not show any visual cues that they are disturbed by activities, or they could become alert, avoid the area, leave the area, or display other mild responses that are not visually observable such as exhibiting increased stress levels (*e.g.,* Rolland *et al.,* 2012; Lusseau, 2005; Bejder *et al.,* 2006; Rako *et al.,* 2013; Pirotta *et al.,* 2015; Pérez-Jorge *et al.,* 2016). They may also exhibit increased vocalization rates, louder vocalizations, alterations in the spectral features of vocalizations, or a cessation of communication signals (Hotchkin and Parks 2013).

Bottlenose dolphins in the region will only be present temporarily based on seasonal patterns. Thus, individuals present will be exposed to only transient periods of noise-generating activity as they move past the project site. Most likely, individual animals will either be temporarily deterred from swimming past the construction activities and will pass by when no pile driving is occurring, or will swim through the area more quickly. Takes may also occur during important foraging seasons, when anadromous fishes are migrating past the project area and marine mammals follow. However, the SPCT project area represents a small portion of available foraging habitat and impacts on dolphin feeding are expected to be minimal. No marine mammal species or individuals are known or expected to be resident in the project area, and impacts are unlikely to be more than temporary and low-intensity.

The activities analyzed here are similar to numerous other coastal construction activities which have taken place with no known long-term adverse consequences from behavioral harassment. Any potential reactions and behavioral changes are expected to subside quickly when the exposures cease, and therefore, no long-term adverse consequences are expected (*e.g.,* Graham *et al.,* 2017). While there are no long-term peer-reviewed studies of marine mammal habitat use in the Patapsco River, studies from other areas indicate that most marine mammals would be expected to have responses on the order of hours to days. The intensity of Level B harassment events will be minimized through use of mitigation measures described herein, which were not quantitatively factored into the take estimates. The TTT will use PSOs stationed strategically to increase detectability of marine mammals during in-water construction activities, enabling a high rate of success in implementation of shutdowns to minimize any likelihood of injury. Further, given the absence of any important habitat areas within the estimated harassment zones, we assume that potential takes by Level B harassment will have an inconsequential short-term effect on individuals and will not result in population-level impacts.

As stated in the Mitigation section, the TTT will implement shutdown zones (table 13). No take by Level A harassment is proposed for authorization and thus is not expected to adversely impact individual fitness, let alone annual rates of recruitment or survival for the affected species or stocks.

Repeated, sequential exposure to pile driving noise over a long duration could result in more severe impacts to

individuals that could affect a population (via sustained or repeated disruption of important behaviors such as feeding, resting, traveling, and socializing; Southall *et al.,* 2007). Alternatively, marine mammals exposed to repetitious construction sounds may become habituated, desensitized, or tolerant after initial exposure to these sounds (reviewed by Richardson *et al.,* 1995; Southall *et al.,* 2007). However, given the relatively low abundance and generally transitory nature of marine mammals in the Chesapeake Bay and Patapsco River near the project location compared to the stock sizes (tables 11 and 12), population-level impacts are not anticipated. The absence of any important habitat areas in the action area further decreases the likelihood of population-level impacts.

The SPCT project is also not expected to have significant adverse effects on any marine mammal habitats. The long-term impact on marine mammals associated with the SPCT project would be a small permanent decrease in low-quality potential habitat because of the shifted footprint of the wharf. Installation of in-water piles would be temporary and intermittent, and the increased footprint of the facilities would destroy only a small amount of low-quality habitat, which currently experiences high levels of anthropogenic activity. Impacts to the immediate substrate are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time but which would not be expected to have any effects on individual marine mammals. Further, there are no known biologically important areas (BIAs) near SPCT project area that will be impacted by the TTT's proposed activities.

Impacts to marine mammal prey species are also expected to be minor and temporary and to have, at most, short-term effects on foraging of individual marine mammals and likely no effect on the populations of marine mammals as a whole. Overall, the area impacted by the SPCT project is very small compared to the available surrounding habitat and does not include habitat of particular importance. The most likely impact to prey would be temporary behavioral avoidance of the immediate area. During construction activities, it is expected that some fish and marine mammals would temporarily leave the area of disturbance, thus impacting marine mammals' foraging opportunities in a limited portion of their foraging range. But, because of the relatively small area of the habitat that may be affected and lack of any habitat of particular importance, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary negligible impact determinations for the affected stocks of Tamanend's bottlenose dolphins:

- No takes by mortality or serious injury are anticipated or authorized;
- Any acoustic impacts to marine mammal habitat from pile driving are expected to be temporary and minimal;
- Take will not occur in places and/or times where take would be more likely to accrue to impacts on reproduction or survival, such as within habitats critical to recruitment or survival (*e.g.,* rookery);
- The SPCT project area represents a very small portion of the available foraging area for all potentially impacted marine mammal species and does not contain any habitat of particular importance;
- Take will only occur within the Chesapeake Bay and Patapsco River, which is a limited, confined area of any given stock's home range;
- Monitoring reports from similar work have documented little to no observable effect on individuals of the same species impacted by the specified activities;
- The required mitigation measures (*i.e.,* soft starts, pre-clearance monitoring, shutdown zones, bubble curtains) are expected to be effective in reducing the effects of the specified activity by minimizing the numbers of marine mammals exposed to injurious levels of sound; and
- The intensity of anticipated takes by Level B harassment is low for all stocks consisting of, at worst, temporary modifications in behavior, and would not be of a duration or intensity expected to result in impacts on reproduction or survival.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds for each of the proposed IHAs that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under section 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers (see 86 FR 5322, January 19, 2021). Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

For all stocks, the number of takes proposed for authorization is less than one-third of the best available population abundance estimate (*i.e.,* no more than 0.67 percent of any stock; see tables 11 and 12). The maximum annual number of animals that may be authorized to be taken from these stocks would be considered small relative to the relevant stock's abundances even if each estimated take occurred to a new individual.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds for each of the proposed IHAs that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensures that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of incidental take authorizations, NMFS consults internally whenever we

propose to authorize take for ESA-listed species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue two consecutive IHAs to TTT for conducting the SPCT project near Baltimore, MD, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHAs can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHAs for the proposed SPCT project. We also request comment on the potential renewal of these proposed IHAs as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for these IHAs or any subsequent renewal IHAs.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
- The request for renewal must include the following:

1. An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

2. A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 20, 2026.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2026–07838 Filed 4–21–26; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF155]

Final 2024 Marine Mammal Stock Assessment Reports

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

ACTION: Notice; response to comments.

SUMMARY: As required by the Marine Mammal Protection Act (MMPA), NMFS has considered public comments for revisions of the 2024 marine mammal stock assessment reports (SARs). This notice announces the availability of 21 final 2024 SARs that were updated and finalized.

ADDRESSES: The 2024 final SARs are available in electronic form via the internet at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

FOR FURTHER INFORMATION CONTACT: Zachary Schakner, Office of Science and Technology, (301) 427–8106, *Zachary.Schakner@noaa.gov;* Nancy Young, *Nancy.Young@noaa.gov,* regarding Alaska regional stock assessments; Jessica McCordic, *Jessica.McCordic@noaa.gov,* regarding Atlantic, Gulf of America, and Caribbean regional stock assessments; or Amanda Bradford, *Amanda.Bradford@noaa.gov,* regarding Pacific regional stock assessments.

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (USFWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These SARs must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury (M/SI) from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial SARs were completed in 1995.

The MMPA requires NMFS and USFWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available and at least once every three years for non-strategic stocks. The term ''strategic stock'' means a marine mammal stock: (A) for which the level of direct human-caused mortality exceeds the potential biological removal level or Potential Biological Removal (PBR); (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act (ESA) within the foreseeable future; or (C) which is listed as a threatened species or endangered species under the ESA or is designated as depleted under the MMPA (*see* 16 U.S.C. 1362(19)–(20) (PBR is defined as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population). NMFS and USFWS are required to revise a SAR if they determine the review indicates that the status of the stock has changed or can be more accurately determined.

In order to ensure that SARs constitute the best scientific information available, the updated SARs under NMFS' jurisdiction are peer-reviewed within NMFS Science Centers and by members of three regional independent scientific review groups established under the MMPA to independently advise NMFS and the USFWS on marine mammals. As a result of the time involved in the assessment of new scientific information, revision, and peer-review of the SARs, the period covered by the 2024 final SARs is generally 2018 through 2022.

NMFS reviewed the status of all marine mammal strategic stocks and considered whether significant new information was available for all other stocks under NMFS' jurisdiction. As a result of this review, NMFS revised or developed new reports for 21 stocks in the Alaska, Atlantic, and Pacific regions. The 2024 revisions to the SARs consist primarily of updated or revised human-caused M/SI estimates and updated abundance estimates.

Pursuant to Executive Order 14172 *Restoring Names that Honor American Greatness* (January 20, 2025), the Gulf of Mexico is renamed the Gulf of America. This notice announces updates to stock names consistent with renaming of the Gulf. Commercial fishery names will be updated in future SARs to reflect name changes on the MMPA List of Fisheries.

Comments and Responses

On March 21, 2025, NMFS published a Notice in the **Federal Register** soliciting public comments on the draft 2024 SARs (90 FR 13344). NMFS received comments from the Marine Mammal Commission (Commission) and an environmental non-governmental organization (Center for Biological Diversity (CBD)). Our responses to substantive comments are below. We have not responded to comments that failed to raise a significant point for us to consider (*e.g.,* comments that are out of scope of the draft SARs). We appreciate the Commission's program-level comments and will take them into consideration, as appropriate, in the future.

Comments on National Issues

Comment 1: CBD commented that fishing gear is the primary source of at-sea plastic pollution and claims the draft SARs fail to adequately address the impact of lost and derelict gear on stocks. CBD recommends that the SARs include estimates of gear loss from the 2024 Report to Congress on Derelict Fishing Gear, providing the Hawai'i and American Samoa pelagic longline fisheries as an example of significant annual gear loss, including problematic monofilament line. They also suggest gear loss information should be used to help apportion entanglements from unknown fishing gear to specific marine mammal stocks. Furthermore, CBD expresses disappointment in the NMFS' ''failure to provide reliable estimates of marine mammal serious injury and death from commercial fisheries, including both active and lost gear'', emphasizing that the MMPA mandates such estimates through commercial fishery observer programs. They advocate for incorporating alternative data collection methods like satellite and drone imagery analysis to improve these estimates, which they claim would allow NMFS to better prioritize entanglement reduction efforts.

Response 1: The MMPA requires that SARs contain estimates of the annual human-caused mortality and serious injury (M/SI) of the stock by source, and for strategic stocks, the MMPA requires the SARs to identify other factors that might be causing population decline or hindering recovery, such as impacts on marine mammal habitat and prey (16 U.S.C. 1386(a)(3)).

When information confirms that lost or derelict fishing gear has led to the M/SI of a marine mammal from a specific stock, regardless of whether it can be attributed to a specific fishery, these data are incorporated into the SAR. We rely on all available data for this assessment, which can typically be found under the ''Fisheries Information'' subheading within the ''Human-caused M/SI'' section of the SAR.

NMFS will continue to review all known and confirmed human-caused M/SI data as the information relates to lost and derelict fishing gear and incorporate it into the SARs as appropriate and required by statute.

Comments on Alaska Issues

Comment 2: CBD expressed concern regarding the declining Eastern Pacific northern fur seal population on St. Paul Island, and commented that there is well-established information on the competition between fur seals and commercial fisheries, contrary to the draft SAR's statement that the threat of prey competition is ''unclear.'' CBD cited research (Divine *et al.,* 2022; Short *et al.,* 2021; Kuhn *et al.,* 2014; Benoit-Bird *et al.,* 2013) linking this decline to the pollock trawl fishery, particularly for the Pribilof Islands population. CBD noted research showing direct competition with seals for prey in the Eastern Bering Sea during breeding season, impacting lactating females (McHuron *et al.,* 2020, 2023), and indirect competition affecting Pribilof Islands seals (Short *et al.,* 2021).

Response 2: We have clarified statements in the Eastern Pacific northern fur seal final SAR regarding the ''unclear'' threat of prey competition between fur seals and commercial fisheries, acknowledging that while evidence suggests nutritional limitation impacts the fur seal population, the decline on the Pribilof Islands has not been definitively linked to commercial fisheries, particularly the pollock fishery. We recognize the potential for competition and that understanding these impacts is an ongoing research focus. We contend that CBD's claim of ''extensive scientific research'' proving the link between the pollock trawl fishery and the fur seal decline overstates the findings. Most of the studies cited by CBD (Divine *et al.,* 2022; Short *et al.,* 2021; Kuhn *et al.,* 2014; Benoit-Bird *et al.,* 2013; McHuron *et al.,* 2020, 2023) only suggest potential competition or nutritional limitation, with only one study (Short *et al.,* 2021) directly implicating the pollock fishery. We have added language to the final SAR to address this Short *et al.* (2021), emphasizing the importance of continued research and scientific debate on the causes of the northern fur seal decline.

Comment 3: The Commission supports using the critical Nmin approach for stock classification but cautioned against its use for the Bering Sea harbor porpoise stock due to limited M/SI data and unresolved stock structure. They noted the 2020 SAR deemed this stock strategic and that M/SI is likely underestimated due to data gaps and low detection. The Commission recommends NMFS expand discussion in the SAR.

Response 3: NMFS agrees that the minimum M/SI recorded for this stock is very likely underestimated because the estimate is based solely on information reported through the Alaska stranding network and through self-reports. This and other important caveats are repeated in multiple sections of the SAR. However, the available information provides reasonable assurance that the actual range-wide stock abundance is very likely greater than the abundance threshold where human-caused M/SI would exceed a PBR based on that abundance (*i.e.,* the critical Nmin). Although the stock's Nmin is currently considered to be unknown, Nmins calculated from the 2008 partial-range ship-board survey and the 1999 aerial survey are 23 to 223 times greater than the critical Nmin value. NMFS considers this sufficient to support a non-strategic determination despite the uncertainties and the Alaska SRG agreed. This is in contrast to the Gulf of Alaska harbor porpoise stock, where the outdated Nmin was only 3.6 times greater than the critical Nmin, which NMFS did not consider sufficient to support a non-strategic determination, again with agreement from the Alaska SRG.

Comment 4: CBD expressed concern that the draft Cook Inlet beluga whale SAR might misrepresent the population trend as increasing and recommended that NMFS explicitly state up front that no definitive trend can be determined,

rather than suggesting that future data might confirm stabilization and increase. They commented that the draft SAR's statement that ''additional data collection and analysis from future years are needed before population stabilization and increase can be confirmed'' is an ''overly-optimistic assessment of a very small population that lacks clear signs of population growth, especially given that significant threats—noise pollution, toxins, and prey availability—have not lessened.''

Response 4: The draft SAR's section on trend indicated that a statistical analysis of the past 10 years of Cook Inlet beluga abundance data shows a trend of 0.2 percent and a confidence interval that includes both negative and positive trends (95 percent PI of −1.8–2.6 percent), indicating that it is not statistically significant. This lack of significance in the 10-year trend has been clarified in the final SAR, and the description of the 10-year trend as an increase has been removed. We also revised the statement in the SAR to specify that additional data are needed to address the uncertainty in the trend. Regardless of the number of animals, the population is greatly reduced relative to the estimated abundance in the 1990s, and a slight recent increase in abundance does not eliminate or mitigate concern about threats to the population.

Comment 5: CBD noted disappointment that the 2024 draft SARs did not include a revision of the Eastern North Pacific Alaska Resident killer whale stock, citing NMFS' intention to initiate a review in 2025 to determine if multiple demographically independent populations exist within this stock (90 FR 12640, March 18, 2025).

Response 5: Per the process outlined in NMFS (2019), the first step in revising stock structure is to evaluate the best scientific information available on possible demographically independent populations within an existing stock. This process is separate from and occurs outside of the stock assessment process. NMFS began this process for the Eastern North Pacific Alaska resident killer whale stock in early 2025. This work remains a priority for NMFS and will be completed, as resources allow.

Comments on Atlantic Issues

Comment 6: The Commission provided comment on the SARs for stocks injured by the Deepwater Horizon (DWH) Oil Spill and noted that many of these SARs have not been updated recently, which has led to outdated estimates from the population models previously used (DWH MMIQT 2015 and Schwacke *et al.,* 2017). The Commission suggested that these SARs may not reflect best available science, citing the pelagic species in the Gulf (updated in 2020) as an example. The Commission commented that DWH M/SI estimates are orders of magnitude greater than any other source of M/SI, therefore, those estimates should be updated and available to inform both fisheries- and non fisheries-related negligible impact determinations. They recommend that NMFS revise all relevant Gulf SARs to include DWH M/SI estimates projected for either 10 years or until the estimates are less than one, using refined population models that have been developed since the Natural Resource Damage Assessment (NRDA, Schwacke *et al.,* 2022; Marques *et al.,* 2023).

Response 6: The MMPA requires NMFS to review SARs at least annually for strategic stocks and stocks for which significant new information is available and at least once every three years for non-strategic stocks and to revise SARs if such review indicates the status of the stock has changed or can be more accurately determined (16 U.S.C. 1386(c)). In the case of estuarine and coastal bottlenose dolphin stocks, the Schwacke *et al.* (2022) models cited above serves as the best available scientific information on abundance. For the oceanic stocks, the most recent surveys to support updated abundance estimates were conducted during the summers of 2023 and 2024. We anticipate completion of the analyses of these data during 2025. There have been no additional aerial surveys of the continental shelf since 2017–2018. However, we anticipate conducting similar aerial surveys during 2026–2027 under a new interagency agreement with the Bureau of Ocean Energy Management (under review). During the appropriate SAR cycle, NMFS will review the best scientific information available for these stocks and determine whether a SAR revision is warranted consistent with Section 117(c) of the MMPA.

Comment 7: The Commission provided comment on the depleted status of all Tamanend's bottlenose dolphin coastal stocks. They commend NMFS for the collaborative research on the structure of *Tursiops spp.* and stocks in the western North Atlantic, including the identification of Tamanend's bottlenose dolphin as a distinct species; and new abundance, M/SI, and population trends for the Central Florida Coastal, the Northern Florida Coastal, and the South Carolina/Georgia Coastal Stocks in the Draft SARs. The Commission commented on the ''depleted'' and ''strategic'' status of these three stocks, that resulted from the 1987–1988 Unusual Mortality Event (UME) which caused a significant population decline in the previously recognized single coastal migratory stock, and recognized that while the stock structure has since been refined into ten estuarine, two migratory coastal, and three resident coastal stocks, commented that the depleted designation correctly applies to the two migratory and three resident coastal stocks. Given that 27 years have passed since the initial UME and new scientific data, including impacts from subsequent UMEs like the 2013–2015 Mid-Atlantic Bottlenose Dolphin UME, are available, the Commission recommends that NMFS re-evaluate the depleted status of these five coastal Tamanend's bottlenose dolphin stocks. This re-evaluation should involve reanalyzing population trends and potentially using risk assessment models that account for both the 1987–1988 and 2013–2015 UMEs, with the Commission offering assistance on these analyses as time and budget allow.

Response 7: NMFS acknowledges the Commission's comment that the status of Tamanend's bottlenose dolphin off the Atlantic coast may warrant further evaluation. However, in order to further assess the status of these stocks, we need to fully understand their population structure. As we presented at the recent Bottlenose Dolphin Management Workshop (held in person September 24–25, 2024), there are significant new genetic findings pertaining to this question that are currently in journal review. There also remain important data gaps, including the identification of which stocks occupy the Chesapeake Bay and a clear understanding of the southern boundary of the coastal stocks along the Florida coast. NMFS is assessing whether these new results warrant changes in stock structure and welcomes the support of the Commission.

Comment 8: The Commission commented on the Gray Seal Western North Atlantic SAR, stating that the rate of increase of the gray seal population in the United States is affected by pup production, juvenile and adult survival, and immigration from Canada. The Commission noted that since 2016, pup production has been relatively stable, and the U.S. abundance estimate increased by only about 100 animals per year from 2016 to 2021 (Wood *et al.,* 2022; Hayes *et al.,* 2024); during this time, more than 1,200 seals were killed annually on average by the Northeast sink gillnet fishery alone (Hayes *et al.,*

2024). They noted that ''because the combination of intrinsic growth plus immigration from Canada is resulting in very slow total growth, it is plausible that human-caused M/SI rates in the United States are sufficiently high that U.S. pup production would be declining if not for immigration from Canada.'' The Commission commented that NMFS's non-strategic designation for this stock is unsupported, as it relies on an unproven assumption that total M/SI would not exceed PBR.

Response 8: NMFS has endeavored to better understand the population dynamics of, and human impacts to, this transboundary stock for some time (Murray *et al.,* 2021; Heywood *et al.,* 2025) in part due to the concerns highlighted. We will continue to assess scientific information about the hypothesis that ''U.S. pup production would be declining if not for immigration from Canada.'' Nevertheless, when evaluating a stock's status, NMFS evaluates that status to the entire stock and what is known about its abundance (*see* NMFS, *Guidelines for Preparing Stock Assessment Reports Pursuant to the Marine Mammal Protection Act* (2023)).

Comments on Pacific Issues

Comment 9: The Commission recommends that NMFS update the Eastern North Pacific Southern Resident killer whale SAR to include the fact that the two ecotypes are no longer considered unnamed subspecies, following an update from the Society for Marine Mammalogy's Committee on Taxonomy, that has provisionally named them *Orcinus orca ater* (resident killer whale) and *O. orca rectipinnus* (Bigg's killer whale), although Morin *et al.* (2024) recommended elevating these forms to full species status.

Response 9: NMFS agrees that the Morin *et al.* (2024) reference represents the best available scientific information, and the 2024 SAR has been edited to include the new taxonomic information.

Comment 10: CBD comment recommended that the draft Southern Resident killer whale (SRKW) SAR include recent research that shows reducing threats could increase the population, following the integrated population modeling framework assessing SRKW population dynamics by Nelson *et al.* (2024). Given the delay in the SARs and the very small SRKW population, CBD urges NMFS to provide updated information. They recommend and request that NMFS include a reference to Williams *et al.* (2024) on SRKW's ''bright extinction'' in the section on Current Population Trend, and specifically, the baseline population dynamics model predicted a mean annual population decline of roughly 1 percent, which is consistent with the information in the draft SARs at the bottom of page 32, but notes that the average decline consists of gradual reduction followed by accelerating decline that presages extinction.

Response 10: The draft 2024 SAR was completed prior to the completion of the 2025 census, and thus, the abundance estimate presented in that draft represented the best available science at that time. However, for the final SAR, we have updated the abundance estimate with the best available scientific information from the 2025 census and include reference to Williams *et al.* (2024) and Nelson *et al.* (2024).

References

Benoit-Bird, K.J., B.C. Battaile, C.A. Nordstrom, and A.W. Trites. 2013. Foraging behavior of northern fur seals closely matches the hierarchical patch scales of prey. Mar. Ecol. Prog. Ser. 479: 283–302. *https://doi.org/10.3354/meps10209.*

Divine, L., M.J. Peterson Williams, J. Davies, M. LeVine, and B. Robson. 2022. A synthesis of Laaqudax (northern fur seal) community surveys and commercial fishery data in the Pribilof Islands Marine Ecosystem, Alaska. J. Mar. Sci. Eng. 10(4): 467. *https://doi.org/10.3390/jmse10040467.*

DWH MMIQT. 2015. Models and analyses for the quantification of injury to Gulf of Mexico cetaceans from the Deepwater Horizon Oil Spill. Available at *https://www.fws.gov/doiddata/dwh-ar-documents/876/DWH-AR0105866.pdf.*

Hayes, S.A., E. Josephson, K. Maze-Foley, P.E. Rosel, and J. McCordic (eds.). 2024. U.S. Atlantic and Gulf of Mexico marine mammal stock assessments 2023. NOAA Tech. Memo. NMFS–NE–321. U.S. Dep. Commer., 375 p.

Heywood, E. I., K.T. Murray, L. Doughty, R. A. DiGiovanni, and D.B. Sigourney. 2025. Postweaning horizontal movements and diving behavior of a recovering grey seal (*Halichoerus grypus atlantica*) population in the western North Atlantic. Anim. Biotelem. 13: 10. *https://doi.org/10.1186/s40317-025-00405-5.*

Kuhn, C.E., J. D. Baker, R.G. Towell, and R. R. Ream. 2014. Evidence of localized resource depletion following a natural colonization event by a large marine predator. J. Anim. Ecol. 83: 1169–1177. *https://doi.org/10.1111/1365-2656.12202.*

Marques, T.A., L. Thomas, C. G. Booth, L.P. Garrison, P.E. Rosel, R. Takeshita, K.D. Mullin, and L. Schwacke. 2023. Population consequences of the Deepwater Horizon oil spill on pelagic cetaceans. Mar. Ecol. Prog. Ser. 714: 1–14. *https://doi.org/10.3354/meps14323.*

McHuron, E.A., J.T. Sterling, and M. Mangel. 2023. The influence of prey availability on behavioral decisions and reproductive success of a central-place forager during lactation. J. Theor. Biol. 560: 111392. *https://doi.org/10.1016/j.jtbi.2022.111392.*

McHuron, E.A., K. Luxa, N.A. Pelland, K. Holsman, R. Ream, T. Zeppelin, and J. T. Sterling, 2020. Practical application of a bioenergetic model to inform management of a declining fur seal population and their commercially important prey. Front. Mar. Sci. 7: 597973. *https://doi.org/10.3389/fmars.2020.597973.*

Morin, P.A., M. L. McCarthy, C.W. Fung, J. W. Durban, K.M. Parsons, W.F. Perrin, B. L. Tylor, T.A. Jefferson, and F.I. Archer. 2024. Revised taxonomy of eastern North Pacific killer whales (Orcinus orca): Bigg's and resident ecotypes deserve species status. R. Soc. Open Sci. 11: 231368. *https://doi.org/10.1098/rsos.231368.*

Murray, K.T., J.M. Hatch, R.A. DiGiovanni, Jr., and E. Josephson. 2021. Tracking young-of-the-year gray seals *Halichoerus grypus* to estimate fishery encounter risk. Mar. Ecol. Prog. Ser. 671: 235–245. *https://doi.org/10.3354/meps13765.*

Nelson, B. W., E. J. Ward, D. W. Linden, E. Ashe, and R. Williams. 2024. Identifying drivers of demographic rates in an at-risk population of marine mammals using integrated population models. Ecosphere 15(2): e4773. *https://doi.org/10.1002/ecs2.4773.*

NMFS (National Marine Fisheries Service). 2019. Reviewing and Designating Stocks and Issuing Stock Assessment Reports under the Marine Mammal Protection Act. NMFS Procedure 02–203–04. Available at: *https://www.fisheries.noaa.gov/national/laws-and-policies/policy-directive-system.*

Schwacke, L.H., L. Thomas, R.S. Wells, W. E. McFee, A.A. Hohn, K. D. Mullin, E. S. Zolman, B. M. Quigley, T.K. Rowles, and J. H. Schwacke. 2017. Quantifying injury to common bottlenose dolphins from the Deepwater Horizon oil spill using an age-, sex- and class-structured population model. Endanger. Species Res. 33: 265–279. *https://doi.org/10.3354/esr00777.*

Schwacke, L.H., T. A. Marques, L. Thomas, C.G. Booth, B.C. Balmer, A. Barratclough, K. Colegrove, S. De Guise, L. P. Garrison, F. M. Gomez, J. S. Morey, K.D. Mullin, B. M. Quigley, P.E. Rosel, T.K. Rowles, R. Takeshita, F. I. Townsend, T. R. Speakman, R.S. Wells, E. S. Zolman, and C.R. Smith. 2022. Modeling population effects of the Deepwater Horizon oil spill on a long-lived species. Conserv. Biol. 36(4): e13878. *https://doi.org/10.1111/cobi.13878.*

Short, J.W., H. J. Geiger, L.W. Fritz, and J.J. Warrenchuk. 2021. First-year survival of northern fur seals (*Callorhinus ursinus*) can be explained by pollock (*Gadus chalcogrammus*) catches in the Eastern Bering Sea. J. Mar. Sci. Eng. 9(9): 975. *https://doi.org/10.3390/jmse9090975.*

Williams, R.L., R.C. Lacy, E.Ashe, L. Barrett-Lennard, T.M. Brown, J.K. Gaydos, F. Gulland, M. MacDuffee, B.W. Nelson, K.A. Nielsen, H. Nollens, S. Raverty, S.

Reiss, P.S. Ross, M. Salerno Collins, R. Stimmelmayr, and P. Paquet. 2024. Warning sign of an accelerating decline in critically endangered killer whales (*Orcinus orca*). Commun. Earth Environ. 5: 173. *https://doi.org/10.1038/s43247-024-01327-5.*

Wood, S.A., E. Josephson, K. Precoda, and K. T. Murray. 2022. Gray seal (*Halichoerus grypus*) pupping trends and 2021 population estimate in U.S. waters. NEFSC Reference Document 22–14. U.S. Dep.Commer., Northeast Fisheries Science Center, Woods Hole, MA, 16 p.

Dated: April 8, 2026.

David Detlor,

Acting Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 2026–07791 Filed 4–21–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF473]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Francis Scott Key Bridge Rebuild Project in Baltimore, Maryland

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

ACTION: Notice; proposed incidental harassment authorizations; request for comments on proposed authorizations and possible renewal.

SUMMARY: NMFS has received a request from the Federal Highway Administration (FHWA) for authorization to take marine mammals incidental to the Francis Scott Key (FSK) Bridge Rebuild project in Baltimore, MD. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two consecutive incidental harassment authorizations (IHAs) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on possible one-time, 1-year renewals that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 22, 2026.

ADDRESSES: Comments should be addressed to Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.Hotchkin@noaa.gov.* Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Cara Hotchkin, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking; other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as ''mitigation''); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms used above are included in the relevant sections below (*see also* 16 U.S.C. 1362; 50 CFR 216.3, 216.103).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHAs qualifies to be categorically excluded from further NEPA review.

Summary of Request

On December 9, 2025, NMFS received a request from FHWA for two consecutive IHAs to take marine mammals incidental to construction activities necessary for the FSK Bridge Rebuild project in Baltimore, MD. Following NMFS' review of the application, FHWA submitted revised versions on January 21, 2026 and March 23, 2026. The application was deemed adequate and complete on March 26, 2026. FHWA's request is for take of Tamanend's bottlenose dolphins (*Tursiops erebennus*) by Level B harassment only. Neither FHWA nor NMFS expect serious injury or mortality to result from this activity and, therefore, IHAs are appropriate.

Description of Proposed Activity

Overview

FHWA proposes to replace a pre-existing critical bridge and associated infrastructure which were destroyed during a ship collision in March 2024. The proposed project includes construction of a new bridge structure

with two travel lanes in each direction designed to current roadway standards over the Fort McHenry Navigation Channel, and twelve new piers in the Patapsco River. Construction activities associated with the proposed project include vibratory and impact installation of steel pipe piles ranging from 24-inches (in) (61 centimeters (cm)) to 96-in (244 cm) in diameter for a temporary construction trestle and main span piers and associated vessel collision protection systems. Pile driving activities may be concurrent for up to four piles at a time. Due to the overall work schedule and accelerated/emergency need for the project, pile driving would occur year-round.

Dates and Duration

Construction is proposed between June 1, 2026 and May 31, 2028; thus FHWA has requested two sequential IHAs that would be effective for June 1, 2026 through May 31, 2027 and for June 1, 2027 through May 31, 2028, respectively. However, project delays may occur due to a number of factors, including availability of equipment and/or materials, weather-related delays, equipment maintenance and/or repair, and other contingencies.

The total project duration would exceed 2 years, including demolition of remaining elements of the original bridge. If necessary, FHWA intends to apply for additional incidental harassment authorizations to cover that period of work.

A total of approximately 728 piles would be installed during Year 1 and a total of 107 piles would be installed during Year 2 (table 1). Between April 15 and October 30th of each year, work would generally be limited to daylight construction, typically consisting of a 12 hours on and 12 hours off work schedule. Pile driving activities would be initiated only during daylight hours. Concurrent driving of up to four piles at different locations along the bridge span is proposed. Table 1 shows the number of each type of pile and number of workdays planned for installation for each season. Seasons are defined as follows: 'summer' is June through August, 'fall' is September through November, 'winter' is December through February, and 'spring' is March through May.

TABLE 1—ESTIMATED NUMBER OF PILES AND WORKDAYS [a] DURING EACH SEASON FOR YEARS 1 AND 2

	24-in		36-in		48-in		96-in		Totals	
	# Piles	Days	# Piles	Days	# Piles	Days	# Piles	Days	# Piles	Days
Year 1										
Summer	44	31	20	11	0	0	92	117	156	159
Fall	33	21	139	84	0	0	57	119	229	224
Winter	29	20	115	67	0	0	65	120	209	207
Spring	42	23	40	20	16	30	36	69	134	142
Total Year 1	148	95	314	182	16	30	250	425	728	732
Year 2										
Summer	13	8	0	0	40	59	0	0	53	67
Fall	0	0	0	0	34	55	0	0	34	55
Winter	0	0	0	0	20	20	0	0	20	20
Spring	0	0	0	0	0	0	0	0	0	0
Total Year 2	13	8	0	0	94	134	0	0	107	142

[a] The number of workdays per year exceeds 365 because this calculation excludes concurrent driving. The actual number of workdays in year 1 is 311, and for year 2 is 142 days.

Specific Geographic Region

The proposed project will occur within portions of Curtis Bay, Patapsco River, and Bear Creek, near the Port of Baltimore (figure 1). The Patapsco River is approximately 1.6 kilometers (km; 1 mile) wide (between Hawkins Point and Sollers Point). United States Army Corps of Engineers (USACE) maintains the Fort McHenry Navigational Channel, which is 0.2 km (800 feet (ft)) wide and 15 m (50 ft) deep at the location of the bridge.

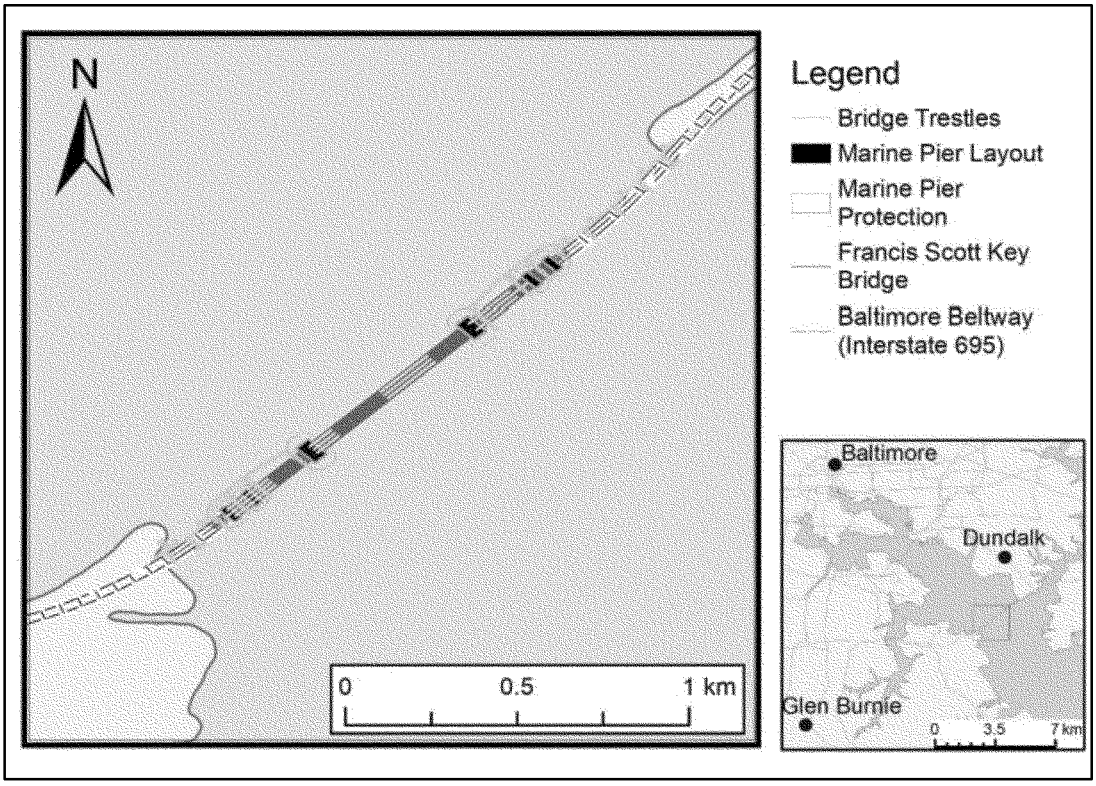

Figure 1 – Map of the FSK Bridge Project Vicinity

Detailed Description of the Specified Activity

The proposed project includes construction of a new bridge structure with two travel lanes in each direction designed to current roadway standards, a minimum vertical clearance of 70.1 m (230 ft) over the Fort McHenry Navigation Channel, a horizontal clearance of 333.3 m (1,100 ft), an anticipated main bridge span length of 504.5 m (1,665 ft), and twelve new piers in the Patapsco River. Construction activities anticipated to occur within years 1 and 2 of the project include:

- Vibratory installation of 24-in (61 cm) diameter battered steel pipe piles; and vibratory and impact installation of 36-in (91 cm) diameter plumb steel pipe piles for a temporary construction trestle;
- Vibratory and impact installation of 48-in (1.22 m) diameter plumb steel pipe piles for marine approach piers (Piers 20, 21, and 28–31); and
- Vibratory and impact installation of 96-in (2.44 m) diameter plumb steel pipe piles for main span piers (Piers 22–27) and associated vessel collision protection systems.

Construction activities that are likely to occur after the expiration of the proposed authorizations include demolition of remnants of the original bridge, including existing girders on the six remaining water spans and removing select in-water piers. Demolition may be by mechanical demolition to the mudline or by controlled blasting. Demolition is likely to be conducted after May 31, 2028, and FHWA intends to apply for additional authorizations as necessary. Blasting activities are therefore not addressed further in this notice.

On the south side of the navigation channel, construction would begin with Pier 24 and progress south to the southern shoreline to Pier 20. On the northern side of the navigation channel, construction would begin at Pier 25 and progress north to the northern shoreline towards Pier 32. Construction of the temporary trestle will occur as the piers are constructed. Concurrent pile driving is expected for up to four piles simultaneously at different locations along the bridge span.

Pile installation would be by vibratory (all sizes) and impact driving (36-in, 48-in, and 96-in piles). A typical installation scenario for a 96-in diameter pile begins with vibratory driving for approximately 5–30 minutes (min) to set each pile and then impact pile driving to complete pile installation. Impact installation of 96-in steel piles would occur for approximately 3 hours, with approximately 2,500 strikes per pile. Restriking of certain 96-in piles with an impact hammer may also occur, with approximately 200 strikes per pile. Restrikes are not anticipated for piles smaller than 96-in diameter, and it is expected that impact installation for the 96-in diameter piles represents the maximum amount of time for impact pile installation for piles of any size. A similar method of vibratory and impact pile driving would be used to install the 48-in diameter and 36-in diameter steel pipe piles. The 24-in diameter piles would require only vibratory pile driving. Table 2 shows proposed pile quantities and estimated installation times.

TABLE 2—PILE QUANTITIES AND INSTALLATION TIME FOR YEARS 1 AND 2

Year	Pile diameter (in)	Approx. number of piles	Method	Approx. time (vibratory/impact) [a]	Approx. total days [b]	Maximum piles per day
1	96	250	Vibratory and Impact	5–30 min/3 hours	425	6
	48	16			30	6
	36	314			182	8
	24	148	Vibratory	30 min	95	2
2	24	13	Vibratory	30 min	8	2
	48	94	Vibratory and Impact	5– 30 min/3 hours	134	6

[a] Estimates 2,500 strikes per pile for impact installation and 5–30 minutes of vibratory per pile for vibratory installation. Estimated number of strikes per pile based on installation of 96″ diameter piles. Smaller piles are estimated to require less strikes per pile.
[b] Some workdays will occur concurrently.

During Year 1 (June 1, 2026 through May 31, 2027), pile installation would include approximately 250 96-in diameter steel pipe piles for main span (Piers 22–27) as well as the associated vessel collision pier protection systems for these piers. 96-in diameter piles would primarily be installed during Year 1, with the goal of being completed in the May 2027 timeframe. In addition, approximately 16 48-in diameter steel pipe piles would be installed for the marine approach piers (Piers 20–21 on the south side of the river and Piers 28–31 on the north side of the river). Approximately 314 36-in and 148 24-in diameter steel pipe piles would be driven for the temporary construction trestle. A total of approximately 728 piles will be installed during Year 1 (Table 1).

Installation of 96-in diameter piles at the main span piers during Year 1 may occur concurrently or may be concurrent with each other and with vibratory and impact installation of 36-in piles and vibratory installation of 24-in piles for the construction trestle. At any time, the distance between concurrent installation of 96-in piles would be greater than 445 m (0.28 mi). Table 3 provides a summary of possible concurrent pile driving scenarios.

TABLE 3—POTENTIAL CONCURRENT DRIVING SCENARIOS

Structure	Activity	Equipment and quantity
Pier	Pier 24/25 installation of two 96-in piles	Pier: • 2 vibratory hammers.
Pier and Trestle	Pier 24/25 installation (96-in pile) and trestle installation (24-in pile).	Pier: • 1 Impact hammer. • 1 vibratory hammer Trestle: • 1 vibratory hammer.
Pier and Trestle	Pier 24/25 installation (96-in pile) and trestle installation (36-in pile).	Pier: • 1 Impact hammer. • 1 vibratory hammer. Trestle: • 1 impact hammer. • 1 vibratory hammer.

During Year 2 (June 1, 2027 through May 31, 2028), construction would focus on completing installation of the marine approach piers (Piers 20–21 and 28–31) as well as completion of the temporary construction trestle. Approximately 94 48-in diameter piles would be installed using impact and vibratory installation. For the temporary construction trestle, approximately 13 24-in diameter battered piles would be installed using vibratory installation. Approximately 107 piles in total will be installed during Year 2 (Table 1).

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species).*

Table 4 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual mortality and serious injury (M/SI) from anthropogenic sources are included here as gross indicators of the

status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs. All values presented in table 4 are the most recent available at the time of publication (including from the draft 2024 SARs) and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 4—SPECIES,[1] STOCKS, AND THE STATUS OF MARINE MAMMALS WITH ESTIMATED TAKE FROM THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [2]	Stock abundance N_{best}, (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [3]
Order Odontoceti (toothed whales, dolphins, and porpoises)						
Family *Delphinidae*:						
Bottlenose Dolphin [4]	*Tursiops erebennus*	Northern Migratory Coastal	-, D, Y	6,639 (0.41, 4,759, 2016)	48	12.2–21.5
		Southern Migratory Coastal	-, D, Y	3,751 (0.6, 2,353, 2016)	24	0–18.3

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy *(https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/)*.

[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[4] Coastal bottlenose dolphins along the Eastern U.S. have been genetically identified as a separate species (Tamanend's bottlenose dolphin (*T. erebennus*)) (Costa *et al.* 2022); however, this is not yet reflected in the SARs. Here we present the most recent SAR for the two relevant stocks, both of which are now considered *T. erebennus.*

As indicated above, only bottlenose dolphins temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While fin whales (*Balaenoptera physalus*), minke whales (*Balaenoptera acutorostrata*), humpback whales (*Megaptera novaeangliae*), sei whales (*Balaenoptera borealis*), harbor porpoise (*Phocoena phocoena*), and harbor (*Phoca vitulina*) and grey seals (*Halichoerus grypus*) have been documented in Lower Chesapeake Bay or the waters of coastal Maryland, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. All of these species are considered extralimital in the waters of the upper bay and the Patapsco River. Additionally, single individuals of Risso's dolphin (*Grampus griseus*) have been found stranded in the Baltimore area; however, these species are also considered extralimital.

Bottlenose dolphins are the only marine mammal species that are expected to occur on a regular basis in the waters of the upper Chesapeake Bay and Patapsco River. Atlantic coastal bottlenose dolphins have recently been recategorized as Tamanend's bottlenose dolphins (*Tursiops erebennus*) by Costa *et al.* (2022). Tamanend's bottlenose dolphins within the area of the FSK Bridge project likely belong to either the Western North Atlantic Northern Migratory Coastal Stock (NMCS) or the Western North Atlantic Southern Migratory Coastal Stock (SMCS). The best available abundance estimate for the NMCS is 6,639 (Hayes *et al.,* 2024; Garrison *et al.,* 2017), and for the SMCS is 3,751 (Garrison *et al.,* 2017).

Tamanend's bottlenose dolphins are seasonally transient in the lower Patapsco River (Rodriguez et *al.,* 2021). They have a higher likelihood of occurrence along the middle and lower Chesapeake Bay, outside the area of the project area. Tamanend's bottlenose dolphins primarily use the lower Chesapeake Bay in summer with most usage near the James and Elizabeth Rivers in Virginia. They are seen annually in Virginia from April through November with approximately 65 strandings occurring each year (Barco and Swingle, 2014; Engelhaupt *et al.,* 2016). Dolphins are more commonly sighted in areas far south of Baltimore Harbor including the mouths of the Potomac and Rappahannock Rivers (Bay Journal, 2021).

Sighting data within the proximity of the project area near the mouth of the Patapsco River and within the entire Chesapeake Bay, are based on 'citizen science', where reports are logged via the Dolphin Watch app (*https://chesapeakedolphinwatch.org*) supported by University of Maryland, Center for Environmental Science. These data are available from 2017 through 2022. Logged sightings are less frequent farther north in the Patapsco River and Baltimore Harbor areas and typically occur in the summer. Recent reported observations near the immediate area of the project include a dolphin sighted using waters in the Inner Harbor (14.5 km (9 miles) north of the Key Bridge; ABC Baltimore 2023) and a dolphin sighted using waters at the mouth of the Patapsco River (approximately 8 km (5 miles) south of the Key Bridge; The Washington Post, 2018).

Rodriguez *et al.* (2021) synthesizes three consecutive years (2017, 2018, and 2019) of data from the DolphinWatch app. Overall, the highest dolphin sightings are correlated with water temperatures between 24 and 30 degrees Celsius (75.2 to 86 degrees Fahrenheit). Salinity and tidal state also influence the spatiotemporal patterns of bottlenose dolphins. Dolphins were sighted most in the summer. The highest number of documented dolphin sightings from these data was in July of each year, when water temperatures are high and provide nursery habitat for dolphin prey fish species (Gannon and Waples, 2004). During September and October, dolphins were primarily sighted in the lower and southern middle portions of the Chesapeake Bay while during the summer, dolphins occurred in the upper, middle, and lower portions of the bay. No dolphins were sighted in the upper bay during September and October of 2018.

Considering data synthesized in this report and global sea temperature data for the Upper Chesapeake Bay, it is expected that bottlenose dolphins would most likely be present within the vicinity of the FSK Bridge Rebuild project between June 1 and September 30 of any given year. Reduced presence is possible in spring and fall when water temperatures are above 20 degrees Celsius, and no dolphins are expected to be present in the project location during winter months.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007; 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from composite audiograms, previous analyses in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019). We note that the names of two hearing groups and the generalized hearing ranges of all marine mammal hearing groups have been recently updated (NMFS, 2024) as reflected below in table 5. Tamanend's bottlenose dolphins are considered high-frequency (HF) cetaceans.

TABLE 5—MARINE MAMMAL HEARING GROUPS

[NMFS, 2024]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 36 kHz.
High-frequency (HF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
Very High-frequency (VHF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	200 Hz to 165 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	40 Hz to 90 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 68 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges may not be as broad. Generalized hearing range chosen based on approximately 65 dB threshold from composite audiogram, previous analysis in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019). Additionally, animals are able to detect very loud sounds above and below that "generalized" hearing range.

For more detail concerning these groups and associated frequency ranges, please see NMFS (2024) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activity are expected to potentially occur from vibratory and impact pile driving. The effects of underwater noise from FHWA's proposed activities have the potential to result in Level B harassment of marine mammals in the action area.

The proposed activities would result in the placement of 728 steel pipe piles with diameters of 24-, 36-, 48-, and 96-in in year 1 and 107 24- and 48-in diameter steel pipe piles in year 2 (see table 2 for details). There are a variety of types and degrees of effects on marine mammals, prey species, and habitat that could occur as a result of the project. Below we provide a brief description of the types of sound sources that would be generated by the project, the general impacts from these types of activities, and an analysis of the anticipated impacts on marine mammals from the project, with consideration of the proposed mitigation measures.

Description of Sound Sources for the Specified Activities

Activities associated with the project that have the potential to incidentally take marine mammals though exposure to sound would include vibratory and impact pile driving during the construction of the new bridge.

Impact hammers typically operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is impulsive, characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the substrate. Vibratory hammers typically produce less sound (*i.e.,* lower levels) than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009; California Department of Transportation (CALTRANS), 2015, 2020). Sounds produced by vibratory hammers are non-impulsive; compared to sounds produced by impact hammers, the rise time is slower, reducing the probability and severity of injury, and the sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

The likely or possible impacts of the FHWA's proposed activities on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, visual and other non-acoustic stressors would be limited, and any impacts to marine mammals are expected to primarily be acoustic in nature.

Potential Effects of Underwater Sound on Marine Mammals

The introduction of anthropogenic noise into the aquatic environment from impact and vibratory pile driving is the primary means by which marine mammals may be harassed from the FHWA's specified activity. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life from none or minor to potentially severe responses depending on received levels, duration of exposure, behavioral context, and various other factors. Broadly, underwater sound from active acoustic sources, such as those in the project, can potentially result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009).

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly as we do not expect that use of impact driving is reasonably likely to result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The project activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007, 2019). Exposure to anthropogenic noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). It can also lead to non-observable physiological responses, such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions, such as communication and predator and prey detection.

The degree of effect of an acoustic exposure on marine mammals is dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), signal characteristics, the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the noise source and the animal, received levels, behavioral state at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). In general, sudden, high-intensity sounds can cause hearing loss as can longer exposures to lower-intensity sounds. Moreover, any temporary or permanent loss of hearing, if it occurs at all, will occur almost exclusively for noise within an animal's hearing range. We describe below the specific manifestations of acoustic effects that may occur based on the activities proposed by FHWA.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur in relation to distance from a source and assuming that the signal is within an animal's hearing range. First (at the greatest distance) is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone (closer to the receiving animal) corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. The third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

Below, we provide additional detail regarding potential impacts on marine mammals and their habitat from noise in general, starting with hearing impairment, as well as from the specific activities FHWA plans to conduct, to the degree it is available.

Hearing Threshold Shifts. NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018, 2024). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018, 2024) there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Auditory Injury (AUD INJ). NMFS (2024) defines AUD INJ as damage to the inner ear that can result in destruction of tissue, such as the loss of cochlear neuron synapses or auditory neuropathy (Houser 2021; Finneran 2024). AUD INJ may or may not result in a permanent threshold shift (PTS). PTS is subsequently defined as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2024). PTS does not generally affect more than a limited frequency range, and an animal that has incurred PTS has some level of hearing loss at the relevant frequencies; typically animals with PTS or other AUD INJ are not functionally deaf (Au and Hastings, 2008; Finneran, 2016). Available data from humans and other terrestrial mammals indicate that a 40-dB threshold shift approximates AUD INJ onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). AUD INJ levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (*Phoca vitulina*) (Kastak *et al.,* 2008), there are no empirical data measuring AUD INJ in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing AUD INJ are not typically pursued or authorized (NMFS, 2024).

Temporary Threshold Shift (TTS). TTS is a temporary, reversible increase in the threshold of audibility at a

specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2024), and is not considered an AUD INJ. Based on data from marine mammal TTS measurements (see Southall *et al.,* 2007, 2019), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Finneran *et al.,* 2000, 2002; Schlundt *et al.,* 2000). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with the 24-hour cumulative sound exposure level (SEL_{24}) in an accelerating fashion: at low exposures with lower SEL_{24}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{24}, the growth curves become steeper and approach linear relationships with the sound exposure level (SEL).

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to more impactful (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more severe impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 2013). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS) (Finneran, 2015). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. For cetaceans, published data on the onset of TTS are limited to captive bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*) (Southall *et al.,* 2019). For pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), bearded seals (*Erignathus barbatus*) and California sea lions (*Zalophus californianus*) (Kastak *et al.,* 1999, 2007; Kastelein *et al.,* 2019b, 2019c, 2021, 2022a, 2022b; Reichmuth *et al.,* 2019; Sills *et al.,* 2020). TTS was not observed in spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to single airgun impulse sounds at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). These studies examine hearing thresholds measured in marine mammals before and after exposure to intense or long-duration sound exposures. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times.

The amount and onset of TTS depends on the exposure frequency. Sounds below the region of best sensitivity for a species or hearing group are less hazardous than those near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.,* 2019a, 2019c). Note that in general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Mooney *et al.,* 2009; Finneran *et al.,* 2010; Kastelein *et al.,* 2014, 2015). This means that TTS predictions based on the total SEL_{24} will overestimate the amount of TTS from intermittent exposures, such as sonars and impulsive sources. Nachtigall *et al.* (2018) describe measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.,* 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2024). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species.

Relationships between TTS and AUD INJ thresholds have not been studied in marine mammals, and there are no measured PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. AUD INJ typically occurs at exposure levels at least several dB above that inducing mild TTS (*e.g.,* a 40-dB threshold shift approximates AUD INJ onset (Kryter *et al.,* 1966; Miller, 1974), while a 6-dB threshold shift approximates TTS onset (Southall *et al.,* 2007, 2019). Based on data from terrestrial mammals, a precautionary assumption is that the AUD INJ thresholds for impulsive sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and AUD INJ cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007, 2019). Given the higher level of sound or longer exposure duration necessary to cause AUD INJ as compared with TTS, it is considerably less likely that AUD INJ could occur.

Behavioral Effects. Exposure to noise also has the potential to behaviorally disturb marine mammals to a level that rises to the definition of harassment under the MMPA. Generally speaking, NMFS considers a behavioral disturbance that rises to the level of harassment under the MMPA a non-minor response—in other words, not every response qualifies as behavioral disturbance, and for responses that do, those of a higher level, or accrued across a longer duration, have the potential to affect foraging, reproduction, or survival. Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes

in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses may include changing durations of surfacing and dives, changing direction and/or speed; reducing/increasing vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); eliciting a visible startle response or aggressive behavior (such as tail/fin slapping or jaw clapping); and avoidance of areas where sound sources are located. In addition, pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007, 2019; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) and Gomez *et al.* (2016) for reviews of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2004). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

As noted above, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; National Research Council (NRC), 2005). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (*e.g.,* seismic airguns) have been varied but often consist of avoidance behavior or other behavioral changes (Richardson *et al.,* 1995; Morton and Symonds, 2002; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal (*e.g.,* Erbe *et al.,* 2019). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. If a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Avoidance and displacement. Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a, 2013b; Blair *et al.,* 2016). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. Acoustic and movement bio-logging tools also have been used in some cases to infer responses to anthropogenic noise. For example, Blair *et al.* (2015) reported significant effects on humpback whale (*Megaptera novaeangliae*) foraging behavior in Stellwagen Bank in response to ship noise including slower descent rates, and fewer side-rolling events per dive with increasing ship nose. In addition, Wisniewska *et al.* (2018) reported that tagged harbor porpoises demonstrated fewer prey capture attempts when encountering occasional high-noise levels resulting from vessel noise as well as more vigorous fluking, interrupted foraging, and cessation of echolocation signals observed in response to some high-noise vessel passes. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Respiration rates vary naturally with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001; 2005; 2006; Gailey *et al.,* 2007). For example, harbor porpoise respiration rates increased in response to pile driving sounds at and above a received broadband SPL of 136 dB (zero-peak SPL: 151 dB (referenced to 1 micropascal (re 1 µPa); SEL of a single

strike (SEL_{ss}): 127 dB re 1 μPa^2-s) (Kastelein *et al.,* 2013).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales (*Eschrictius robustus*) are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Harbor porpoises, Atlantic white-sided dolphins (*Lagenorhynchus actusus*), and minke whales have demonstrated avoidance in response to vessels during line transect surveys (Palka and Hammond, 2001). In addition, beluga whales in the St. Lawrence Estuary in Canada have been reported to increase levels of avoidance with increased boat presence by way of increased dive durations and swim speeds, decreased surfacing intervals, and by bunching together into groups (Blane and Jaakson, 1994). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996; Bowers *et al.,* 2018). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (England *et al.,* 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fishes and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive (*i.e.,* meaningful) behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Physiological stress responses. An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Selye, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress, including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Ayres *et al.,* 2012; Yang *et al.,* 2022). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. In addition, Lemos *et al.* (2022) observed a correlation between higher levels of fecal glucocorticoid metabolite concentrations (indicative of a stress response) and vessel traffic in gray whales. Yang *et al.* (2022) studied behavioral and physiological responses in captive bottlenose dolphins exposed to playbacks of ''pile-driving-like'' impulsive sounds, finding significant changes in cortisol and other

physiological indicators but only minor behavioral changes. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2005), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar construction projects.

Norman (2011) reviewed environmental and anthropogenic stressors for Cook Inlet beluga whales. Lyamin *et al.* (2011) determined that the heart rate of a beluga whale increases in response to noise, depending on the frequency and intensity. Acceleration of heart rate in the beluga whale is the first component of the ''acoustic startle response.'' Romano *et al.* (2004) demonstrated that captive beluga whales exposed to high-level impulsive sounds (*i.e.,* seismic airgun and/or single pure tones up to 201 dB root-mean-square (RMS)) resembling sonar pings showed increased stress hormone levels of norepinephrine, epinephrine, and dopamine when TTS was reached. Thomas *et al.* (1990) exposed beluga whales to playbacks of an oil-drilling platform in operation (''Sedco 708,'' 40 Hz-20 kHz; source level 153 dB). Ambient SPL at ambient conditions in the pool before playbacks was 106 dB and 134 to 137 dB RMS during playbacks at the monitoring hydrophone across the pool. All cell and platelet counts and 21 different blood chemicals, including epinephrine and norepinephrine, were within normal limits throughout baseline and playback periods, and stress response hormone levels did not increase immediately after playbacks. The difference between the Romano *et al.* (2004) and Thomas *et al.* (1990) studies could be the differences in the type of sound (seismic airgun and/or tone versus oil drilling), the intensity and duration of the sound, the individual's response, and the surrounding circumstances of the individual's environment. The sounds in the Thomas *et al.* (1990) study would be more similar to those anticipated by the FHWA's activities; therefore, no more than short-term, low-hormone stress responses, if any, are expected as a result of exposure to noise from the FHWA's activities.

Vocalizations and Auditory Masking. Since many marine mammals rely on sound to find prey, moderate social interactions, and facilitate mating (Tyack, 2008), noise from anthropogenic sound sources can interfere with these functions, but only if the noise spectrum overlaps with the hearing sensitivity of the receiving marine mammal (Southall *et al.,* 2007; Clark *et al.,* 2009; Hatch *et al.,* 2012). Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere with an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions (Hotchkin and Parks, 2013).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales (*Orcinus orca*) have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003) or vocalizations (Foote *et al.,* 2004), respectively, while North Atlantic right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). Fin whales (*Balaenoptera physalus*) have also been documented lowering the bandwidth, peak frequency, and center frequency of their vocalizations under increased levels of background noise from large vessels (Castellote *et al.,* 2012). Other alterations to communication signals have also been observed. For example, gray whales, in response to playback experiments exposing them to vessel noise, have been observed increasing their vocalization rate and producing louder signals at times of increased outboard engine noise (Dahlheim and Castellote, 2016). Alternatively, in some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994, Wisniewska *et al.,* 2018).

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is human-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect (though not necessarily one that would be associated with harassment).

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2010; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors, including modifications of the acoustic properties of the signal or the signaling behavior (Hotchkin and Parks, 2013). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking

sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking occurs in the frequency band that the animals utilize and is more likely to occur in the presence of broadband, relatively continuous noise sources such as vibratory pile driving. Energy distribution of vibratory pile driving sound covers a broad frequency spectrum and is anticipated to be within the audible range of marine mammals present in the proposed action area. Since noises generated from the proposed construction activities are mostly concentrated at low frequencies (< 2 kHz), these activities likely have less effect on mid-frequency echolocation sounds produced by odontocetes (toothed whales). However, lower frequency noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. Low-frequency noise may also affect communication signals when they occur near the frequency band for noise and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Holt *et al.,* 2009). Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, in addition to individual levels. Masking affects both senders and receivers of the signals, and at higher levels for longer durations, could have long-term chronic effects on marine mammal species and populations. However, the noise generated by the FHWA's proposed activities will only occur intermittently, across an estimated 234 days in year 1 and 193 days in year 2 during the authorization period in a relatively small area focused around the proposed construction site. Thus, while the FHWA's proposed activities may mask some acoustic signals that are relevant to the daily behavior of marine mammals, the short-term duration and limited areas affected make it very unlikely that the fitness of individual marine mammals would be impacted.

Potential Effects on Marine Mammal Habitat

The FHWA's proposed activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water SPLs. Increased noise levels may affect acoustic habitat and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). Elevated levels of underwater noise would ensonify the project areas where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during the proposed construction activities; however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

The total area likely impacted by the FHWA's activities is relatively small compared to the available habitat in upper Chesapeake Bay and the Patapsco River. Avoidance by potential prey (*i.e.,* fish) of the immediate area due to increased noise is possible. The duration of fish and marine mammal avoidance of this area after pile installation and associated activities stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by fish or marine mammals of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

The proposed project will occur within the same footprint as existing marine infrastructure. The nearshore and intertidal habitat where the proposed project will occur is an area of relatively high marine vessel traffic. Most marine mammals do not generally use the area within the footprint of the project area. Temporary, intermittent, and short-term habitat alteration may result from increased noise levels during the proposed construction activities. Effects on marine mammals will be limited to temporary displacement from pile installation and removal noise, and effects on prey species will be similarly limited in time and space.

Water quality. Temporary and localized reduction in water quality will occur as a result of in-water construction activities. Most of this effect would occur during the installation and removal of piles when bottom sediments are disturbed. The installation and removal of piles would disturb bottom sediments and may cause a temporary increase in suspended sediment in the project area. During pile extraction (if necessary), sediment attached to the pile moves vertically through the water column until gravitational forces cause it to slough off under its own weight. The small resulting sediment plume is expected to settle out of the water column within a few hours. Studies of the effects of turbid water on fish (marine mammal prey) suggest that concentrations of suspended sediment can reach thousands of milligrams per liter before an acute toxic reaction is expected (Burton, 1993).

Effects to turbidity and sedimentation are expected to be short-term, minor, and localized. Since the currents are so strong in the area, following the completion of sediment-disturbing activities, suspended sediments in the water column should dissipate and quickly return to background levels in all construction scenarios. Turbidity within the water column has the potential to reduce the level of oxygen in the water and irritate the gills of prey fish species in the proposed project area. However, turbidity plumes associated with the project would be temporary and localized, and fish in the proposed project area would be able to move away from and avoid the areas where plumes may occur. Therefore, it is expected that the impacts on prey fish species from turbidity, and therefore on marine mammals, would be minimal and temporary. In general, the area likely impacted by the proposed construction activities is relatively small compared to the available marine mammal habitat in the upper Chesapeake Bay and Patapsco River.

Potential Effects on Prey. Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fishes, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Studies regarding the effects of noise on known marine mammal prey are described here.

Fishes utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds that are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to

noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fishes (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Peña *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fishes are temporary.

SPLs of sufficient strength have been known to cause injury to fishes and fish mortality (summarized in Popper *et al.,* 2014). However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012b) showed that a TTS of 4 to 6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012a; Casper *et al.,* 2013, 2017).

Fish populations in the proposed project area that serve as marine mammal prey could be temporarily affected by noise from pile installation and removal. The frequency range in which fishes generally perceive underwater sounds is 50 to 2,000 Hz, with peak sensitivities below 800 Hz (Popper and Hastings, 2009). Fish behavior or distribution may change, especially with strong and/or intermittent sounds that could harm fishes. High underwater SPLs have been documented to alter behavior, cause hearing loss, and injure or kill individual fish by causing serious internal injury (Hastings and Popper, 2005).

Zooplankton is a food source for several marine mammal species, as well as a food source for fish that are then preyed upon by marine mammals. Population effects on zooplankton could have indirect effects on marine mammals. Data are limited on the effects of underwater sound on zooplankton species, particularly sound from construction (Erbe *et al.,* 2019). Popper and Hastings (2009) reviewed information on the effects of human-generated sound and concluded that no substantive data are available on whether the sound levels from pile driving, seismic activity, or any human-made sound would have physiological effects on invertebrates. Any such effects would be limited to the area very near (1 to 5 m) the sound source and would result in no population effects because of the relatively small area affected at any one time and the reproductive strategy of most zooplankton species (short generation, high fecundity, and very high natural mortality). No adverse impact on zooplankton populations is expected to occur from the specified activity due, in part, to large reproductive capacities and naturally high levels of predation and mortality of these populations. Any mortalities or impacts that might occur would be negligible.

The greatest potential impact to marine mammal prey during construction would occur during impact pile driving. Impact driving would be attenuated with bubble curtains during all months, reducing the potential for injurious effects on prey species. In-water construction activities would typically occur during daylight hours, allowing fish to forage and transit the project area in the evening. Vibratory pile driving may elicit behavioral reactions from fishes such as temporary avoidance of the area but is unlikely to cause injuries to fishes or have persistent effects on local fish populations. Construction would have minimal permanent and temporary impacts on benthic invertebrate species, a marine mammal prey source. In addition, it should be noted that the area in question is low-quality habitat since it is already highly developed and experiences a high level of anthropogenic noise from normal operations and other vessel traffic.

Potential Effects on Foraging Habitat

The FSK Bridge Rebuild project is not expected to result in any habitat-related effects that could cause significant or long-term negative consequences for individual marine mammals or their populations, since installation and removal of in-water piles would be temporary and intermittent. The total seafloor area affected by pile installation and removal is a very small area compared to the vast foraging area available to marine mammals outside this project area. The mouth of the Patapsco River and the northern portion of the Chesapeake Bay are at best peripheral habitat for dolphins and not expected to include any foraging areas of particular importance. The area impacted by the project is relatively small compared to the available habitat just outside the project area, and there are no areas of particular significance that would be impacted by this project. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for the FHWA's construction to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant. Therefore, impacts of the project are not likely to have adverse effects on marine mammal foraging habitat in the proposed project area.

In summary, given the relatively small areas being affected, as well as the temporary and mostly transitory nature of the proposed construction activities, any adverse effects from the FHWA's activities on prey habitat or prey populations are expected to be minor and temporary. The most likely impact to fishes at the project site would be temporary avoidance of the area. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we preliminarily conclude that impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform NMFS' consideration of ''small numbers,'' the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment);

or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of behavioral reactions and/or TTS for individual marine mammals resulting from exposure to impact and vibratory pile driving. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown zones and bubble curtains) discussed in detail below in the Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic criteria above which NMFS believes there is some reasonable potential for marine mammals to be behaviorally harassed or incur some degree of AUD INJ; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Criteria

NMFS recommends the use of acoustic criteria that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur AUD INJ of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007; Southall *et al.,* 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above RMS SPL of 120 dB re 1 µPa) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 µPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

FHWA's proposed activity includes the use of continuous non-impulsive and impulsive sources, and therefore the RMS SPL thresholds of 120 dB and 160 dB re 1µPa are applicable.

Level A harassment. NMFS' Updated Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 3.0) (Updated Technical Guidance, 2024) identifies dual criteria to assess AUD INJ (Level A harassment) to five different underwater marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). FHWA's proposed activity includes the use of impulsive (impact driving) and non-impulsive (vibratory driving) sources.

The 2024 Updated Technical Guidance criteria include both updated thresholds and updated weighting functions for each hearing group. The thresholds are provided in table 6, below. The references, analysis, and methodology used in the development of the criteria are described in NMFS' 2024 Updated Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance-other-acoustic-tools.*

TABLE 6—THRESHOLDS IDENTIFYING THE ONSET OF AUDITORY INJURY

Hearing group	AUD INJ onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 222 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 197 dB.
High-Frequency (HF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,HF,24h}$: 193 dB	*Cell 4:* $L_{E,HF,24h}$: 201 dB.
Very High-Frequency (VHF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,VHF,24h}$: 159 dB	*Cell 6:* $L_{E,VHF,24h}$: 181 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 223 dB; $L_{E,PW,24h}$: 183 dB	*Cell 8:* $L_{E,PW,24h}$: 195 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 230 dB; $L_{E,OW,24h}$: 185 dB	*Cell 10:* $L_{E,OW,24h}$: 199 dB.

* Dual metric criteria for impulsive sounds: Use whichever criteria results in the larger isopleth for calculating AUD INJ onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level criteria associated with impulsive sounds, the PK SPL criteria are recommended for consideration for non-impulsive sources.

Note: Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 µPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1 µPa²s. In this table, criteria are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript ''flat'' is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals underwater (*i.e.,* 7 Hz to 165 kHz). The subscript associated with cumulative sound exposure level criteria indicates the designated marine mammal auditory weighting function (LF, HF, and VHF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level criteria could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these criteria will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The ensonified areas associated with the proposed pile driving activities were modeled by FHWA and JASCO Applied Sciences during the application preparation process (JASCO 2025), and the resulting predictions were verified in the field via hydroacoustic monitoring during a test-pile program during the fall of 2025. During monitoring, the source values associated with impact and vibratory driving of 96-in steel pipe piles were determined, as well as effectiveness of two separate noise attenuation systems, finding that for impact driving the bubble curtain attenuated source values by approximately 26.3 dB, and for vibratory by approximately 6 dB (see Proposed Mitigation, below).

Sound propagation modeling performed prior to the test-pile monitoring was found to be conservative as measured isopleths were smaller than expected in the modeling. The numerical model likely underestimated the true propagation loss, resulting in an over estimation of the sound propagation distances in this environment, as reflected by the measured data. Therefore, FHWA used the measured values from October 2025 for attenuated impact and vibratory driving in the prediction of ensonified areas for the work to be performed in Years 1 and 2 of the FSK Bridge rebuild project. For unattenuated vibratory driving, FHWA modeled with a source level increased by 10 dB based on predicted bubble curtain performance, although the measured performance was only 6 dB. Thus, increasing the source value by 10 dB is conservative.

One impact and one vibratory hammer were used during the test-pile program (table 7). The results of the test-pile driving indicated a need for larger hammers for all vibratory pile installation and for approximately 20 percent of impact pile installation. Source values for the larger hammers were approximated based on the measured results of the test-pile sound levels and the ratios of the driving forces or hammer energies; for further detail, please refer to the IHA application.

TABLE 7—MEASURED AND PREDICTED SOURCE VALUES FOR EACH HAMMER TYPE FOR 96-IN STEEL PILES

Method	Hammer details	Attenuated SPL at 10 m	Unattenuated SPL at 10 m
Impact (measured during test pile and estimated for 80% of production driving).	Menck MHU 800S Energy = 820 kilojoules (kJ) Hammer weight = 793 kiloNewtons (kN).	[a] 196.8	[a] 209.9
Impact (estimated for 20% of production driving)	Menck 1900, or similar Energy = 1900 kJ Hammer weight = 1,574 kN.	[b] 199.	[c]
Vibratory (measured during test pile)	APE 600 Driving force = 4,434 kN Hammer weight = 275 kN 22.5 Hz working frequency.	168	[d] 178
Vibratory (estimated for production driving)	ICE 200–C Driving force = 7,104 kN Hammer weight = 345 kN 26 Hz working frequency.	[b] 170	[d] 180

[a] The attenuated measured value for all 11 test piles is shown. For the 2 test piles with on/off bubble curtain testing, the measured attenuated SPL averaged 183.2 dB RMS and measured unattenuated measured 209.9 dB RMS. The bubble curtain effectiveness and unattenuated source level were based off the 2 piles with on/off testing.

[b] Value predicted based on ratio of hammer energies;

[c] —No unattenuated impact pile driving is planned, and thus no unattenuated value for the larger impact hammer was predicted or used in modeling;

[d] Measured unattenuated source level of vibratory installation for a single pile during the test pile program was 174 dB RMS, a 6 dB increase from attenuated measurements. However, modeling was completed before test pile measurements were fully analyzed and assumed 10 dB effectiveness of the bubble curtain system, resulting in overestimates of unattenuated source values.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations. Rodriguez *et al.* (2021) synthesizes three consecutive years (2017, 2018, and 2019) of data from the DolphinWatch app collected between the months of April (2018 and 2019) and October (2017, 2018, and 2019). Data collection began in late June 2017. Overall, the highest dolphin sightings were correlated with water temperatures between 24 and 30 degrees Celsius (75.2 to 86 degrees Fahrenheit). Dolphins were sighted most in the summer, peaking in July of each year. Salinity and tidal state also influenced the spatiotemporal occurrence of bottlenose dolphins.

Density estimates for the upper Chesapeake Bay region were compiled for each year (table 8) and the geometric mean of all three years was used to estimate dolphin densities for the purpose of this analysis. Although dolphin densities are expected to be lower during spring and fall (no dolphins were sighted in the upper bay region during April, May, September, and October of 2018, with other years following a similar pattern), FHWA determined, and NMFS agrees, that the geometric mean density incorporates the confirmed dolphin sightings across spring, summer, and fall, and is suitable to estimate presence in all three seasons. Winter density of dolphins in the area is estimated at zero, as no dolphins were sighted in the shoulder months in the upper bay, and dolphins are not expected to be present in the project area during the months of December through February.

TABLE 8—DOLPHIN DENSITY BASED ON RODRIGUEZ *et al.* 2021

Year	Yearly (March–November) average density (per km^2)	Geometric mean density (per km^2)
2017	0.015	0.019
2018	0.026	
2019	0.017	

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

Estimated take by Level B harassment was calculated based on the ensonified areas multiplied by the seasonal density estimates and the number of in-water workdays in each season for each year. The approximate number of workdays per season includes concurrent driving, and has been limited to the maximum number of days in the appropriate months. The calculated daily, seasonal, and total take estimates for year 1 and year 2 are shown in tables 9 and 10, respectively.

TABLE 9—PROPOSED TAKE CALCULATIONS FOR YEAR 1

Method	Level B harassment area (km^2)	Density	Daily exposures	Number of days	Estimated seasonal exposures	Proposed take
Summer						
Impact (80%)	0.43	0.019	0.0082	63	0.52	12
Impact (20%)	0.64		0.0122	16	0.20	
Vibratory (attenuated)[1]	7.74		0.1471	79	11.62	
Fall and Spring						
Impact (80%)	0.43	0.019	0.0082	124	1.01	59
Impact (20%)	0.64		0.0122	31	0.38	
Vibratory (unattenuated) [1]	19.48		0.3701	155	57.37	
Total Proposed Take						71

[1] Bubble curtains are proposed for use during vibratory pile driving only between June 1 and September 30 due to expected increased dolphin presence during the summer months. No bubble curtains would be used for vibratory driving outside of these dates.

TABLE 10—PROPOSED TAKE CALCULATIONS FOR YEAR 2

Method	Level B harassment area (km^2)	Density	Daily exposures	Number of days	Estimated seasonal exposures	Proposed take
Summer						
Impact (80%)	0.43	0.019	0.0082	47	0.38	10
Impact (20%)	0.64		0.0122	12	0.15	
Vibratory (attenuated)	7.74		0.1471	67	9.85	
Fall and Spring						
Impact (80%)	0.43	0.0038	0.0082	44	0.36	21
Impact (20%)	0.64		0.0122	11	0.13	
Vibratory (unattenuated)	19.48		0.3701	55	20.36	
Total Proposed Take						31

[1] Bubble curtains are proposed for use during vibratory pile driving between June 1 and September 30 due to expected increased dolphin presence during the summer months. No bubble curtains would be used for vibratory driving outside of these dates.

An estimate of take by Level A harassment was performed in the same manner for days with impact pile driving. The Level A harassment area for attenuated impact driving measured during the test pile program was 0.02 km^2 for the smaller hammer; FHWA estimated a Level A harassment area of 0.045 km^2 for the larger impact hammer based on the measured distance for the smaller hammer and the ratio of hammer energies discussed previously. JASCO's acoustic model outputs indicated that the threshold for onset of AUD INJ for HF cetaceans would not be reached during vibratory pile driving (single and concurrent scenarios). Ranges from the test pile project measurements of attenuated and unattenuated vibratory pile driving were less than 10 m. Using the same number

of seasonal days as shown in tables 9 and 10, the estimates of take by Level A harassment were 0.08 animals in Year 1, and 0.03 animals in Year 2. Thus, FHWA did not request any take by Level A harassment, and none is proposed for authorization. Tables 11 and 12 show the total estimated take proposed for authorization and the percentages of stocks taken for years 1 and 2, respectively.

TABLE 11—ESTIMATED PROPOSED TAKE BY LEVEL A AND LEVEL B HARASSMENT AND PERCENT OF STOCKS TAKEN FOR YEAR 1

Species	Stock	Level A	Level B	Total	Stock abundance	Percent of stock (%)
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal Stock.	0	71	71	6,639	1.07
	Western North Atlantic Southern Migratory Coastal Stock.	.....	.....	.....	3,751	1.89

TABLE 12—ESTIMATED PROPOSED TAKE BY LEVEL A AND LEVEL B HARASSMENT AND PERCENT OF STOCKS TAKEN FOR YEAR 2

Species	Stock	Level A	Level B	Total	Stock abundance	Percent of stock (%)
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal Stock.	0	31	31	6,639	0.47
	Western North Atlantic Southern Migratory Coastal Stock.	.....	.....	.....	3,751	0.83

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

The mitigation requirements described in the following were proposed by FHWA in its adequate and complete application or are the result of subsequent coordination between NMFS and FHWA. FHWA has agreed that all of the mitigation measures are practicable. NMFS has fully reviewed the specified activities and the mitigation measures to determine if the mitigation measures would result in the least practicable adverse impact on marine mammals and their habitat, as required by the MMPA, and has determined the proposed measures are appropriate. NMFS describes these below as proposed mitigation requirements, and has included them in the proposed IHAs.

In addition to the measures described later in this section, the FHWA would follow these general mitigation measures:

- Authorized take, by Level B harassment only, would be limited to the species and numbers listed in tables 11 and 12 for years 1 and 2, respectively. Construction activities must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone.
- The taking by serious injury or death of any of the species listed in tables 11 and 12 or any taking of any other species of marine mammal would be prohibited and may result in the modification, suspension, or revocation of the IHAs, if issued. Any taking exceeding the authorized amounts listed in in tables 11 and 12 would be prohibited and may result in the modification, suspension, or revocation of the IHAs, if issued.
- Ensure that construction supervisors and crews, the marine mammal monitoring team, and relevant FHWA staff are trained prior to the start of all construction activities, so that responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;
- The FHWA, construction supervisors and crews, Protected Species Observers (PSOs), and relevant FHWA staff must avoid direct physical interaction with marine mammals

during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.

- Employ PSOs and establish monitoring locations as described in section 5 of the IHA and the FHWA's Marine Mammal Monitoring and Mitigation Plan. The FHWA must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions;

Additionally, the following mitigation measures apply to the FHWA's in-water construction activities:

Establishment of Shutdown Zones—The FHWA would establish shutdown zones with radial distances as identified in table 13 for all construction activities. If a marine mammal is observed entering or within the shutdown zones indicated in table 13, pile driving activity must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zones or 15 minutes have passed without re-detection of the animal.

TABLE 13—PROPOSED SHUTDOWN ZONES DURING PROJECT ACTIVITIES

Activity	Season	Shutdown zone (m)	Monitoring zone (Level B) (m)
Impact—small hammer	All	80	370
Impact—large hammer	All	120	450
Vibratory (Single Hammer)	Summer	10	1,330
	Fall, Winter, Spring	10	2,200
Vibratory (Concurrent)	Summer	10	1,570
	Fall, Winter, Spring	10	2,490

Pre- and Post-Activity Monitoring—Monitoring would take place from 30 minutes prior to initiation of pile driving activity (*i.e.,* pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity. In addition, monitoring for 30 minutes would take place whenever a break in the specified activity (*i.e.,* impact pile driving, vibratory pile driving) of 30 minutes or longer occurs. Pre-start clearance monitoring would be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in table 13 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals.

If nighttime pile driving is required, PSOs will continue monitoring using infrared goggles or other night-vision equipment. Additionally, the shutdown zones will be illuminated during any night pile driving.

Soft Start—The FHWA would use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second (sec) waiting period, then two subsequent reduced-energy strike sets. A soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. Soft starts would not be required for infrequently occurring pile restrikes (short duration events with low blow counts) due to technical conflicts with hammer energy.

Noise Attenuation Systems

A bubble curtain would be deployed for all impact pile driving except during pile restrikes, regardless of pile size or time of year. Pile restrikes are short-duration events with low blow counts that occur infrequently to test pile stability after it has been driven. Using soft start techniques during restrikes presents technical conflicts with hammer energy. A 3-ring bubble curtain would be used during impact pile driving of 96-in and 48-in piles, consisting of three perforated pipe rings stacked vertically along the length of the driven pile. The pipes in all layers would be arranged in a geometric pattern to allow for the pile being driven to be completely enclosed by bubbles for the full depth of the water column. At a minimum, the bubble curtain would distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column, the lowest bubble ring would be in contact with the substrate for the full circumference of the ring, and the weights attached to the bottom ring would ensure 100 percent substrate contact. No parts of the ring or other objects would prevent full substrate contact. In addition, air flow to the bubblers would be balanced around the circumference of the pile.

For vibratory pile driving, a separate perimeter-style bubble curtain system would be deployed from June 1–September 30 when dolphins are most likely to be in the area. The perimeter style hose will sit on the riverbed and surround the pile being driven. The hose will be a Flexral AR60HT hose perforated with ¼-in holes at 5-in spacing or similar.

Impact hammering associated with the 36-in trestle piles will also be protected by either a bubble ring system or a perimeter ring system.

Both bubble curtain systems were evaluated for effectiveness during the fall 2025 FSK Bridge Test Pile Program (table 14) (Denes, 2026). The effectiveness of the 3-ring bubble curtain was measured during the installation of eight 96-in piles. During the installation of the first two test piles, the bubble curtain was turned on and off in approximately 15-minute intervals. Measurements from the rest of the piles occurred with the bubble curtain active throughout. To determine the effectiveness of the bubble curtains, regressions of measurements of pile driving noise were used to estimate the SPL at approximately 10 m from the pile for each hammer type and bubble curtain condition (on/off). The average SPL at 10 m for impact pile driving without a bubble curtain was 206.3 dB re: 1 µPa and with a bubble curtain was 180.0 re: 1 µPa.

TABLE 14—MEASURED BUBBLE CURTAIN EFFECTIVENESS FROM FSK TEST PILE PROGRAM (OCTOBER 2025)

[Denes, 2026]

Method	Bubble curtain type	Measured attenuation (dB)
Impact	Tiered 3-ring system	26.3
Vibratory	Perimeter hose system	6.0

During the noise monitoring study, vibratory setting was conducted for under 10 minutes per pile, an insufficient duration to measure alternating bubble curtain conditions for a given pile and have the bubbles dissipate. Therefore, there was only one pile measured with the bubble curtain off. The average SPL at 10 m for vibratory setting without a bubble curtain was 174.0 dB re: 1 µPa RMS and with a bubble curtain was 168.0 dB re: 1 µPa RMS (Denes, 2026).

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. NMFS conducted an independent evaluation of the proposed measures, and has preliminarily determined for each of the proposed IHAs that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

The monitoring and reporting requirements described in the following were proposed by FHWA in its adequate and complete application and/or are the result of subsequent coordination between NMFS and FHWA. FHWA has agreed to the requirements. NMFS describes these below as requirements and has included them in the proposed IHAs.

Visual Monitoring

Qualified NMFS-approved PSOs must conduct monitoring in accordance with the project's Marine Mammal Monitoring Plan. PSOs would be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods. At least one PSO would have prior experience performing the duties of a PSO during an activity pursuant to a NMFS-issued incidental take authorization. Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued ITA. PSOs would be present during all pile installation and removal activities, including vibratory and impact methods during summer months, with reduced presence during spring, fall, and winter seasons, in accordance with the following:

- Observer training must be provided before the project starts and must include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors, and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).
- All PSOs must have no other project-related tasks while conducting monitoring.
- PSOs shall be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator.
- A minimum of two independent NMFS-approved PSOs will be active and on duty at a time from June 1 through September 30. The PSO closest to the hammer will be designated as the lead PSO. The lead PSO will be responsible for monitoring the shutdown zone and coordinating communication between PSOs and between PSOs and construction crew. One PSO would be stationed on or near the pile driving platform or barge to monitor the full shutdown zone and as much of the clearance zone as possible. Another PSO would be actively monitoring the downriver portion of the

clearance zone from the bow of the barge or equivalent.

- From October 1 through November 30 and March 1 through May 31, one PSO will be active and on duty at a time. This PSO will be stationed on the pile driving barge or equivalent.
- From December 1 through February 28, one PSO will be active and on duty one day a week. This PSO will be stationed on the pile driving barge or equivalent.
- Between April 15 and October 30, pile driving activities will be initiated only during daylight hours when the PSO (if present) can visually monitor for the presence of marine mammals. In the event that pile driving continues after dusk (to complete the installation of a pile in progress), night vision equipment (handheld night vision devices or handheld thermal imagers), will be used.
- Monitoring would be conducted 30 minutes before, during, and 30 minutes after drilling and pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and must document any behavioral reactions in concert with the distance from piles being driven or removed. PSOs would include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.
- PSOs would scan the waters using binoculars and/or the naked eye to search for marine mammals.
- PSOs will rotate shifts and stations to reduce potential fatigue. No PSO will be assigned a combined watch schedule of more than 12 hours in any 24-hour period.

Additionally, PSOs should meet the following qualifications:

- Have the ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio, or in person with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Hydroacoustic Monitoring—The FHWA would conduct hydroacoustic monitoring to ground truth the zones over which effects to marine mammals are expected for each location and source/mitigation system configuration. An acoustic monitoring plan would be submitted to NMFS no later than 60 days prior to the beginning of impact pile driving for approval. FHWA proposes that underwater noise measurements of the first 5 piles installed of each size (24-, 36-, 48-, and 96-in steel) with both impact and vibratory driving would be collected. Beyond the first 5 piles of each size, underwater noise monitoring will be conducted during the installation of one pile per month for the duration of the project under normal production driving conditions.

Data will be collected using a bottom-moored hydrophone at a single location. Underwater acoustic recorders will be deployed at prescribed locations in the area of the project at different distances from the active pile (see figure 14 of the FHWA's application). Underwater noise data will be collected at near-field, intermediate, and far-field locations to monitor noise associated with the active pile.

Environmental data would be collected, including but not limited to, the following: wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions, and other factors that could contribute to influencing the airborne and underwater sound levels (*e.g.,* aircraft, boats, *etc.*). The chief inspector would supply the acoustics specialist with the substrate composition, hammer model and size, hammer energy settings and any changes to those settings during the piles being monitored.

For acoustically monitored piles, data from the monitoring locations would be post-processed to obtain the following sound measures:

- Mean, median, minimum, and maximum RMS pressure level in [dB re 1 μPa];
- Mean, median, minimum, and maximum single strike SEL in [dB re μPa^2s];
- Cumulative SEL as defined by the mean single strike SEL + 10*log10 (number of hammer strikes) in [dB re μPa^2s]; and
- A frequency spectrum (pressure spectral density) in dB re μPa^2 per Hz based on the average of up to eight successive strikes with similar sound. Spectral resolution would be 1 Hz, and the spectrum would cover nominal range from 7 Hz to 20 kHz.

Reporting

Draft marine mammal monitoring and hydroacoustic monitoring reports would be submitted to NMFS within 90 days after the completion of pile driving activities for each IHA or 60 days before the requested date of issuance of any future IHAs for projects at the exact location, whichever comes first. The marine mammal monitoring report would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (beginning and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of holes/piles driven or removed and by what method (*i.e.,* impact, vibratory, or drilling);
- PSO locations during marine mammal monitoring; and
- Environmental conditions during monitoring periods (at the beginning and end of a PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions, including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance. Upon observation of a marine mammal, the following information is required:
- The name of the PSO who sighted the animal(s), the PSO's location, and activity at the time of the sighting;
- The time of the sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), the PSO's confidence in identification, and the composition of the group if there is a mix of species;
- The distance and bearing of each marine mammal observed relative to the specified activity for each sighting (*e.g.,* if pile driving was occurring at the time of sighting);
- The estimated number of animals (min/max/best estimate);
- The estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, *etc.*);
- The animal's closest point of approach and estimated time spent within the harassment zone;
- A description of any marine mammal behavioral observations (*e.g.,*

observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- The number of marine mammals detected within the harassment zones by species (differentiated by month as appropriate);
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and the resulting changes in the behavior of the animal(s), if any; and
- All PSO datasheets and/or raw sighting data in an electronic tabular format with the draft report.

Acoustic monitoring report(s) must be submitted on the same schedule as visual monitoring reports (*i.e.,* within 90 days following the completion of construction). The acoustic monitoring report must contain the informational elements described in the Acoustic Monitoring Plan and, at minimum, must include:

- Hydrophone equipment and methods: (1) recording device, sampling rate, calibration details, distance (m) from the pile where recordings were made; and (2) the depth of water and recording device(s);
- Location, identifier, orientation (*e.g.,* vertical, battered), material, and geometry (shape, diameter, thickness, length) of pile being driven, substrate type, method of driving during recordings (*e.g.,* hammer model and energy), and total pile driving duration;
- Whether a sound attenuation device is used and, if so, a detailed description of the device used, its distance from the pile and hydrophone, and the duration of its use per pile;
- For impact pile driving: (1) number of strikes per day and per pile and strike rate; (2) depth of substrate to penetrate; (3) decidecade (one-third octave) band spectra in tabular and figure formats computed on a per-pulse basis, including the arithmetic mean or median for all computed spectra; (4) pulse duration and median, mean, maximum, minimum, and number of samples (where relevant) of the following sound level metrics: (5) RMS SPL; (6) SEL_{24}, Peak (PK) SPL, and SEL_{ss}; and
- For vibratory driving/removal: (1) duration of driving per pile; (2) vibratory hammer operating frequency; (3) decidecade (one-third octave) band spectra in tabular and figure formats for 1-sec windows, including the arithmetic mean or median for all computed spectra; and (4) median, mean, maximum, minimum, and number of samples (where relevant) of the following sound level metrics: 1-sec RMS SPL, SEL_{24} (and timeframe over which the sound is averaged).

If no comments are received from NMFS within 30 days, the draft reports would constitute the final reports. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity causes the take of a marine mammal in a manner prohibited by the IHAs (if issued), such as an injury, serious injury, or mortality, FHWA must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov* and *ITP.hotchkin@noaa.gov*) and to the regional stranding coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Activities would not resume until NMFS can review the circumstances surrounding the prohibited take. NMFS would work with FHWA to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. FHWA must not resume in-water construction activities until NMFS has notified them via letter, email, or telephone.

If FHWA discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), then the Navy would immediately report the incident to the NMFS Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*) and to the regional stranding coordinator as soon as feasible. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with FHWA to determine whether modifications in the activities are appropriate.

Finally, in the event that FHWA discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHAs (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the FHWA would report the incident to the Office of Protected Resources, NMFS, and the NMFS Stranding Hotline and/or by email to the Regional Stranding Coordinator, within 24 hours of the discovery. FHWA would provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

NMFS has identified key factors which may be employed to assess the level of analysis necessary to conclude whether potential impacts associated with a specified activity should be considered negligible. These include, but are not limited to, the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect to the species or stock, and the status of the species or stock. The potential effects of the specified activities on Tamanend's bottlenose dolphins are discussed below.

Pile driving associated with the FSK Bridge Rebuild project, as outlined previously, has the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment only from underwater sounds generated by pile driving. Potential takes could occur if dolphins are present in zones ensonified above the threshold for Level B harassment identified above while activities are underway.

The FHWA's proposed activities and associated impacts would occur within a limited, confined area of the stocks' range. The work would occur in the vicinity of the FSK Bridge Rebuild project site, and sound from the specified activities would be blocked by the shorelines of the Patapsco River and Chesapeake Bay. The intensity and duration of take by Level B harassment would be minimized through use of mitigation measures described herein. Further, the presence of dolphins in the area is limited and typically seasonal as animals move through the area chasing prey associated with changing water temperatures, thereby reducing the potential for prolonged exposure or behavioral disturbance. In addition, NMFS does not anticipate that serious injury or mortality will occur as a result of the FHWA's proposed activity given the nature of the activity, even in the absence of required mitigation.

Exposures to elevated sound levels produced during pile driving may cause behavioral disturbance of some individuals. Behavioral responses of marine mammals to pile driving at the FSK Bridge Rebuild project site are expected to be mild, short term, and temporary. Effects on individuals that are taken by Level B harassment, as enumerated in the Estimated Take section, on the basis of reports in the literature as well as monitoring from other similar activities elsewhere, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging if such activity were occurring (*e.g.,* Ridgway *et al.,* 1997; Nowacek *et al.,* 2007; Thorson and Reyff, 2006; Kendall and Cornick, 2015; Goldbogen *et al.,* 2013b; Blair *et al.,* 2016; Wisniewska *et al.,* 2018; Piwetz *et al.,* 2021). Marine mammals within the Level B harassment zones may not show any visual cues that they are disturbed by activities, or they could become alert, avoid the area, leave the area, or display other mild responses that are not visually observable such as exhibiting increased stress levels (*e.g.,* Rolland *et al.,* 2012; Lusseau, 2005; Bejder *et al.,* 2006; Rako *et al.,* 2013; Pirotta *et al.,* 2015; Pérez-Jorge *et al.,* 2016). They may also exhibit increased vocalization rates, louder vocalizations, alterations in the spectral features of vocalizations, or a cessation of communication signals (Hotchkin and Parks 2013).

Bottlenose dolphins in the region will only be present temporarily based on seasonal patterns. Thus, individuals present will be exposed to only transient periods of noise-generating activity as they move past the project site. Most likely, individual animals will either be temporarily deterred from swimming past the construction activities and will pass by when no pile driving is occurring, or will swim through the area more quickly. Takes may also occur during important foraging seasons, when anadromous fishes are migrating past the project area and marine mammals follow. However, the FSK Bridge project area represents a small portion of available foraging habitat and impacts on dolphin feeding are expected to be minimal. No marine mammal species or individuals are known or expected to be resident in the project area, and impacts are unlikely to be more than temporary and low-intensity.

The activities analyzed here are similar to numerous other coastal construction activities which have taken place with no known long-term adverse consequences from behavioral harassment. Any potential reactions and behavioral changes are expected to subside quickly when the exposures cease, and therefore, no long-term adverse consequences are expected (*e.g.,* Graham *et al.,* 2017). While there are no long-term peer-reviewed studies of marine mammal habitat use in the Patapsco River, studies from other areas indicate that most marine mammals would be expected to have responses on the order of hours to days. The intensity of Level B harassment events will be minimized through use of mitigation measures described herein, which were not quantitatively factored into the take estimates. The FHWA will use PSOs stationed strategically to increase detectability of marine mammals during in-water construction activities, enabling a high rate of success in implementation of shutdowns to minimize any likelihood of injury. Further, given the absence of any important habitat areas within the estimated harassment zones, we assume that potential takes by Level B harassment will have an inconsequential short-term effect on individuals and will not result in population-level impacts.

As stated in the Mitigation section, the FHWA will implement shutdown zones (table 13). No take by Level A harassment is proposed for authorization and thus is not expected to adversely impact individual fitness, let alone annual rates of recruitment or survival for the affected species or stocks.

Repeated, sequential exposure to pile driving noise over a long duration could result in more severe impacts to individuals that could affect a population (via sustained or repeated disruption of important behaviors such as feeding, resting, traveling, and socializing; Southall *et al.,* 2007). Alternatively, marine mammals exposed to repetitious construction sounds may become habituated, desensitized, or tolerant after initial exposure to these sounds (reviewed by Richardson *et al.,* 1995; Southall *et al.,* 2007). However, given the relatively low abundance and generally transitory nature of marine mammals in the Chesapeake Bay and Patapsco River near the project location compared to the stock sizes (tables 10 and 11), population-level impacts are not anticipated. The absence of any important habitat areas in the action area further decreases the likelihood of population-level impacts.

The FSK Bridge Rebuild project is also not expected to have significant adverse effects on any marine mammal habitats. The long-term impact on marine mammals associated with the FSK Bridge Rebuild project would be a small permanent decrease in low-quality potential habitat because of the shifted footprint of the bridge. Installation of in-water piles would be temporary and intermittent, and the increased footprint of the facilities would destroy only a small amount of low-quality habitat, which currently experiences high levels of anthropogenic activity. Impacts to the immediate substrate are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time but which would not be expected to have

any effects on individual marine mammals. Further, there are no known biologically important areas near the FSK Bridge project zone that will be impacted by the FHWA's proposed activities.

Impacts to marine mammal prey species are also expected to be minor and temporary and to have, at most, short-term effects on foraging of individual marine mammals and likely no effect on the populations of marine mammals as a whole. Overall, the area impacted by the FSK Bridge project is very small compared to the available surrounding habitat and does not include habitat of particular importance. The most likely impact to prey would be temporary behavioral avoidance of the immediate area. During construction activities, it is expected that some fish and marine mammals would temporarily leave the area of disturbance, thus impacting marine mammals' foraging opportunities in a limited portion of their foraging range. But, because of the relatively small area of the habitat that may be affected and lack of any habitat of particular importance, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary negligible impact determinations for the affected stocks of Tamanend's bottlenose dolphins:

- No takes by mortality or serious injury or by Level A harassment are anticipated or authorized;
- Any acoustic impacts to marine mammal habitat from pile driving are expected to be temporary and minimal;
- Take will not occur in places and/or times where take would be more likely to accrue to impacts on reproduction or survival, such as within habitats critical to recruitment or survival (*e.g.,* rookery);
- The FSK Bridge Rebuild project area represents a very small portion of the available foraging area for all potentially impacted marine mammal species and does not contain any habitat of particular importance;
- Take will only occur within the Chesapeake Bay and Patapsco River, which is a limited, confined area of any given stock's home range;
- Monitoring reports from similar work have documented little to no observable effect on individuals of the same species impacted by the specified activities;
- The required mitigation measures (*i.e.,* soft starts, pre-clearance monitoring, shutdown zones, bubble curtains) are expected to be effective in reducing the effects of the specified activity by minimizing the numbers of marine mammals exposed to injurious levels of sound; and
- The intensity of anticipated takes by Level B harassment is low for all stocks consisting of, at worst, temporary modifications in behavior, and would not be of a duration or intensity expected to result in impacts on reproduction or survival.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds for each of the proposed IHAs that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under section 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers (see 86 FR 5322, January 19, 2021). Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

For all stocks, the number of takes proposed for authorization is less than one-third of the best available population abundance estimate (*i.e.,* no more than 1.9 percent of any stock in year 1, and no more than 0.9 percent of any stock in year 2; see tables 11 and 12). The maximum annual number of animals that may be authorized to be taken from these stocks would be considered small relative to the relevant stock's abundances even if each estimated take occurred to a new individual.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds for each of the proposed IHAs that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensures that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of incidental take authorizations, NMFS consults internally whenever we propose to authorize take for ESA-listed species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue two consecutive IHAs to FHWA for conducting the FSK Bridge Rebuild project near Baltimore, MD, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHAs can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHAs for the proposed FSK Bridge Rebuild project. We also request comment on the potential renewal of these proposed IHAs as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for these IHAs or any subsequent renewal IHAs.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA

following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
- The request for renewal must include the following:

1. An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

2. A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 16, 2026.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2026–07768 Filed 4–21–26; 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; NOAA Office of Education Higher Education Scholarship, Fellowship, and Internship Programs

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 8, 2025, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: NOAA Office of Education Higher Education Scholarship, Fellowship, and Internship Programs.

OMB Control Number: 0648–0568.

Form Number(s): None.

Type of Request: Regular submission. Revision and extension of approved collection.

Number of Respondents: 3,379.

Average Hours per Response: Hollings and EPP/MSI Application—12 hours; Hollings and EPP Reference—1 hour; Voluntary Alumni Update Form—0.1 hours; Student Tracker Form—28 hours; EPP Graduate Fellowship Application—12 hours; EPP Graduate Fellowship References—1 hour; Student Training Record Form—0.5 hours; Hollings and EPP Student Surveys—0.25 hours; Hollings and EPP Mentor Surveys—0.5 hours; Hollings and EPP Travel Request Forms—0.25 hours.

Total Annual Burden Hours: 13,043.

Needs and Uses: This request is for extension and revision of a current information collection.

The National Oceanic and Atmospheric Administration (NOAA) Office of Education is sponsoring the information collection herein described. The Administrator of NOAA is authorized by section 4002 of the America COMPETES Act, Public Law 110–69, to establish and administer a Graduate Sciences Program and two undergraduate scholarship programs to enhance understanding of ocean, coastal, Great Lakes, and atmospheric science and stewardship by the general public and other coastal stakeholders, including underrepresented groups in ocean and atmospheric science and policy careers. In addition, NOAA's Administrator is authorized by section 214 of the Consolidated Appropriations Act, 2005, Public Law 108–447, to establish and administer the Ernest F. Hollings Undergraduate Scholarship Program to support undergraduate studies in oceanic and atmospheric science, research, technology, and education that support NOAA's mission and programs.

The NOAA Office of Education collects, evaluates, and assesses student data and information for the purpose of selecting successful candidates for scholarships, fellowships and internships, generating internal NOAA reports, and articles to demonstrate the success of its program.

The purpose of the NOAA Educational Partnership Program with Minority Serving Institutions (EPP) is to educate, train and graduate students in NOAA mission-aligned disciplines to build a pool of candidates eligible for the future NOAA workforce. The EPP program is strongly committed to broadening the participation of Minority Serving Institutions such as Historically Black Colleges and Universities, Hispanic Serving Institutions, Indian Tribally Controlled Colleges and Universities, Alaska Native-Serving Institutions, and Native Hawaiian-Serving Institutions. The EPP program has five program components: the Undergraduate Scholarship Program (USP); the Cooperative Science Centers (CSCs); Graduate Fellowship Program (GFP); the Graduate Sciences Program (GSP); and the Environmental Entrepreneurship Program (EEP). The GSP and EEP programs are no longer actively supporting students, however alumni of those programs may provide updates to EPP of educational and career changes.

The Ernest F. Hollings Undergraduate Scholarship Program was established to increase undergraduate training in oceanic and atmospheric science, research, technology, and education and foster multidisciplinary training opportunities.

The NOAA Office of Education requires all applicants to NOAA's Undergraduate Scholarship Programs to complete an application in order to be considered. The application package requires two faculty and/or academic advisors to complete a student scholar

reference form in support of the scholarship application. Undergraduate scholarship recipients are required to complete a Student Scholarship Training Record to track their time, attendance, and accomplishments during their internships. Student scholar alumni are also requested to provide information to NOAA for internal tracking purposes. This information informs NOAA whether NOAA-funded students pursue and complete post-graduate NOAA-related science degrees, are employed by NOAA or a NOAA contractor, or in fields related to NOAA's mission.

NOAA EPP CSC grant award recipients are required to update the student tracker database with the required student information in order to assess compliance with award performance measures. While supported by NOAA scholarship and internship programs, the Office of Education surveys students and mentors to gain feedback on experiences and to assess program impact. Feedback collected from surveys will be used to improve programs to ensure the highest quality experience for supported students.

The collected data supports the Office of Education's program performance measures. To measure the impact of these programs, the data collected are compared to the available data in the national education databases (*e.g.,* National Science Foundation and National Center for Education Statistics) and NOAA workforce management database. Furthermore, the student data collection identifies degree and NOAA mission-aligned discipline pipeline areas, guiding NOAA's effort to recruit for its mission-aligned educational and training programs and future workforce.

This information collection includes several changes to the type and amount of information being collected as described below. The changes to the application and surveys are minimal and will not change the burden response time.

1. Updates to Undergraduate Scholarship Programs Application
2. Updates to Undergraduate Scholarship Programs Student Surveys
3. Updates to Undergraduate Scholarship Programs Mentor Surveys
4. Addition of Undergraduate Scholarship Programs Travel Request Forms
5. Addition of Undergraduate Scholarship Programs Onboarding and Scholar Information Form
6. Removal of Student Opportunities Optional Demographic Data Collection and the Hollings Preparation Program Application and Surveys
7. Removal of Undergraduate Scholarship Program Applicant Surveys

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; Federal, State, Local or Tribal Government.

Frequency: On occasion, depending on the collection instrument.

Respondent's Obligation: Voluntary or Required to Obtain or Retain Benefits depending on the collection instrument.

Legal Authority: The America COMPETES Act, Public Law 110–69, Section 4002; The Consolidated Appropriations Act, 2005, Public Law 108–447, Section 214.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0568.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–07790 Filed 4–21–26; 8:45 am]

BILLING CODE 3510–12–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; Secrecy and License To Export

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 (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comments on the information collection renewal of 0651–0034, which helps the USPTO assess the impact of its information collection requirements and minimize the reporting burden to the public. Public comments were previously requested via the **Federal Register** on November 19, 2025 during a 60-day comment period (90 FR 52041). This notice allows for an additional 30 days for public comments.

DATES: To ensure consideration, you must submit comments regarding this information collection on or before May 22, 2026.

ADDRESSES: Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website, *http://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number, 0651–0034. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

- This information collection request may be viewed at *http://www.reginfo.gov.* Follow the instructions to view the Department of Commerce, USPTO information collections currently under review by OMB.
- *Email: InformationCollection@uspto.gov.* Include ''0651–0034 information request'' in the subject line of the message.
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Telephone:* Jeffrey R. West, Senior Legal Advisor, 571–272–2226.

SUPPLEMENTARY INFORMATION:

Title: Secrecy and License to Export.

OMB Control Number: 0651–0034.

Abstract: In the interest of national security, patent laws and regulations place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries.

This information collection includes the information needed by the USPTO to review the various types of petitions regarding secrecy orders and foreign filing licenses. This collection of information is required by 35 U.S.C.

181–186 and is administered by the USPTO through 37 CFR 5.1–5.5, 5.11–5.15, 5.18–5.20, and 5.25.

Secrecy Orders

Whenever the publication or disclosure of an invention by the publication of an application or by the granting of a patent is, in the opinion of the head of an interested Government agency, determined to be detrimental to national security, the USPTO Commissioner for Patents must issue a secrecy order and withhold the publication of a patent application and the grant of a patent for such period as the national interest requires. A patent will not be issued on the application, nor will the application be published, as long as the secrecy order is in force. If a secrecy order is applied to an international application, the application will not be forwarded to the International Bureau as long as the secrecy order is in effect.

The Commissioner for Patents can issue three types of secrecy orders, each of a different scope. The first type, Secrecy Order and Permit for Foreign Filing in Certain Countries, is intended to permit the widest utilization of the technical data in the patent application while still controlling any publication or disclosure that would result in an unlawful exportation. The second type, the Secrecy Order and Permit for Disclosing Classified Information, is to treat classified technical data presented in a patent application in the same manner as any other classified material. The third type of secrecy order, the General Secrecy Order, is used where the other types of orders do not apply, including orders issued by direction of agencies other than the Department of Defense.

Under the provision of 35 U.S.C. 181, a secrecy order remains in effect for a period of one year from its date of issuance. A secrecy order may be renewed for additional periods of not more than one year upon notice by a government agency that the national interest continues to so require it. The applicant is notified of the renewal.

When the USPTO places a secrecy order on a patent application, the regulations authorize the applicant to petition the USPTO for permits to allow disclosure, modification, or rescission of the secrecy order, or to obtain a general or group permit. In each of these circumstances, the petition is forwarded to the appropriate defense agency for decision. Also, the Commissioner for Patents may rescind any order upon notification by the heads of the departments and the chief officers of the agencies who caused the order to be issued that the disclosure of the invention is no longer deemed detrimental to national security.

Unless expressly ordered otherwise, action on the application and prosecution by the applicant will proceed during the time the application is under secrecy order to a specific point as indicated under 37 CFR 5.3. See the Manual of Patent Examining Procedure (MPEP) Section 130 (9th ed., rev. 01.2024, November 2024). For example, prosecution of a national application under a secrecy order may proceed only to the point where it is found to be in condition for allowance. See 37 CFR 5.3(c). Prosecution of international applications under a secrecy order, on the other hand, will proceed only to the point before record and search copies would be transmitted to the international authorities or the applicant. See 37 CFR 5.3(d). National applications under secrecy order that come to a final rejection must be appealed or otherwise prosecuted to avoid abandonment. Appeals in such cases must be completed by the applicant, but unless specifically indicated by the Commissioner of Patents, will not be set for hearing until the secrecy order is removed.

Foreign Filing License

This information collection also covers information gathered with respect to foreign filing licenses. The filing of a patent application is considered a request for a foreign filing license. However, in some instances an applicant may need a license for filing patent applications in foreign countries prior to a filing in the USPTO or sooner than the anticipated licensing of a pending patent application.

For such circumstances, this information collection covers petitions for a foreign filing license either with or without a corresponding United States application. In addition, this information collection covers petitions to change the scope of a license and petitions for a retroactive license for instances when a patent application is filed through error in a foreign country without the appropriate filing license.

Forms: None.

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: 7,318 respondents.

Estimated Number of Annual Responses: 7,318 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 4 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed item to the USPTO.

Estimated Total Annual Respondent Burden Hours: 4,207 hours.

Estimated Total Annual Respondent Non-hourly Cost Burden: $1,623,052.

Since the publication of the 60-day notice, the USPTO has updated the postage costs rates associated with this information collection. This results in an increase of $76 in non-hourly burden, for a new estimated total annual respondent cost burden of $1,623,052.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2026–07831 Filed 4–21–26; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2026–FSA–0727]

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the U.S. Department of Education (Department) publishes this notice of a modified system of records entitled ''Aid Awareness and Application Processing'' (18–11–21). This system maintains information necessary for the Department to process applications for Federal student financial program assistance under title IV of the Higher Education Act of 1965, as amended (HEA); to perform the responsibilities of the Federal Student Aid (FSA) Ombudsman; to provide Federal student loan repayment relief including under the borrower defense to repayment regulations; to notify aid applicants and aid recipients of aid program opportunities and updates under title IV of the HEA via digital communication channels; and to maintain the StudentAid.gov website as the front end for assisting customers with all of their Federal student financial aid needs throughout the student aid lifecycle. The Department's Digital and Customer Care (DCC) Information Technology (IT) system collects the electronic records

maintained in the Aid Awareness and Application Processing (AAAP) system.

DATES: Submit your comments on this modified system of records notice on or before May 22, 2026.

This modified system of records notice will become applicable upon publication in the **Federal Register** on April 22, 2026. The Department will publish any changes to the modified system of records notice resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at regulations.gov. However, if you require an accommodation or cannot otherwise submit your comments via regulations.gov, please contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**. 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 comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ''.

Privacy Note: The Department's policy is generally to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, the Department will provide an 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 this notice. If you want to schedule an appointment for this type of accommodation or aid, please contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Rachel Coghlan, Central Processing System (CPS) System Manager, Student Experience and Aid Delivery, Federal Student Aid (FSA), U.S. Department of Education, 400 Maryland Ave. SW, Washington, DC 20202–0001. Telephone: (202) 377–3205. Email: *Rachel.Coghlan@ed.gov.*

Corey Johnson, Free Application for Federal Student Aid (FAFSA®) Processing System (FPS) Information System Owner, Federal Student Aid, U.S. Department of Education, 400 Maryland Ave. SW, Washington, DC 20202–0001. Telephone: (202) 377–3898. Email: *Corey.Johnson@ed.gov.*

Bonnie Latreille, Ombudsman/Director, Ombudsman Group, Federal Student Aid (FSA), U.S. Department of Education, 400 Maryland Ave. SW, Washington, DC 20202–0001. Telephone: (202) 377–3726. Email: *Bonnie.J.Latreille@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), the Department proposes to modify the system of records notice entitled ''Aid Awareness and Application Processing'' (18–11–21), which was last published in full in the **Federal Register** on November 07, 2024 (89 FR 88240).

The Department is modifying the section entitled ''PURPOSE(S) OF THE SYSTEM'' relating to the Department's administration and oversight of title IV, HEA programs as follows:

(i) Purpose (10) has been updated to identify, verify, and maintain records for ''legacy'' borrowers, defined as those who are enrolled in a program of study at an institution as of June 30, 2026 and have borrowed (or parent of a dependent undergraduate student has borrowed) a Direct Loan for such program of study prior to July 1, 2026 during the expected time to credential. This process ensures continued eligibility under pre-2026 provisions for the lesser of a transitional period not to exceed three academic years or the difference between the published program length minus the period the student has already completed in the program of study. The legacy provision no longer applies if the student completes the program of study, ceases enrollment in such program of study unless the student has taken an approved leave of absence, or ceases enrollment at the institution the student was enrolled at as of June 30, 2026. A change in an undergraduate student's major does not affect this legacy provision.;

(ii) New Purpose (21) is added to support the implementation of provisions authorizing financial aid administrators to maintain records and set lower annual loan limits for students or parent borrowers of PLUS loans. This modification allows the system to record and apply these reduced limits, ensuring they are maintained and applied consistently to all students within a specific program of study. Specifically, to track and enforce revised aggregate loan limits, including tiered unsubsidized caps for graduate and professional students, aggregate loan limit for Parent PLUS borrowers per dependent, and non-PLUS lifetime maximum aggregate loan limit.

The Department is modifying the section entitled ''CATEGORIES OF RECORDS IN THE SYSTEM'' as follows:

(i) Category (11) has been updated to include records of aid applicants collected during the FAFSA completion process to help identify and prevent potential fraud. These records include name, email address, phone number, IP address, date of birth, photograph, and identification documents.

(ii) New Category (15) has been added to account for records of legacy borrowers of Parent PLUS loans with lower annual loan limits per dependent student. Specifically, records that track revised aggregate loan limits, including tiered unsubsidized caps for graduate and professional students, aggregate loan limit for Parent PLUS borrowers per dependent, and non-PLUS lifetime maximum aggregate loan limit.

Accessible Format: On request to any of the program contact persons 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, 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 documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

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.

Richard Lucas,

Acting Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the Acting Chief Operating Officer, Federal Student Aid (FSA) of the U.S. Department of Education (Department) publishes a modified system of records notice to read as follows:

SYSTEM NAME AND NUMBER:

Aid Awareness and Application Processing (18–11–21).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Education, 400 Maryland Ave. SW, Washington, DC 20202–0001.

The following locations are for the Central Processing System (CPS) until CPS was decommissioned on September 24, 2025:

Lee's Summit Federal Records Center, National Archives and Records Administration (NARA), 200 Space Center Drive, Lee's Summit, MO 6464–1182 (*Note:* This is where paper applications are stored);

General Dynamics Information Technology (GDIT) Image and Data Capture (IDC) Center, 1084 South Laurel Road, Building 1, London, KY 40744 (*Note:* The IDC scans paper financial aid documents and correspondence, key-enters the data and electronically transmits the data and related images to the CPS for processing);

Next Generation Data Center (NGDC), 250 Burlington Drive, Clarksville, VA 23927 (*Note:* NGDC hosts the infrastructure that supports CPS applications including backend application processing); and

CPS Print Facility, 327 Columbia Pike, Rensselaer, NY 12144 (*Note:* This facility handles print operations).

The following locations are for the Free Application for Federal Student Aid (FAFSA®) Processing System (FPS):

Perspecta/Peraton, 15052 Conference Center Drive, Chantilly, VA 20151 (*Note:* Perspecta supports the FSA-provided development, security, and operations (DevSecOps) toolchain configuration; coordinates environment building; and supports technical operations activities and application modernization);

Information Capture Solutions (ICS), 25 Air Park Drive, London, KY 40744 (*Note:* ICS provides image and data capture, print/mailing operational services, and builds and operates the IDC);

iWorks, 1889 Preston White Drive, Suite 100, Reston, VA 20191 (*Note:* iWorks provides quality control managers (key personnel); develops and updates the quality control plan; oversees/validates service level measures; supports internal Capability Maturity Model Integration (CMMI) audits; supports Project Management Office (PMO) activities; and provides application development support using Agile methodologies);

Red Cedar Consultancy, LLC, 161 Fort Evans Road NE, Suite 200, Leesburg, VA 20176 (*Note:* Red Cedar provides application development support using Agile methodologies);

Windsor Group, LLC, 6820 Wisconsin Avenue, Unit 4004, Chevy Chase, MD 20815 (*Note:* Windsor Group provides quality resources in system security, database administration, and technical writing); and

Jazz Solutions, LLC, 20745 Williamsport Place, Suite 320, Ashburn, VA 20147 (*Note:* Jazz Solutions provides application development support using Agile methodologies and supports application programming interface (API) management solutions, including designing, building, and operating services).

The following locations are for the Digital and Customer Care (DCC) Information Technology (IT) system (*Note:* The Specialty Processing Subsystem (SPS) is part of the DCC IT system):

Salesforce Government Cloud, 415 Mission Street, 3rd Floor, San Francisco, CA 94105 (*Note:* The system is accessible via the internet to different categories of users, including Department personnel, customers, and designated agents of the Department at any location where they have internet access. This site is the location where customer interactions with contact center support via all inbound and outbound channels (phone, email, chat, webform, email, customer satisfaction survey, fax, physical mail, and controlled correspondence) and customer-provided feedback (complaints, suspicious activities, positive feedback, and dispute cases) are tracked and worked by contractors and the Department. This site also contains workflow management for processing tasks including, but not limited to: credit appeals, borrower defense to repayment, commingled Social Security numbers (SSNs), and archived document retrieval in the Common Origination and Disbursement (COD) system, and the FAFSA special correction application process. This site stores customer-provided documentation to support the interactions and processing tasks, as needed. The Department also uses this site for determining employer eligibility to support Public Service Loan Forgiveness/Temporary Expanded Public Service Loan Forgiveness (PSLF/TEPSLF), and Office of Inspector General (OIG) fraud referrals);

Amazon Web Services (AWS) GovCloud (East/West), 410 Terry Avenue, North Seattle, WA 98109–5210 (*Note:* The DCC IT system is hosted at this location. This site is the location where the Shado (Dynamo) application collects, processes, stores, and makes available user activity events from across the DCC IT system to provide a complete view of the customer to the Department and its contractors. This site is also the location where the Adobe Marketing Campaign application delivers strategic and real-time personalized email and short message service (SMS) communications); and

Contact Center Fulfillment Center (Senture facility), 4255 W Highway 90, Monticello, KY 42633 (*Note:* This facility handles mail fulfillment and imaging operations).

The following 10 listings are the locations of the Aid Awareness and Application Processing Customer Contact Centers: Jacksonville Contact Center, One Imeson Park Boulevard, Jacksonville, FL 32118; Knoxville, TN Servicing Center, 120 N Seven Oaks Drive, Knoxville, TN 37922; 1600 Osgood Street, Suite 2–120, North Andover, MA 01845; 11499 Chester Road, Suite 101, Sharonville, OH 45246; 100 Domain Drive, Suite 200, Exeter, NH 03833; 221 N Kansas Street, Suite 700, El Paso, TX 79901; 4255 W Highway 90, Monticello, KY 42633; 555 Vandiver Drive, Columbia, MO 65202; 633 Spirit Drive, Chesterfield, MO 63005; and 820 First Street NE, Washington, DC 20002.

SYSTEM MANAGER(S):

CPS—System Manager, Student Experience and Aid Delivery, FSA, U.S. Department of Education, Union Center Plaza (UCP), 830 First Street NE, Washington, DC 20202–5454.

FPS—Information System Owner, Technology Directorate, Federal Student Aid, U.S. Department of Education, UCP, 830 First Street NE, Washington, DC 20202–5454.

Ombudsman, FSA, U.S. Department of Education, UCP, 830 First Street NE, Washington, DC 20202–5454.

DCC/SPS IT system—Information System Owner, Technology Directorate, Federal Student Aid, U.S. Department of

Education, UCP, 830 First Street NE, Washington, DC 20202–5454.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authorities under which the system is maintained includes section 455(a) of title IV of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070 *et seq.*); 20 U.S.C. 1087e(a); 20 U.S.C. 1018(f); and the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the Federal student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency). The collection of SSNs of individuals, and parents of dependent students, who apply for or receive Federal student financial assistance under programs authorized by title IV of the HEA is also authorized by 31 U.S.C. 7701 and Executive Order 9397, as amended by Executive Order 13478 (November 18, 2008).

PURPOSE(S) OF THE SYSTEM:

The information contained in this system is maintained for the following purposes related to applying for Federal student financial assistance and administering title IV, HEA programs: (*Note:* Different parts of the HEA use the terms ''discharge,'' ''cancellation,'' or ''forgiveness'' to describe when a borrower's loan amount is reduced in whole or in part by the Department. To reduce complexity, this system of records notice uses the term ''discharge'' to include all three terms (''discharge,'' ''cancellation,'' and ''forgiveness''), including but not limited to discharges of student loans made pursuant to specific benefit programs. At times, the system of records notice may refer by name to a specific benefit program, such as the ''Public Service Loan Forgiveness'' program; such specific references are not intended to exclude any such program benefits from more general references to loan discharges.)

(1) Assisting with the determination, correction, processing, tracking, and reporting of program eligibility and benefits for the Federal student financial assistance programs authorized by title IV of the HEA, including, but not limited to, discharge of eligible loans under title IV, HEA programs;

(2) Making a loan or grant;

(3) Verifying the identity of the applicant for Federal financial assistance under title IV of the HEA, the spouse of a married applicant, the parent(s) of a dependent applicant, and, until CPS was decommissioned after September 24, 2025, an individual who applies for an FSA ID; and verifying the accuracy of the information in this system;

(4) Reporting the results of the need analysis and Federal Pell Grant eligibility determination to applicants, institutions of higher education (IHEs), third-party servicers, State agencies designated by the applicant, and Departmental and investigative components;

(5) Reporting the results of duly authorized matching programs between the Department and other Federal agencies and between the Department and State or local governments, or agencies thereof, to applicants, IHEs, third-party servicers, State agencies designated by the applicant, and Departmental and investigative components where the Department is required by law to do so or where it would be essential to the conduct of the matching program to report, such as for the imposition of criminal, civil, or administrative sanctions;

(6) Enforcing the terms and conditions of a title IV, HEA loan or grant;

(7) Servicing and collecting a delinquent title IV, HEA loan or grant;

(8) Initiating enforcement action against individuals, IHEs, or other entities involved in program fraud, abuse, or noncompliance;

(9) Locating a debtor or recipient of a grant overpayment;

(10) Maintaining a record of the data supplied by those requesting title IV, HEA program assistance;

(11) Ensuring compliance with and enforcing title IV, HEA programmatic requirements and various consumer protection laws;

(12) Acting as a repository and source for information necessary to fulfill the requirements of title IV of the HEA;

(13) Evaluating title IV, HEA program effectiveness;

(14) Enabling IHEs and State grant agencies designated by the applicant to review and analyze the financial aid data of their applicant population;

(15) Enabling IHEs and State grant agencies to assist applicants with the completion of the application for the Federal student financial assistance programs authorized by title IV of the HEA;

(16) Assisting State agencies, eligible IHEs, and other entities that award aid to students and that are designated by the Secretary of Education with making eligibility determinations for the award of aid and with administering these awards;

(17) Promoting and encouraging applications for title IV, HEA program assistance, State assistance, and aid awarded by eligible IHEs or by other entities designated by the Secretary of Education; and

(18) Enabling IHEs and State higher education agencies to provide aid applicants and aid recipients with information about certain Federal means-tested benefits for which they may qualify and to enable IHEs and State higher education agencies, with the explicit written consent of aid applicants or aid recipients, and parents of dependent aid applicants or aid recipients and spouses of married aid applicants or aid recipients if necessary, to share non-FTI FAFSA information directly with Federal, State, or local government agencies or tribal organizations to assist such applicants or recipients, in applying for or receiving Federal, State, or local government assistance, or tribal assistance for any component of the applicants' or recipients' cost of attendances that may include financial assistance or non-monetary assistance.

The information contained in this system is also maintained for the following purposes related to managing customer engagement:

(1) Carrying out the duties and responsibilities of the FSA Ombudsman, including investigating and resolving complaints, inquiries, and requests for assistance, updating borrower account records, correcting errors, analyzing complaint trends, and making appropriate recommendations pursuant to 20 U.S.C. 1018(f);

(2) Carrying out the duties and responsibilities of the Department to provide Federal student loan repayment relief under Federal law;

(3) Verifying the identity of FSA customers;

(4) Recording complaints, suspicious activities, positive feedback, and comments as provided by customer interactions with contact center support via inbound and outbound channels (phone, chat, webform, email, customer satisfaction survey, fax, physical mail, social media platforms, digital engagement platforms, and controlled correspondence);

(5) Tracking individual cases, including complaints, borrower defense submissions, general inquiries, and chat sessions, through final resolution, reporting trends, and analyzing the data to recommend improvements in Federal student financial assistance programs;

(6) Assisting in the informal resolution of disputes submitted by aid applicants or aid recipients about issues

related to title IV, HEA program assistance;

(7) Carrying out the duties and responsibilities of the Department under the borrower defense to repayment regulations at 34 CFR 685.206 and 685.222 and 34 CFR part 685, subpart D, including receiving, reviewing, evaluating, and processing requests for relief under the borrower defense to repayment regulations; and

(8) Initiating proceedings, where appropriate, to recover liabilities from an IHE for losses incurred as a result of the act or omission of the IHE participating in the Federal student loan programs.

The information contained in this system is also maintained for the following purposes related to assisting aid applicants and recipients with Federal student financial assistance programs authorized by title IV of the HEA, and managing customer relationships for marketing and improving customer service:

(1) Determining employer qualification for borrowers to receive a discharge under the Public Service Loan Forgiveness (PSLF)/Temporary Expanded Public Service Loan Forgiveness (TEPSLF) Program;

(2) Collecting, processing, storing, and making available user activity events and user-submitted documentation from across the DCC IT system to provide a complete view of the customer to the Department and its contractors;

(3) Sending aid applicants and aid recipients strategic and real-time, personalized communications via email, and SMS ''text messages'' via mobile phone communications to inform them of title IV, HEA aid marketing campaigns (such as encouraging completion of their FAFSA), and sending transactional communication to customers (such as confirmation emails when a user completes an action);

(4) Measuring customer satisfaction and analyzing results;

(5) Promoting and encouraging the repayment of title IV, HEA program loans in a timely manner; and

(6) Collecting, processing, storing, and promoting the completion of PSLF/TEPSLF applications, Teacher Education Assistance for College and Higher Education (TEACH) Grant certifications, and Total and Permanent Disability (TPD) loan requests across the DCC IT system under the *StudentAid.gov* website to provide automated processing flows for borrowers.

The information in this system is also maintained for the following purposes relating to the Department's administration and oversight of title IV, HEA programs:

(1) To support the investigation of possible fraud and abuse and to detect and prevent fraud and abuse in the title IV, HEA Federal grant and loan programs;

(2) To support compliance with title IV, HEA statutory and regulatory requirements;

(3) To provide an aid recipient's financial aid history, including information about the recipient's title IV, HEA loan defaults, title IV, HEA aid receipt, and title IV, HEA grant program overpayments;

(4) To facilitate receiving and correcting application data, processing Federal Pell Grants and Direct Loans, and reporting Federal Perkins Loan Program expenditures to the Department's processing and reporting systems;

(5) To support pre-claims/supplemental pre-claims assistance;

(6) To assist in locating holders of title IV, HEA loan(s);

(7) To assist in assessing the administration of title IV, HEA program funds by guaranty agencies, lenders and loan holders, IHEs, and third-party servicers;

(8) To initiate or support a limitation, suspension, or termination action, an emergency action, or a debarment or suspension action;

(9) To inform the parent(s) of a dependent applicant of information about the parent(s), or the spouse of a married applicant of information about the spouse, in an application for title IV, HEA funds;

(10) To disclose applicant records to the parent(s) of a dependent applicant applying for a PLUS loan (to be used on behalf of a student), to identify the student as the correct beneficiary of the PLUS loan funds, to allow the processing of the PLUS loan application and promissory note, and to identify, verify, and maintain records for ''legacy'' borrowers, defined as those who are enrolled in a program of study at an institution as of June 30, 2026 and have borrowed (or parent of a dependent undergraduate student has borrowed) a Direct Loan for such program of study prior to July 1, 2026 during the expected time to credential. This process ensures continued eligibility under pre-2026 provisions for the lesser of a transitional period not to exceed three academic years or the difference between the published program length minus the period the student has already completed in the program of study. The legacy provision no longer applies if the student completes the program of study, ceases enrollment in such program of study unless the student has taken an approved leave of absence, or ceases enrollment at the institution the student was enrolled at as of June 30, 2026. A change in an undergraduate student's major does not affect this legacy provision.

(11) To expedite the application process;

(12) To enable an applicant, at the applicant's written request, to obtain income information about the applicant from the Internal Revenue Service (IRS) using the Data Retrieval Tool, until CPS was decommissioned after September 24, 2025;

(13) To identify, prevent, reduce, and recoup improper payments, prevent fraud, and conduct at-risk campaigns, including protecting customers from Third-Party Debt Relief firms;

(14) To help Federal, State, Tribal, and local government entities exercise their supervisory and administrative powers (including, but not limited to licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, lenders and loan holders, and third-party servicers) or to respond to individual aid applicant or recipient complaints submitted regarding the practices or processes of the Department and/or the Department's contractors, or to update information or correct errors contained in Department records regarding the aid applicant's or recipient's title IV, HEA program funds;

(15) To provide eligible applicants for title IV, HEA aid, and when necessary, the spouse or parents of an applicant, with information about certain Federal means-tested benefits and services for which they may qualify;

(16) To collect, track, and process Office of Inspector General (OIG) fraud referrals;

(17) To support research, analysis, and development, and the implementation and evaluation of educational policies in relation to title IV, HEA programs;

(18) To conduct testing, analysis, or take other administrative actions needed to prepare for or execute programs under title IV of the HEA;

(19) To support the calculation of the earnings premium measure related to Financial Value Transparency and Gainful Employment (FVT/GE) regulations by using the State of residence listed as part of the permanent address provided by program graduates in their earliest FAFSA submission to support the establishment of an earnings threshold for the program; and

(20) To track the qualifying payments for PSLF/TEPSLF, number of years

taught for TEACH Grant certifications, and the TPD discharge eligibility match information from the U.S. Social Security Administration (SSA) and U.S. Department of Veterans Affairs (VA).

(21) To support the implementation of provisions authorizing financial aid administrators to maintain records and set lower annual loan limits for students or parent borrowers of PLUS loans. This modification allows the system to record and apply these reduced limits, ensuring they are maintained and applied consistently to all students within a specific program of study. Specifically, to track and enforce revised aggregate loan limits, including tiered unsubsidized caps for graduate and professional students, gross lifetime limit for Parent PLUS borrowers per dependent, and universal non-PLUS lifetime maximum.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains records on individuals who are, were, or may be participants in any of the Federal student financial assistance programs under title IV of the HEA who request assistance from the Department, directly or through State requestors and legal assistance organizations (''third-party requestors'') who may request that the Secretary of Education form a group of Federal student loan borrowers for borrower defense relief.

This system also maintains records on student and parent applicants (and their third-party preparers), as well as the spouse of a married applicant and the parent(s) of a dependent applicant, who apply for Federal student financial assistance under one of the programs authorized under title IV of the HEA, including, but not limited to the: (1) Federal Pell Grant Program; (2) Federal Perkins Loans Program; (3) Academic Competitiveness Grant (ACG) Program; (4) National Science and Mathematics Access to Retain Talent (National SMART) Grant Program; (5) TEACH Grant Program; (6) Iraq and Afghanistan Service Grant (IASG) Program; (7) Direct Loan Program, which includes Federal Direct Stafford/Ford Loans, Federal Direct Unsubsidized Stafford/Ford Loans, Federal Direct PLUS Loans, and Federal Direct Consolidation Loans; (8) Federal Family Education Loan (FFEL) Program; and (9) Federal Insured Student Loan (FISL) Program.

This system also maintains records on individuals who apply for an FSA ID in the Department's Person Authentication Service (PAS) system because the Department uses CPS, which maintains records that are part of this system, as a pass-through to send these individuals' records from the PAS system to the SSA for computer matching in order to assist the Department in verifying their identities. This pass-through will be terminated when CPS was decommissioned after September 24, 2025.

This system also maintains records on individuals who may be eligible for benefits related to their title IV, HEA obligations (including, but not limited to, TPD discharges, PSLF/TEPSLF, and other Federal and State loan repayment or discharge benefits) obtained from matching programs or other information exchanges with other Federal and State agencies, and other entities.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains records that contain the following information:

(1) Information provided by applicants for title IV, HEA program assistance on an incomplete or completed FAFSA, including, but not limited to, the applicant's name, address, State of residence, SSN, DOB, telephone number, driver's license number (which will not be collected on the FAFSA for award year 2024–2025 and onward, and will not be collected by FPS), email address, citizenship status, marital status, legal residence, status as a veteran, educational status, and financial information (including asset and income information). (*Note:* The Federal Tax Information (FTI) that the Department obtains directly from the IRS under the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act, Public Law 116–91, is maintained in a separate system of records entitled ''FUTURE Act System (FAS)'' (18–11–23), the notice for which was published in the **Federal Register** on June 29, 2023 (88 FR 42220));

(2) Information provided about the parent(s) of a dependent applicant, including, but not limited to, the parent's highest level of schooling completed (which will not be collected on the FAFSA starting with award year 2024–2025 and will not be collected by FPS; after which point the Department will instead collect on the FAFSA the parent's college attendance status), marital status, SSN, last name and first initial, DOB, email address, number of people in the household supported by the parent, and asset and income information;

(3) Information about the spouse of a married applicant including, but not limited to: the spouse's name, address, SSN, DOB, telephone number, email address, citizenship status, marital status, legal residence, status as a veteran, and financial information (including asset and income information that is needed for CPS processing until CPS was decommissioned after September 24, 2025);

(4) Information provided by IHEs on behalf of student and parent applicants, including, but not limited to, verification results, dependency overrides, and resolution of comment codes or reject codes;

(5) Information calculated by CPS through the 2023–24 award year on the applicant's expected family contribution (EFC);

(6) Information on the applicant's Institutional Student Information Record (ISIR), and Student Aid Report (SAR) or the renamed FAFSA Submission Summary (FSS). The Department uses the ISIR and SAR or FSS to report, among other things, the EFC, or the Student Aid Index (SAI) results that are calculated during FPS processing, to IHEs, State grant agencies, and applicants. The EFC or SAI is available to, and used by, IHEs to determine the applicant's eligibility for Federal and institutional program assistance and the amount of assistance, and State grant agencies to determine the applicant's eligibility for State grants and the amount of grant assistance. The Department notifies the applicant of the results of their application via the SAR or FSS. The Department provides the IHEs identified on the applicant's FAFSA with the ISIR, which indicates whether there are discrepant or insufficient information, school adjustments, or CPS assumptions that affect the processing of the FAFSA. Other information in the system includes, but is not limited to: Secondary EFC (an EFC that is calculated from the full EFC formula and is printed in the Financial Aid Administrator's (FAA) Information section of the ISIR), dependency status, Federal Pell Grant eligibility, duplicate SSN (an indicator that is set to alert ISIR recipients that two applications were processed with the same SSN, Incarcerated Student Indicator Flag (an indicator that will be used to identify an aid applicant as an incarcerated student), selection for verification, Simplified Needs Test (SNT) or Automatic Zero EFC (used for extremely low family income), CPS and FPS processing comments, reject codes (explanation for applicant's FAFSA not computing EFC), assumptions made with regard to the student's information due to incomplete or inconsistent FAFSA information, FAA adjustments including dependency status overrides, and CPS and FPS record processing information (application receipt date, transaction number, transaction process

date, SAR Serial Number, Compute Number, Data Release Number (DRN), a four-digit number assigned to each application), National Student Loan Database System (NSLDS) match results, a bar code, and transaction source);

(7) Information that identifies aid applicant or aid recipient complaints, positive feedback, reports of suspicious activity, requests for assistance, requests for borrower defense relief, requests for PSLF/TEPSLF reconsideration, or other inquiries. Such information includes, but is not limited to: written documentation of an aid applicant or aid recipient's complaint, request for assistance, request for relief under the borrower defense to repayment regulations, case tracking number, case appeal identifier, or other comment or inquiry; and information pertaining to the aid recipient's or the aid recipient's parent's student financial assistance program account(s) under title IV of the HEA, such as the aid recipient's and the aid recipient's parent's names and Federal Student Aid IDs (FSA IDs). Information may include the name, address, and phone numbers of the aid recipient's counsel or representative, IHE(s), lender(s), secondary holder(s) or lender(s), guaranty agency(ies), servicer(s), private collection agency(ies), and third-party requestor(s), as this term is defined in 34 CFR 685.401(a), if applicable, and may contain other loan-level information;

(8) Information provided and generated through customer interactions with contact center support via inbound and outbound channels (phone, chat, webform, email, customer satisfaction survey, fax, physical mail, social media platforms, digital engagement platforms, and controlled correspondence). Information includes, but is not limited to: chat transcripts, email communications, audio recordings of customer calls, and screen recordings of contact center support desktop during customer interactions;

(9) Loan discharge eligibility and verification information for use in determining whether a title IV, HEA debt/loan qualifies for discharge including, but not limited to, information relating to TPD (such as medical records submitted to support an application for discharge by reason of disability) and PSLF/TEPSLF (such as employment records and qualifying payment counts);

(10) Aid recipient's employer information to determine employer qualification for borrowers to receive discharge under PSLF/TEPSLF; OIG fraud referral information; and customer support interactions including phone, chat, webform, email, fax, physical mail, and controlled correspondence;

(11) Information for collecting, processing, and storing user activity events from across the DCC IT system: campaign details, delivery details, email/SMS sent timestamp, transaction ID, Federal Account Number (FAN) ID, activity details, activity date, pages/URL accessed, user IP address, user-submitted materials, user request details, and FAFSA completion activity to identify and prevent potential fraud, including name, email address, phone number, IP address, date of birth, photograph, and identification documents;

(12) Information needed to aid in the delivery of strategic and real-time communication to customers, including, but not limited to, first name, last name, DOB, state of residence, email, phone number, mobile device ID, device data, FAFSA transaction data, uniform resource locator (URL), computer-related data, and customer communication preferences and user activity (open or clicks) for email and SMS communications;

(13) Information provided on third-party preparers, including, but not limited to, first name, last name, SSN or employer identification number, affiliation, address or employer's address, signature, and signature date; and

(14) TEACH Grant recipient school verification information (including, but not limited to, authorizing school official name, title, phone number, email address, and digital signature (including time and date stamp)) to complete and process TEACH Grant certification applications.

(15) Information needed to identify, verify, and maintain records for ''legacy'' borrowers, defined as those who are enrolled in a program of study at an institution as of June 30, 2026 and have borrowed (or parent of a dependent undergraduate student has borrowed) a Direct Loan for such program of study prior to July 1, 2026 during the expected time to credential. This process ensures continued eligibility under pre-2026 provisions for the lesser of a transitional period not to exceed three academic years or the difference between the published program length minus the period the student has already completed in the program of study. The legacy provision no longer applies if the student completes the program of study, ceases enrollment in such program of study unless the student has taken an approved leave of absence, or ceases enrollment at the institution the student was enrolled at as of June 30, 2026. A change in an undergraduate student's major does not affect this legacy provision.

Note: This system of records also maintains information that is collected in this system and stored in other systems of records. The following information about individuals who apply for or receive a Federal grant or loan under one of the programs authorized under title IV of the HEA is collected in this system and stored in the ''Common Origination and Disbursement (COD) System'' (18–11–02) system of records: applicant identifiers including applicant's name, SSN, and DOB; demographic information, including asset and income information (tax return status, adjusted gross income, Internal Revenue Service exemptions, and tax year), and enrollment information; borrower's loan(s) information, including information about recipients of Direct Loans, FFEL Program loans, Perkins Loans, and FISL Program loans, such as the period from the origination of the loan through final payment, and milestones, including, but not limited to, consolidation, discharge, or other final disposition including details such as loan amount, disbursements, balances, loan status, repayment plan and related information, collections, claims, deferments, forbearances, and refunds; information about students receiving Federal grants, including recipients of Pell Grants, ACG, National SMART Grants, TEACH Grants, Iraq and Afghanistan Service Grants, and including grant amounts, grant awards, verification status, lifetime eligibility used (LEU), IASG eligible veteran's dependent indicator, Children of Fallen Heroes Scholarship eligibility indicator, and the Pell Grant additional eligibility indicator; Pell Grant collection status indicator and overpayment collection information; promissory notes, Direct Loan Entrance Counseling forms, Federal Student Loan Exit Counseling forms, PLUS Loan Counseling forms, the Annual School Loan Acknowledgement (ASLA), Direct PLUS Loan Requests, endorser addendums, and counseling in the Direct Loan and TEACH Grant programs, such as the date that applicant completed counseling; PLUS Loan credit report information; applicant identifier information for an electronic request to repay a Direct Loan under an income-driven repayment plan and endorser/spouse information, such as the SSN, date that applicant completed the income-driven repayment plan application, and current loan balances; Electronic Direct Consolidation Loan borrower identifier

information, such as the borrower's SSN, the date that borrower completed the Federal Direct Consolidation Loan application and promissory note, and current loan balances; and credit check decisions, credit appeals, credit appeal identifiers, and credit history information to support the credit appeal process. Further, information from the ''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22) system of records is accessible in the DCC IT system to: allow real-time updates to a customer's identifiers, demographic attributes, address, phone, and email contact details; update customer preference for receiving marketing information via text message; allow the Department and its contractors to identify customers who have completed a customer satisfaction survey; and enable the Department to contact borrowers who have been identified by the Department as potentially having fraudulent activity from a Third-Party Debt Relief (TPDR) company and are at risk of loan default. The following information is modifiable by the customer through *StudentAid.gov*: name, DOB, address, phone number, and email address. The DCC IT system also sends the following information to the EDMAPS system for analytics and reporting: case information including complaints, and OIG fraud referral data. Information includes, but is not limited to: SSN, DOB, address, phone, and email. Additionally, some information from Federal Loan Servicers' systems (covered by the ''Common Services for Borrowers (CSB)'' (18–11–16) system of records) is accessible on *StudentAid.gov* to allow customers to view their payment information, loan information, and to make payments on *StudentAid.gov* as they would on the various Federal Loan Servicer websites. Further, customers can use *StudentAid.gov* to update their contact information and access financial aid history that is stored in the ''National Student Loan Data System (NSLDS)'' (18–11–06) system of records. Additionally, until CPS was decommissioned on September 24, 2025, CPS was also used as a pass-through to send information that is stored in the ''Person Authentication Service (PAS)'' (18–11–12) system of records to SSA for computer matching on individuals who apply for an FSA ID in PAS in order to assist the Department in verifying their identities. The information includes, but is not limited to: SSN, name, and DOB. Finally, beginning with the 2024–25 award year application cycle, the IRS began disclosing directly to the Department FTI for FAFSA application processing and aid eligibility determination; that FTI is not maintained in this system. As of July 30, 2023, the IRS also began disclosing directly to the Department FTI to determine eligibility and monthly payment amounts under Income-Driven Repayment (IDR) plans; that FTI also is not maintained in this system. All FTI that the Department obtains directly from the IRS under the FUTURE Act is maintained within the FTI Module (FTIM) system that is compliant with the IRS Publication 1075, ''Tax Information Security Guidelines for Federal, State and Local Agencies, Safeguards for Protecting Federal Tax Returns and Return Information,'' and that is covered under the Department's system of records notice entitled ''FUTURE Act System (FAS)'' (18–11–23). This system will continue to maintain both historical income information (obtained from the IRS until CPS was decommissioned) and applicant-provided income information (either through a manual FAFSA entry or submission of alternative documentation of income (ADOI) through the IDR process). Any reference to income throughout this system of records notice refers explicitly to income information that the Department did not obtain directly from the IRS but obtained from the applicant or from another source.

RECORD SOURCE CATEGORIES:

Information maintained in this system of records is obtained from applicants, the parents of dependent applicants, third-party preparers, and the spouse of married applicants for title IV, HEA program assistance, on the paper FAFSA, Portable Document Format (PDF) FAFSA, the online FAFSA form, and FAFSA by phone; the authorized employees or representatives of authorized entities (namely, IHEs, institutional third-party servicers, FFEL Program lenders, FFEL Program guaranty agencies, Federal loan servicers, State grant agencies, other Federal agencies, and research agencies); and from other persons or entities from which information is obtained following a disclosure under the routine uses set forth below.

The Financial Aid Administrators at IHEs designated by the applicant and IHEs' third-party servicers may correct the records in this system as a result of documentation provided by the applicant or by a dependent applicant's parents, such as Federal income return(s) (IRS Form 1040), Social Security card(s), and Department of Homeland Security I–551 Permanent Resident Card.

This system maintains information added during CPS processing and FPS processing and information received from other Department systems, including the NSLDS, the COD system, and the FSA Partner Connect system. The results of matching programs with Federal agencies or State or local governments, or agencies thereof, are added to the student's record during CPS processing and FPS processing. The Department's matching programs at the time of the publication of this system of records notice are with the SSA to verify the SSNs of applicants, dependent applicants' parent(s), and spouses of married applicants, as well as of individuals who apply for an FSA ID, and to confirm the U.S. citizenship status of applicants as recorded in SSA records and date of death (if applicable) of applicants, and dependent applicants' parents, pursuant to title IV of the HEA, including section 484(o) (20 U.S.C. 1091(o)); with the Department of Veterans Affairs (VA) to verify the status of applicants who claim to be veterans, pursuant to section 480(c) and (d)(4)) of the HEA (20 U.S.C. 1087vv(c) and (d)((4); with the U.S. Department of Homeland Security (DHS) to confirm the immigration status of applicants for assistance as authorized by section 484(g) of the HEA (20 U.S.C. 1091(g)); and with the U.S. Department of Justice (DOJ) to enforce any requirement imposed at the discretion of a court, pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, Public Law 100–690, as amended by section 1002(d) of the Crime Control Act of 1990, Public Law 101–647 (21 U.S.C. 862), denying Federal benefits under the programs established by title IV of the HEA to any individual convicted of a State or Federal offense for the distribution or possession of a controlled substance. The Department also maintains records on the matching program, with the U.S. Department of Defense (DoD) to identify dependents of U.S. military personnel who died in service in Iraq and Afghanistan after September 11, 2001, to determine if they are eligible for increased amounts of title IV, HEA program assistance, pursuant to sections 420R and 473(b) of the HEA (20 U.S.C. 1070h and 1087mm(b)). The matching program ended September 30, 2024. (*Note:* following implementation of the FAFSA Simplification Act, section 401(c) of the HEA (20 U.S.C. 1070a(c)) replaced sections 420R and 473(b)).

During CPS and FPS processing, the Department's COD system sends information to these systems for students who have received a Federal

Pell Grant. CPS and FPS use this information for verification analysis and for end-of-year reporting. These data elements include, but are not limited to: Verification Selection and Status, Potential Over-award Project (POP) indicator, Institutional Cost of Attendance, Reporting and Attended Campus Pell ID and Enrollment Date, and Federal Pell Grant Program information (Scheduled Federal Pell Grant Award, Origination Award Amount, Total Accepted Disbursement Amount, Number of Disbursements Accepted, Percentage of Eligibility Used At This Attended Campus Institution, and Date of Last Activity from the Origination or Disbursement table).

CPS and FPS also receive applicant information from the Department's NSLDS each time an application is processed or corrected. This process assesses student aid eligibility, updates financial aid history, and ensures compliance with title IV, HEA regulations. Some of this information appears on the applicant's SAR or FSS and ISIR. SPS also receives information from the Department's NSLDS concerning qualifying payment periods for PSLF/TEPSLF and TPD loan discharge eligibility. Title IV, HEA award information is provided to NSLDS from several different sources. Federal Perkins Loan information and Federal Supplemental Educational Opportunity Grant (FSEOG) overpayment information is sent from IHEs or their third-party servicers; the Department's COD system provides Federal Pell Grant and Direct Loan data; and State and guaranty agencies provide information on FFEL loans received from lending institutions participating in the FFEL programs. Financial aid transcript information reported by NSLDS provides aid recipients, IHEs, and third-party servicers with information about the type(s), amount(s), dates, and overpayment status of prior and current title IV, HEA funds the aid recipient has received. FFEL and William D. Ford Federal Direct Student Loan data information reported by NSLDS includes, but is not limited to: (1) Aggregate Loan Data, such as Subsidized, Unsubsidized; Combined Outstanding Principal Balances; Unallocated Consolidated Outstanding Principal Balances, Subsidized, Unsubsidized; Combined Pending Disbursements, Subsidized, Unsubsidized; Combined Totals; and Unallocated Consolidated Totals; (2) Detailed Loan Data, such as Loan Sequence Number; Loan Type Code; Loan Change Flag; Loan Program Code; Current Status Code and Date; Outstanding Principal Balance and Date; Net Loan Amount; Loan Begin and End Dates; Amount and Date of Last Disbursement; Guaranty Agency Code; School Code; Contact Code; and Institution Type and Grade Level; and (3) system flags for Additional Unsubsidized Loan; Capitalized Interest; Defaulted Loan Change; Discharged Loan Change; Loan Satisfactory Repayment Change; Active Bankruptcy Change; Overpayments Change; Aggregate Loan Change; Defaulted Loan; Discharged Loan; Loan Satisfactory Repayment; Active Bankruptcy; Additional Loans; Direct Loan Master Promissory Note; Direct PLUS Loan Master Promissory Note; Subsidized Loan Limit; and the Combined Loan Limit. Federal Perkins Loan information reported by NSLDS includes, but is not limited to: Cumulative and Current Year Disbursement Amounts; flags for Perkins Loan Change; Defaulted Loan; Discharged Loan; Loan Satisfactory Repayment; Active Bankruptcy; Additional Loans; and Perkins Overpayment Flag and Contact (School or Region). Federal Pell Grant payment information reported includes, but is not limited to: Pell Sequence Number; Pell Attended School Code; Pell Transaction Number; Last Update Date; Scheduled Amount; Award Amount; Amount Paid to Date; Percent Scheduled Award Used; Pell Payment EFC; Flags for Pell Verification; and Pell Payment Change. TEACH Grant Program information includes, but is not limited to: TEACH Grant Overpayment Contact; TEACH Grant Overpayment Flag; TEACH Grant Loan Principal Balance; TEACH Grant Total; and TEACH Grant Change Flag. Iraq and Afghanistan Service Grants information includes, but is not limited to, Total Award Amount. The Department obtains from and exchanges information that is included in this system of records with IHEs, third-party servicers, and State agencies. These eligible entities register with the SAIG system to participate in the information exchanges specified for their business processes.

TEACH Grant school verification information is also obtained through DocuSign (a secure digital software used by the Department to obtain and document digital signatures). The process through which the Department obtains such information using DocuSign is as follows:

(1) The grant recipient completes the TEACH Grant application via the ''SPS Helptool,'' which includes the applicable school's name and email address;

(2) The Department sends the information to DocuSign, which then sends an email to the school containing, among other things, a randomly generated code;

(3) If the school does not opt-out, the school logs in to DocuSign with the randomly generated code to ensure the school is accessing the correct recipient certification in DocuSign;

(4) The school certifies the grant recipient's school information, provides the school's authorizing official's name, title, email address, and phone number, and electronically signs the TEACH Grant certification; and

(5) DocuSign returns to the Department the TEACH Grant school verification information and the grant recipient's signature. Once SPS receives both the authorizing school official's and grant recipient's signatures, the grant recipient's certification information is updated.

During FPS processing, this system receives the SAI information from the Department's FAS. The SAI is calculated using FTI that the IRS provides directly to the Department under the FUTURE Act that is not maintained in this system but instead is maintained in the system of records entitled ''FUTURE Act System (FAS)'' (18–11–23).

Additionally, for individuals who request assistance from the Department, directly or through State requestors and legal assistance organizations (''third-party requestors''), as these terms are defined in 34 CFR 685.401(a), who may request that the Secretary of Education form a group of Federal student loan borrowers for borrower defense relief, information is obtained from individuals (*e.g.,* borrowers), their counsel or representatives, or students or their parents (when the individual is a borrower and depending on whether the individual is a parent or student), Federal agencies, State agencies, IHEs, lenders, private collection agencies, guaranty agencies, accreditors, and from other persons or entities from whom or from which data is obtained following a disclosure under routine uses set forth below.

Note: Some customer information that is retrieved from Federal Loan Servicers' IT systems (covered by the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16)) is accessible through *StudentAid.gov* to provide customers with payment and loan information and to enable customers to make loan payments as they would on the various Federal Loan Servicer websites. Information that is collected in this system is stored in and retrieved from the COD system (covered by the system of records notice entitled ''Common

Origination and Disbursement (COD) System'' (18–11–02)) to allow applicants and borrowers to submit Counseling (Entrance, Exit, Financial Awareness Counseling, PLUS, TEACH Grant Initial and Subsequent, TEACH Grant Exit, TEACH Grant Conversion), Master Promissory Note (MPN), Endorser Addendum, TEACH Grant Agreement to Serve or Repay (Agreement), Loan Consolidation, Income-Driven Repayment, PLUS Loan Request, and Annual Student Loan Acknowledgement (ASLA) applications through *StudentAid.gov;* credit check decision, credit appeal, and credit history information to be viewable on StudentAid.gov to support credit appeal processing; users to view and search the PSLF employer database as retrieved from the COD system and provide updates to employers' information; and the PDF version of the PSLF/TEPSLF certification and application form that is generated from the PSLF Help Tool to be accessible. Information is also retrieved from the COD system to provide *StudentAid.gov* functionality for creating and updating customer records. The following information from the EDMAPS system is accessible in the DCC IT system: customer information that is retrieved to allow real-time updates to a customer's identifiers, demographic attributes, address, phone, and email contact details; SMS opt-in/out information for customer communication preferences to opt-in/out of receiving marketing information via text message; information for customers who have been identified by the Department and its contractors as having completed a customer satisfaction survey; information for borrowers who will be contacted by the Department because they have been identified by the Department as having potentially fraudulent activity from a TPDR company; and information on borrowers who have been identified by the Department and its contractors as being at risk for loan default.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information maintained in a record in this system of records under the routine uses listed in this system of records notice without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or pursuant to a computer matching agreement that meets the requirements of the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a).

(1) *Program Disclosures.* The Department may disclose records from the system of records for the following program purposes:

(a) To verify the identity of the applicant, the spouse of a married applicant, and the parent(s) of a dependent applicant, to verify, until CPS was decommissioned after September 24, 2025, the identities of individuals who apply for a FSA ID, to determine the accuracy of the information contained in the record, to support compliance with title IV, HEA statutory and regulatory requirements, and to assist with the determination, correction, processing, tracking, and reporting of program eligibility and benefits, the Department may disclose records to applicants, guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, local, or Tribal agencies;

(b) To provide an applicant's financial aid history to IHEs, guaranty agencies and State agencies, lenders and loan holders participating in the FFEL Program, and third-party servicers, including information about the applicant's title IV, HEA loan defaults, and title IV, HEA grant program overpayments, the Department may disclose records to IHEs, guaranty agencies and State agencies, lenders and loan holders participating in the FFEL Program, and third-party servicers;

(c) To facilitate receiving and correcting application information, processing Federal Pell Grants and Direct Loans, and reporting Federal Perkins Loan Program expenditures to the Department's processing and reporting systems, the Department may disclose records to IHEs, State agencies, and third-party servicers;

(d) To assist loan holders with the collection and servicing of title IV, HEA loans, to support pre-claims/supplemental pre-claims assistance, to assist in locating borrowers, and to assist in locating students who owe grant overpayments, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, local, and Tribal agencies;

(e) To facilitate assessments of title IV, HEA program compliance, the Department may disclose records to guaranty agencies and IHEs, third-party servicers, and Federal, State, and local agencies;

(f) To assist in locating holders of loans, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, and local agencies;

(g) To assist in assessing the administration of title IV, HEA program funds by guaranty agencies, lenders and loan holders in the FFEL Program, IHEs, and third-party servicers, the Department may disclose records to Federal and State agencies;

(h) To enforce the terms of a loan or grant or to assist in the collection of loan or grant overpayments, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, and local agencies;

(i) To assist borrowers in repayment, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, and local agencies;

(j) To determine the relief that is appropriate if the Secretary of Education grants a borrower defense to repayment discharge application, as well as to pursue the recovery of liabilities of such discharges against the IHE, the Department may disclose records to Federal, State, and Tribal agencies, accreditors, IHEs, lenders and loan holders, guaranty agencies, third-party servicers, and private collection agencies;

(k) To initiate legal action against an individual or entity involved in an illegal or unauthorized title IV, HEA program expenditure or activity, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, local, and Tribal agencies;

(l) To initiate or support a limitation, suspension, or termination action, an emergency action, or a debarment or suspension action, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, local, and Tribal agencies;

(m) To investigate and resolve complaints, inquiries, requests for assistance, requests for Federal student loan repayment relief and other relief under the borrower defense to repayment regulations, and to update borrower account records and to correct errors, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, accreditors, IHEs, third-party requestors, third-party servicers,

private collection agencies, and Federal, State, and local agencies;

(n) To inform the parent(s) of a dependent applicant of information about the parent(s), or the spouse of a married applicant of information about the spouse, in an application for title IV, HEA funds, the Department may disclose records to the parent(s), or spouse, respectively;

(o) To identify the student as the correct beneficiary of the PLUS loan funds, and to allow the processing of the PLUS loan application and promissory note, the Department may disclose records to the parent(s) applying for the parent PLUS loan;

(p) To encourage a student to complete a FAFSA that they started but did not submit or to assist a student with the completion of a FAFSA, the Department may disclose a student's FAFSA filing status to a State higher education agency so that the agency may redisclose that information to a local educational agency; a secondary school where the student is or was enrolled; grantees of the Department; American Indian and Alaska Native educational entities; and nonprofit college access organizations with an established relationship with the student;

(q) The Department may disclose records under Sections 483(a)(2)(D)(i), 483(a)(2)(E)(ii), and 483(a)(3)(B)(i) of the HEA (20 U.S.C. 1090(a)(2)(D)(i), 1090(a)(2)(E)(ii), and 1090(a)(3)(B)(i)) from this system to State higher education agencies, eligible IHEs, and scholarship organizations that were designated prior to the date of enactment (December 19, 2019) of the FUTURE Act (Pub. L. 116–91, 133 Stat. 1189) that award and administer aid to students, to determine an applicant's eligibility for aid awarded by State higher education agencies, eligible IHEs, or designated scholarship organizations, and to administer Federal aid or aid awarded by State higher education agencies, eligible IHEs, or designated scholarship organizations;

(r) To help Federal, State, Tribal, and local government entities exercise their supervisory and administrative powers (including, but not limited to licensure, examination, discipline, regulation, or oversight of IHEs, Department contractors, guaranty agencies, lenders and loan holders, and third-party servicers) or to respond to aid applicant or recipient complaints submitted regarding the practices or processes of the Department and/or the Department's contractors, or to update information or correct errors contained in Department records regarding the aid applicant's or recipient's title IV, HEA program funds, the Department may disclose records to governmental entities at the Federal, State, Tribal, and local levels. These records may include all aspects of loans and grants made under title IV of the HEA to permit these governmental entities to verify compliance with applicable debt collection, consumer protection, financial, and other applicable statutory, regulatory, or local requirements. Before making a disclosure to these Federal, State, local, or Tribal governmental entities, the Department will require them to maintain safeguards consistent with the Privacy Act to protect the security and confidentiality of the disclosed records;

(s) The Department may disclose records from an applicant's FAFSA to IHEs and State higher education agencies to provide aid applicants and aid recipients with information about certain Federal means-tested benefits for which they may qualify; and

(t) To detect, prevent, and support the investigation of possible fraud and abuse in the use of title IV, HEA program funds, the Department may disclose records to institutions of higher education, third-party servicers, and Federal, State, local, or Tribal agencies.

Note: Some information that is maintained in this system of records is also maintained in other Department systems of records and, therefore, may be disclosed pursuant to the routine uses published in those other systems' system of records notices, including the ''Common Origination and Disbursement (COD) System'' (18–11–02), ''National Student Loan Data System (NSLDS)'' (18–11–06), ''Common Services for Borrowers (CSB)'' (18–11–16), and ''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22).

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulations, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive Order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed in sub-paragraphs (i) through (v) of this routine use is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in their official capacity;

(iii) Any Department employee in their individual capacity where the U.S. Department of Justice (DOJ) agrees to or has been requested to provide or arrange for representation of the employee;

(iv) Any Department employee in their individual capacity where the Department has agreed to represent the employee; and

(v) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to judicial or administrative litigation or ADR to disclose certain records to an adjudicative body before which the Department is authorized to appear or to a person or entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(4) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or to the Office of Management and Budget (OMB) if the Department determines that disclosure is desirable or necessary in determining whether records are required to be disclosed under the FOIA or the Privacy Act.

(5) *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosing records in this system of records to the contractor's employees, the Department may disclose the

records to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(6) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff when necessary to respond to an inquiry from the member made at the written request of and on behalf of the individual whose records are being disclosed. The member's right to the information is no greater than the right of the individual who requested it.

(7) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency, or to another public agency or professional organization, maintaining civil, criminal, or other relevant enforcement or other pertinent records, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or other public agency or professional organization, or the Department's contractor in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(8) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to an employee grievance, complaint, or disciplinary action involving a present or former employee of the Department, the Department may disclose a record from this system of records in the course of investigation, fact-finding, or adjudication to any party to the grievance, complaint, or action; to the party's counsel or representative; to a witness; or to a designated fact-finder, mediator, or other person designated to resolve issues or decide the matter.

(9) *Labor Organization Disclosure.* The Department may disclose records from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(10) *Disclosure to the DOJ.* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(11) *Research Disclosure.* The Department may disclose records to a researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The Department may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher must agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(12) *Disclosure to the OMB and Congressional Budget Office (CBO) for Federal Credit Reform Act (FCRA) Support.* The Department may disclose records to OMB and CBO as necessary to fulfill FCRA requirements in accordance with 2 U.S.C. 661b.

(13) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(14) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system of records to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach, or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(15) *Disclosure of Information to State and Federal Agencies.* The Department may disclose records from this system of records to (a) a Federal or State agency, its employees, agents (including contractors of its agents), or contractors, or (b) a fiscal or financial agent designated by the U.S. Department of the Treasury, including employees, agents, or contractors of such agent, for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds.

(16) *Disclosure to the National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(17) *Disclosure to Consumer Reporting Agencies.* Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose the following information to a consumer reporting agency regarding a valid, overdue claim of the Department: (a) the name, address, taxpayer identification number, and other information necessary to establish the identity of the individual responsible for the claim; (b) the amount, status, and history of the claim; and (c) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 15 U.S.C. 1681a(f) and 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

System records are paper-based and stored in locked rooms or electronic and stored on secured computer systems and in the cloud.

Fully processed paper applications and supporting paper documentation that were received on or before June 30, 2024, are stored for applicable periods in standard Federal Records Center boxes in locked storage rooms at the contractor facilities in London, Kentucky. Fully processed paper applications and supporting paper documentation requiring retention and received on or after July 1, 2024, will be stored in a private records storage facility, as applicable. The records storage facilities currently utilized are

listed in the ''System Location'' section above.

Digitized paper applicant records, which include optically imaged documents, are stored on DADS (disks) in a virtual disk library, which is also electronic, in the computer facilities controlled by the Next Generation Data Center (NGDC) in Clarksville, VA.

Records that are collected in this system for applicants of Federal grants or loans are stored in the COD system for individuals who apply under one of the programs authorized under title IV of the HEA, including, but not limited to the: (1) Federal Pell Grant Program; (2) Federal Perkins Loans Program; (3) ACG Program; (4) National SMART Grant Program; (5) TEACH Grant Program; (6) Iraq and Afghanistan Service Grant Program; (7) Direct Loan Program, which includes Federal Direct Stafford/Ford Loans, Federal Direct Unsubsidized Stafford/Ford Loans and Federal Direct PLUS Loans and Federal Direct Consolidation Loans; (8) FFEL Program; and (9) FISL Program.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system pertaining to a title IV, HEA loan applicant, borrower, or grant recipient are indexed and retrieved by a single data element, or a combination of the following data elements, to include SSN, name, DOB, the award year in which the applicant applied for title IV, HEA program assistance, and case tracking number. These data elements are also used to retrieve information of title IV, HEA program applicants and recipients of Federal grants or loans from the COD system (applicant information is collected in this system of records and stored in the COD system).

This system also uses a credit appeal identifier to retrieve credit appeal information from the COD system to support the credit appeal process.

Additionally, this system uses a combination of SSN, DOB, and name data elements to retrieve some records from Federal Loan Servicers' systems (covered by the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16)) to allow customers to access their payment information, loan information and to make payments on *StudentAid.gov* as they would on the various Federal Loan Servicer websites.

This system also uses customer identifiers to retrieve customer information data from the EDMAPS system (covered by the system of records notice entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS) System'' (18–11–22)) to allow real-time updates to customer information and communication preferences; and for the Department and its contractors to identify customers who have completed a customer satisfaction survey in the DCC IT system; who may have potential fraudulent activity from a TPDR company; and who may be at risk for loan default.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records maintained in this system are primarily retained and disposed of in accordance with the records schedules listed below. The Department has submitted amendments to these records schedules to NARA for its review and approval.

(a) *Department Records Schedule 051:* FSA National Student Loan Data System (NSLDS) (DAA–0441–2017–0004) (ED 051). (Records covered by ED 051 will not be destroyed until NARA-approved amendments to ED 051 are in effect, as applicable.)

(b) *Department Records Schedule 052:* Ombudsman Case Files (N1–441–09–21) (ED 052). (Records covered by ED 052 will not be destroyed until NARA-approved amendments to ED 052 are in effect, as applicable.)

(c) *Department Records Schedule 072:* FSA Application, Origination, and Disbursement Records (DAA–0441–2013–0002) (ED 072). (Records covered by ED 072 will not be destroyed until NARA-approved amendments to ED 072 are in effect, as applicable.)

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All users of the system will have a unique user ID with a password. All physical access to the data housed at system locations is controlled and monitored by security personnel who check each individual entering the building for their employee or visitor badge. The IT systems employed by the Department offer a high degree of resistance to tampering and circumvention with firewalls, encryption, and password protection. This security system limits data access to Department and contract staff on a ''need-to-know'' basis and controls individual users' ability to access and alter records within the system. All interactions by users of the system are recorded.

In accordance with the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, every Department system must receive a signed Authorization to Operate (ATO) from a designated Department official. The ATO process includes a rigorous assessment of security and privacy controls, a plan of action and milestones to remediate any identified deficiencies, and a continuous monitoring program.

FISMA controls implemented are comprised of a combination of management, operational, and technical controls, and include the following control families: access control, awareness and training, audit and accountability, security assessment and authorization, configuration management, contingency planning, identification and authentication, incident response, maintenance, media protection, physical and environmental protection, planning, personnel security, privacy, risk assessment, system and services acquisition, system and communications protection, system and information integrity, and program management.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the respective system manager at the address listed above. You must provide necessary particulars such as your name, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name.

Alternatively, to gain access to a record in the system, you may make a Privacy Act request through the U.S. Department of Education, FOIA Service Center at *https://www2.ed.gov/policy/gen/leg/foia/request_privacy.html* by completing the applicable request forms. Requests by an individual for access to a record must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

Borrowers are able to access their financial aid history from NSLDS in this system. If you wish to gain access to other records in the NSLDS, please refer to the RECORD ACCESS PROCEDURES section in the system of records notice entitled ''National Student Loan Data System (NSLDS)'' (18–11–06).

For title IV, HEA program applicants and recipients of Federal grants or loans, if you wish to gain access to such information about you from the COD system, please refer to the RECORD ACCESS PROCEDURES section in the system of records notice entitled ''Common Origination and Disbursement (COD) System'' (18–11–02).

If you wish to gain access to the EDMAPS system information that is about you and accessible in this system,

please refer to the RECORD ACCESS PROCEDURES section in the system of records notice entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS) System'' (18–11–22).

If you wish to gain access to the PAS system information about you that is maintained in this system until CPS was decommissioned after September 24, 2025, please refer to the RECORD ACCESS PROCEDURES section in the system of records notice entitled ''Person Authentication Service (PAS)'' (18–11–12).

If you wish to gain access to the information in the Federal Loan Servicers' IT systems that is about you and accessible in this system, please refer to the RECORD ACCESS PROCEDURES section in the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16).

CONTESTING RECORD PROCEDURES:

If you wish to contest or change the content of a record about you in the system of records, provide the respective system manager with your name, DOB, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Identify the specific items to be changed and provide a written justification for the change.

To contest information submitted or included on a FAFSA application for the current award year, send your request to the FOIA Service Center listed in the Notification Procedures section.

Financial aid history from NSLDS is accessible in this system. To contest name and address records about you, provide the respective system manager with your name, DOB, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. All other financial aid history records from NSLDS must be contested by following the CONTESTING RECORD PROCEDURES identified in the system of records notice entitled ''National Student Loan Data System (NSLDS)'' (18–11–06).

For title IV, HEA program applicants and recipients of Federal grants or loans, if you wish to contest such information about you, please refer to the CONTESTING RECORD PROCEDURES section in the system of records notice entitled ''Common Origination and Disbursement (COD) System'' (18–11–02).

To contest information about you in a Federal Loan Servicer IT system, such as the payment and loan information that is accessible in this system, please refer to the CONTESTING RECORD PROCEDURES section in the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16).

To contest the EDMAPS system information that is accessible in this system, please refer to the CONTESTING RECORD PROCEDURES section in the system of records notice entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS) System'' (18–11–22).

To contest the PAS system information about you that is maintained in this system until CPS was decommissioned after September 24, 2025, please refer to the CONTESTING RECORD PROCEDURES section in the system of records notice entitled ''Person Authentication Service (PAS)'' (18–11–12).

Requests to amend a record must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists about you in the system of records, contact the respective system manager at the address listed above. You must provide necessary particulars such as your name, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name.

Alternatively, you may make a Privacy Act request through the U.S. Department of Education, FOIA Service Center at *https://www2.ed.gov/policy/gen/leg/foia/request_privacy.html* by completing the applicable request forms.

If you wish to submit a request for notification to determine whether a record exists about you in the COD system as a title IV, HEA program applicant or recipient of a Federal grant or loan, please refer to the NOTIFICATION PROCEDURES section in the system of records notice entitled ''Common Origination and Disbursement (COD) System'' (18–11–02).

Borrowers are able to access their financial aid history from NSLDS in this system. If you wish to submit a request for notification to determine whether a record exists about you in the NSLDS system of records, please refer to the NOTIFICATION PROCEDURES section in the system of records notice entitled ''National Student Loan Data System (NSLDS)'' (18–11–06).

If you wish to submit a request for notification to determine whether a record exists about you in a Federal Loan Servicer IT system, please refer to the NOTIFICATION PROCEDURES section in the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16).

If you wish to submit a request for notification to determine whether a record exists about you in EDMAPS system, please refer to the NOTIFICATION PROCEDURES section in the system of records notice entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS) System'' (18–11–22).

If you wish to submit a request for notification to determine whether a record exists about you in the PAS system, please refer to the NOTIFICATION PROCEDURES section in the system of records notice entitled ''Person Authentication Service (PAS)'' (18–11–12).

Requests for notification about whether the system of records contains information about an individual must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The system of records entitled ''Aid Awareness and Application Processing'' (18–11–21) was last modified and published in full in the **Federal Register** on November 07, 2024 (89 FR 88240).

[FR Doc. 2026–07825 Filed 4–21–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2026–FSA–0793]

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of a Modified System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of a modified system of records entitled ''Common Services for Borrowers (CSB)'' (18–11–16). The information contained in this system is maintained for various purposes relating to aid applicants and recipients, cosigners, and endorsers of loan applications for Federal title IV, Higher Education Act of 1965, as amended (HEA) program funds.

DATES: Submit your comments on this modified system of records notice on or before May 22, 2026.

This modified system of records notice will become applicable upon publication in the **Federal Register** on April 22, 2026, unless it needs to be changed as a result of public comment. The Department will publish any changes to the modified system of records notice resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. 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 comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ''.

Privacy Note: The Department's policy is to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an 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 this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mark LaVia, Executive Director, Servicing, Student Experience and Aid Delivery, Federal Student Aid, U.S. Department of Education, 1300 Market St., 5th Floor, Philadelphia, PA 19107. Telephone: 202–805–4376. Email: *Mark.LaVia@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), the Department proposes to modify the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16), which was last published in full in the **Federal Register** on July 27, 2023 (88 FR 48449).

The Department is modifying the section entitled ''PURPOSE(S) OF THE SYSTEM'' as follows:

New purpose (25) is added to identify, verify, and maintain records for ''legacy'' borrowers, defined as those who received a Graduate PLUS or Parent PLUS loan prior to June 30, 2026. This process ensures continued eligibility under pre-2026 provisions for the lesser of a transitional period not to exceed three academic years or until the borrower completes their current program of study.

New Purpose (26) is added to support the implementation of provisions authorizing financial aid administrators to maintain records and set lower annual loan limits for students or parent borrowers of PLUS loans. This modification allows the system to record and apply these reduced limits, ensuring they are maintained and applied consistently to all students within a specific program of study as required by Departmental policy. Specifically, to track and enforce revised aggregate loan limits, including tiered unsubsidized caps for graduate and professional students, gross lifetime limit for Parent PLUS borrowers per dependent, and universal non-PLUS lifetime maximum.

The Department is modifying the section entitled ''CATEGORIES OF RECORDS IN THE SYSTEM'' to add a new category of records that pertains to legacy borrowers of Graduate PLUS and Parent PLUS loans with lower annual loan limits. This modification allows the system to record and apply these reduced limits, ensuring they are maintained and applied consistently to all students within a specific program of study as required by Departmental policy. Specifically, to track and enforce revised aggregate loan limits, including tiered unsubsidized caps for graduate and professional students, gross lifetime limit for Parent PLUS borrowers per dependent, and universal non-PLUS lifetime maximum.

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. 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 documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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.

Richard Lucas,

Acting Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the Acting Chief Operating Officer, Federal Student Aid (FSA), U.S. Department of Education (Department), publishes a notice of a modified system of records to read as follows:

SYSTEM NAME AND NUMBER:

Common Services for Borrowers (CSB) (18–11–16).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

(1) U.S. Department of Education, Executive Director, Servicing, Student Experience and Aid Delivery, Federal Student Aid, U.S. Department of Education, 1300 Market St., 5th Floor, Philadelphia, PA 19107 (System Manager);

50 Beale St., San Francisco, CA 94105;

500 West Madison St., Chicago, IL 60661; and

61 Forsyth St., Atlanta, GA 30303.

(2) Maximus Federal Services, Inc. (Contractor—Federal Loan Servicer for Collections—Debt Management Collection System (DMCS)):

5202 Presidents Ct., Frederick, MD 21703 (Department contractor—DMCS Program Management and Help Desk;

Amazon Web Services Government Cloud, US East;

410 Terry Ave. North, Seattle, WA 98109–5210 (System Hosting);

Mail Fulfillment and Imaging Centers: 800 Commerce Dr., Upper Marlboro, MD 20774; and 6201 Interstate 30, Greenville, TX 75402; and

Contact Centers: 1 Imeson Park Blvd., Suite 300, Jacksonville, FL 32218; and 4335 Paredes Line Rd., Brownsville, TX 78526.

(3) Nelnet Servicing, LLC (Contractor—Federal Loan Servicer),

1001 Fort Crook Rd. North, Suite 132, Bellevue, NE 68005 (System Hosting);

700 East 54th St. North, Suite 200, Sioux Falls, SD 57104 (System Hosting Backup site);

Mail Fulfillment: 1720 Northway Dr., North Mankato, MN 56003; 3125 Lewis Centre Way, Grove City, OH 43123; 3885 Seaport Blvd., Suite 40, West Sacramento, CA 95691; and 1803 Rocky River Rd., North Monroe, NC 28110;

Imaging Centers: 121 South 13th St., Lincoln, NE 68508 and 2401 and 2501 International Lane, Madison, WI 53704; and

Contact Centers: 308 Second St., Boscobel, WI 53805; 3381 Ruben M. Torres Blvd., Brownsville, TX 78526; 3620 23rd St., Columbus, NE 68601; 1529 Continental Dr., Eau Claire, WI 54701; 401 S 21st St., Lincoln, NE 68510; 2401 and 2501 International Lane, Madison, WI 53704; 14400 Branch St. Omaha, NE 68010; 1205 Jackson St. Suite 300, Sidney, NE 69162; and 1101 Centerpoint Drive, Stevens Point, WI 54481;

(4) Great Lakes Educational Loan Services, Inc. (GLCS) (Contractor—Federal Loan Servicer):

2401 and 2501 International Lane, Madison, WI 53704; and 1529 Continental Dr., Eau Claire, WI 54701; (System Hosting and System Hosting Backup site);

Mail Fulfillment and Imaging Centers: 2401 and 2501 International Lane, Madison, WI 53704; and 1529 Continental Dr., Eau Claire, WI 54701; and

Contact Centers: 930 Blue Gentian Rd., Eagan, MN 55121; 2401 and 2501 International Lane, Madison, WI 53704; 1529 Continental Dr., Eau Claire, WI 54701; 308 2nd St., Boscobel, WI 53805; and 1101 Center Point Dr., Stevens Point, WI 54481.

(5) Aidvantage (Contractor—Federal Loan Servicer):

Chandler Data Center, 240 North Roosevelt Ave., Chandler, AZ 48226 (System Hosting);

Omaha Data Center, 7305 Pacific St., Omaha, NE 68106 (System Hosting Backup site);

Mail Fulfillment and Imaging Centers: 3885 Seaport Blvd., Suite 40, West Sacramento, CA 95691; 1803 North Rocky River Rd., Monroe, NC 28110; and 6201 Interstate 30, Greenville, TX 75402; and

Contact Center(s): A fully remote contact center model is employed. Customer Service Representatives manage customer calls in a distributed environment utilizing secure internet connections and using centrally managed technology.

(6) Missouri Higher Education Loan Assistance Authority (MOHELA) (Contractor—Not-for-Profit (NFP) Federal Loan Servicer):

633 Spirit Dr., Chesterfield, MO 63005 (System Hosting);

555 Vandiver Dr., Columbia, MO 65202 (System Hosting Backup site);

820 First Street NE, Suite L–120, Washington, DC 20002 (Main Office);

Mail Fulfillment and Imaging Centers: 633 Spirit Dr., Chesterfield, MO 63005; and 555 Vandiver Dr., Columbia, MO 65202; and

Contact Centers: 633 Spirit Dr., Chesterfield, MO 63005; 555 Vandiver Dr., Columbia, MO 65202; and 820 First St. NE, Suite L–120, Washington, DC 20002.

(7) Oklahoma Student Loan Authority (NFPOSLA) (Contractor—NFP Federal Loan Servicer):

525 Central Park Dr., Ste. 600, Oklahoma City, OK 73105 (System Hosting); 7499 East Paradise Lane, Scottsdale, AZ 85260 (System Hosting Backup site);

1001 Fort Crook Road, North, Suite 132, Bellevue, NE 68005–4247 (System Hosting Backup site);

700 East 54th St. North, Suite 200, Sioux Falls, SD 57104 (System Hosting Backup site);

Mail Fulfillment and Imaging Center: 525 Central Park Dr., Ste. 600, Oklahoma City, OK 73105; and

Call Center: 525 Central Park Dr., Ste. 600, Oklahoma City, OK 73105.

(8) EdFinancial (Contractor—NFP Federal Loan Servicer):

1001 Fort Crook Rd., Suite 132, North Bellevue, NE 68005–4247 (Nelnet System Hosting);

700 East 54th St. North, Suite 200, Sioux Falls, SD 57104 (Nelnet System Hosting Backup);

7301 Pacific Street, Omaha, NE 68114 (FISERV System Hosting—FISERV Solutions Primary Data Center); and

240 North Roosevelt Avenue, Chandler, AZ 85226 (FISERV System Hosting Backup);

Mail Fulfillment and Imaging Centers: 13271 North Promenade Blvd., Stafford, TX 77477–3957; 3885 Seaport Blvd., Suite 40, West Sacramento, CA 95691; and 1803 Rocky River Rd., North Monroe, NC 29110 (Mail Fulfillment and Imaging Backup site); and

Contact Centers: 120 North Seven Oaks Dr., Knoxville, TN 37922; 298 North Seven Oaks Dr., Knoxville, TN 37922; 2741 Gunter Park Dr., Montgomery, AL 36109; and 4 Barrell Court, Concord, NH 03301;

(9) Educational Computer Systems, Inc. (ECSI) (Contractor—Federal Perkins Loan Servicer):

1033 Jefferson St. NW, Atlanta, GA 30318 (System Hosting);

Mail Fulfillment and Imaging Center: 100 Global View Dr., Warrendale, PA 15086; and

Contact Centers: 1200 Cherrington Parkway, Suite 200, Moon Township, PA 15108; and 3330 Healy Dr., Winston-Salem, NC 27103.

(10) Action Financial Services (Contractor—Private Collection Agency):

2055 Cardinal Ave., Medford, OR 97504 (Call Center, Administrative Support, Compliance, Training and Human Resources).

(11) Bass & Associates, P.C. (Contractor—Private Collection Agency):

3926 E Fort Lowell Rd., Tucson, AZ 85712–1083 (Administration and Student Loan Collections).

(12) Central Research, Inc. (CRI) (Contractor—Private Collection Agency):

122 N Bloomington St., Suite I, Lowell, AR 72745 (Accounting/Corporate Administration).

(13) Coast Professional, Inc (Contractor—Private Collection Agency):

4273 Volunteer Rd., Geneseo, NY 14454 (Student Loan Servicing & Collecting).

(14) Credit Adjustments, Inc. (CAI) (Contractor—Private Collection Agency):

1270 Geneva Blvd. Defiance, OH 43512 (Collection Activity, Administrative Offices).

(15) F.H. Cann & Associates, Inc. (Contractor—Private Collection Agency):

1600 Osgood St., Suite 2–120, North Andover, MA 01845 (Collection Activity, Administrative Office).

(16) Immediate Credit Recovery (ICR) (Contractor—Private Collection Agency):

6 Neptune Rd., Suite 110, Poughkeepsie, NY 12601 (Call Center, Rehab Payer Service and Maintenance, Compliance, IT Staff, HR, Accounting, CEO, CIO, VP admin and other executive staff).

(17) National Credit Services (Contractor—Private Collection Agency):

2525 220th St. SE, Suite 200, Bothell, WA 98021 (Debt Collection,

Rehabilitations, Skip Tracing, QA, Compliance, HR and Administrative Wage Garnishment (AWG)).

(18) National Recoveries Inc. (Contractor—Private Collection Agency):

14735 Hwy 65, NE, Ham Lake, MN 55304 (Collections, Invoice Processing, IT).

(19) Professional Bureau of Collections of Maryland, Inc. (Contractor—Private Collection Agency):

5295 DTC Parkway, Greenwood Village, CO 80111 (Executive, Administrative, Accounting, Collections, IT and Compliance).

(20) Reliant Capital Solutions (Contractor—Private Collection Agency):

670 Cross Pointe Rd., Gahanna, OH 43230 (Front Line Agents and Administrative Office).

SYSTEM MANAGER(S):

Executive Director, Servicing, Student Experience and Aid Delivery, Federal Student Aid, U.S. Department of Education, 1300 Market St., 5th Floor, Philadelphia, PA 19107.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority under which the system is maintained includes section 455(a) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1087e(a)). Titles IV–A, IV–B, IV–D, and IV–E of the Higher Education Act (HEA) of 1965, as amended (20 U.S.C. 1070 *et seq.*) and the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency).

PURPOSE(S) OF THE SYSTEM:

Note: Different parts of the HEA use the terms ''discharge,'' ''cancellation,'' or ''forgiveness'' to describe when a borrower's loan amount is reduced in whole or in part by the Department. To reduce complexity, this system of records notice uses the term ''discharge'' to include all three terms (''discharge,'' ''cancellation,'' and ''forgiveness''), including but not limited to discharges of student loans made pursuant to specific benefit programs. At times, this system of records notice may refer by name to a specific benefit program, such as the ''Public Service Loan Forgiveness'' program; such specific references are not intended to exclude any such program benefits from more general references to loan discharges.

The information maintained in this system of records is used for the following purposes:

(1) To verify the identity of an individual;

(2) To determine program eligibility and benefits;

(3) To facilitate default reduction efforts by program participants;

(4) To enforce the conditions or terms of a title IV, HEA obligation;

(5) To originate, disburse, service, collect, assign, adjust, transfer, refer, furnish credit information for, and discharge a title IV, HEA obligation;

(6) To provide customers with information to help them make informed decisions on repayment options, including forbearance, deferment, and recurring debit options, based on their unique situations;

(7) To investigate possible fraud or abuse or verify compliance with program regulations or contract requirements;

(8) To locate a delinquent or defaulted individual obligated to repay a title IV, HEA obligation;

(9) To litigate a title IV, HEA obligation, or to prepare for, provide support services for, or audit the results of litigation on a title IV, HEA obligation;

(10) To prepare for, conduct, or enforce a limitation, suspension, termination, or debarment action;

(11) To verify that Federal, state, local, and Tribal statutory, regulatory, and program requirements are met by educational and financial institutions, guaranty agencies, and Department contractors including Federal Loan Servicers, NFP Federal Loan Servicers, the Federal Perkins Loan Servicer, and Private Collection Agencies (PCAs);

(12) To verify whether a title IV, HEA obligation qualifies for discharge;

(13) To conduct credit checks or respond to inquiries or disputes arising from information on a title IV, HEA obligation already furnished to a consumer reporting agency;

(14) To investigate, respond to, or resolve complaints submitted to the Department or to other Federal, State, local, or Tribal agencies regarding an aid applicant's or recipient's title IV, HEA program eligibility, the disbursement, or servicing of a title IV, HEA obligation, or the practices or processes of the Department and/or the Department's contractors;

(15) To determine credit balances to be refunded by the U.S. Department of the Treasury (Treasury) to the individual or loan holder;

(16) To allow educational institutions, financial institutions, Federal Loan Servicers, NFP Federal Loan Servicers the Federal Perkins Loan Servicer, PCAs, and guaranty agencies to report information to the Department on all aspects of title IV, HEA obligations in uniform formats to permit the Department to directly compare data submitted to the Department by individual educational institutions, financial institutions, third-party servicers, guaranty agencies, Federal Loan Servicers, NFP Federal Loan Servicers the Federal Perkins Loan Servicer, or PCAs;

(17) To report to the Internal Revenue Service (IRS) information required by law to be reported, including, but not limited to, reports required by 26 U.S.C. 6050P and 6050S;

(18) To support research, analysis, and development of educational policies in relation to title IV, HEA student financial aid programs;

(19) To support Federal budget analysts in the Department, the Office of Management and Budget (OMB), and the Congressional Budget Office (CBO) in the development of budget needs and forecasts;

(20) To help governmental entities at the Federal, State, Tribal, and local levels to exercise their supervisory and administrative powers (including, but not limited to licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers); to investigate, respond to, or resolve complaints regarding the practices or processes of the Department and/or the Department's contractors; and to update information or correct errors contained in Department records;

(21) To ensure that only authorized users access aid applicants' or recipients' records, to maintain a history of each instance in which the aid applicant's or recipient's records are viewed or updated, and to assist the Department in responding to a suspected or confirmed breach of this system or in preventing, minimizing, or remedying harm when the Department suspects or confirms that this system has been breached or when the Department determines that information from this system is reasonably necessary to assist another agency or entity in responding to a suspected or confirmed breach or in preventing, minimizing, or remedying the risk of harm resulting from a suspected or confirmed breach;

(22) To support the Department in detecting, preventing, mitigating, and recouping improper payments in title IV, HEA programs;

(23) To conduct testing, analysis, or take other administrative actions needed to prepare for or execute programs under title IV of the HEA; and

(24) To identify whether an aid recipient or application participant who is applying for an income-driven repayment (IDR) plan or recertifying an IDR plan has provided consent/affirmative approval to redisclose Federal Tax Information (FTI) of such individuals pursuant to clause (iv) of section 6103(l)(13)(D) of the Internal Revenue Code (IRC) of 1986 and for the disclosure of records by the Department to the IRS to obtain FTI and for the IRS to disclose FTI to the Department as referenced in Section 494(a) of the HEA (20 U.S.C. 1098h(a)) for the purpose of determining repayment obligation monthly amounts for an IDR plan under title IV of the HEA with respect to loans made under part D of title IV of the HEA (Direct Loan Program);

(25) To identify, verify, and maintain records for ''legacy'' borrowers, defined as those who received a Graduate PLUS or Parent PLUS loan prior to June 30, 2026. This process ensures continued eligibility under pre-2026 provisions for the lesser of a transitional period not to exceed three academic years or until the borrower completes their current program of study; and

(26) To support the implementation of provisions authorizing financial aid administrators to maintain records and set lower annual loan limits for students or parent borrowers of PLUS loans. This modification allows the system to record and apply these reduced limits, ensuring they are maintained and applied consistently to all students within a specific program of study as required by Departmental policy. Specifically, to track and enforce revised aggregate loan limits, including tiered unsubsidized caps for graduate and professional students, gross lifetime limit for Parent PLUS borrowers per dependent, and universal non-PLUS lifetime maximum.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The CSB system contains records on individuals who received a loan or who otherwise owe a title IV, HEA obligation held, originated, serviced, disbursed, adjusted, collected, or discharged by the Department, which was made under:

(1) The Federal Family Education Loan (FFEL) Program, including Stafford Loans, Federal Insured Student Loans (FISL), Supplemental Loans for Students (SLS), PLUS Loans (formerly Parental Loans for Undergraduate Students), and Consolidation Loans;

(2) the William D. Ford Federal Direct Loan (Direct Loan) Program, including Federal Direct Unsubsidized and Subsidized Stafford/Ford Loans, Federal Direct Consolidation Loans, and Federal Direct PLUS Loans;

(3) the Federal Perkins Loan Program;

(4) the Federal Pell Grant Program;

(5) the Federal Supplemental Education Opportunity Grant (FSEOG) Program;

(6) the Leveraging Educational Assistance Partnership (LEAP) Program;

(7) the Special Leveraging Educational Assistance Partnership (SLEAP) Program;

(8) the Academic Competitiveness Grant (ACG) Program;

(9) the National Science and Mathematics Access to Retain Talent (SMART) Grant Program;

(10) the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; and

(11) the Iraq and Afghanistan Service Grant Program.

This system also contains records on individuals who apply for, but do not receive, a Direct Loan, as well as individuals identified by the borrower or recipient of the Federal title IV, HEA program funds as references, co-signers, endorsers, or a spouse whose income and expenses are considered in connection with the making or the enforcement of a title IV, HEA obligation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Note: Beginning with the 2024–2025 award year application cycle, the IRS will disclose FTI directly to the Department for use by the Department in processing the Free Application for Federal Student Aid (FAFSA®) and making aid eligibility determinations under a program authorized under subpart 1 of part A, part C, or part D of title IV of the HEA. FTI will not be maintained in this system. Beginning July 30, 2023, the IRS will also disclose FTI directly to the Department for use by the Department to determine monthly payment amounts under IDR plans with respect to Direct Loans. That FTI also will not be maintained in this system. All FTI that the Department will obtain directly from the IRS under the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act will be maintained within the FTI Module (FTIM) system that will be compliant with the IRS Publication 1075, ''Tax Information Security Guidelines for Federal, State and Local Agencies, Safeguards for Protecting Federal Tax Returns and Return Information,'' and that will be covered under the Department's system of records notice entitled ''FUTURE Act System (FAS)'' (18–11–23). This system will continue to maintain both historical and applicant-provided income information (either through a manual FAFSA entry or submission of alternative documentation of income (ADOI) through the IDR process). Any reference to income throughout this system of records notice refers to income information that the Department did not obtain directly from the IRS but obtained from the applicant or from another source.

This system of records covers the following Information Technology (IT) systems of the Department used to carry out activities with regard to title IV, HEA obligations held, originated, serviced, disbursed, collected, or discharged by the Department: DMCS, IT systems operated by the Federal Loan Servicers and NFP Federal Loan Servicers to accomplish the purpose(s) of this system of records, IT systems operated by the Federal Perkins Loan Program Servicer to accomplish the purpose(s) of this system of records, and IT systems operated by the PCAs to accomplish the purpose(s) of this system of records. This system of records also covers paper records obtained by the Department from guaranty agencies in the process of considering appeals by title IV, HEA loan borrowers of guaranty agency decisions.

This system of records maintains the employment information, educational status, family income, Social Security number (SSN), address(es), email address(es), monthly payment amounts, ADOI, and telephone number(s) of the aid applicant or recipient indebted on a title IV, HEA obligation or the individuals whose income and expenses are included in a financial statement submitted by the aid applicant or recipient. This system also maintains the consent/affirmative approval to include permitting the Department to disclose records to the IRS to obtain FTI and to permit the disclosure and redisclosure of the FTI of the applicant or recipient. This system of records maintains the loan discharge income, eligibility information, and associated discharge eligibility consent information of the aid recipient indebted on a title IV, HEA obligation. This system also maintains records including, but not limited to, the application for, agreement to repay, and disbursements on the loan, and loan guaranty, if any; the repayment history, including deferments and forbearances; claims by lenders on the loan guaranty; and records related to discharge of title IV, HEA obligations on grounds of

qualifying service, bankruptcy discharge, Total and Permanent Disability (including medical records submitted to support an application for discharge by reason of disability), death, Public Service Loan Forgiveness (PSLF) (including, but not limited to, employment records), Borrower Defense (including but not limited to, case decisions, principal and interest discharged, amount refunded, and borrower defense notifications) or other statutory or regulatory grounds for relief.

Additionally, for title IV, HEA grant overpayments, the system contains records about the amount disbursed, the school that disbursed the grant, and the basis for overpayment; for all title IV, HEA obligations, the system contains demographic, employment, and other data on the individual who owes a title IV, HEA obligation or provided as references by the obligor, and the collection actions taken by any holder, including write-off amounts and compromise amounts.

This system of records also contains records of legacy borrowers of Graduate PLUS and Parent PLUS loans with lower annual loan limits. Specifically, records that track revised aggregate loan limits, including tiered unsubsidized caps for graduate and professional students, gross lifetime limit for Parent PLUS borrowers per dependent, and universal non-PLUS lifetime maximum.

This system also contains information obtained from matching programs or other information exchanges with other Federal and State agencies, and other entities, to assist in identifying individuals who may be eligible for benefits related to their title IV, HEA obligations, including, but not limited to, TPD discharges, loan deferments, interest rate reductions, PSLF, and other Federal and State loan repayment or discharge benefits or for the purpose of recouping payments on delinquent title IV, HEA obligations under title IV, HEA programs.

RECORD SOURCE CATEGORIES:

The system includes information that the Department obtains from applicants and those individuals and their families who received, or who are otherwise obligated to repay, a title IV, HEA obligation held and collected by the Department. The Department also obtains information from Federal Loan Servicers, NFP Federal Loan Servicers, the Federal Perkins Loan Servicer, PCAs, references, cosigners, endorsers, current or prior FFEL loan holders or servicers, guaranty agencies, educational and financial institutions and their authorized representatives, and Federal, State, Tribal and local agencies and their authorized representatives; private parties, such as relatives and business and personal associates; present and former employers; creditors; consumer reporting agencies; and adjudicative bodies. Information in this system may be obtained from other persons or entities from whom or from which data is obtained following a disclosure under the listed routine uses.

Information is also obtained from other Department systems including the Common Origination and Disbursement (COD) system (covered by the Department's system of records notice entitled ''Common Origination and Disbursement (COD) System'' (18–11–02)) and the National Student Loan Data System (NSLDS) (covered by the Department's system of records notice entitled ''National Student Loan Data System (NSLDS)'' (18–11- 06)) or any successor systems thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the information in the record was collected. These disclosures may be made on a case-by-case basis, or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement.

(1) *Program Disclosures.* The Department may disclose records for the following program purposes:

(a) To verify the identity of the individual whom records indicate has applied for or received title IV, HEA program funds, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, Tribal, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; to adjudicative bodies; and to the individual whom the records identify as the party obligated to repay the title IV, HEA obligation;

(b) To determine program eligibility and benefits, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(c) To facilitate default reduction efforts by program participants, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to consumer reporting agencies; and to adjudicative bodies;

(d) To enforce the conditions or terms of a title IV, HEA obligation, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; to adjudicative bodies; and to the individual whom the records identify as the party obligated to repay the title IV, HEA obligation;

(e) To permit originating, disbursing, servicing, collecting, assigning, adjusting, transferring, referring, furnishing of credit information, or discharging title IV, HEA obligations, disclosures may be made to guaranty agencies, educational institutions, or financial institutions that originated, held, serviced, or have been assigned the title IV, HEA obligation, and their authorized representatives; to a party identified by the debtor as willing to advance funds to repay the title IV, HEA obligation; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(f) To provide customers with information to help them make informed decisions on repayment options, including deferment, forbearance, and recurring auto debit, based on their unique situations, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; and to Federal, State, or local agencies, and their authorized representatives;

(g) To investigate possible fraud or abuse or to verify compliance with contractual requirements or Federal, State, local, or Tribal statutory, regulatory, or program requirements, disclosures may be made to guaranty

agencies, educational and financial institutions, third-party servicers, and their authorized representatives; to Federal, State, Tribal, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(h) To locate a delinquent or defaulted borrower, or an individual who owes a title IV, HEA obligation, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(i) To prepare a title IV, HEA obligation for litigation, to provide support services for litigation on a title IV, HEA obligation, to litigate a title IV, HEA obligation, or to audit the results of litigation on a title IV, HEA obligation, disclosures may be made to FFEL loan holders or servicers; Department contractors including but not limited to, Federal Loan Servicers, NFP Federal Loan Servicers, the Federal Perkins Servicer, PCAs and to guaranty agencies and their authorized representatives; Federal, State, Tribal, or local agencies, and their authorized representatives; and to adjudicative bodies;

(j) To prepare for, conduct, or enforce a limitation, suspension, or termination or a debarment action, disclosures may be made to guaranty agencies, educational or financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; and to adjudicative bodies;

(k) To verify that HEA program requirements are met by educational and financial institutions, guaranty agencies, Federal Loan Servicers, NFP Federal Loan Servicers, the Federal Perkins Loan Servicer, and PCAs, disclosures may be made to guaranty agencies, educational or financial institutions, and their authorized representatives; to accrediting agencies; to auditors engaged to conduct an audit of a guaranty agency or an educational or financial institution; to Federal, State, Tribal, or local agencies, and their authorized representatives; and to adjudicative bodies;

(l) To verify whether a title IV, HEA obligation qualifies for discharge, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(m) To conduct credit checks or to respond to inquiries or disputes arising from information on the title IV, HEA obligation already furnished to a consumer reporting agency, disclosures may be made to consumer reporting agencies; to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; to creditors; and to adjudicative bodies;

(n) To investigate, respond to, and resolve complaints submitted to the Department or to Federal, State, local, or Tribal agencies regarding an aid applicant's or recipient's title IV, HEA program eligibility, the disbursement or servicing of a title IV, HEA obligation, or the practices or processes of the Department and/or the Department's contractors or to update information or correct errors contained in Department records, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, Tribal, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(o) To provide credit balances identified in the Department's systems to Treasury for distribution, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; and to creditors;

(p) To allow the reporting of information to the Department on all aspects of title IV, HEA obligations in uniform formats and to permit the Department to directly compare data submitted to the Department by individual educational institutions, financial institutions, third-party servicers, guaranty agencies, Federal Loan Servicers, NFP Federal Loan Servicers, PCAs, and the Federal Perkins Loan Servicer, disclosures may be made to educational institutions, financial institutions, guaranty agencies, Federal Loan Servicers, the Federal Perkins Loan Servicer, NFP Federal Loan Servicers, and PCAs;

(q) To report information required by law to be reported, including, but not limited to, reports required by 26 U.S.C. 6050P and 6050S, disclosures may be made to the IRS; and;

(r) To help Federal, State, Tribal, and local governmental entities exercise their supervisory and administrative powers (including, but not limited to, licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers) or to investigate, respond to, or resolve complaints submitted regarding the practices or processes of the Department and/or the Department's contractors, the Department may disclose records to governmental entities at the Federal, State, Tribal, and local levels. These records may include all aspects of records relating to title IV, HEA obligations to permit these governmental entities to verify compliance with debt collection, consumer protection, financial, and other applicable statutory, regulatory, or local requirements. Before making a disclosure to these Federal, State, local, or Tribal governmental entities, the Department will require them to maintain safeguards consistent with the Privacy Act to protect the security and confidentiality of the disclosed records.

(2) *Feasibility Study Disclosure.* The Department may disclose information from this system of records to other Federal agencies, and to guaranty agencies and to their authorized representatives, to determine whether matching programs should be conducted by the Department for purposes such as to locate a delinquent or defaulted debtor or to verify compliance with program regulations.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either alone or in connection with other information, a violation or potential violation of any applicable statutory, regulatory, or legally binding requirement, the Department may disclose the relevant records to an entity charged with the responsibility for investigating or enforcing those violations or potential violations.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed below is involved in judicial or administrative litigation or ADR, or has an interest in such

litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in his or her official capacity;

(iii) Any Department employee in his or her individual capacity where the Department of Justice (DOJ) has been requested to or agrees to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee; and

(v) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear or to an individual or an entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies or their Agents and Contractors, and Professional Organizations or the Department's Contractors.* The Department may disclose a records to a Federal, State, local, or other public authority or an agent or contractor of such public agency, or professional organization, or the Department's contractors in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(6) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to an employee grievance, complaint, or disciplinary action, the Department may disclose the record in this system of records in the course of investigation, fact-finding, or adjudication to any witness, designated factfinder, mediator, or other person designated to resolve issues or decide the matter.

(7) *Labor Organization Disclosure.* The Department may disclose a record from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of a labor organization recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(8) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or to OMB if the Department determines that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(9) *Disclosure to the DOJ.* The Department may disclose records to the DOJ, or the authorized representative of DOJ, to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(10) *Contracting Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in the system to the employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department shall require the contractor to agree to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) of the Privacy Act with respect to the records in the system.

(11) *Research Disclosure.* The Department may disclose records to a researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The Department may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(12) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff when necessary to respond to an inquiry from the member made at the written request of that individual and on behalf of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(13) *Disclosure to OMB or CBO for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB or CBO as necessary to fulfill CRA requirements in accordance with 2 U.S.C. 661b.

(14) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system of records to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs and operations), the Federal government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach and prevent, minimize, or remedy such harm.

(15) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to

individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(16) *Disclosure to Third Parties through Matching Programs.* Unless otherwise prohibited by other laws, any information from this system of records, including personal information obtained from other agencies through matching programs, may be disclosed to any third party through a matching program, which is conducted under a Computer Matching Agreement between the Department and the third party, and requires that the matching be conducted in compliance with the requirements of the Privacy Act. Purposes of these disclosures may be: (a) To establish or verify program eligibility and benefits; (b) to establish or verify compliance with program regulations or statutory requirements, such as to investigate possible fraud or abuse; and (c) to recoup payments or delinquent debts under any Federal benefit programs, such as to locate or take legal action against a delinquent or defaulted debtor.

(17) *Disclosure of Information to Treasury.* The Department may disclose records to (a) a Federal or State agency, its employees, agents (including contractors of its agents), or contractors, or (b) a fiscal or financial agent designated by the Treasury, including employees, agents, or contractors of such agent, for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a State in a State-administered, Federally funded program.

(18) *Disclosure to National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a valid overdue claim of the Department; such information is limited to:

(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the individual responsible for the claim;

(2) the amount, status, and history of the claim; and

(3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined in 15 U.S.C. 1681a(f) and 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are maintained in hardcopy, microfilm, magnetic storage, and optical storage media, such as tape, disk, etc.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system pertaining to a title IV, HEA loan borrower or grant recipient are retrieved by one or more of the following data elements: the SSN, name, address, randomly generated number, debt number, phone number, debt type reference, debt type extension debt number, commercial name, commercial contact name, legacy ID, driver's license number, American Bankers Association (ABA) routing number, bankruptcy docket number, debt placement date, debt user defined page (UDP), email address, last worked date, payment additional extension reference ID, payment extension reference ID, tag short name, total balance, credit bureau legacy ID, debt type group short name, debt type short name, department name, institution account number, judgment docket number, license-issuing State, next scheduled payment amount, next scheduled payment date, office name, original debt type name, PCA group short name, and PCA short name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are retained and disposed of in accordance with ED Records Schedule 075: FSA Loan Servicing, Consolidation, and Collections Records (N1–441–09–016) (ED 075). The Department has submitted amendments to ED 075 for NARA's consideration and will continue to preserve all records covered by ED 075 until the amendments are approved.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All physical access to the Department's site, and to the sites of the Federal Loan Servicers, the Federal Perkins Loan Servicer, PCAs, and other contractors listed in this notice, where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

In accordance with the Department's Administrative Communications System Directive ACSD–OFO–013 entitled ''Contractor Employee Personnel Security Screenings,'' all contract personnel who have facility access and system access are required to undergo a security clearance investigation. Individuals requiring access to Privacy Act records are required to hold, at a minimum, a moderate-risk security clearance level. These individuals are required to undergo periodic screening at five-year intervals.

In addition to conducting security clearances, contract and Department employees are required to complete security awareness training on an annual basis. Annual security awareness training is required to ensure that contract and Department users are appropriately trained in safeguarding Privacy Act records.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a ''need-to-know'' basis and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user identification and password. The Department's Information Technology (IT) Identification and Authentication (IA) Standard requires the enforcement of a complex password policy. In addition to the enforcement of a complex password policy, users are required to change their password at least every 90 days or based on the Zero Trust Strategy/Plan in accordance with the Department's IT IA standards.

In accordance with the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, every Department system must receive a signed Authorization to Operate (ATO) from a designated Department official. The ATO process includes a rigorous assessment of security and privacy controls, a plan of actions and milestones to remediate any identified deficiencies, and a continuous monitoring program.

FISMA controls implemented comprise a combination of management, operational, and technical controls, and include the following control families: access control, awareness and training, audit and accountability, assessment, authorization, and monitoring, configuration management, contingency planning, identification and

authentication, incident response, maintenance, media protection, physical and environmental protection, planning, program management, personnel security, personally identifiable information processing and transparency, risk assessment, system and services acquisition, system and communications protection, system and information integrity, and supply chain risk management.

All of the Federal Loan Servicers, NFP Federal Loan Servicers, the Federal Perkins Loan Servicer, PCAs, and other contractors, as listed in ''SYSTEM LOCATION,'' undergo FISMA security authorizations. In addition, access is monitored 24 hours per day, 7 days a week.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, provide the system manager with your name, date of birth, and SSN. Requests by an individual for access to a record must meet the requirements of the regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record in this system of records, contact the system manager with your name, date of birth, and SSN; identify the specific items to be changed; and provide a written justification for the change. Requests to amend a record must meet the requirements of the regulations in 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in this system of records, provide the system manager with your name, date of birth, and SSN. Requests must meet the requirements of the regulations in 34 CFR 5b.5 and 5b.7, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The system of records entitled ''Common Services for Borrowers (CSB)'' (18–11–16) was originally published in the **Federal Register** on January 23, 2006 (71 FR 3503–3507), modified on September 12, 2014 (79 FR 54685–54695), modified on September 2, 2016 (81 FR 60683–60691), September 13, 2022 (87 FR 56003–56015), and last modified on July 23, 2023 (88 FR 48449).

[FR Doc. 2026–07826 Filed 4–21–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2026–FSA–0760]

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of a Modified System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the U.S. Department of Education (Department) publishes this notice of a modified system of records entitled ''Common Origination and Disbursement (COD) System'' (18–11–02). The information contained in this system is maintained for various purposes relating to aid applicants and recipients including determining their eligibility for Federal student financial assistance under the programs authorized by title IV of the Higher Education Act of 1965, as amended (HEA); institutions of higher education participating in and administering title IV, HEA programs; and the Department's oversight of title IV, HEA programs.

DATES: Submit your comments on this modified system of records notice on or before May 22, 2026.

This modified system of records notice will become applicable upon publication in the **Federal Register** on April 22, 2026. The Department will publish any changes to the modified system.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**. 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 comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ''.

Privacy Note: The Department's policy is generally to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, the Department will provide an 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 this notice. If you want to schedule an appointment for this type of accommodation or aid, please contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Shannon Mahan, Acting Director, Program Delivery Services Group, Federal Student Aid, U.S. Department of Education,400 Maryland Ave. SW, Washington, DC 20202–0001. Telephone: 202–377–3019. Email: *Shannon.Mahan@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), the Department proposes to modify the system of records notice entitled ''Common Origination and Disbursement (COD) System'' (18–11–02), which was last published in full in the **Federal Register** on June 28, 2023 (88 FR 41942).

The Department is modifying the section entitled **PURPOSE(S) OF THE SYSTEM** relating to aid applicants and recipients under title IV of the HEA as follows:

(i) Purpose (11) has been updated to identify, verify, and maintain records for ''legacy'' borrowers, defined as those who are enrolled in a program of study at an institution as of June 30, 2026 and have borrowed (or parent of a dependent undergraduate student has borrowed) a Direct Loan for such program of study prior to July 1, 2026 during the expected time to credential. This process ensures continued eligibility under pre-2026 provisions for the lesser of a transitional period not to exceed three academic years or the difference between the published program length minus the period the student has already completed in the program of study. The legacy provision no longer applies if the student completes the program of study, ceases

enrollment in such program of study unless the student has taken an approved leave of absence, or ceases enrollment at the institution the student was enrolled at as of June 30, 2026. A change in an undergraduate student's major does not affect this legacy provision.

(ii) New purpose (16) is added to track and enforce revised aggregate loan limits, including tiered unsubsidized caps for graduate and professional students, aggregate loan limit for Parent PLUS borrowers per dependent, and non-PLUS lifetime maximum aggregate loan limit.

The Department is modifying the section entitled **PURPOSE(S) OF THE SYSTEM** relating to institutions of higher education participating in and administering title IV, HEA programs by adding new purpose (8) to support the implementation of provisions authorizing financial aid administrators to maintain records and set lower annual loan limits for students or parent borrowers. This modification allows the system to record and apply these reduced limits, ensuring they are maintained and applied consistently to all students within a specific program of study. Specifically, to track and enforce revised aggregate loan limits, including tiered unsubsidized caps for graduate and professional students, aggregate loan limit for Parent PLUS borrowers per dependent, and non-PLUS lifetime maximum aggregate loan limit.

The Department is modifying the section entitled **CATEGORIES OF RECORDS IN THE SYSTEM** as follows:

(i) Category (9) is modified to include the process to identify, verify, and maintain records for ''legacy'' borrowers -defined as those who are enrolled in a program of study at an institution as of June 30, 2026 and have borrowed (or parent of a dependent undergraduate student has borrowed) a Direct Loan for such program of study prior to July 1, 2026 during the expected time to credential. This process ensures continued eligibility under pre-2026 provisions for the lesser of a transitional period not to exceed three academic years or the difference between the published program length minus the period the student has already completed in the program of study. The legacy provision no longer applies if the student completes the program of study, ceases enrollment in such program of study unless the student has taken an approved leave of absence, or ceases enrollment at the institution the student was enrolled at as of June 30, 2026. A change in an undergraduate student's major does not affect this legacy provision.

The Department is modifying the section **RECORD SOURCE CATEGORIES** as follows:

(i) This section is modified to remove the Student Aid internet Gateway (SAIG) (covered by the Department's Privacy Act system of records notice entitled ''Student Aid internet Gateway (SAIG), Participation Management System'' (18–11–10)) and replace it with the Federal Student Aid Partner Connect (FSA Partner Connect) (covered by the Department's Privacy Act system of records notice entitled ''Federal Student Aid Partner Connect'' (18–11–24), which rescinded the two systems of records notices entitled ''Student Aid internet Gateway, Participant Management System'' (18–11–10) and ''Postsecondary Education Participants System (PEPS)'' (18–11–09).

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. 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 documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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.

Richard Lucas,

Acting Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the Acting Chief Operating Officer, Federal Student Aid (FSA) of the U.S. Department of Education (Department) publishes a modified system of records notice to read as follows:

SYSTEM NAME AND NUMBER:

Common Origination and Disbursement (COD) System (18–11–02).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Program Management Services, Federal Student Aid (FSA), U.S. Department of Education, 400 Maryland Ave. SW, Washington, DC 20202–0001.

Amazon Web Services (AWS) Government Cloud, 1200 12th Ave., Suite 1200, Seattle, WA 98114. (This is the Hosting Center for the COD application, where all electronic COD information is processed and maintained.)

Accenture, 22451 Shaw Rd., Sterling, VA 20166–4319. (The COD Sterling Cloud-based operations is located here.)

Accenture DC, 820 First St. NE, Washington, DC 20202–4227. (This is the COD operations center.)

Accenture Federal Services, 10931 Laureate Dr., San Antonio, TX 78249. (This is the COD support center.)

Atlanta Federal Records Center, National Archives and Records Administration (NARA), 4712 Southpark Blvd., Ellenwood, GA 30294. (This is where Direct Loan paper promissory notes (also referred to as master promissory notes or MPNs)), Endorser Addenda, and Power of Attorney documents are maintained.)

NTT Global Data Centers Americas (Raging Wire), 44664 Guilford Dr., Ashburn, VA 20147. (This is a datacenter for contact center technical infrastructure.)

NTT Global Data Centers Americas (Raging Wire), 2008 Lookout Dr., Garland, TX 75044. (This is a datacenter for contact center technical infrastructure.)

The following three listings are the locations of the COD Customer Service Centers:

ASM Research, 4050 Legato Road, #1100, Fairfax, VA 22033. (This center images and maintains all the Direct Loan paper MPNs and Endorser Addenda);

Senture, LLC, 4255 W Highway 90, Monticello, KY 42633–3398; and

Veteran Call Center, 53 Knightsbridge Rd., Suite 216, Piscataway, NJ 08854–3925.

SYSTEM MANAGER(S):

Director, COD System, Program Delivery Services Group, Federal Student Aid (FSA), U.S. Department of Education (Department), Union Center Plaza (UCP), Room 64E1, 830 First Street NE, Washington, DC 20202–5454.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority under which the system is maintained includes section 455(a) of title IV of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070 *et seq.*) and (20 U.S.C. 1087e(a)), the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098(b) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency), the FAFSA Simplification Act (Title VII, Division FF of Pub. L. 116–260) (including but not limited to the following sections of the FAFSA Simplification Act: Subsection 702(m), which amends Section 483 of the HEA, and Section 703, which amends Section 401 of the HEA), and the FAFSA Simplification Act Technical Corrections Act (Division R of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103)).

PURPOSE(S) OF THE SYSTEM:

The information contained in this system is maintained for the following purposes related to aid applicants and recipients under title IV of the HEA:

Note: Different parts of the HEA use the terms ''discharge,'' ''cancellation,'' or ''forgiveness'' to describe when a borrower's loan amount is reduced in whole or in part by the Department. To reduce complexity, this system of records notice uses the term ''discharge'' to include all three terms (''discharge,'' ''cancellation,'' and ''forgiveness''), including, but not limited to, discharges of student loans made pursuant to specific benefit programs. Also, the Department is making a global change that clarifies the Department's responsibilities regarding the collection, maintenance, use, and dissemination of Graduate PLUS and Parent PLUS records for the lesser of a transitional period not to exceed the lesser of three academic years or the difference between the published program length minus the period the student has already completed in the program of study. The legacy provision no longer applies if the student completes the program of study, ceases enrollment in such program of study unless the student has taken an approved leave of absence, or ceases enrollment at the institution the student was enrolled at as of June 30, 2026. A change in an undergraduate student's major does not affect this legacy provision. This allows this system of records notice to use the term ''legacy borrowers'' defined as those who are enrolled in a program of study at an institution as of June 30, 2026 and have borrowed (or parent of a dependent undergraduate student has borrowed) a Direct Loan for such program of study prior to July 1, 2026 during the expected time to credential.

At times, the system of records notice may refer by name to a specific benefit program, such as the ''Public Service Loan Forgiveness'' program; such specific references are not intended to exclude any such program benefits from more general references to loan discharges.

(1) To determine aid applicants' and recipients' eligibility for and benefits under title IV, HEA programs, including, but not limited to, receiving a loan, grant, or scholarship, and obtaining discharge of eligible loans under title IV of the HEA;

(2) To maintain data and documentation, including, but not limited to, promissory notes and other agreements that evidence the existence of a legal obligation to repay funds disbursed under title IV, HEA programs and alternative documentation of income (ADOI) used to support the calculation of a monthly payment amount IDR plans;

(3) To identify whether an aid recipient may have received title IV, HEA program funds at more than one educational institution for the same enrollment period in violation of title IV, HEA program regulations;

(4) To identify whether an aid recipient may have exceeded title IV, HEA program fund award limits in violation of title IV, HEA program regulations;

(5) To identify an aid applicant or recipient who completed an electronic Direct Consolidation Loan Application and promissory note or a Special Direct Consolidation Loan application and promissory note;

(6) To identify an aid applicant or recipient who completed entrance and exit counseling in the Direct Loan or Teacher Education Assistance for College and Higher Education (TEACH) Grant programs;

(7) To identify an aid recipient who apply to repay, or recertifies their eligibility to repay, a Direct Loan, a Department-held Perkins loan, a Department- or an eligible lender-held Federal Family Education Loan (FFEL) Program loan under an IDR plan;

(8) To track student enrollments by educational program for purposes of determining educational program outcomes, including using that information to obtain average earnings of students by educational program from another Federal agency;

(9) To maintain a qualifying employer database to allow aid recipients who apply for Public Service Loan Forgiveness (PSLF), Temporary Expanded Public Service Loan Forgiveness (TEPSLF), or the limited PSLF waiver to search for and select their PSLF qualifying employer;

(10) To enable the Department, or other Federal, State, Tribal, or local government agencies, to investigate, respond to, or resolve complaints concerning the practices or processes of the Department and/or the Department's contractors, and to investigate, respond to, or resolve aid applicant and recipient requests for assistance or relief regarding title IV, HEA program funds;

(11) To enable an aid applicant, recipient, and, where applicable, an endorser, to initiate online credit checks via the electronic Federal Direct PLUS Loan Application or an Endorser Addendum (noting that applicants with adverse credit may still qualify via a qualified endorser or credit appeal); to identify, verify, and maintain records for ''legacy'' borrowers, defined as those who are enrolled in a program of study at an institution as of June 30, 2026 and have borrowed (or parent of a dependent undergraduate student has borrowed) a Direct Loan for such program of study prior to July 1, 2026 during the expected time to credential. This process ensures continued eligibility under pre-2026 provisions for the lesser of a transitional period not to exceed three academic years or the difference between the published program length minus the period the student has already completed in the program of study. The legacy provision no longer applies if the student completes the program of study, ceases enrollment in such program of study unless the student has taken an approved leave of absence, or ceases enrollment at the institution the student was enrolled at as of June 30, 2026. A change in an undergraduate student's major does not affect this legacy provision;

(12) To identify an aid recipient obligated to repay title IV, HEA program funds pursuant to various maintained data and documentation such as promissory notes, applications, and agreements;

(13) To identify an aid recipient who received a Federal Supplemental Education Opportunity Grant (FSEOG) or who earned money under the Federal Work-Study (FWS) program for use in the calculation of the Student Aid Index (SAI) and to assist with expenditure reporting on the Fiscal Operations

Report and Application to Participate (FISAP);

(14) To enable an aid recipient to complete a PSLF application using the ''PSLF Help Tool'' and to maintain the aid recipient's PSLF qualifying employer's information including, but not limited to, authorizing official's name, title, phone number, email address, and digital signature (including time and date stamp); and

(15) To identify whether an aid recipient (and where applicable the spouse) who is applying or recertifies eligibility for an IDR plan has or has not provided consent/affirmative approval both to redisclose Federal Tax Information (FTI) of such individuals pursuant to clauses (iii), (iv), (v), and (vi) of section 6103(l)(13)(D) of the Internal Revenue Code (IRC) of 1986 and under subsection 494 (a) of the HEA (20 U.S.C. 1098h(a)) for the purpose of determining eligibility for, or repayment obligations under, IDR plans under title IV of the HEA with respect to loans under part D of the HEA (the Direct Loan Program), and redisclosure of FTI under IRC § 6103(l)(13)(A) and (C).

(16) To track and enforce revised aggregate limits, including tiered unsubsidized caps for graduate and professional students, aggregate lifetime limit for Parent PLUS borrowers per dependent, and non-PLUS lifetime maximum aggregate loan limit.

The information in this system is also maintained for the following purposes relating to institutions of higher education (also referred to herein as ''educational institutions'') participating in and administering title IV, HEA programs:

(1) To enable an institution of higher education to reconcile, on an aggregate and recipient-level basis, the amount of title IV, HEA program funds that an institution received for disbursements it made to, or on behalf of, eligible students (including reconciling verification codes, reconciling the funds received with disbursements made by type of funds received, and making necessary adjustments);

(2) To enable an institution of higher education to request online credit checks on an aid applicant, recipient, or endorser in connection with the determination of the aid applicant's eligibility for a title IV, HEA Federal Direct PLUS Loan;

(3) To assist an institution of higher education, a software vendor, or a third-party servicer with questions about title IV, HEA program funds;

(4) To assist an institution of higher education with student loan default prevention;

(5) To reconcile an institution of higher education's cash drawdowns from the U.S. Department of the Treasury with its reported disbursements and to ensure that the institution of higher education receives the appropriate amount of funds during the respective time period;

(6) To collect Campus-Based expenditure information for the previous award year and the ability to apply for Campus-Based program funds using the FISAP;

(7) To enable an institution of higher education to report an aid recipient's receipt of a FSEOG or earnings under the FWS program, which will be used in the SAI calculation and to assist with expenditure reporting on the FISAP.

(8) To support the implementation of provisions authorizing financial aid administrators to maintain records and set lower annual loan limits for students or parent borrowers. This modification allows the system to record and apply these reduced limits, ensuring they are maintained and applied consistently to all students within a specific program of study.

The information in this system is also maintained for the following purposes relating to the Department's administration and oversight of title IV, HEA programs:

(1) To support the investigation of possible fraud and abuse and to detect and prevent fraud and abuse in title IV, HEA programs;

(2) To confirm that an institution of higher education, or a program offered by an institution of higher education, is eligible to receive title IV, HEA program funds, and to limit student aid eligibility for ineligible institutions or programs accordingly;

(3) To set and adjust program funding authorization levels for each institution;

(4) To enforce institutional compliance with Department reporting deadlines;

(5) To apply appropriate title IV, HEA funding controls;

(6) To ensure that Federal, State, local, and Tribal statutory, regulatory, contractual, and program requirements are met by educational and financial institutions, and the Department's contractors including Federal Loan Servicers and the Federal Perkins Loan Servicer;

(7) To help governmental entities at the Federal, State, Tribal, and local levels to exercise their supervisory and administrative powers (including, but not limited to, licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers); to investigate, respond to, or resolve complaints regarding the practices or processes of the Department and/or the Department's contractors; and to update information or correct errors contained in Department records regarding title IV, HEA program funds;

(8) To provide reporting capabilities for educational institutions, guaranty agencies, lenders, Department contractors including Federal Loan Servicers, and the Federal Perkins Loan Servicer for use in title IV, HEA administrative functions, and for use by the Department or Federal, State, Tribal, or local agencies for oversight and compliance;

(9) To support research, analysis, and development, and the implementation and evaluation of educational policies in relation to title IV, HEA programs;

(10) To support the Department in detecting and mitigating improper payments in title IV, HEA programs;

(11) To conduct testing, analysis, or take other administrative actions needed to prepare for or execute programs under title IV of the HEA; and

(12) To assist eligible lenders in processing IDR plan requests for eligible aid recipients by providing the calculated monthly payment amounts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records of aid applicants, aid applicants' parents, spouses of aid applicants, and where applicable, endorsers, who apply for title IV, HEA programs including, but not limited to, the:

(1) Federal Pell Grant Program;

(2) Federal Perkins Loans Program;

(3) Academic Competitiveness Grant (ACG) Program;

(4) National Science and Mathematics Access to Retain Talent (National SMART) Grant Program;

(5) TEACH Grant Program;

(6) Iraq and Afghanistan Service Grant (IASG) Program;

(7) Direct Loan Program, which includes Federal Direct Stafford/Ford Loans, Federal Direct Unsubsidized Stafford/Ford Loans, Federal Direct PLUS Loans, and Federal Direct Consolidation Loans;

(8) FFEL Program;

(9) Federal Insured Student Loan (FISL) Program;

(10) FWS Program; and

(11) FSEOG Program.

The COD System also contains records of aid recipients under title IV of the HEA, parents of dependent aid applicants or recipients and the spouse of independent applicant or recipient. The COD System also maintains records on a PSLF qualifying employer's

authorizing official who has certified an aid recipient's employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Note: The Federal Tax Information (FTI) that the Department will obtain directly from the Internal Revenue Service (IRS) under the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act will be maintained in a separate system of records, which will be covered by a system of records notice entitled ''FUTURE Act System (FAS)'' (18–11–23) that the Department will publish in the **Federal Register**.

Records in the COD System include, but are not limited to, the following data about aid applicants and recipients, endorsers, aid applicants' and recipients' parents, and spouses of aid applicants and recipients who are part of an aid applicant's title IV, HEA aid application or receive title IV, HEA aid:

(1) Identifier information, including name, Social Security number (SSN), date of birth (DOB), mailing address, email address, driver's license number, and telephone number;

(2) Aid applicant and recipient demographic information, including demographic information of the aid applicant's and recipient's parent(s) and aid applicant's and recipient's spouse (if applicable), incarcerated student indicator flag, expected student enrollment, list of participating title IV, HEA institutions of higher education designated by the aid applicant to receive the Free Application For Federal Student Aid (FAFSA®) form data along with residency plans, and the financial profile of an aid applicant, an aid applicant's parent(s), or an aid applicant's spouse, as reported and calculated through the FAFSA form, and to also include processing flags, indicators, rejections, and overrides; and the consent/affirmative approval to disclose personally identifiable information to the IRS and to obtain FTI in order to determine eligibility for, or repayment obligations under, IDR plans pursuant to subsection 494 (a) of the HEA (20 U.S.C. 1098h(a));

(3) Aid recipient's loan information including information about Direct Loans, FFEL program loans, Perkins loans, and FISL program loans. This includes information about the period from the origination of the loan through final payment, and milestones, including, but not limited to: discharge, consolidation, or other final disposition including details such as loan amount, date of disbursement, disbursement amounts, balances, loan status, repayment plan and related information, collections, claims, deferments, forbearances, refunds, and guaranty agencies, lender(s), holder(s), and servicer(s) of an aid recipient's FFEL program loan(s);

(4) Information about Federal grant aid recipients, including recipients of Pell Grants, ACG, National SMART Grants, TEACH Grants, Iraq and Afghanistan Service Grants, and FSEOGs, including grant amounts, grant awards, verification status, lifetime eligibility used (LEU), IASG eligible veteran's dependent indicator, Children of Fallen Heroes Scholarship eligibility indicator, Pell Grant additional eligibility indicator, approved Prison Education programs (PEPs)(the FAFSA Simplification Act allows for expanding access to Federal Pell Grants to include Federal and State penal facilities' approved PEPS; and information about the FWS program, including the amount of FWS earnings and category/type of FWS employment;

(5) Pell Grant collection status indicator and overpayment collection information;

(6) Promissory notes including promissory note identification numbers, loan type, current servicer, principal balance, and the accrued interest for Direct Loans, Federal Direct PLUS Loans, or Department-held FFEL program loans;

(7) TEACH Agreements to Serve;

(8) Direct Loan Entrance Counseling forms, Federal Student Loan Exit Counseling forms, Federal Direct PLUS Loan Counseling forms, the Annual School Loan Acknowledgement (ASLA), Federal Direct PLUS Loan Requests, endorser addendums, and counseling in the Direct Loan and TEACH Grant programs, such as the date that the aid applicant completed counseling;

(9) Credit report information for Federal Direct PLUS Loan applicants, recipients, and endorsers and if applicable, documents related to a Federal Direct PLUS Loan applicant's request for a credit appeal including credit check details, adverse credit history, credit bureau information, and applicant provided appeal support documentation and the Department's appeal decision, including the records for ''legacy'' borrowers, defined as those who are enrolled in a program of study at an institution as of June 30, 2026 and have borrowed (or parent of a dependent undergraduate student has borrowed) a Direct Loan for such program of study prior to July 1, 2026 during the expected time to credential. This process ensures continued eligibility under pre-2026 provisions for the lesser of a transitional period not to exceed three academic years or the difference between the published program length minus the period the student has already completed in the program of study. The legacy provision no longer applies if the student completes the program of study, ceases enrollment in such program of study unless the student has taken an approved leave of absence, or ceases enrollment at the institution the student was enrolled at as of June 30, 2026. A change in an undergraduate student's major does not affect this legacy provision; including revised aggregate loan limit data (both historical and current borrowing totals to enforce specific caps) and institutional discretionary limit records via documentation of lower annual loan limits set by financial aid administrators, including program-level identifiers to verify consistent application across a specific program of study.

(10) Aid applicant, endorser, or spouse identifier information for a paper or electronic request to repay or annual recertification of an Direct Loan or Department-held Perkins or FFEL loans or annual recertification of eligibility for, an IDR plan, such as SSN; the date that the IDR plan application was completed; ADOI; IDR monthly payment amount based on the plan selection (as applicable); and current loan balances;

(11) Electronic Direct Consolidation Loan or Special Direct Consolidation Loan aid recipient identifier information, such as the aid recipient's SSN, the date that the aid recipient completed the Federal Direct Consolidation Loan application and promissory note, and current loan balances;

(12) Information concerning the date of any default on a loan;

(13) Demographic and contact information for aid recipient accounts that the Department places with the Federal Loan Servicer(s) for collection of the aid recipient's title IV, HEA loans;

(14) Information obtained pursuant to matching programs or other information exchanges with Federal and State agencies, and other external entities, to assist in identifying aid recipients who may be eligible for benefits related to their title IV, HEA loans or other title IV, HEA obligations, including, but not limited to, Total and Permanent Disability discharges, loan deferments, interest rate reductions, PSLF, and other Federal and State loan repayment, discharge benefits, or for the purpose of recouping payments or delinquent debts under title IV, HEA programs;

(15) Information provided and generated through customer interactions with contact center support via inbound

and outbound channels (phone, chat, webform, email, customer satisfaction survey, fax, physical mail, and digital engagement platforms). Information includes, but is not limited to: chat transcripts, email communications, audio recordings of customer calls, and screen recordings of contact center desktop support during customer interactions; and

(16) Borrower defense (BD) information including a uniquely generated internal system case ID, a uniquely generated BD case number for Department, educational institution and student tracking, Office of Postsecondary Education Identification Number (OPEID), and the applicable regulatory year and provisions (*i.e.,* 1995, 2016, or 2020) under which the BD case is being processed.

The system also contains the following data about students provided by institutions of higher education that participate in an experiment under the Experimental Sites Initiative: award year, experiment number, OPEID, student SSN, student last name, and any data collection instrument elements authorized under the Information Collection Request associated with each experiment.

The system also contains records from 2014–2021 on the level of study, Classification of Instructional Program code (field of study), and published length of an educational program in which a student receiving title IV, HEA Federal student aid was enrolled to limit their eligibility for Direct Subsidized Loans to no more than 150 percent of the published length of the educational program in which the student was enrolled, and to determine when an aid recipient who enrolled after reaching the 150 percent limit would have been responsible for the accruing interest on outstanding Direct Subsidized Loans.

The system also contains an aid recipient's PSLF qualifying employer's information including, but not limited to, authorizing official's name, title, phone number, email address, and digital signature (including time and date stamp).

Finally, the system maintains cohort default rates (CDRs) calculated by the National Student Loan Data System (NSLDS) from guaranty agency-reported and Federal Loan Servicer-reported data at the institution level.

RECORD SOURCE CATEGORIES:

This system includes records obtained from aid applicants and recipients, aid applicants' and recipients' parents, and spouses of aid applicants and recipients who are part of an applicant's or recipient's title IV, HEA aid application, or who have received title IV, HEA program assistance. These records include information provided by applicants for and recipients of title IV, HEA program assistance, via, for example, Federal Direct Consolidation Loan or Special Direct Loan Consolidation application forms and promissory notes, the parents of dependent aid applicants and recipients, and the spouses of aid applicants and recipients who request to repay a Direct Loan, or recertifies their eligibility for, an IDR plan. This system also includes Federal grant and Direct Loan origination and disbursement records provided to the Department by institutions of higher education or their agents. The system also receives completion information for Direct Loan and TEACH Grant program counseling through *Studentaid.gov* (the student-facing portion of the website) or from institutions of higher education, or both.

The system also receives information on Federal Direct PLUS Loan applicants, recipients, and endorsers from consumer reporting agencies.

Information is also obtained from other Federal, State, Tribal, and local agencies, guaranty agencies, consumer reporting agencies, educational institutions, financial institutions, servicers.

Information is also obtained about a PSLF qualifying employer through DocuSign (a secure digital software used by the Department to obtain and document digital signatures). The process through which the Department obtains the information using DocuSign is as follows:

(1) The aid recipient completes the PSLF application via the ''Helptool,'' which includes the employer's name and email address;

(2) The Department sends the information to DocuSign; and DocuSign sends an email to the employer, which includes a randomly generated code;

(3) If the employer does not opt out, the employer logs in to DocuSign with the randomly generated code to ensure the employer is accessing the correct recipient certification in DocuSign;

(4) The employer certifies the aid recipient's employment, provides the employer's authorizing official's name, title, email address, and phone number, and electronically signs the PSLF certification; and

DocuSign returns to the Department the PSLF qualifying employer's information.

Information is also obtained from other Department systems, including the following systems, or their successor systems:

(1) The Federal Student Aid Partner Connect (FSA Partner Connect) (covered by the Department's Privacy Act system of records notice entitled ''Federal Student Aid Partner Connect'' (18–11–24);

(2) The National Student Loan Data System (NSLDS) (covered by the Department's Privacy Act system of records notice entitled ''National Student Loan Data System'' (18–11-06));

(3) The Financial Management System (FMS) (covered by the Department's Privacy Act system of records notice entitled ''Financial Management System (FMS)'' (18–11–17));

(4) The Common Services for Borrowers (CSB) system (covered by the Department's Privacy Act system of records notice entitled ''Common Services for Borrowers (CSB)'' (18- 11–16);

(5) The Federal Tax Information Module (FTIM) (covered by the Department's Privacy Act system of records notice entitled ''FUTURE Act System (FAS)'' (18–11–23));

(6) The Person Authentication Service (PAS) (covered by the Department's Privacy Act system of records notice entitled ''Person Authentication Service (PAS)'' (18–11–12)); and

(7) The FAFSA Processing System (covered by the Department's Privacy Act system of records notice entitled ''Aid Awareness and Application Processing (AAAP'') (18–11–21)).

The system may also obtain information from other persons or entities from which data is obtained following a disclosure under the routine uses set forth below.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Program Disclosures.* The Department may disclose records from the system of records for the following program purposes:

(a) To assist with the determination of program eligibility and benefits, the Department may disclose records to institutions of higher education, financial institutions, third-party

servicers, and Federal, State, Tribal, or local agencies;

(b) To maintain data that supports the existence of a legal obligation to repay funds disbursed under title IV, HEA programs, including documentation such as promissory notes and other agreements, the Department may disclose records to institutions of higher education, third-party servicers, and Federal agencies;

(c) To identify whether an aid recipient may have received title IV, HEA program funds at more than one institution of higher education for the same enrollment period in violation of title IV, HEA regulations, the Department may disclose records to institutions of higher education, third-party servicers, and Federal, State, or local agencies;

(d) To identify whether an aid recipient may have exceeded the award limits under title IV, HEA program funds in violation of title IV, HEA regulations, the Department may disclose records to institutions of higher education, third-party servicers, and Federal agencies;

(e) To enable institutions of higher education to reconcile, on an aggregate and recipient-level basis, the amount of title IV, HEA program funds that an institution received with the disbursements it made to, or on behalf of, eligible students (including reconciling verification codes, reconciling the funds received with disbursements made by type of funds received, and making necessary corrections and adjustments), the Department may disclose records to institutions of higher education, third-party servicers, and Federal, State, or local agencies;

(f) To enable an institution of higher education to request online credit checks of aid applicants, aid recipients, or endorsers as part of the process for determining the eligibility of aid applicants and recipients for a title IV, HEA Federal Direct PLUS Loan, disclosures may be made to institutions of higher education, third-party servicers, consumer reporting agencies, and Federal agencies;

(g) To assist individuals, institutions of higher education, third-party servicers, or software vendors with questions about title IV, HEA program funds, disclosures may be made to institutions of higher education, software vendors, third-party servicers, and Federal, State, or local agencies;

(h) To support the investigation of possible fraud and abuse and to detect and prevent fraud and abuse in title IV, HEA program funds, disclosures may be made to institutions of higher education, third-party servicers, and Federal, State, local, or Tribal agencies;

(i) To assist institutions of higher education with student loan default prevention, disclosures may be made to institutions of higher education as to whether an aid applicant or recipient has completed required counseling in the Direct Loan or TEACH Grant programs;

(j) To assist the Department in determining eligibility for a Federal Direct PLUS Loan, disclosures may be made to consumer reporting agencies;

(k) To help Federal, State, Tribal, and local governmental entities exercise their supervisory and administrative powers (including, but not limited to licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers) or to investigate, respond to, or resolve complaints submitted regarding the practices or processes of the Department and/or the Department's contractors, the Department may disclose records to governmental entities at the Federal, State, Tribal, and local levels. These records may include all aspects of records relating to loans and grants made under title IV of the HEA, to permit these governmental entities to verify compliance with debt collection, consumer protection, financial, and other applicable statutory, regulatory, or local requirements. Before making a disclosure to these Federal, State, local, or Tribal governmental entities, the Department will require them to maintain safeguards consistent with the Privacy Act to protect the security and confidentiality of the disclosed records;

(l) To assist an eligible lender in processing an aid recipient's IDR plan, the Department may disclose records, including, but not limited to, the calculated monthly payment amount based on the IDR plan selected and ADOIs, to eligible lenders.

(2) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff when necessary to respond to an inquiry from the member made at the written request of that individual and on behalf of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(3) *Enforcement Disclosure.* If information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with investigating or prosecuting that violation or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the following parties listed in sub-paragraphs (i) through (v) is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records from this system of records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in his or her official capacity;

(iii) Any Department employee in his or her individual capacity if the U.S. Department of Justice (DOJ) has been requested to or has agreed to provide or arrange for representation of the employee;

(iv) Any Department employee in his or her individual capacity when the Department has agreed to represent the employee; and

(v) The United States when the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to DOJ.* If the Department determines that disclosure of certain records to DOJ is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to judicial or administrative litigation or ADR to disclose certain records from this system of records to an adjudicative body before which the Department is authorized to appear or to a person or an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records

as a routine use to the party, counsel, representative, or witness.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose information from this system of records to a Federal, State, or local agency, or to another public authority or professional organization, maintaining civil, criminal, or other relevant enforcement or other pertinent records, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies or their Agents and Contractors, Professional Organizations, or the Department's Contractors.* The Department may disclose records to a Federal, State, local, or other public agency or an agent or contractor of such a public agency, professional organization, or the Department's contractor in connection with the hiring or retention of an employee or other personnel action; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(6) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to a grievance, complaint, or disciplinary proceeding involving a present or former employee of the Department, the Department may disclose the record in the course of investigation, fact-finding, or adjudication to any party to the grievance, complaint, or action; to the party's counsel or representative; to a witness; or to a designated fact-finder, mediator, or other person designated to resolve issues or decide the matter. The disclosure may only be made during the course of investigation, fact-finding, or adjudication.

(7) *Labor Organization Disclosure.* The Department may disclose a record to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of a labor organization recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(8) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or the Office of Management and Budget (OMB) if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(9) *Disclosure to the DOJ.* The Department may disclose records to DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(10) *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(11) *Research Disclosure.* The Department may disclose records to a researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to the functions or purposes of this system of records. The Department may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(12) *Disclosure to OMB and the Congressional Budget Office (CBO) for Federal Credit Reform Act (CRA) Support.* The Department may disclose records to OMB and CBO as necessary to fulfill CRA requirements in accordance with 2 U.S.C. 661b.

(13) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system of records to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(14) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(15) *Disclosure to the National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency the following information regarding a valid, overdue claim of the Department:

(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the individual responsible for the claim;

(2) The amount, status, and history of the claim; and

(3) The program under which the claim arose.

The Department may disclose the information specified in this section under 5 U.S.C. 552a(b)(12) and the procedures contained in 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 15 U.S.C. 1681a(f) and 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The Department electronically maintains, for the entire Federal Student Aid lifecycle from application through loan payoff, student and applicant demographic, and title IV, HEA aid data such as, but not limited to, FFEL program, FISL program, and Perkins loan records, on hard disk at the AWS Government Cloud in Seattle, Washington. The Department maintains electronic master promissory notes, electronic Special Direct Consolidation Loan opportunity applications and promissory notes, paper or electronic requests to repay or a recertification a

Direct Loan or Department-held Perkins or FFEL under an IDR plan, and Federal Direct Consolidation Loan applications, ADOIs, and promissory notes on hard disk at the AWS Government Cloud in Seattle, Washington. Paper Direct Loan promissory notes and endorser addendums are maintained in locked vaults in ASM Research in Niagara Falls, New York, and at the NARA operated Atlanta Federal Records Center near Atlanta, Georgia. Data obtained from the paper promissory notes are maintained on hard disks at the AWS Government Cloud in Seattle, Washington. This data is referred to as metadata and is used by the system to link promissory notes to aid recipient data. The Department also creates and maintains electronic images of the paper promissory notes at the ASM Research facility in Niagara Falls, New York. For information on the maintenance of other documents, see the section entitled ''SYSTEM LOCATION.''

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in the COD System are retrieved by the individual's SSN or name, BD case number, or by the institution's OPEID.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are retained and disposed of in accordance with Department Records Schedule 072: FSA Application, Origination, and Disbursement Records (DAA–0441–2013–0002) (ED 072). ED 072 is being amended, pending approval by NARA. Records will not be destroyed until NARA-approved amendments to ED 072 are in effect, as applicable.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Physical access to the sites of the Department's contractors, where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the buildings for their employee or visitor badge.

In accordance with the Department's Administrative Communications System Directive ACSD–OFO–013 entitled ''Contractor Employee Personnel Security Screenings,'' all contract and Department personnel who have facility access and system access must undergo a security clearance investigation. Individuals requiring access to Privacy Act data are required to hold, at a minimum, a moderate-risk security clearance level. These individuals are required to undergo periodic screening at five-year intervals.

In addition to undergoing security clearances, contract and Department employees are required to complete security awareness training on an annual basis. Annual security awareness training is required to ensure that contract and Department users are appropriately trained in safeguarding Privacy Act data.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a ''need-to-know'' basis and controls individual users' ability to access and alter records within the system. All users of this system of records are given unique user identification. The Department's FSA Information Security and Privacy Policy requires the enforcement of a complex password policy. In addition to the enforcement of the complex password policy, users are required to change their password at least every 90 days in accordance with the Department's information technology standards.

In accordance with the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, every Department system must receive a signed Authorization to Operate (ATO) from a designated Department official. The ATO process includes a rigorous assessment of security and privacy controls, a plan of actions and milestones to remediate any identified deficiencies, and a continuous monitoring program.

Security and privacy controls implemented are comprised of a combination of management, operational, and technical controls, and include the following control families: access control, awareness and training, audit and accountability, security assessment and authorization, configuration management, contingency planning, identification and authentication, incident response, maintenance, media protection, physical and environmental protection, planning, personnel security, privacy, risk assessment, system and services acquisition, system and communications protection, system and information integrity, and program management.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the system manager at the address listed above. You must provide necessary particulars of your name, DOB, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name.

Requests by an individual for access to a record must meet the requirements in 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of your personal record within the system of records, contact the system manager at the address listed above and provide your name, DOB, and SSN. Identify the specific items to be changed and provide a written justification for the change.

Requests to amend a record must meet the requirements in 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager at the address listed above. You must provide necessary particulars such as your name, DOB, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Requests must meet the requirements in 34 CFR 5b.5.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The system of records entitled ''Common Origination and Disbursement (COD) System'' (18–11–02) was last modified and published in full in the **Federal Register** on June 28, 2023 (88 FR 41942–41951).

[FR Doc. 2026–07827 Filed 4–21–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2026–FSA–0761]

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the U.S. Department of Education (Department) publishes this notice of a modified system of records entitled the ''National Student Loan Data System (NSLDS)'' (18–11–06). The information contained in this system is maintained for various purposes relating to aid applicants and recipients. These include determining aid applicants' and

recipients' eligibility for Federal student financial assistance under the programs authorized by title IV of the Higher Education Act of 1965, as amended (HEA); assisting institutions of higher education participating in and administering the title IV, HEA programs by verifying the eligibility of aid recipients for, and tracking, Federal student loans; and assisting the Department's oversight and administration of the title IV, HEA programs, including evaluating their effectiveness.

DATES: Submit your comments on this modified system of records notice on or before May 22, 2026.

This modified system of records notice will become applicable upon publication in the **Federal Register** on April 22, 2026, unless it needs to be changed as a result of public comment. The Department will publish any changes to the modified system of records notice resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov,* please contact the program contact listed under **FOR FURTHER INFORMATION CONTACT**. 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 comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ''.

Privacy Note: The Department's policy is to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an 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 this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sandi McCabe, Director, Partner System Integration Division, Program Technical and Business Support, Partner Participation and Oversight Directorate, Federal Student Aid, U.S. Department of Education, 400 Maryland Ave. SW, Washington, DC 20202–0001. Telephone: (202) 377–3547. Email: *Sandi.Mccabe@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), the Department proposes to modify the system of records notice entitled, ''National Student Loan Data System (NSLDS)'' (18–11–06), which was last published in full in the **Federal Register** on May 21, 2024 (89 FR 44652).

The Department is modifying the section entitled ''PURPOSE(S) OF THE SYSTEM'' relating to the Department's administration and oversight of title IV, HEA programs as follows:

(i) New Purpose (19) is added to identify, verify, and maintain records for ''legacy'' borrowers, defined as those who received a Graduate PLUS or Parent PLUS loan prior to June 30, 2026. This process ensures continued eligibility under pre-2026 provisions for the lesser of a transitional period not to exceed three academic years or until the borrower completes their current program of study;

(ii) New Purpose (20) has been added to support the implementation of provisions authorizing financial aid administrators to maintain records and set lower annual loan limits for students or parent borrowers of PLUS loans. This modification allows the system to record and apply these reduced limits, ensuring they are maintained and applied consistently to all students within a specific program of study as required by Departmental policy. Specifically, to track and enforce revised aggregate loan limits, including tiered unsubsidized caps for graduate and professional students, gross lifetime limit for Parent PLUS borrowers per dependent, and universal non-PLUS lifetime maximum.

The Department is modifying the section entitled ''CATEGORIES OF RECORDS IN THE SYSTEM'' to add new Category (20) records of legacy borrowers of Graduate PLUS and Parent PLUS loans with lower annual loan limits. Specifically, records that track revised aggregate loan limits, including tiered unsubsidized caps for graduate and professional students, gross lifetime limit for Parent PLUS borrowers per dependent, and universal non-PLUS lifetime maximum.

The Department is modifying the section entitled ''RECORD SOURCE CATEGORIES'' to remove the Student Aid Internet Gateway (SAIG) (covered by the Department's Privacy Act system of records notice entitled ''Student Aid internet Gateway (SAIG), Participation Management System'' (18–11–10)) and replace it with the Federal Student Aid Partner Connect (FSA Partner Connect) (covered by the Department's Privacy Act system of records notice entitled ''Federal Student Aid Partner Connect'' (18–11–24), which rescinded the two systems of records notices entitled ''Student Aid Internet Gateway, Participant Management System'' (18–11–10) and ''Postsecondary Education Participants System (PEPS)'' (18–11–09).

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. 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, 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 Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents 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.

Richard Lucas,

Federal Student Aid.

For the reasons discussed in the preamble, the Acting Chief Operating Officer, Federal Student Aid, U.S. Department of Education (Department)

publishes a notice of a modified system of records to read as follows:

SYSTEM NAME AND NUMBER:

National Student Loan Data System (NSLDS) (18–11–06).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Student Aid (FSA), U.S. Department of Education, 400 Maryland Ave. SW, Washington, DC 20202–0001.

Amazon Web Services (AWS) Government Cloud, 410 Terry Ave., North Seattle, WA 98109–5210. (This is the hosting center for the NSLDS application, where all electronic NSLDS information is processed and maintained.)

Accenture, 22451 Shaw Rd., Sterling, VA 20166–4319. (This is Accenture's main program office.)

Accenture DC, 820 First St. NE, Washington, DC 20202–4227. (This location is an alternate Accenture work site to support NSLDS.)

Accenture Federal Services, 10931 Laureate Dr., San Antonio, TX 78249. (This location is an alternate Accenture work site to support NSLDS.)

NTT Global Data Centers Americas, 44664 Guilford Dr., Ashburn, VA 20147 and 2008 Lookout Dr., Garland, TX 75044. (NSLDS call recordings are maintained at these locations.)

Oracle Service Cloud, 500 Eldorado Blvd., Broomfield, CO 80021. (Provides customer case management and reporting capabilities to NSLDS Help Desk Customer Service Representatives (CSRs) and has the capability to track and maintain NSLDS inquiries, which allows CSRs to respond to these cases/inquiries.)

The following are the locations of the NSLDS Customer Service Centers:

ASM Research, 4050 Legato Rd., #1100, Fairfax, VA 22033;

Senture, LLC, 4255 W Highway 90, Monticello, KY 42633–3398; and

Veteran Call Center, LLC, 53 Knightsbridge Rd., Suite 216, Piscataway, NJ 08854–3925.

SYSTEM MANAGER(S):

Director, Partner Systems Integration Division, Program Technical and Business Support Group, Partner Participation and Oversight Directorate, Federal Student Aid, U.S. Department of Education, 400 Maryland Ave. SW, Washington, DC 20202–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority under which the system is maintained includes sections 101, 102, 132(i), 428, 455(a), 485, and 485B of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1001, 1002, 1015a(i), 1078, 1087e(a), 1092, and 1092b), and section 431(2) and (3) of the General Education Provisions Act (20 U.S.C. 1231a(2)–-(3)). The collection of Social Security numbers (SSNs) of individuals who are covered by this system is authorized by 31 U.S.C. 7701 and Executive Order 9397 (November 22, 1943), as amended by Executive Order 13478 (November 18, 2008).

PURPOSE(S) OF THE SYSTEM:

The information contained in this system of records is maintained for the following purposes relating to applicants and recipients of aid under title IV of the HEA: (*Note:* Different parts of the HEA use the terms ''discharge,'' ''cancellation,'' or ''forgiveness'' to describe when an aid recipient's loan amount is reduced in whole or in part by the Department. To reduce complexity, this system of records notice uses the term ''discharge'' to include all three terms (''discharge,'' ''cancellation,'' and ''forgiveness''), including, but not limited to, discharges of student loans made pursuant to specific benefit programs. At times, the system of records notice may refer by name to a specific benefit program, such as the ''Public Service Loan Forgiveness'' program; such specific references are not intended to exclude any such program benefits from more general references to loan discharges.

(1) to determine the eligibility of aid applicants and recipients for Federal student financial aid programs authorized by title IV of the HEA;

(2) to report changes in aid applicant and recipient enrollment status and enrollment in educational programs;

(3) to track aid recipients who owe title IV, HEA obligations (debtors);

(4) to maintain information on the status of student loans;

(5) to maintain information on awards to students under the Federal Pell Grant program (including approved Prison Education Programs (PEPs) (the FAFSA Simplification Act allows for expanding access to Federal Pell Grants to include Federal and State penal facilities' approved educational programs), the Academic Competitiveness Grant (ACG) program, the National Science and Mathematics Access to Retain Talent (National SMART) Grant program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant program, the Federal Supplemental Educational Opportunity Grant (FSEOG) program, the Iraq and Afghanistan Service Grant program, and the Federal Work Study (FWS) Program;

(6) to provide aid recipients and NSLDS users with loan refund and discharge details;

(7) to identify qualifying individuals and inform them about title IV, HEA benefits, including total and permanent disability (TPD) discharges, Public Service Loan Forgiveness (PSLF), and benefits under the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. 3901–4043, to streamline the process for applying for loans and benefits, and to recoup payments or delinquent debts under the title IV, HEA programs;

(8) to provide consumer tools to the public to better evaluate the effectiveness of postsecondary institutions and programs, considering their costs, financial aid, loan repayment rates, completion rates, median debts, and the aggregate earnings of title IV, HEA aid recipients who were enrolled at postsecondary institutions and programs participating in the title IV, HEA programs, so that the public can make informed decisions about which postsecondary institutions and programs to attend;

(9) to enable the Department, or other Federal, State, Tribal, or local government agencies, to investigate, respond to, or resolve complaints concerning the practices or processes of the Department and/or the Department's contractors, or to investigate, respond to, or resolve aid recipients' requests for assistance or relief with regard to title IV, HEA program funds;

(10) to conduct testing, analysis, or take other administrative actions needed to prepare for or execute programs under title IV of the HEA; and

(11) to process income eligibility information and documentation for aid applicants and recipients, or applicable aid applicants' and recipients' parents or spouses, pertaining to the discharge of eligible loans under title IV, HEA programs.

The information in this system is also maintained for the following purposes relating to institutions of higher education (also referred to herein as ''educational institutions'' or ''postsecondary institutions'') participating in and administering the title IV, HEA programs:

(1) to permit Department staff, Department contractors, guaranty agencies, eligible lenders, and eligible institutions of higher education to verify the eligibility of a student, potential student, or parent for loans or Pell Grants or Pell Grant disbursements;

(2) to provide student aggregate loan calculations to educational institutions;

(3) to determine default rates for educational institutions, guaranty agencies, and lenders;

(4) to prepare electronic financial aid histories on aid applicants and recipients for educational institutions, guaranty agencies, Department staff, and Department contractors;

(5) to alert educational institutions of changes in students' financial aid eligibility via the Transfer Student Monitoring process;

(6) to assist Department staff, Department contractors and agents, guaranty agencies, the Department of Justice (DOJ), educational institutions, lenders, and servicers in collecting debts arising from the receipt of title IV, HEA funds;

(7) to assess title IV, HEA program activities by guaranty agencies, educational institutions, lenders, and servicers;

(8) to display organizational contact information provided by educational institutions, guaranty agencies, lenders, and servicers;

(9) to provide reporting capabilities for educational institutions, guaranty agencies, lenders, and servicers for use in title IV, HEA administrative functions and for the Department or other Federal, State, Tribal, or local agencies for use in oversight and compliance;

(10) to provide financial institutions and servicers, Department staff, and Department contractors with contact information on loan holders for use in the collection of loans;

(11) to provide educational institutions and servicers with information to resolve overpayments of Pell, ACG, National SMART, TEACH, Iraq and Afghanistan Service Grants, and FSEOG grants;

(12) to obtain data on and to report on students in an educational program for the purposes of monitoring program outcomes and compiling information related to financial value transparency or gainful employment to be made available to educational institutions and to the general public;

(13) to provide consumer tools, such as the College Scorecard, that are designed to simplify information that prospective students receive about costs, financial aid, loan repayment rates, completion rates, median debts, and aggregate earnings of title IV, HEA aid recipients who were enrolled at postsecondary institutions and programs participating in the title IV, HEA programs so that prospective students can make informed decisions about which postsecondary institutions and programs to attend; and

(14) to provide data for educational institutions to ensure the accuracy of their educational programs' performance metrics.

The information maintained in this system is also maintained for the following purposes relating to the Department's oversight and administration of the title IV, HEA programs:

(1) to assist audit and program review planning;

(2) to support research, analysis and development, and the implementation and evaluation of educational policies in relation to the title IV, HEA programs;

(3) to conduct budget analysis and program review planning;

(4) to provide information that supports the Department's compliance with the Federal Credit Reform Act of 1990, as amended (CRA) (2 U.S.C. 661 *et seq.*);

(5) to ensure only authorized users access the NSLDS database and to maintain a history of the aid applicant and recipient information reviewed;

(6) to track the Department's interest in loans funded through the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA) (Pub. L. 110–227);

(7) to track TEACH grants that have been converted to loans;

(8) to track eligibility for PSLF;

(9) to assist in the calculation of metrics related to gainful employment and other title IV, HEA educational programs;

(10) to provide data for program oversight and strategic decision-making in the administration of higher education programs;

(11) to track eligibility for Direct Subsidized Loans and interest subsidy based upon the level of study, Classification of Instructional Programs (CIP) code, and published length of the educational program in which a student is enrolled;

(12) to evaluate the effectiveness of an institution's educational programs, and help provide information to the public at the institutional and programmatic level on this effectiveness;

(13) to verify that Federal, State, local, and Tribal statutory, regulatory, and program requirements are met by educational and financial institutions, Federal Loan Servicers, the Federal Perkins Loan Servicer, and guaranty agencies;

(14) to help governmental entities at the Federal, State, Tribal, and local levels exercise their supervisory and administrative powers (including, but not limited to, licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers) or to investigate, respond to, or resolve complaints regarding the practices or processes of the Department and/or the Department's contractors, or to update information or correct errors contained in Department records regarding an aid recipient's title IV, HEA program funds;

(15) to provide information to support web-based access to aid applicant's and recipient's title IV, HEA program data including enrollment;

(16) to track loan transfers from one holder or servicer to another;

(17) to provide title IV, HEA loan information to support the calculation of monthly payment amounts under Income-Driven Repayment (IDR) plans; and

(18) To support the investigation of possible fraud or abuse and to detect and prevent fraud or abuse.

(19) To identify, verify, and maintain records for ''legacy'' borrowers, defined as those who received a Graduate PLUS or Parent PLUS loan prior to June 30, 2026. This process ensures continued eligibility under pre-2026 provisions for the lesser of a transitional period not to exceed three academic years or until the borrower completes their current program of study;

(20) To support the implementation of provisions authorizing financial aid administrators to maintain records and set lower annual loan limits for students or parent borrowers of PLUS loans. This modification allows the system to record and apply these reduced limits, ensuring they are maintained and applied consistently to all students within a specific program of study as required by Departmental policy. Specifically, to track and enforce revised aggregate loan limits, including tiered unsubsidized caps for graduate and professional students, gross lifetime limit for Parent PLUS borrowers per dependent, and universal non-PLUS lifetime maximum.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individual title IV, HEA aid applicants and recipients.

This system also contains information on the parent(s) of a dependent aid applicant or recipient and the spouse of a married aid applicant or recipient.

In addition, this system contains records on aid recipients and endorsers who received, or signed the promissory note for a loan(s) under one of the programs authorized under title IV of the HEA, including:

(1) the William D. Ford Direct Loan Program (Direct Loan), including Federal Direct Unsubsidized and Subsidized Stafford/Ford Loans, Federal Direct Consolidation Loans, and Federal Direct PLUS Loans;

(2) the Federal Family Education Loan (FFEL) Program,

(3) the Federal Insured Student Loan (FISL) Program,

(4) the Federal Perkins Loan Program (including National Defense Student Loans, National Direct Student Loans, and Perkins Expanded Lending and Income Contingent Loans) (Perkins Loans).

This system also contains records on aid recipients of Federal Pell Grants, ACG, National SMART Grants, TEACH Grants, Iraq and Afghanistan Service Grants, the FWS Program, and FSEOG, as well as on individuals who owe an overpayment on a Federal Pell Grant, an ACG, a TEACH Grant, a National SMART Grant, a FSEOG, an Iraq and Afghanistan Service Grant, or a Federal Perkins Loan.

Further, this system contains student enrollment information for individuals who have received title IV, HEA student assistance, as well as Master Conduit Loan Program Data, Master Loan Participation Program (LPP) Data, and loan-level detail on FFEL Subsidized, Unsubsidized, and Graduate and Parent PLUS loans funded through those programs.

This system contains records for ''legacy'' borrowers, defined as those who received a Graduate PLUS or Parent PLUS loan prior to June 30, 2026. This process ensures continued eligibility under pre-2026 provisions for the lesser of a transitional period not to exceed three academic years or until the borrower completes their current program of study.

This system contains records of legacy borrowers of Graduate PLUS and Parent PLUS loans with lower annual loan limits. Specifically, records that track revised aggregate loan limits, including tiered unsubsidized caps for graduate and professional students, gross lifetime limit for Parent PLUS borrowers per dependent, and universal non-PLUS lifetime maximum.

This system also contains records on students who are title IV, HEA aid recipients and who attended, or who are attending, a gainful employment program at a postsecondary institution.

Lastly, this system contains records from 2014–2021 on the level of study, CIP code, and published length of an educational program in which a student receiving title IV, HEA Federal student aid was enrolled to limit his or her eligibility for Direct Subsidized Loans to no more than 150 percent of the published length of the educational program in which the student was enrolled, and to determine when an aid recipient who enrolled after reaching the 150 percent limit would have been responsible for the accruing interest on outstanding Direct Subsidized Loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Note: The Federal Tax Information (FTI) that the Department obtains directly from the Internal Revenue Service (IRS) under the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act is maintained in a separate system of records entitled the ''FUTURE Act System (FAS)'' (18–11–23);

Records in the NSLDS include, but are not limited to:

(1) aid applicant and recipient identifier information, including SSN, name, date of birth, physical address, phone number, email address, and driver's license number and State of issuance;

(2) aid applicant demographic information, including an aid applicant's parent's and spouse's demographic information (if applicable), student enrollment, incarcerated student indicator flag, list of participating title IV, HEA institutions of higher education selected by the aid applicant to receive the Free Application for Federal Student Aid (FAFSA®) data along with residency plans, and the financial profile of an applicant and an aid applicant's parent(s) or spouse, as reported and calculated through the FAFSA form; and processing flags, indicators, rejections, and overrides;

(3) information on the aid recipient's loan(s) covering the period from the origination of the loan through final payment, consolidation, discharge, or other final disposition, including details such as borrower person ID, student person ID, PLUS borrower person ID, loan ID, loan amount, disbursements, balances, loan status, repayment plan payments and related information, collections, claims, deferments, forbearances, refunds, and discharges;

(4) information on an aid applicant's or recipient's endorser or co-signer of a PLUS loan application from the origination of the loan through final payment, consolidation, discharge, or other final disposition, including details such as co-signer SSN, name, date of birth, driver's license number and State of issuance (if reported), active-duty status (if applicable and reported), email address, address, phone number, and relevant loan information with respect to the loan on which they are the endorser or co-signer;

(5) for students who began an educational program, student identifiers including the student's SSN, date of birth, and name; student enrollment information including the Office of Postsecondary Education identification number (OPE ID number) of the institution, and the CIP code and credential level for the educational program in which the student enrolled; the student's enrollment status, annual cost of attendance (COA), total tuition and fees assessed, tuition residency status, total annual allowance for books, supplies, equipment, housing, and food from their COA, amount of institutional grants and scholarships disbursed, amount of other State, Tribal, or private grants disbursed, and the amount of any private educational loans disbursed; and, if the student completed or withdrew from the program, the completion or withdrawal date, the total amount the student received from private education loans, the student's total amount of institutional debt, the student's total amount of tuition and fees assessed, the student's total amount of allowances for books, supplies, and equipment from the student's COA for each award year, and the total amount of institutional grants and scholarships disbursed to the student;

(6) aggregated income information on completers and non-completers of a particular educational program, and the median loan debt incurred by students enrolled in those education programs;

(7) student demographic information, such as dependency status, citizenship, veteran status, marital status, gender, income and asset information (including income and asset information on the student's spouse, if married), and expected family contribution or Student Aid Index (SAI);

(8) information on the parent(s) of a dependent aid applicant or aid recipient or the spouse of an independent aid applicant or aid recipient, including name, date of birth, SSN, marital status, email address, highest level of schooling completed and starting with award year 2024–2025, the parents' college attendance status, and income and asset information;

(9) information related to an aid applicant's or recipient's application for title IV, HEA benefits, including information relating to IDR or PSLF eligibility such as current income; family size; repayment plan selections; employer name; dates of employment; employment status; if the IDR aid applicant or aid recipient (or spouse, where applicable), provided consent/affirmative approval both to redisclose Federal Tax Information (FTI) of such individuals pursuant to clauses (iii), (iv), (v), and (vi) of section 6103(l)(13)(D) of the Internal Revenue Code (IRC) of 1986 and under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) of information to the IRS for the IRS to disclose FTI to the Department as part of a matching program to determine eligibility for, or

repayment obligations under, IDR plans under title IV of the HEA with respect to loans under part D (Direct Loan program) of title IV of the HEA; repayment amount; and information about the aid recipient's spouse, if the aid applicant or recipient is married;

(10) Federal Pell Grant, FSEOG, ACG Grant, National SMART Grant, and TEACH Grant, and Iraq and Afghanistan Service Grant amounts, dates of disbursement, and for Federal Pell Grants, approved PEPs (the FAFSA Simplification Act allows for expanding access to Federal Pell Grants to include Federal and State penal facilities' approved educational programs);

(11) Federal Pell Grant, ACG Grant, National SMART Grant, TEACH Grant, Iraq and Afghanistan Service Grant, FSEOG, Federal Perkins Loan Program overpayment amounts and/or earning amounts under the FWS Program;

(12) Information maintained by a guaranty agency, including demographic, contact, and identifier information, an aid applicant's FFEL loan(s), and the lender(s), holder(s), and servicer(s) of the borrower's FFEL loan(s);

(13) NSLDS user profiles that include name, SSN, date of birth, employer, and NSLDS username;

(14) information concerning the date of any default on loans and the aggregated loan data to support cohort default rate calculations for educational institutions, financial institutions, and guaranty agencies;

(15) pre- and post-screening results used to determine a student's or parent's aid eligibility;

(16) information on financial institutions participating in the loan participation and sale programs established by the Department under ECASLA, including the collection of: ECASLA loan-level funding amounts, dates of ECASLA participation for financial institutions, dates and amounts of loans sold to the Department under ECASLA, and the amount of loans funded by the Department's programs but repurchased by the lender;

(17) information on the student's educational institution, level of study, the CIP code, and published length for the program in which the student enrolled for an institution or programs of studies at the institution;

(18) information obtained pursuant to matching programs or other information exchanges with Federal and State agencies and other administrators of Federal funds and programs to assist in identifying individuals who may be eligible for aid applicant's or recipient's benefits related to their title IV, HEA loans or other title IV, HEA obligations, including TPD discharges, loan deferments, interest rate reductions, PSLF, and other Federal and State loan repayment or discharge benefits, or for the purpose of recouping payments or delinquent debts under title IV, HEA programs; and

(19) Information provided and generated through customer interactions with contact center support via inbound and outbound channels (phone, chat, webform, email, customer satisfaction survey, fax, physical mail, and digital engagement platforms). Information includes, but is not limited to: chat transcripts, email communications, audio recordings of customer calls, and screen recordings of contact center desktop support during customer interactions.

(20) Records of legacy borrowers of Graduate PLUS and Parent PLUS loans with lower annual loan limits. Specifically, records that track revised aggregate loan limits, including tiered unsubsidized caps for graduate and professional students, gross lifetime limit for Parent PLUS borrowers per dependent, and universal non-PLUS lifetime maximum.

RECORD SOURCE CATEGORIES:

Information is obtained from other Federal, State, local, and Tribal agencies, other administrators of Federal funds and programs, guaranty agencies, educational institutions, financial institutions and servicers, aid applicants and recipients, parents and spouses of applicable aid applicants and recipients, and designated co-signers and endorsers.

Information is also obtained from other Department systems, or their successor systems, such as the Federal Loan Servicers (covered by the system of records entitled ''Common Services for Borrowers (CSB)''); Debt Management Collection System (covered by the system of records entitled ''Common Services for Borrowers (CSB)''); Common Origination and Disbursement System (covered by the system of records entitled ''Common Origination and Disbursement (COD) System''); Financial Management System (covered by the system of records entitled ''Financial Management System (FMS)''); FSA Partner Connect (covered by the system of records entitled ''Federal Student Aid Partner Connect (FSA Partner Connect)'' which resulted in the rescindment of both Student Aid Internet Gateway, Participant Management System (covered by the system of records entitled ''Student Aid Internet Gateway (SAIG), Participation Management System'') and Postsecondary Education Participants System (covered by the system of records entitled ''Postsecondary Education Participants System''); and all systems covered by the system of records entitled ''Aid Awareness and Application Processing.''

Information in this system also may be obtained from other persons or entities from which data is obtained under routine uses set forth below.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records notice without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement.

(1) *Program Disclosures.* The Department may disclose records to the specified users for the following program purposes:

(a) To verify the identity of the applicant involved, the accuracy of the record, or to assist with the determination of program eligibility and benefits, as well as institutional program eligibility, the Department may disclose records to the applicant, guaranty agencies, educational institutions, financial institutions and servicers, and to Federal and State agencies;

(b) To support default rate calculations and/or provide information on aid recipients' current loan status, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and State agencies;

(c) To monitor program outcomes and compile information related to financial value transparency or gainful employment, the Department may disclose records to educational institutions;

(d) To provide financial aid history information to aid in their administration of title IV, HEA programs, the Department may disclose records to educational institutions, guaranty agencies, loan holders, or servicers;

(e) To support auditors and program reviewers in planning and carrying out their assessments of title IV, HEA program compliance, the Department may disclose records to guaranty agencies, educational institutions,

financial institutions and servicers, and to Federal, State, and local agencies;

(f) To support governmental researchers and policy analysts, the Department may disclose records to governmental organizations at the Federal, State, or local level, using safeguards for system integrity and provided that the recipient agrees to establish and maintain safeguards to protect the security and confidentiality of the disclosed records;

(g) To support Federal budget analysts in the development of budget needs and forecasts, the Department may disclose records to Federal and State agencies;

(h) To assist in locating holders of loan(s), the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and Federal agencies;

(i) To assist analysts in assessing title IV, HEA program participation by guaranty agencies, educational institutions, and financial institutions and servicers, the Department may disclose records to Federal and State agencies;

(j) To assist loan holders in locating aid recipients, the Department may disclose records to guaranty agencies, educational institutions, financial institutions that hold an interest in the loan and their servicers, and to Federal agencies;

(k) To assist with meeting requirements under the CRA, the Department may disclose records to Federal agencies;

(l) To assist program administrators with tracking refunds and discharges of title IV, HEA loans, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and to Federal and State agencies;

(m) To enforce the terms of a loan, assist in the collection of a loan, or assist in the collection of an aid overpayment, the Department may disclose records to guaranty agencies, loan servicers, educational institutions and financial institutions, to the DOJ and private counsel retained by the DOJ, and to other Federal, State, local, or Tribal agencies;

(n) To assist the Department in tracking loans funded under ECASLA, the Department may disclose records to Federal agencies;

(o) To obtain data needed to assist the Department in evaluating the effectiveness of an institution's education programs and to provide the public with greater transparency about the level of economic return of an educational institution and their programs that receive title IV, HEA program assistance and to conduct testing that the Department has determined is necessary to obtain such data, the Department may disclose records to educational institutions and to Federal and State agencies, including the Social Security Administration and the U.S. Department of the Treasury; and

(p) To help Federal, State, Tribal, and local governmental entities exercise their supervisory and administrative powers (including licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers) or to investigate, respond to, or resolve complaints submitted regarding the practices or processes of the Department and/or the Department's contractors, the Department may disclose records to governmental entities at the Federal, State, Tribal, and local levels. These records may include all aspects of records relating to loans and grants made under title IV of the HEA, to permit these governmental entities to verify compliance with debt collection, consumer protection, financial, and other applicable statutory, regulatory, or local requirements. Before making a disclosure to these Federal, State, local, or Tribal governmental entities, the Department will require them to maintain safeguards consistent with the Privacy Act to protect the security and confidentiality of the disclosed records.

(q) To support the investigation of possible fraud or abuse and to detect and prevent fraud or abuse in title IV, HEA program funds, disclosures may be made to institutions of higher education, third-party servicers, and Federal, State, local, or Tribal agencies.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive Order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the following parties listed in sub-paragraphs (i) through (v) is involved in judicial or administrative litigation or ADR, or has an interest in such litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity where the DOJ agrees to or has been requested to provide or arrange for representation of the employee; or

(iv) Any Department employee in his or her individual capacity where the Department requests representation for or has agreed to represent the employee; or

(v) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear or to a person or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(4) *Freedom of Information Act (FOIA) or Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or the Office of Management and Budget (OMB) if the Department seeks advice regarding whether records maintained in this system of records are required to be disclosed under the FOIA or the Privacy Act.

(5) *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosing records to the contractor's employees, the Department may disclose the records to those employees. As part of such a contract, the

Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(6) *Congressional Member Disclosure.* The Department may disclose records to a Member of Congress in response to an inquiry from the Member made at the written request of and on behalf of the individual whose records are being disclosed. The Member's right to the information is no greater than the right of the individual who requested it.

(7) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies or their Agents or Contractors, Professional Organizations, or the Department's Contractors.* The Department may disclose a record to a Federal, State, local, Tribal or other public agency or an agent or contractor of such a public agency, a professional organization, or a Department contractor, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(8) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to a grievance, complaint, or disciplinary proceeding involving a present or former employee of the Department, the Department may disclose a record from this system of records during the course of investigation, fact-finding, mediation, or adjudication to any party to the grievance, complaint, or action to the party's counsel or representative, to a witness, or to a designated fact-finder, mediator, or other person designated to resolve issues or decide the matter.

(9) *Labor Organization Disclosure.* The Department may disclose records from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. 71 when relevant and necessary to their duties of exclusive representation.

(10) *Disclosure to the DOJ.* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(11) *Disclosure to the OMB for CRA Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements in accordance with 2 U.S.C. 661b.

(12) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records from this system to appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs and operations), the Federal government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(13) *Disclosure in Assisting Another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(14) *Disclosure to the National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose the following information to a consumer reporting agency regarding a valid overdue claim of the Department: (1) the name, address, taxpayer identification number, and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined in 15 U.S.C. 1681a(f) and 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are maintained electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the individual's SSN, name, date of birth, borrower person ID, student person ID, PLUS borrower person ID, or by the loan ID.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are primarily retained and disposed of in accordance with ED Records Schedule 051: FSA National Student Loan Data System (NSLDS) (DAA–0441–2017–0004) (ED 051). The Department has submitted amendments to ED 051 for NARA's consideration and will not destroy records covered by ED 051 until such amendments are in effect, as applicable.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Authorized users: Access to the system is limited to authorized NSLDS program personnel and contractors responsible for administering the NSLDS program. Authorized personnel include Department employees and officials, financial and fiscal management personnel, computer personnel, and program managers who have responsibilities for implementing the NSLDS program. Read-only users: Read-only access is given to servicers, holders, financial/fiscal management personnel, and institutional personnel.

Physical safeguards: Magnetic tapes, disc packs, computer equipment, and other forms of data are maintained in areas where fire and life safety codes are strictly enforced. Security guards are staffed 24 hours a day, seven days a week, to perform random checks on the physical security of the record storage areas.

Procedural safeguards: A password is required to access the terminal, and a

data set name controls the release of data to only authorized users. In addition, all sensitive data is encrypted using Oracle Transparent Data Encryption functionality. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act and Automatic Data Processing (ADP) security procedures. Contractors are required to maintain confidentiality safeguards with respect to these records. Contractors are instructed to make no further disclosure of the records except as authorized by the System Manager and permitted by the Privacy Act. All individuals who have access to these records receive appropriate ADP security clearances.

Department personnel make site visits to ADP facilities for the purpose of ensuring that ADP security procedures continue to be met. Privacy Act and ADP system security requirements are specifically included in contracts. The NSLDS project directors, project officers, and the system manager oversee compliance with these requirements.

In accordance with the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, every Department system must receive a signed Authorization to Operate (ATO) from a designated Department official. The ATO process includes a rigorous assessment of security controls, a plan of actions and milestones to remediate any identified deficiencies, and a continuous monitoring program.

FISMA controls implemented are comprised of a combination of management, operational, and technical controls, and include the following control families: access control, awareness and training, audit and accountability, security assessment and authorization, configuration management, contingency planning, identification and authentication, incident response, maintenance, media protection, physical and environmental protection, planning, personnel security, privacy, risk assessment, system and services acquisition, system and communications protection, system and information integrity, and program management.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, you must contact the system manager with the necessary particulars such as your name, date of birth, SSN, the name of the school or lender from which the loan or grant was obtained, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. Requests by an individual for access to a record must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record in the system of records, you must contact the system manager with the necessary particulars such as your name, date of birth, SSN, the name of the school or lender from which the loan or grant was obtained, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. You must also identify the specific item(s) to be changed, and provide a justification for the change, including any supporting documentation. Requests to amend a record must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in this system of records, you must contact the system manager with the necessary particulars such as your name, date of birth, SSN, the name of the school or lender from which the loan or grant was obtained, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. Requests for notification about whether the system of records contains information about an individual must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The system of records entitled ''National Student Loan Data System (NSLDS)'' (18–11–06) was last modified and published in full in the **Federal Register** on May 21, 2024 (89 FR 44652).

[FR Doc. 2026–07817 Filed 4–21–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2026–FSA–0925]

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of a new matching program.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, the Computer Matching and Privacy Protection Amendments of 1990, and Office of Management and Budget (OMB) guidance on the conduct of matching programs, notice is hereby given of the re-establishment of the matching program between the U.S. Department of Education (Department), as the recipient agency, and the U.S. Department of Veterans Affairs (VA), as the source agency. This matching program will assist the Department in its obligation to ensure that borrowers who either owe balances on or who have had any of loans made under title IV of the Higher Education Act of 1965, as amended (HEA) written off due to default for the Federal Perkins Loan Program (20 U.S.C. 1087aa *et seq.*), the William D. Ford Federal Direct Loan Program (20 U.S.C. 1087a *et seq.*), the Federal Family Education Loan (FFEL) Program (20 U.S.C. 1071 *et seq.*), or the Federal Insured Student Loan (FISL) Program (20 U.S.C. 1071 *et seq.*) or with Teacher Education Assistance for College and Higher Education (TEACH) Grant service obligations (referred to collectively herein as ''title IV loans'') are more efficiently and effectively able to obtain Total and Permanent Disability (TPD) discharges of their title IV loans.

DATES: Submit your comments on the proposed re-establishment of the matching program on or before May 22, 2026.

The matching program will become effective on the later of the following two dates: (1) June 1, 2026, or (2) 30 days after the publication of this notice, on April 22, 2026, unless comments have been received from interested members of the public requiring modification and republication of the notice. The matching program will continue for 18 months after the effective date and may be renewed for up to an additional 12 months if, within 3 months prior to the expiration of the 18 months, the respective Data Integrity Boards of the Department and the VA determine that the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by

email, or comments submitted after the comment period. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''FAQ'' tab.

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 Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Corinne Sauri, Management and Program Analyst, Office of Operations and Governance, Federal Student Aid, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 245–5612.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, published in the **Federal Register** on June 19, 1989 (54 FR 25818); and OMB Circular No. A–108, notice is hereby provided of the re-establishment of the matching program between the Department and VA.

Participating Agencies

The U.S. Department of Education and the U.S. Department of Veterans Affairs.

Authority for Conducting the Matching Program

The Department's legal authority to enter into the matching program and to disclose information thereunder is sections 420N(c), 437(a)(1), 455(a)(1), and 464(c)(1)(F)(ii & iii) of the HEA (20 U.S.C. 1070g–2(c), 1087(a)(1), 1087e(a)(1), and 1087dd(c)(1)(F)(ii & iii)). VA's legal authority to enter into this matching program is 38 U.S.C. 5106.

Purpose(s)

This matching program will assist the Department in its obligation to ensure that borrowers of title IV loans are more efficiently and effectively able to obtain TPD discharge of their title IV loans. The Department will proactively send notices to borrowers with title IV loans who VA has designated as (1) having a service-connected disability rating that is 100 percent disabling, or (2) being totally disabled based on an individual unemployability rating, informing them that the Department will discharge the borrower's title IV loans no earlier than 61 days after the date that the Department sends the notification to the borrower, unless the borrower chooses to have their title IV loans or TEACH Grant service obligations discharged earlier or chooses to opt out of the TPD discharge within 60 days from the date that ED sends the notification to the borrower. The notices also inform these borrowers that the Department has accepted VA data matched information in lieu of the borrower's submission of a VA Statement with the borrower's TPD loan discharge application, thereby simplifying the TPD discharge process for borrowers.

Categories of Individuals

This matching program covers veterans whom VA has designated as having a service-connected disability rating that is 100 percent disabling or being totally disabled based on an individual unemployability rating, as described in 38 CFR 3.4(b) and 3.340, and who have title IV loans (as defined above).

Categories of Records

This matching program covers the following records on the aforementioned individuals: the name (first, middle, and last), date of birth (DOB), and Social Security number (SSN), the 100 percent disabling service-connected disability rating or the individuals' unemployability rating, and the disability determination date.

System(s) of Records

VA will use the VA system of records entitled ''Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA'' (58VA21/22/28), last published in full in the **Federal Register** on September 15, 2025 (90 FR 44464). VA has determined that routine use 34 in the foregoing system of records is compatible with the purpose for which the information is collected and contains appropriate Privacy Act disclosure authority.

The Department will match information obtained from the VA with Department records maintained in the Department's system of records entitled ''National Student Loan Data System (NSLDS)'' (18–11–06). The NSLDS system of records notice was last published in full in the **Federal Register** on November 7, 2024 (89 FR 88240).

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. 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, 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 documents of this Department published in the **Federal Register,** in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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.

Richard Lucas,

Acting Chief Operating Officer, Federal Student Aid.

[FR Doc. 2026–07801 Filed 4–21–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2026–SCC–1486]

Agency Information Collection Activities; Comment Request; Survey of Postgraduate Employment for the Foreign Language and Area Studies (FLAS) Fellowship Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a 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–1486. 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 Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 5C140, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kurrinn Abrams, 202–987–1920.

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: Survey of Postgraduate Employment for the Foreign Language and Area Studies (FLAS) Fellowship Program.

OMB Control Number: 1840–0829.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 10,000.

Total Estimated Number of Annual Burden Hours: 1,300.

Abstract: The Foreign Language and Area Studies (FLAS) Fellowships program is authorized by 20 U.S.C. 1121(b) and provides allocations of academic year and summer fellowships to institutions of higher education or consortia of institutions of higher education to assist meritorious undergraduate and graduate students undergoing training in modern foreign languages and related area or international studies. This information collection is a survey of FLAS fellows required by 20 U.S.C. 1121(d) which states ''The Secretary shall assist grantees in developing a survey to administer to students who have completed programs under this subchapter to determine postgraduate employment, education, or training. All grantees, where applicable, shall administer such survey once every two years and report survey results to the Secretary.''

Revisions have been made to the estimated total number of responses and total burden hours to reflect the expected current number of responses and corresponding burden hours for each of the two survey components. Minor edits were made to the collections to remove outdated links and update contact information.

Ross Santy,

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

[FR Doc. 2026–07841 Filed 4–21–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2044–044; ER15–2211–058; ER24–1587–011; ER13–1266–061; ER12–162–037; ER21–2280–007; ER22–1385–021; ER23–676–019; ER23–674–017; ER10–1522–011; ER10–1521–027; ER10–1520–027.

Applicants: Occidental Power Services, Inc., Occidental Power Marketing, L.P., Occidental Chemical Corporation, BHE Wind Watch, LLC, BHE Power Watch, LLC, BHER Market Operations, LLC., Independence Wind Energy LLC, Bishop Hill Energy II LLC, CalEnergy, LLC, AlbertaEx, L.P., MidAmerican Energy Services, LLC, MidAmerican Energy Company.

Description: Motion to File Out of Time of Non-Material Change in Status of MidAmerican Energy Company, et al.

Filed Date: 4/10/26.

Accession Number: 20260410–5222.

Comment Date: 5 p.m. ET 5/1/26.

Docket Numbers: ER18–2370–007.

Applicants: Lackawanna Energy Center LLC.

Description: Compliance filing: PJM Entities Report to be effective N/A.

Filed Date: 4/17/26.

Accession Number: 20260417–5213.

Comment Date: 5 p.m. ET 5/8/26.

Docket Numbers: ER21–2460–000.

Applicants: New York Independent System Operator, Inc.

Description: Motion of New York Independent System Operator, Inc. to defer the effective date and request for waiver.

Filed Date: 4/15/26.

Accession Number: 20260415–5238.

Comment Date: 5 p.m. ET 5/6/26.

Docket Numbers: ER26–1634–001.

Applicants: Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.

Description: Tariff Amendment: Duke Energy Carolinas, LLC submits tariff filing per 35.17(b): Amendment to Duke Retail Deferral Adjustment Mechanism Filing to be effective 5/5/2026.

Filed Date: 4/17/26.

Accession Number: 20260417–5199.

Comment Date: 5 p.m. ET 5/8/26.

Docket Numbers: ER26–2231–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Southern Power Enhanced Reliability Upgrade Construction Agt Termination Filing to be effective 6/15/2026.

Filed Date: 4/16/26.

Accession Number: 20260416–5211.

Comment Date: 5 p.m. ET 5/7/26.

Docket Numbers: ER26–2232–000.

Applicants: Georgia Power Company.

Description: Tariff Amendment: Southern Power ERU Construction Agreement Concurrence Termination Filing to be effective 6/15/2026.

Filed Date: 4/16/26.
Accession Number: 20260416–5212.
Comment Date: 5 p.m. ET 5/7/26.
Docket Numbers: ER26–2233–000.
Applicants: Mississippi Power Company.
Description: Tariff Amendment: Southern Power ERU Construction Agreement Concurrence Termination Filing to be effective 6/15/2026.
Filed Date: 4/16/26.
Accession Number: 20260416–5218.
Comment Date: 5 p.m. ET 5/7/26.
Docket Numbers: ER26–2234–000.
Applicants: American Transmission Systems, Incorporated.
Description: § 205(d) Rate Filing: ATSI submits two new Construction Agmts—SA Nos. 7501 & 7498 to be effective 6/17/2026.
Filed Date: 4/17/26.
Accession Number: 20260417–5000.
Comment Date: 5 p.m. ET 5/8/26.
Docket Numbers: ER26–2238–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2026–04–17_SA 4741 ITC Midwest-WPL GIA (E0036) to be effective 4/13/2026.
Filed Date: 4/17/26.
Accession Number: 20260417–5047.
Comment Date: 5 p.m. ET 5/8/26.
Docket Numbers: ER26–2239–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company, Ameren Illinois Company.
Description: § 205(d) Rate Filing: Ameren Illinois Company submits tariff filing per 35.13(a)(2)(iii: 2026–04–17_SA 3028 Ameren IL-Prairie Power Project #45 Arcola to be effective 6/17/2026.
Filed Date: 4/17/26.
Accession Number: 20260417–5067.
Comment Date: 5 p.m. ET 5/8/26.
Docket Numbers: ER26–2240–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: OATT Formula Rate—Schedule 10 Trans System Loss Factor June 2026 to be effective 6/1/2026.
Filed Date: 4/17/26.
Accession Number: 20260417–5070.
Comment Date: 5 p.m. ET 5/8/26.
Docket Numbers: ER26–2241–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company, Ameren Illinois Company.
Description: § 205(d) Rate Filing: Ameren Illinois Company submits tariff filing per 35.13(a)(2)(iii: 2026–04–17_SA 4745 Ameren IL–IMEA-Waterloo Reimbursement Agreement to be effective 6/17/2026.
Filed Date: 4/17/26.
Accession Number: 20260417–5072.
Comment Date: 5 p.m. ET 5/8/26.
Docket Numbers: ER26–2242–000.
Applicants: 301AK 8me LLC.
Description: Initial Rate Filing: Application for Market Based Rate to be effective 4/18/2026.
Filed Date: 4/17/26.
Accession Number: 20260417–5081.
Comment Date: 5 p.m. ET 5/8/26.
Docket Numbers: ER26–2243–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company, Ameren Illinois Company.
Description: § 205(d) Rate Filing: Ameren Illinois Company submits tariff filing per 35.13(a)(2)(iii: 2026–04–17_SA 4746 Ameren Illinois-IMEA-Rantoul WCA to be effective 6/17/2026.
Filed Date: 4/17/26.
Accession Number: 20260417–5086.
Comment Date: 5 p.m. ET 5/8/26.
Docket Numbers: ER26–2244–000.
Applicants: Hillsboro Solar, LLC.
Description: Initial Rate Filing: Market-Based Rate Tariff to be effective 6/17/2026.
Filed Date: 4/17/26.
Accession Number: 20260417–5091.
Comment Date: 5 p.m. ET 5/8/26.
Docket Numbers: ER26–2245–000.
Applicants: Tucson Electric Power Company.
Description: § 205(d) Rate Filing: OATT Revisions to Transition to Flowgate Methodology to be effective 6/16/2026.
Filed Date: 4/17/26.
Accession Number: 20260417–5128.
Comment Date: 5 p.m. ET 5/8/26.
Docket Numbers: ER26–2246–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: GIA, Santa Ana River 3 Power House (WDT010/SA No. 1419) to be effective 6/17/2026.
Filed Date: 4/17/26.
Accession Number: 20260417–5180.
Comment Date: 5 p.m. ET 5/8/26.
Docket Numbers: ER26–2247–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Notice of Cancellation of ISA and CSA, SA Nos. 7092 & 7093; No. AF1–092 to be effective 5/18/2026.
Filed Date: 4/17/26.
Accession Number: 20260417–5210.
Comment Date: 5 p.m. ET 5/8/26.

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 17, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–07813 Filed 4–21–26; 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: PR26–50–000.
Applicants: Black Hills/Kansas Gas Utility Company, LLC.
Description: § 284.123 Rate Filing: BHKG AVTS Filing to be effective 4/1/2026.
Filed Date: 4/16/26.
Accession Number: 20260416–5097.
Comment Date: 5 p.m. ET 5/7/26.
Docket Numbers: RP26–762–000.
Applicants: Portland Natural Gas Transmission System.
Description: § 4(d) Rate Filing: PNGTS Administrative Updates to FERC Gas Tariff to be effective 6/1/2026.
Filed Date: 4/16/26.
Accession Number: 20260416–5000.
Comment Date: 5 p.m. ET 4/28/26.
Docket Numbers: RP26–763–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—New Mexico Gas to be effective 5/1/2026.
Filed Date: 4/17/26.

Accession Number: 20260417–5057.
Comment Date: 5 p.m. ET 4/29/26.

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 17, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–07811 Filed 4–21–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–10316–001]

Burbure, Stacey L.; Notice of Filing

Take notice that on April 16, 2026, Stacey L. Burbure submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) and Part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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.*

Comment Date: 5 p.m. Eastern Time on May 7, 2026.

Dated: April 17, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–07812 Filed 4–21–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10896–027]

Northbrook Virginia Hydro, LLC; City of Danville, Virginia; Notice of Intent to File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 10896–027.

c. *Dated Filed:* February 27, 2026.

d. *Submitted By:* Northbrook Virginia Hydro, LLC (Northbrook) and the City of Danville, Virginia (City).

e. *Name of Project:* Pinnacles Hydroelectric Project.

f. *Location:* The Pinnacles Project is located on the Dan River in Patrick, Henry, and Pittsylvania counties, Virginia.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Chuck Ahlrichs, Northbrook Virginia Hydro, LLC, 14550 N Frank Lloyd Wright Boulevard, Suite 101, Scottsdale, Arizona 85260, *cahlrichs@nbenergy.com;* Jason Grey, Director, Danville Utilities, City of Danville, Virginia, P.O. Box 3300, Danville, Virginia 24543, *greyjc@danvilleva.gov.*

i. *FERC Contact:* Silvia Pineda-Munoz at (202) 502–8388; or email at *silvia.pineda-munoz@ferc.gov.*

j. Northbrook and the City filed their request to use the Traditional Licensing Process on February 27, 2026, and provided public notice of its request on February 25, 2026. In a letter dated April 17, 2026, the Director of the Division of Hydropower Licensing approved Northbrook's and the City's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402. We are also initiating consultation with the State Historic Preservation Officer, Virginia Department of Historic Resources, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Northbrook and the City as the Commission's non-federal representatives for carrying out informal

consultation pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Northbrook and the City filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 10896. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2029.

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.*

(Authority: 18 CFR 2.1)

Dated: April 17, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–07835 Filed 4–21–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD26–6–000]

Notice of Availability of the Draft Section 9.0 Security Program for Hydropower Guidance and Request for Comments

The staff of the Office of Energy Projects (OEP) has revised Section 9.0 of its *Security Program for Hydropower Guidance (Guidance)* to modernize the Commission's existing guidance for cybersecurity practices at licensed projects. The Section 9.0 revisions reflect technological advancements and lessons learned through recent inspections and audits. The revised Section 9.0 *Guidance* updates definitions, applicability criteria, and the technical measures used to evaluate and protect cyber and control-system assets. The staff is asking for public input and suggestions for modifications to the Section 9.0 revisions of the *Guidance* from hydropower owners and operators, federal and state agencies, and other interested parties with expertise in the implementation of cybersecurity practices. The more specific your comments, the more useful they will be. Please note that this comment period will close on Monday, May 18, 2026, 5:00 p.m. Eastern Time.

The revised Section 9.0 *Guidance* may be accessed on the Commission's website via eLibrary | General search. Select ''General Search'' and enter the docket number (AD26–6) in the docket number field to access the document. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov,* toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the docket number (AD26–6–000) with your submission.

1. You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments;

2. You can file your comments electronically by using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. 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.'' Please select ''Comment on a Filing'' as the filing type; or

3. You can file a paper copy of your comments by mailing them to the Commission. 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.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: April 17, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–07837 Filed 4–21–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26–136–000]

Kinder Morgan Louisiana Pipeline LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Texas Access Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Texas Access Project involving construction and operation of facilities by Kinder Morgan Louisiana Pipeline LLC (KMLP) from Jefferson County, Texas into Cameron and Calcasieu Parishes, Louisiana. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope

of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on May 18, 2026. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on March 3, 2026, you will need to file those comments in Docket No. CP26–136–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

KMLP provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. 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; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP26–136–000) in your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

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.*

Summary of the Proposed Project

KMLP proposes to construct, install, modify, operate, and maintain an extension of KMLP's interstate natural gas pipeline system and certain related facilities located in Jefferson County, Texas and Cameron and Calcasieu parishes, Louisiana. The proposed project would enable KMLP to transport up to 1,300,000 dekatherms per day (Dth/d) of natural gas from new Texas interconnections for delivery to various points on the KMLP system.

The Texas Access Project would consist of the following facilities:

- Installation of about 3 miles of 48-inch-diameter pipeline from Jefferson County, Texas to Cameron Parish, Louisiana (Mainline Extension);
- Installation of two aboveground facilities with pig [1] assemblies at the beginning and terminus of the Mainline Extension;
- Modification of KMLP's existing regulator and metering facilities at its existing Sabine Pass Metering Facility in Cameron Parish, Louisiana; and
- Installation of a new interconnection with Louisiana LNG Gas Management LLC from KMLP's existing 42-inch-diameter mainline in Calcasieu Parish, Louisiana (Woodside Interconnect).

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 110.6 acres of land for the aboveground facilities and the pipeline. Following construction, KMLP would maintain about 17.2 acres for permanent operation of the project's facilities, and the remaining acreage would be restored and reverted to former uses. About 39 percent of the proposed pipeline route parallels existing pipeline, utility, or road rights-of-way.

[1] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary.'' For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [3] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP26–136–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

or

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

(Authority: 18 CFR 2.1)

Dated: April 17, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–07836 Filed 4–21–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1971–079]

Idaho Power Company; Notice of Tribal Consultation Meeting

a. *Project Name and Number:* Hells Canyon Hydroelectric Project No. 1971–079.

b. *Applicant:* Idaho Power Company.

c. *Date and Time of Meeting:* Thursday, May 7, 2026 at 11:00 a.m. Eastern Daylight Time.

d. *Meeting Location:* Teleconference.

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] Cooperating agency responsibilities are addressed in Section 107(a)(3) of NEPA (42 U.S.C. 4336(a)(3)).

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

e. *FERC Contact:* Michael Davis, (202) 502–8339, *michael.davis@ferc.gov*.

f. *Purpose of Meeting:* Commission staff will hold a meeting with representatives from the Confederated Tribes of the Umatilla Indian Reservation (Umatilla Tribes) to discuss the Umatilla Tribes' concerns regarding the Hells Canyon Hydroelectric Project.

g. Intervenors in the referenced proceeding may attend the meeting; however, participation will be limited to representatives of the Umatilla Tribes and Commission staff. If Umatilla Tribal representatives decide to disclose information about a specific location which could create a risk or harm to an archaeological site or Native American cultural resource, attendees other than Tribal representatives and Commission staff will be excused for that portion of the meeting and can return to the meeting after such information is disclosed. A summary of the meeting will be placed in the public record of this proceeding. As appropriate, the meeting summary will include both a public, redacted version that excludes any information about the specific location of the archeological site or Native American cultural resource and an unredacted privileged version. Intervenors planning to attend the meeting should notify Michael Davis at (202) 502–8339 or *michael.davis@ferc.gov* by 5 p.m. Eastern Time, Thursday, April 30, 2026.

Dated: April 17, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–07814 Filed 4–21–26; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

TIME AND DATE: Monday, April 27, 2026, at 7:30 a.m.

PLACE: The meeting will be held at Ex-Im Bank in room 1125B, 811 Vermont Avenue NW, Washington, DC 20571.

STATUS: Open.

MATTERS TO BE CONSIDERED: U.S. Content Change for the Working Capital Guarantee Program (WCGP)

CONTACT PERSON FOR MORE INFORMATION: Members of the public who wish to attend the meeting should call Deidre Hodge, Office of the General Counsel, 811 Vermont Avenue NW, Washington, DC 20571 (202) 565–3336 by close of business Friday, April 24, 2026.

India Walker,

Deputy Vice President, Office of External Affairs.

[FR Doc. 2026–07848 Filed 4–20–26; 4:15 pm]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 7, 2026.

A. Federal Reserve Bank of Dallas (Lindsey Wieck, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to *Comments.applications@dal.frb.org:*

1. *James Long, New Braunfels, Texas;* to acquire control of voting shares of First Commercial Financial Corporation (''Corporation''), by becoming a co-trustee of First Commercial Financial Corporation Employee Stock Ownership Plan, which owns Corporation, and thereby indirectly owns First Commercial Bank, N.A., all of Seguin, Texas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026–07815 Filed 4–21–26; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue

NW, Washington, DC 20551–0001, not later than May 22, 2026.

A. Federal Reserve Bank of Minneapolis (Mark Nagle, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org:*

1. *GEBSCO, Inc., Mondovi, Wisconsin;* to acquire Rushford State Bank (Incorporated), Rushford, Minnesota.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026–07816 Filed 4–21–26; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 251 0011]

Rollins, Inc.; Analysis of Proposed Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Agreement Containing Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 22, 2026.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please write ''Rollins, Inc.; File 251 0011'' on it and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex V), Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis of Proposed Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

The public is invited to submit comments on this document. For the Commission to consider your comment, we must receive it on or before May 22, 2026. Write ''Rollins, Inc.; File 251 0011'' on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. If you prefer to file your comment on paper, write ''Rollins, Inc.; File 251 0011'' on your comment and on the envelope, and mail your comment by overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex V), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *https://www.ftc.gov* to read this document and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before May 22, 2026. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') with Rollins, Inc. (''Rollins'' or ''Respondent''). The proposed Decision and Order (''Proposed Order''), included in the Consent Agreement and subject to final Commission approval, is designed to remedy the anticompetitive effects that have resulted from Respondent's use of post-employment covenants not to compete (''Non-Compete Agreements''). A Non-Compete Agreement refers to contract terms that, after a worker has ceased working for an employer, restricts the worker's freedom to accept

employment with a competing business, to form a competing business, or otherwise to compete with the employer.

The Consent Agreement settles charges that Respondent has engaged in unfair methods of competition in violation of section 5 of the FTC Act, as amended, 15 U.S.C. 45, by entering into Non-Compete Agreements with its employees and enforcing them against its former employees.

The Proposed Order has been placed on the public record for 30 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received and will decide whether it should withdraw from the Consent Agreement and take appropriate action or make the Proposed Order final.

II. The Respondent

Rollins is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its principal place of business located in Atlanta, Georgia. Respondent is one of the largest pest-control companies in the United States. Rollins operates over 700 locations with over 18,000 U.S-based employees.

III. The Complaint

The complaint makes the following allegations.

Respondent provides pest-control services in the United States. Respondent long had a policy requiring all newly hired employees to enter Non-Compete Agreements, regardless of their position or responsibilities, with limited exceptions that depend on the employee's location of employment.

Respondent's Non-Compete Agreements have covered a broad range of employees, including pest-control technicians, customer-service representatives, and other employees earning relatively low wages. These types of employees account for the bulk of Respondent's U.S.-based employees subject to Non-Compete Agreements.

As alleged in the complaint, Respondent's Non-Compete Agreements have contained a clause prohibiting, for two years following the conclusion of employment with Rollins, the employee from working in the pest-control services industry within a predetermined distance—usually a 75-mile radius around the Rollins location at which the employee worked, but often a multi-county region.

The complaint alleges Respondent's Non-Compete Agreements are unfair and anticompetitive because they degrade employees' ability to negotiate for better terms of employment in the pest-control industry. The Non-Compete Agreements deny employees access to job opportunities and restrict their mobility, including their ability to start their own pest-control businesses. The complaint alleges this has the tendency or likely effect of restricting business formation, lowering worker earnings (including but not limited to wages and salaries), reducing benefits, and causing less favorable working conditions and other personal hardships to employees. The complaint further alleges that Respondent's Non-Compete Agreements are unfair and anticompetitive because they suppress competition to sell pest control services to consumers, including by inhibiting current competition in the pest-control industry and by impeding competitive entry.

The complaint further alleges that any procompetitive objectives Respondent sought to achieve through its Non-Compete Agreements do not depend on the use and enforcement of Non-Compete Agreements and could have been achieved through significantly less restrictive means. In particular, the complaint alleges that Respondent's Non-Compete Agreements are not reasonably necessary to incentivize Respondent to continue investing in developing confidential information and employee training. The complaint also alleges Respondent offers the same level of employee training where it does not use or enforce Non-Compete Agreements and is incentivized to provide adequate training to compete on the merits by offering quality services. The complaint further alleges Respondent can use narrowly tailored non-solicitation agreements, which may promote continued investment in growing or maintaining customer relationships and client goodwill. These agreements may reduce or eliminate the harms associated with more restrictive Non-Compete Agreements.

IV. Legal Analysis

Section 5 of the Federal Trade Commission (FTC) Act prohibits unfair methods of competition.[1] This prohibition includes agreements in restraint of trade proscribed by section 1 of the Sherman Act[2] as well as agreements or other practices that ''conflict with the basic policies of the Sherman and Clayton Acts'' even if they ''may not actually violate these laws.''[3] Section 5 claims typically ''bear the characteristics of recognized antitrust violations.''[4] Courts have long found agreements not to compete between workers and their current or former employers to be ''proper subjects for scrutiny'' under Federal antitrust law.[5] That courts at common law prior to the passage of the Federal antitrust laws treated agreements between workers and business owners not to compete as presumptively unlawful further suggests that these agreements often conflict with the basic policies of the antitrust laws.[6]

In applying antitrust scrutiny to such agreements, courts typically make a fact-specific determination to assess the agreements' likely effects on competition.[7] Agreements between market participants not to compete may suppress competition by limiting the entry or growth of competitors or otherwise giving rise to the types of harms the antitrust laws are aimed at preventing. These harms include higher consumer prices, reduced availability of services, lower quality services, and reduced worker earnings and benefits. Courts have long held that agreements between market participants that restrain competition but are not reasonably necessary to achieve some procompetitive purpose can be unlawful ''even in the absence of elaborate market analysis.''[8] Moreover, a growing volume

[1] 15 U.S.C. 45.

[2] 15 U.S.C. 1; *see FTC* v. *Cement Inst.,* 333 U.S. 683, 693–94 (1948).

[3] *FTC* v. *Brown Shoe,* 384 U.S. 316, 321 (1966).

[4] *Atl. Ref. Co.* v. *FTC,* 381 U.S. 357, 369–70 (1965).

[5] *See Newburger, Loeb & Co., Inc.* v. *Gross,* 563 F.2d 1057, 1081–82 (2d Cir. 1977); *see also Polk Bros., Inc.* v. *Forest City Enters., Inc.,* 776 F.2d 185, 189 (7th Cir. 1985) (''A covenant not to compete following employment does not operate any differently from a horizontal market division among competitors—not at the time the covenant has its bite, anyway.'').

[6] *See United States* v. *Addyston Pipe & Steel Co.,* 85 F. 271, 281–82 (6th Cir. 1898), *aff'd,* 175 U.S. 211 (1899) (collecting cases and relating the treatment of agreements not to compete at common law to Sherman Act principles, describing them as permissible only where shown to be ancillary to the sale of a business, a partnership, a lease, or where otherwise shown ''reasonably necessary'' to protect confidential knowledge); *cf. Mitchel* v. *Reynolds,* 24 Eng. Rep. 347, 351 (Q.B. 1711) (analyzing noncompete accompanying the sale of a bakery and presuming noncompetes ''*prima facie* to be bad'' unless shown otherwise).

[7] *See Ohio* v. *Am. Express Co.* (''*Amex*''), 585 U.S. 529, 541 (2018). This analysis is similar to but distinct from that under many State employment law tests for enforceability of non-compete agreements, which tend to focus on balancing the interests of the two parties to the case rather than on competitive effects. *See DeSantis* v. *Wackenhut Corp.,* 793 SW2d 670, 688 (Tex. 1990) (''Rule of reason analysis under antitrust laws must not be confused with reasonableness analysis under the common law. . . . An agreement may be reasonable as between the parties and nevertheless violate antitrust laws. Conversely, an agreement may be unreasonable as between the parties and yet not violate the rule of reason test under the antitrust laws.'').

[8] *FTC* v. *Ind. Fed'n of Dentists,* 476 U.S. 447, 459–61 (1986) (citations omitted); *see also, e.g.,*

of empirical evidence indicates agreements not to compete between workers and their current or former employers can harm both competition between market participants and the workers subject to them.[9] One notable study found such agreements can hinder the formation and growth of competitors.[10]

Determining agreements' lawfulness also typically requires consideration of whether (a) any purported procompetitive justifications are in fact legitimate,[11] and (b) less restrictive alternative measures can incentivize any associated procompetitive investments.[12] The existence of less restrictive alternatives can be dispositive.[13] In assessing the validity of potential justifications, the basic fact that a company trains its employees, for example, does not mean that any worker restraints are necessary to incentivize investments in training.[14] And even if an employer submits persuasive evidence of procompetitive investments that it aims to promote through its restrictive agreements, less restrictive alternatives often exist to advance those aims, including narrowly-tailored non-disclosure agreements and non-solicitation agreements.[15]

Applying these principles, the factual allegations described in the complaint support concluding that Respondent's Non-Compete Agreements constitute unfair methods of competition in violation of section 5 of the FTC Act, as amended, 15 U.S.C. 45. As detailed above, the Non-Compete Agreements likely have anticompetitive effects, including by inhibiting new business formation and restricting worker mobility and self-determination. The Non-Compete Agreements are not needed to advance any procompetitive aims—for example, Respondent provides the same training to employees regardless of whether they are subject to a Non-Compete Agreement. And even if there were procompetitive aims associated with the Non-Compete Agreements, alternatives such as narrowly tailored non-solicitation agreements are available to promote them.

V. Proposed Order

The Proposed Order seeks to remedy Respondent's unfair methods of competition. Section II of the Proposed Order prohibits Respondent from: entering into, maintaining, or enforcing a Non-Compete Agreement against a Covered Employee; communicating to a Covered Employee or any other prospective or current employer that the Covered Employee is subject to a Non-Compete Agreement; and requiring any Covered Employee to pay any fees or penalties relating to a Non-Compete Agreement. Section II of the Proposed Order also specifies that Respondent cannot prohibit Covered Employees from using general advertisements to solicit customers in competition with Rollins nor prohibit Covered Employees from responding to inquiries initiated by Rollins customers.

Section III of the Proposed Order requires Respondent to provide clear and conspicuous written notice to Covered Employees that they (i) are not subject to a Non-Compete Agreement; (ii) may compete with Respondent, including by starting their own business; and (iii) may solicit customers through general advertisements.

Other sections of the Proposed Order contain standard order provisions regarding compliance reports, requirements for Respondent to provide notice to the FTC of material changes to its business, and access for the FTC to documents and personnel. The term of the Proposed Order is ten years.

The purpose of this analysis is to facilitate public comment on the Consent Agreement and Proposed Order to aid the Commission in determining whether it should make the Proposed Order final. This analysis is not an official interpretation of the Proposed Order and does not modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Secretary.

Statement of Chairman Andrew N. Ferguson Joined by Commissioner Mark R. Meador

Over 18,000 workers are free from the constraints of unlawful noncompete agreements. The Commission has secured this victory by issuing an administrative complaint and accepting for public comment a proposed consent agreement with Rollins, Inc. (''Rollins''), one of the largest pest-control services companies in the United States, and the parent company of the Orkin brand, among others.[1] Rollins provides pest-control services, including insect identification and treatment, trapping and removing wildlife, and termite treatment and prevention,[2] through more than 700 locations in 49 States.[3]

Newburger, 563 F.2d at 1082 (suggesting similar framework for analysis of agreements not to compete between workers and their former employers); *Mitchel,* 24 Eng. Rep. at 351 (non-compete agreements presumed ''*prima facie* to be bad'' unless shown otherwise); *Cal. Dental Ass'n* v. *FTC,* 526 U.S. 756, 770 (1999) (affirming that an abbreviated rule of reason analysis is appropriate where ''an observer with even a rudimentary understanding of economics could conclude that [they] would have an anticompetitive effect on customers and markets'').

[9] *See, e.g.,* Michael Lipsitz & Mark Tremblay, *Noncompete Agreements and the Welfare of Consumers,* 16 (4) Am. Econ. J. Microecon. 112 (2024) (showing empirically that when non-compete agreements are enforced more at the State level, market concentration increases, with the potential for harm the greatest in industries in which non-compete agreements are likely to be used at the highest rate); Matthew S. Johnson, Kurt J. Lavetti & Michael Lipsitz, *The Labor Market Effects of Legal Restrictions on Worker Mobility,* J. Pol. Econ. 133(9), 2735–279 (2025) (linking non-compete agreement enforcement to negative worker earnings); Bo Cowgill, Brandon Freiberg & Evan Starr, *Clause and Effect: Theory and Field Experimental Evidence on Noncompete Clauses* (Jan. 10, 2024) (last revised July 18, 2025), *https://ssrn.com/abstract=5012370* (causal study finding that removing non-compete agreements increases workers' earnings and mobility without generating information leakage).

[10] Evan Starr, Natarajan Balasubramanian & Marik Sakakibara, *Screening Spinouts?: How Noncompete Enforceability Affects the Creation, Growth, and Survival of New Firms,* 64 Mgmt. Sci. 552 (2018) (detailing how noncompete enforcement can hinder startup employment).

[11] *See Newburger,* 563 F.2d at 1082 (suggesting non-compete agreements would be invalid if, as an initial step, they ''serve no legitimate purpose at the time they are adopted'').

[12] *See Amex,* 585 U.S. at 540–41.

[13] *See NCAA* v. *Alston,* 594 U.S. 69, 100 (2021) (''[R]estraints of trade may wind up flunking the rule of reason to the extent the evidence shows that substantially less restrictive means exist to achieve any proven procompetitive benefits.'').

[14] *See, e.g., Addyston Pipe,* 85 F. at 281 (discussing employee training only in context of whether the noncompete is necessary to protect confidential information); *Deslandes* v. *McDonald's USA, LLC,* 81 F.4th 699, 704 (7th Cir. 2023) (advocating scrutiny of whether restraints that affect employees are actually necessary for promoting output and do not ''just take advantage of workers' sunk costs and help[ ] [the] business's bottom line''); *AWP, Inc.* v. *Safe Zone Servs., LLC,* No. 3:19–CV–00734–CRS, 2022 WL 989133, at *10–11 (W.D. Ky. 2022) (finding that even though the employer ''made some investment of 'time, effort and money' in training its employees, whether this investment is 'significant' enough to constitute a legitimate business interest is questionable at best'').

[15] *See, e.g., AWP,* 2022 WL 989133, at *8 (''Insofar as any Former Employees . . . had access to sensitive information, the fact that the Employee Agreement contains a separate nondisclosure provision forecloses any argument that [the employer] needed a noncompete agreement to protect it.''); *Total Quality Logistics, LLC* v. *EDA Logistics LLC,* No. 23–3713, 2024 WL 4372312, at *5 (6th Cir. Oct. 2, 2024) (affirming lower court decision that found employer's customer goodwill and relationship interest to be ''adequately protected by the agreement's non-solicitation provision'').

[1] Rollins, Brands, *https://www.rollins.com/brands* (last visited Apr. 13, 2026); Complaint, *In re Rollins, Inc.,* Matter No. 2510011 (Apr. 13, 2026) (''Complaint''); Decision and Order, *In re Rollins, Inc.,* Matter No. 2510011 (Apr. 13, 2026) (''Order'').

[2] Western Pest Services, Pest Control, *https://www.westernpest.com/pest-control* (last visited Apr. 13, 2026); Orkin, Pest Control Services, *https://www.orkinglobal.com/services/* (last visited Apr. 13, 2026).

[3] See Today's Homeowner, Orkin Review, *https://todayshomeowner.com/pest-control/reviews/orkin-reviews/* (last visited Apr. 13, 2026).

Its customers are owners of residential and commercial real estate.[4]

The unlawful conduct the Commission today proscribes was the alleged widespread imposition and enforcement of unfair and anticompetitive noncompete agreements.[5] As I have said before, a priority for the Commission under my leadership is protecting American workers from practices that adversely impact competition in labor markets, including unlawful noncompete agreements.[6] Of course, not all noncompete agreements are unlawful. ''Sometimes noncompete agreements have anticompetitive effects, and other times they have procompetitive effects.'' [7] For this reason, noncompete agreements ''present opposing economic considerations that require careful analysis.'' [8] As with nearly every other type of business restraint, the Commission reviews the lawfulness of noncompete agreements on a case-by-case basis under a reasonableness inquiry.[9] Under that balancing test, which is a particular application of the rule of reason, a noncompete agreement violates the antitrust laws where the anticompetitive effects of the restraint outweigh any procompetitive effects that could not be achieved through substantially less restrictive means.[10]

Here, staff obtained compelling evidence during their investigation that gives me the required ''reason to believe'' that Rollins's use of the vast majority of its noncompete agreements violates section 5 of the FTC Act,[11] as charged in the Complaint.[12] Let me briefly explain.

On one side of the scale, the Commission evaluates the anticompetitive effect of the noncompete agreements. We start with the scope and coverage of Rollins's noncompete agreements that have applied to the vast majority of its workforce of more than 18,000 people. The noncompete agreements prohibited Rollins employees from working in the pest-control industry generally within 75 miles of the Rollins location at which the employee worked for two years after the end of the employment relationship.[13] As our Complaint explains, Rollins required all newly hired employees, regardless of their position or responsibilities, to enter into these noncompete agreements—including employees at firms that Rollins acquired.[14] That sort of indiscriminate ''general policy'' approach of requiring every single worker to sign a noncompete agreement irrespective of the worker's position or responsibilities cries out for scrutiny under the antitrust laws.

These noncompete agreements were not merely pro forma. When workers left Rollins to seek opportunities elsewhere or start their own businesses, we allege that Rollins sent hundreds of threatening letters or initiated litigation to enforce the noncompete agreements.[15] The targets of this enforcement campaign often lacked the resources to litigate and acceded to the threat at great personal and professional expense.[16] And our Complaint alleges that the agreements imposed additional anticompetitive effects, including impeding the expansion of existing competitors and delaying entry of new small-business competitors who could challenge Rollins.[17]

Turning to the procompetitive interests that could justify these onerous agreements, we come up nearly empty. As the Complaint charges, Rollins did not need the challenged provisions to continue making any capital investments in training or the development of associated proprietary information—in fact, Rollins's pest control methods are publicly accessible on the internet, so they are hardly a secret.[18] The majority of Rollins's workforce in the U.S. is comprised of pest control technicians and customer service representatives.[19] Although technicians are critical to providing pest-control services, their job duties do not require access to proprietary information that may justify noncompete restrictions in other circumstances. Rollins's technicians had access to customer lists, and Rollins has an interest in protecting those lists to safeguard customer relationships and client goodwill. But Rollins has available to it the less restrictive alternative of narrowly tailored non-solicitation provisions to vindicate those interests.[20] And, indeed, Rollins has available to it the alternative of tailored non-solicitation agreements.[21] Therefore, Rollins's noncompete agreements flunk the test as to these categories of Rollins employees and those similarly situated.

Nevertheless, the Commission's Order today, as was the case in Gateway,[22] recognizes that noncompete agreements can have their (limited) place—it

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[4] Rollins, About Us, *https://www.rollins.com/about-us* (last visited Apr. 13, 2026).

[5] Compl. ¶¶ 7–11.

[6] See Press Release, FTC, FTC Launches Joint Labor Task Force to Protect American Workers (Feb. 26, 2025), *https://www.ftc.gov/news-events/news/press-releases/2025/02/ftc-launches-joint-labor-task-force-protect-americanworkers;* Statement of Chairman Andrew N. Ferguson, Joined by Comm'r Melissa Holyoak, *In re Gateway Pet Mem'l Servs.,* Matter No. 2210170, at 1 (Sept. 4, 2025) (''Ferguson Gateway Statement''); Statement of Chairman Andrew N. Ferguson, Joined by Comm'r Melissa Holyoak, *Ryan, LLC* v. *FTC,* No. 24–10951, at 2, 3 (Sept. 5, 2025).

[7] Dissenting Statement of Comm'r Andrew N. Ferguson, Joined by Comm'r Melissa Holyoak, *In the Matter of the Non-Compete Clause Rule,* Matter No. P201200, at 41–42 (June 28, 2024) (''Ferguson Noncompete Rule Dissent''). For example, noncompete agreements can promote investment in employees by ''mitigating the risk that a rival will lure employees away'' and ''allow business owners to sell their enterprise profitably because no one would buy a business if the seller could immediately compete again in the same field.'' Ferguson Gateway Statement at 3. Such agreements can also ''serve legitimate business interest by protecting employer investments in human capital development, safeguarding confidential information and proprietary know-how that cannot be easily protected though other means (*e.g.,* non-disclosure and confidentiality agreements or intellectual property), and encouraging intra-firm collaboration and knowledge sharing.'' Statement of Mark R. Meador, *In the Matter of Non-Compete Clauses,* Matter No. P201200, at 3 (Sept. 5, 2025) (''Meador Noncompete Statement'').

[8] Meador Noncompete Statement at 1.

[9] Ferguson Gateway Statement at 4, 5; Meador Noncompete Statement at 2–5. Similarly, the common law ''abandoned the categorical proscription in the early eighteenth century in favor of a case-specific reasonableness test.'' *Id.* at 3, n.20 (citing Ferguson Noncompete Rule Dissent at 35 & Section I.B).

[10] See *Mitchel* v. *Reynolds,* 24 Eng. Rep. 347 (Q.B. 1711); *Ohio* v. *Am. Express,* 585 U.S. U.S. 529, 541–42 (2018); *NCAA* v. *Alston,* 594 U.S. 69, 100 (2021) (''[A]nticompetitive restraints of trade may wind up flunking the rule of reason to the extent the evidence shows that substantially less restrictive means exist to achieve any proven procompetitive benefits.''); cf. *Newburger, Loeb & Co., Inc.* v. *Gross,* 563 F.2d 1057, 1082 (2d Cir. 1977) (explaining that the relevant inquiry in employee agreements not to compete should focus on whether such restrictions ''operate in circumstances where no valid business interest of the ex-employer is at stake'' and whether they ''[a]re so burdensome that their anticompetitive purposes and effects outweigh their justifications.''); *Eichorn* v. *AT&T Corp.,* 248 F.3d 131 (3d Cir. 2001) (challenged no-hire agreement ''not an antitrust violation under the rule of reason'' where the particular provision at issue ''did not have a significant anti-competitive effect on the plaintiffs' ability to seek employment''); *Aya Healthcare Servs., Inc.* v. *AMN Healthcare, Inc.,* 9 F.4th 1102, 1110 (9th Cir. 2021) (challenged non-solicitation agreement, involving employee outsourcing arrangement between healthcare staffing agencies collaborating to supply traveling nurses not unlawful under rule of reason where restraint was reasonably necessary to ensure neither would lose personnel during collaboration).

[11] 15 U.S.C. 45(b); *FTC* v. *Standard Oil of Cal.,* 449 U.S. 232, 241 (1980); see also *AMREP Corp.* v. *FTC,* 768 F.2d 1171, 1177 (10th Cir. 1985); *Boise Cascade Corp.* v. *FTC,* 498 F. Supp. 772, 779 (D. Del. 1980).

[12] Compl. ¶ 19.

[13] *Id.* ¶ 7.

[14] *Id.* ¶¶ 7, 9, 10.

[15] *Id.* ¶ 11.

[16] See *id.* ¶¶ 11–12.

[17] See *id.* ¶¶ 13–14.

[18] *Id.* ¶ 15.

[19] See *id.* ¶ 9.

[20] *Id.* ¶¶ 15–16.

[21] Cf. Order at Section II.D.

[22] Decision and Order, *In re Gateway Pet Mem'l Servs.,* Matter No. 2210170, Section I.F (Nov. 25, 2025).

excludes from the prohibition certain employees who do meet a heightened bar for access to competitively sensitive information. That list includes directors, officers, or other defined senior leaders who exercise policy-making authority and are eligible for grants of equity or equity-based interests in Rollins as a benefit of employment.[23]

Today's Order is consistent with the enforcement approach the Commission announced in 2025. We follow the general common-law rule from which our antitrust laws arose that noncompete agreements are lawful when they go no further than necessary to protect specific, identifiable, valid interests of the employer that could not be protected without the noncompete agreement.[24] But we demand exacting proof to ensure that the dangers of unfair or anticompetitive noncompete agreements do not take hold. And the Commission will continue to act against noncompete agreements that unlawfully limit worker mobility and access to job opportunities, which in turn deny consumers the benefits of vigorous competition.

[FR Doc. 2026–07844 Filed 4–21–26; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–IEB–2026–03; Docket No. 2026–0002; Sequence No. 03]

Privacy Act of 1974; Systems of Records

AGENCY: Office of Information Technology (GSA–IT), General Services Administration (GSA).

ACTION: Notice of modified systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, the General Services Administration (GSA) is modifying the systems of records listed in this notice to incorporate a routine use ''. . . that allows for the disclosure of records to the Department of the Treasury for the purposes of identifying, preventing, or recouping fraud and improper payments, to the extent permissible by law'' in accordance with Executive Order 14249, ''Protecting America's Bank Account Against Fraud, Waste, and Abuse'' (March 25, 2025) and OMB M–25–32, ''Preventing Improper Payments and Protecting Privacy Through Do Not Pay'' (August 20, 2025).

DATES: Please submit comments on or before May 22, 2026. The new routine uses will become effective 30 days after publication.

ADDRESSES: Comments may be submitted to the Federal eRulemaking Portal, *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Call or email Richard Speidel, Chief Privacy Officer at 202–969–5830 and *gsa.privacyact@gsa.gov.*

SUPPLEMENTARY INFORMATION: In response to E.O. 14249 and OMB M–25–32, GSA is proposing a new routine use for all GSA system of records notices (SORNs) and all government-wide SORNs that GSA is responsible for that are connected to payments from GSA. The routine use allows for the disclosure of records to the U.S. Department of the Treasury for identifying, preventing, or recouping improper payments.

SYSTEM NAME AND NUMBER:

The systems of records to be modified by including the new routine use described in this Notice are set forth below. The ''**Federal Register** Citation'' column designates the last publication of the complete document in the **Federal Register**. Any history prior to the last publication in the **Federal Register** is omitted for clarity.

SORN No.	SORN name	**Federal Register** Citation
GSA/ADV–1	GSA Advantage!	87 FR 67690
GSA/Childcare–1	Child Care Subsidy	73 FR 22404
GSA/FSS–13	Personal Property Sales Program	89 FR 11277
GSA/OEA–1	Records of Defunct Agencies	73 FR 22390
GSA/PBS–11	GSA Real Estate Sales (G–RES)	89 FR 87578
GSA/PBS–7	The Museum System—TMS	86 FR 46849
GSA/PPFM–1	Disbursement and Accounts Payable Files	73 FR 22411
GSA/PPFM–12	ImageNow	74 FR 39961
GSA/PPFM–3	Travel System	74 FR 25548
GSA/PPFM–6	Employee Credit Reports	73 FR 22408
GSA/PPFM–7	Credit Data on Individual Debtors	73 FR 22405
GSA/PPFM–9	Payroll Accounting and Reporting (PAR) System	73 FR 22398
GSA/GOVT–3	Travel Charge Card Program	78 FR 20108
GSA/GOVT–4	Contracted Travel Services Program	74 FR 26700
GSA/GOVT–6	GSA SmartPay Purchase Charge Card Program	73 FR 22376
GSA/GOVT–9	System for Award Management (SAM)	78 FR 11648

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The appropriate GSA program, as identified in each notice, governs each respective system of records.

SYSTEM MANAGER(S):

The applicable program executive is identified in each notice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside GSA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

[23] Order at Section II; see also Order at Section I.D.

[24] See Ferguson Gateway Statement at 7, n.50 (citing *Horner* v. *Graves,* 131 Eng. Rep. 284, 287 (C.P. 1831) (English courts upheld noncompete agreements if ''the restraint is such only as to afford a fair protection to the interests of the party in favour of whom it is given, and not so large as to interfere with the interests of the public.''); 15 Corbin on Contracts § 80.6 (2024) (describing multifactor reasonableness test); Restatement (2d) of Contracts § 188 (1981) (same); *United States* v. *Addyston Pipe & Steel Co.,* 85 F. 271, 281 (6th Cir. 1898), *aff'd,* 175 U.S. 211 (1899) (collecting cases and relating noncompete agreements' treatment at common law to antitrust principles).

To the U.S. Department of the Treasury when disclosure of the information is relevant to review payment and award eligibility through the Do Not Pay Working System for the purposes of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state (meaning a state of the United States, the District of Columbia, a territory or possession of the United States, or a federally recognized Indian tribe) in a state-administered, federally funded program.

All other existing routine uses in the above systems of records are unchanged and remain in effect.

HISTORY:

See System Names and Numbers above.

Richard Speidel,

Chief Privacy Officer, Office of Enterprise Data and Privacy Management, General Services Administration.

[FR Doc. 2026–07764 Filed 4–21–26; 8:45 am]

BILLING CODE 6820–AB–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10398 #17]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the ''generic'' clearance process. Generally, this is an expedited process by which agencies may obtain OMB's approval of collection of information requests that are ''usually voluntary, low-burden, and uncontroversial collections,'' do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. On October 23, 2011, OMB approved our initial request to use the generic clearance process under control number 0938–1148 (CMS–10398). It was last approved on April 26, 2021, via the standard PRA process which included the publication of 60- and 30-day **Federal Register** notices. The scope of the April 2021 umbrella accounts for Medicaid and CHIP State plan amendments, waivers, demonstrations, and reporting. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by May 6, 2026.

ADDRESSES: When commenting, please reference the applicable form number (CMS–10398 #17) and the OMB control number (0938–1148). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS–10398 #17/OMB control number: 0938–1148, 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/medicare/regulations-guidance/legislation/paperwork-reduction-act-1995/pra-listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at 410–786–4669.

SUPPLEMENTARY INFORMATION: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collection

1. *Title:* CHIP State Plan Eligibility; *Type of Information Collection Request:* Revision of a currently approved collection; *Use:* This iteration proposes substantive changes to the CHIP State Plan Eligibility collection related to section 71109 of the Working Families Tax Cut (WFTC) legislation which limits federal financial participation (FFP) for full CHIP coverage to individuals who are U.S. citizens or U.S. nationals or in only three groups of noncitizens, including lawful permanent residents, Cuban/Haitian entrants, and COFA (Compact of Free Association) migrants, who CMS refers to as ''FFP-eligible noncitizens.'' While the CHIP State Plan Eligibility collection includes various SPA templates, this revision only updates the Non-Financial Eligibility—Citizenship template (CS 18) and the accompanying Implementation Guide (IG CS18).

The template is part of the CHIP State Plan and includes required eligibility attestations for the state to document state assurances/elections and verification processes, including that the State will provide coverage during a reasonable opportunity period (ROP) of at least 90 days.

Form Number: CMS–10398 #17 (OMB control number: 0938–1148); *Frequency:* One time and on occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 2,800. (For policy questions regarding this collection contact: Abby Kahn at 410–786–4321.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026–07803 Filed 4–21–26; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–26 and CMS–R–185]

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:* Revision of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA) Regulations; *Use:* This is an extension package. The Clinical Laboratory Improvement Amendments of 1988 (CLIA) section 353 of the Public Health Service Act requires the Department of Health and Human Services (HHS) to establish certification requirements for any entity, with certain exceptions contained in the regulation, that performs testing on human beings to meet performance requirements based on test complexity and risk factors related to erroneous test results in order to be certified by HHS.

This information collection reflects a series of records required to be maintained by laboratories participating in the CLIA program and are based upon the publication of a final quality assessment rule on January 24, 2003, and the publication of the final fee, histocompatibility, personnel, and alternative sanction rule on December 28, 2023 (88 FR 89976). Included in the revisions were amendments to the histocompatibility and personnel regulations under CLIA to address obsolete regulations and update the regulations to incorporate technological changes, and that are reflected in this extension package.

The previous iteration was a revision of the information collection. Based on notice of final rulemaking, CMS–3326–F (88 FR 89976) published on December 28, 2023, we revised the ICR by adding additional sections.

The final rule addressed recommendations provided by the Centers for Disease Control and Prevention (CDC)'s Clinical Laboratory Improvement Advisory Committee (CLIAC). CMS and CDC incorporated changes in the rulemaking to remove specific regulations already covered in the general requirements and laboratory director responsibilities. The additional requirements included sections 493.1278, 493.1359, 493.1405–1411; 493.1423, 493.1443–1445, 493.1461–1463; 493.1483; 493.1489–1491. These sections included histocompatibility (493.1278) and personnel (493.1359, 493.1405–1411; 493.1423, 493.1443–1445, 493.1461–1463; 493.1483; 493.1489–1491) which required laboratories to revise and update policies and procedures applicable to new or amended requirements. *Form Number:* CMS–R–26 (OMB Control Number: 0938–0612); *Frequency:* Monthly, occasionally; *Affected Public:* Business or other for-profits and Not-for-profit institutions, State, Local or Tribal Governments, and the Federal government; *Number of Respondents:* 49,626; *Total Annual Responses:* 88,259,802; *Total Annual Hours:* 14,514,802. (For policy questions regarding this collection contact Penny Keller at 410–786–2035).

2. *Type of Information Collection Request:* Extension of currently approved collection; *Title of Information Collection:* Granting and Withdrawal of Deeming Authority to Private Nonprofit Accreditation Organizations and CLIA Exemption Under State Laboratory Programs; *Use:* This is an extension package. The Clinical Laboratory Improvement Amendments of 1988 (CLIA) established a new section 353 of the Public Health Service Act (PHSA) which requires the Department of Health and Human Services (HHS) to establish certification requirements, with certain exceptions, for any laboratory that performs testing on human specimens. Laboratories must meet performance requirements based on test complexity in order to be certified by HHS. CLIA also provides for the recognition of private accreditation organizations and State licensure programs whose standards are determined to be equal to or more stringent than the HHS requirements.

Final regulations were published on February 28, 1992, at 42 CFR part 493 which implemented the certificate,

laboratory standards and inspection requirement sections of CLIA. There have been several subsequent rules that have modified these regulations.

On July 31, 1992, final regulations implementing the provisions of 353 PHSA concerning the recognition of private accreditation organizations and State licensure programs for CLIA purposes were published as Subpart E of part 493. These regulations establish that we may approve a private, nonprofit organization as an accreditation organization for clinical laboratories under the CLIA program if the organization's requirements for its accredited laboratories are equal to or more stringent than the applicable CLIA program requirements of part 493. These regulations also provide for the CLIA exemption of laboratories in a State that applies licensure requirements that are equal to or more stringent than those of CLIA.

On May 14, 1998, revisions to Subpart E were published as part of other CLIA final rulemaking. The revisions to Subpart E eliminated duplicative information by restructuring and consolidating requirements for accreditation organizations and State licensure programs seeking approval under CLIA. The revised Subpart better reflects the information required and process involved in obtaining approval. This restructuring did not change the requirements, but only redesignated them into a more customer-oriented document, making them easier for users to understand. In this process we used new section numbers, but retained all the requirements for Subpart E.

The last iteration required accreditation organizations and State licensure programs to revise and update policies and procedures applicable to new or amended requirements in the final rule, CMS–3326–F, to remain complaint with the regulations at 493.553–557. The accreditation organizations or State licensure programs are required to meet or exceed the CLIA regulations. The final rule, CMS–3326–F, was published on December 28, 2023 (88 FR 89976). *Form Number:* CMS–R–185 (OMB control number: 0938–0686); *Frequency:* Occasionally; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 9; *Total Annual Responses:* 9; *Total Annual Hours:* 5,359. (For policy questions regarding this collection contact Penny Keller at 410–786–2035.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026–07850 Filed 4–21–26; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–305]

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 22, 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.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* External Quality Review (EQR) of Medicaid and Children's Health Insurance Program (CHIP) Managed Care, EQR Protocols, and Supporting Regulations; *Use:* Most contracts between a state Medicaid agency and their managed care plan must provide for an annual External Quality Review (EQR). The annual EQR is conducted by an independent external quality review organization (EQRO). States must provide the EQRO with information obtained through methods consistent with the protocols specified by CMS. The information is used by the EQRO to determine the quality of care furnished by the managed care plans in the state. The publicly posted EQR results allows Medicaid/CHIP enrollees and potential enrollees to make informed choices regarding the selection of their providers. It also provides advocacy organizations, researchers, and other interested parties access to information

on the quality of care provided to Medicaid beneficiaries enrolled in Medicaid/CHIP managed care. States use the information during their oversight of these organizations. *Form Number:* CMS–R–305 (OMB control number: 0938–0786); *Frequency:* Annually and one-time; *Affected Public:* Private sector and State, Local or Tribal Governments; *Number of Respondents:* 681; *Number of Responses:* 7,236; *Total Annual Hours:* 887,086. (For policy questions regarding this collection contact Carrie Hanlon at 410–786–1660.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026–07851 Filed 4–21–26; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10434 #15]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the ''generic'' clearance process. Generally, this is an expedited process by which agencies may obtain OMB's approval of collection of information requests that are ''usually voluntary, low-burden, and uncontroversial collections,'' do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by May 6, 2026.

ADDRESSES: When commenting, please reference the applicable form number (CMS–10434 #15) and the OMB control number (0938–1188). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development Attention: CMS–10434 #15/OMB control number: 0938–1188, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/medicare/regulations-guidance/legislation/paperwork-reduction-act-1995/pra-listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at 410–786–4669.

SUPPLEMENTARY INFORMATION: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collection

1. *Title:* Medicaid State Plan Eligibility*; Type of Information Collection Request:* Revision of a currently approved collection; *Use:* This iteration proposes substantive changes to the Citizenship and Noncitizen Eligibility SPA template (RU S89) related to section 71109 of the Working Families Tax Cut (WFTC) legislation which limits federal financial participation (FFP) for full Medicaid coverage, with limited exceptions, to individuals who are U.S. citizens or nationals or in only three groups of noncitizens, including lawful permanent residents (LPRs), Cuban/Haitian entrants, or COFA (Compact of Free Association) migrants, who CMS refers to as ''FFP-eligible noncitizens.''

The revised template includes a required attestation that the state will provide emergency coverage for the care and services necessary for the treatment of an emergency medical condition (often referred to as ''emergency Medicaid''), and State option to provide medical assistance to lawfully residing children and pregnant women (often referred to as the ''CHIPRA 214 option'').

Section 71109 of the WFTC legislation did not change emergency Medicaid or the CHIPRA 214 option and provides that expenditures for emergency Medicaid are excepted from the FFP limitations.

The template also proposes to add another required attestation that the State will provide coverage during a reasonable opportunity period (ROP) pending verification of U.S. citizenship/national status/satisfactory immigration status, as well as State options related to extending the ROP for noncitizens, which is unchanged by section 71109.

Form Number: CMS–10434 #15 (OMB control number: 0938–1188); *Frequency:* One time and on occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 1,120. (For policy questions regarding this collection contact: Abby Kahn at 410–786–4321.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026–07802 Filed 4–21–26; 8:45 am]

BILLING CODE 4120–01–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; Health Center Program Forms—OMB No. 0915–0285—Revision

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. HRSA seeks comments from the public regarding the burden estimate below or any other aspect of the ICR. 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 22, 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: Health Center Program Forms, OMB No. 0915–0285—Revision.

Abstract: The Health Center Program, administered by HRSA, is authorized under Section 330 of the Public Health Service Act (42 U.S.C. 254b). Health centers are patient-directed organizations that deliver affordable, accessible, quality, and cost-effective primary health care services to patients and adjust fees based on income and family size. Nearly 1,400 health centers operate more than 16,000 service delivery sites that provide primary health care to more than 32 million people in every U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Pacific Basin. HRSA uses forms for new and existing health centers and other entities to apply for various grant and non-grant opportunities, renew grant and non-grant designations, report progress, and change their scope of project.

A 60-day notice published in the **Federal Register** on December 15, 2025, vol. 90, No. 238; pp. 58019–21. There was one comment. The commenter noted that tracking and managing service areas defined by Form 5B ZIP codes is complex when a health center uses the Health Center Program forms. In response, HRSA is currently exploring improvements to the Health Center Program GeoCare Navigator to help health centers better visualize their service area prior to requesting changes to their service area.

Need and Proposed Use of the Information: Health Center Program-specific forms are necessary for award processes and oversight of the Health Center Program and other relevant programs. These forms provide HRSA staff and merit review panels with the information essential for application evaluation, funding recommendation and approval, designation, and monitoring. These forms also provide HRSA staff with information essential for evaluating compliance with Health Center Program statutory and regulatory requirements. The current forms will expire April 30, 2026, and this input will inform edits and updates to the Health Center Program's information collection and reporting. HRSA intends to make several changes to its forms.

HRSA will modify the following forms to update and clarify data currently being collected:

Form No./name	Description of modifications
Form 1A: General Information Worksheet	Updated response options and text; aligned classification to the current process; removed the visit-count field.
Form 2: Staffing Profile	Moved to FTE counts; standardized staffing categories.
Form 3: Income Analysis	Question updates with targeted adds/removals.
Form 5A: Services Provided	Updated labels and categories of services.
Form 5B: Sites (previously ''Service Sites'')	Modified fields collecting site information.
Form 6A: Current Board Member Characteristics	Removed patient board member characteristics section.
Form 12: Organization Contacts	Consolidated contact information; kept two key contacts.
Checklist for Adding a New Service	Revised checklist statements and questions.
Checklist for Adding a New Service Delivery Site	Revised checklist statements and questions.
Checklist for Deleting Existing Service	Revised checklist statements and questions.
Checklist for Deleting Existing Service Delivery Site	Revised checklist statements and questions.
HCCN Progress Report	Clarified and updated objectives; reduced the total number of objectives.
Impact Form (previously ''Expanded Services Patient Impact'')	Streamlined form to request generic information based on the Notice of Funding Opportunity.
Loan Guarantee Program Financial Performance Measures (previously: Financial Performance Indicators).	Three questions removed.
NHHCIA NCC Clinical Performance Measures	Minor language updates; no content changes.
NHHCIA NCC Financial Performance Measures	Minor language updates; no content changes.
NHHCIA NCC Income Analysis Form	Question updates with targeted adds/removals.
NH–NCC Project Work Plan Update	Minor language updates; no content changes.
Project Cover Page	Minor language updates; no content changes.
Project Narrative Update	Minor language updates; no content changes.
Project Overview Form	Converted to a generic form usable across funding opportunities; updated questions.
Project Qualification Criteria	Removed 3 questions.
Project Work Plan	Updated to indicate which questions are for PCAs vs NTAPs. Updated minor language updates.
Quality Improvement Fund (QIF) Evaluative Measures Report	Minor language updates; no content changes.
QIF Progress Report	Minor language updates; no content changes.
QIF Project Plan Form	Converted to a generic form usable across funding opportunities; updated questions.
Summary Page (Service Area Competition)	Aligned special medically underserved population terminology with statute; minor language updates.

Form No./name	Description of modifications
Summary Page (New Access Point)	Aligned special medically underserved population terminology with statute; minor language updates.

HRSA will add the following forms necessary for data collection and change in scope requests to simplify the process:

- Grant Number form
- Checklist for Adding a Transitional Care in Carceral Setting Site to Scope
- QIF Transitions in Care for Justice-Involved Populations Progress Report
- QIF Transitions in Care for Justice-Involved Populations Evaluative Measures Report
- LAL Cover page
- Checklist for Form 5A Scope Adjustments
- Checklist for Form 5B Scope Adjustments

HRSA will remove the following forms to further streamline information collected by HRSA and reduce burden:

- Applicant Qualification Criteria Form
- Checklist for Adding a New Target Population
- Environmental Information and Documentation
- Form 3A: Look-Alike Budget Information
- Form 4: Community Characteristics
- Fiscal Year 2020 Ending the HIV Epidemic Primary Care HIV Prevention PCHP Progress Reporting
- HRSA EHBs Action Plan
- Patient Impact Form
- Patient Target and Calculations
- Progress Report—Non-Capital Investments
- Project Plan

Likely Respondents: Health Center Program award recipients (those funded under section 330 of the Public Health Service Act) and Health Center Program look-alikes, state and national technical assistance organizations, and other organizations seeking funding.

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.

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (hours)	Total burden hours
Capital Semi-Annual Progress Report	500	2	1,000	1.00	1,000.00
Checklist for Adding a New Service	450	1	450	2.00	900.00
Checklist for Adding a New Service Delivery Site	1,480	1	1,480	2.00	2,960.00
Checklist for Deleting Existing Service	500	1	500	2.00	1,000.00
Checklist for Deleting Existing Service Delivery Site	750	1	750	2.00	1,500.00
Equipment List	130	1	130	0.50	65.00
Federal Object Class Categories Form	500	1	500	0.25	125.00
Loan Guarantee Program Financial Performance Indicators (previously: Financial Performance Indicators)	5	1	5	1.00	5.00
Form 1A: General Information Worksheet	1,370	1	1,370	0.75	1,027.50
Form 1B: Funding Request Summary	900	1	900	0.75	675.00
Form 1C: Documents on File	1,460	1	1,460	0.50	730.00
Form 2: Staffing Profile	1,370	1	1,370	1.00	1,370.00
Form 3: Income Analysis	1,370	1	1,370	1.00	1,370.00
Form 5A: Services Provided	1,428	1	1,428	0.25	357.00
Form 5B: Sites (previously "service sites")	1,428	1	1,428	0.25	357.00
Form 5C: Other Activities/Locations	550	1	550	0.25	137.50
Form 6A: Current Board Member Characteristics	1,370	1	1,370	1.00	1,370.00
Form 6B: Request for Waiver of Board Member Requirements	1,370	1	1,370	1.00	1,370.00
Form 8: Health Center Agreements	1,370	1	1,370	1.00	1,370.00
Form 12: Organization Contacts	970	1	970	0.50	485.00
Funding Sources	130	1	130	0.50	65.00
FY 2022 Accelerating Cancer Screening Progress Report	29	1	29	1.50	43.50
Grant Number Form	400	1	400	0.25	100.00
HCCN Progress Report	50	1	50	0.50	25.00
Health Center Program Progress Report	130	1	130	1.00	130.00
HRSA Loan Guarantee Program Application	5	1	5	1.00	5.00
Impact Form (old name: Expanded Services Patient Impact)	400	1	400	1.00	400.00
NHHCIA NCC Clinical Performance Measures	5	1	5	1.50	7.50
NHHCIA NCC Financial Performance Measures	5	1	5	0.50	2.50
NHHCIA NCC Income Analysis Form	5	1	5	0.15	0.75
NHHCIA Sample Project Work Plan	2	1	2	0.15	0.30
NH–NCC Project Work Plan Update	5	1	5	1.00	5.00
Operational Plan	350	1	350	2.00	700.00
Other Requirements for Sites	130	1	130	0.50	65.00
Participating Health Centers List	90	1	90	1.00	90.00
Project Cover Page	130	1	130	1.00	130.00

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (hours)	Total burden hours
Project Narrative Update	1,325	1	1,325	4.00	5,300.00
Project Overview Form	500	1	500	1.00	500.00
Project Qualification Criteria	130	1	130	0.50	65.00
Project Work Plan	508	1	508	4.00	2,032.00
Proposal Cover Page	130	1	130	1.00	130.00
QIF Evaluative Measures Report	25	2	50	1.50	75.00
QIF Progress Report	25	12	300	1.50	450.00
QIF TJI Evaluative Measures Report	54	10	540	1.50	810.00
QIF TJI Progress Report	54	10	540	1.50	810.00
QIF Project Plan Form	100	1	100	1.00	100.00
Summary Page (New Access Point)	500	1	500	1.00	500.00
Summary Page (Service Area Competition)	360	1	360	0.50	180.00
LAL Cover page	110	1	110	0.50	55.00
Checklist for Adding a Transitional Care in a Carceral Setting Site to Scope	50	1	50	1.00	50.00
Checklist for Form 5A Scope Adjustments	1,875	1	1,875	0.50	937.50
Checklist for Form 5B Scope Adjustments	1,695	1	1,695	0.50	847.50
Total	28,588		30,350.00		32,785.55

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2026–07793 Filed 4–21–26; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases (NIAID), an institute of the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is giving notice of the invention listed below, which is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Inquiries related to this licensing opportunity should be directed to: Brian Bailey at 240–669–5128, or *bbailey@mail.nih.gov.* Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852: tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

SUPPLEMENTARY INFORMATION: Technology descriptions follows:

Neutralizing Monoclonal Antibodies Against West Nile Virus.

Description of Technology

West Nile virus (WNV) is a mosquito-borne flavivirus that can cause fever and, in some cases, severe neurologic disease. There is no approved human vaccine or specific antiviral treatment for WNV.

Researchers at NIAID's Vaccine Research Center (VRC), working with collaborators at Sheba Medical Center under the PREMISE program, identified five new human monoclonal antibodies that potently neutralize WNV. These antibodies bind the viral envelope (E) protein, with data indicating recognition of E dimers or quaternary epitopes on the virion.

The invention includes compositions comprising the antibodies alone or in combination, nucleic acids encoding them, vectors and host cells for production, and methods for preventing, treating, or detecting WNV infection. The antibodies may be formulated for therapeutic administration, including emergency-use settings, and may also support diagnostic and research applications.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications

- Prevention or treatment antibodies for WNV, including use alone or in combination.
- Antibodies that strongly target the WNV E protein.
- Potential treatments for WNV outbreak response and prevention in high-risk populations.
- Genetic and cell-engineering tools for antibody production and product development.
- Antibodies for WNV detection, surveillance, and research tests.
- Potential intravenous treatments for patients with WNV.

Competitive Advantages

- Shown to strongly neutralize WNV at low concentrations in laboratory cell-based studies.
- Novel antibodies with distinct molecular features not previously reported in scientific literature.
- Human monoclonal antibodies targeting E dimer or quaternary epitopes on the WNV virion.
- Potential applications in WNV treatment, diagnostics, and surveillance.
- Collaboration may help speed development to support WNV outbreak response.

Development Stage

- Pre-Clinical

Inventors: Dr. Daniel Douek, Dr. Chaim Schramm, Dr. Ananda Chowdhury, Dr. Parker Dabbs, Dr. Lu Wang, Dr. Sarah Smith, Dr. Leonid Serebryannyy, Dr. Theodore C. Pierson, Dr. Kimberly Dowd, Dr. Katherine Burgomaster, Dr. Laura Vanblargan, Dr. David Gordon, and Dr. Yuxiang Wang, all of NIAID; Dr. Yaniv Lustig, Dr. Yael

Ottolenghi, and Dr. Dror Harats, all of Sheba Medical Center.

Publications: n/a.

Intellectual Property: HHS Reference No. E–200–2024–0. U.S. Provisional Patent Application filed on July 31, 2024, and PCT Patent Application No. PCT/US2025/039922, filed on July 30, 2025.

Licensing Contact: To license this technology, please contact Brian Bailey at 240–669–5128, or *bbailey@mail.nih.gov,* and reference E–200–2024–0.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. For collaboration opportunities, please contact Brian Bailey at 240–669–5128, or *bbailey@mail.nih.gov.*

Dated: April 17, 2026.

Surekha Vathyam,

Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2026–07769 Filed 4–21–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases (NIAID), an institute of the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is giving notice of the invention listed below, which is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Inquiries related to this licensing opportunity should be directed to: Brian Bailey at 240–669–5128, or *bbailey@mail.nih.gov.* Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852: tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

SUPPLEMENTARY INFORMATION: Technology description follows:

Neutralizing Antibodies Against West Nile Virus

Description of Technology:

West Nile virus (WNV) is a mosquito-borne virus that can cause severe disease affecting the brain and nervous system, especially in older adults and people with weakened immune systems. There is no approved human vaccine or specific antiviral treatment for WNV.

Researchers at NIAID's Vaccine Research Center (VRC), together with collaborators at Sheba Medical Center and the Israeli Ministry of Health, have identified and characterized seven new fully human monoclonal antibodies that bind to the WNV envelope (E) protein—the main surface protein the virus uses to enter cells. In laboratory studies, these antibodies (AIS–196, AIS–204, AIS–259, AIS–260, AIS–261, AIS–262, and AIS–265) strongly blocked WNV infection, and several also showed protective effects in a mouse model.

The invention includes the antibody sequences and tools needed to produce them, supporting development of full-length antibody therapies or smaller antibody fragments. These antibodies could help prevent WNV disease in people at higher risk or treat infection early, either individually or in combination. Modified versions are also included that may extend how long the antibodies remain active in the body or adjust how they interact with the immune system. The antibodies may also be useful in laboratory tests for WNV diagnosis, surveillance, and research.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- Prevention or treatment antibodies for WNV, especially for people at higher risk of severe disease or after a known exposure.
- Fully human antibodies that strongly neutralize virus infection by targeting its key surface E protein.
- Flexible formats for different uses, including full-length antibodies or antibody fragments, and the option to use a single antibody or a combination (''cocktail'').
- Engineered versions designed to last longer in the body and tune immune functions for safety and performance.
- High-quality antibodies for WNV testing and surveillance, supporting laboratory detection, public health monitoring, and research.
- Neutralizing antibodies as components of delivery systems for prophylactic or therapeutic applications.

Competitive Advantages:

- An antibody-based approach for WNV prevention or treatment, given the lack of an approved human vaccine, specific antiviral treatment, or licensed antibody therapy.
- Strong virus-neutralizing activity.
- Fully human antibodies, which are less likely to cause anti-drug immune responses than non-human or humanized antibodies.
- Engineered versions that may last longer in the body and tune immune activity to improve safety and effectiveness.
- High-quality antibodies that support WNV prevention or treatment and can also be used in diagnostic tests, public health surveillance, and research.

Development Stage:

- Pre-Clinical

Inventors: Dr. Theodore Pierson, Dr. Kimberly Dowd, and Dr. Daniel Douek, all of NIAID; Dr. Dror Harats, Dr. Yael Ottolenghi, and Dr. Gili Regev-Yochay, all of Sheba Impact Ltd.; Dr. Yaniv Lustig, of Sheba Impact Ltd. and Ministry of Health, State of Israel.

Intellectual Property: HHS Reference No. E–021–2026–0. Provisional Patent Application No. 63/991,485, filed on February 26, 2026.

Licensing Contact: To license this technology, please contact Brian Bailey at 240–669–5128, or *bbailey@mail.nih.gov,* and reference E–021–2026–0.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. For collaboration opportunities, please contact Brian Bailey at 240–669–5128, or *bbailey@mail.nih.gov.*

Dated: April 17, 2026.

Surekha Vathyam,

Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2026–07770 Filed 4–21–26; 8:45 am]

BILLING CODE 4167–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1276 (Enforcement/Modification)]

Certain Light-Based Physiological Measurement Devices and Components Thereof; Notice of a Commission Determination Not To Review a Combined Recommended Determination on Modification and Enforcement Initial Determination; Termination of Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review a combined recommended determination on modification and enforcement initial determination (''EID'') of the presiding administrative law judge (''ALJ''), finding that the accused redesigned products do not infringe the asserted patents, and therefore, they should not be excluded pursuant to the terms of the limited exclusion order.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation in August 2021, based on an amended and supplemented complaint filed by complainants Masimo Corporation (''Masimo'') and Cercacor Laboratories, Inc. (together with Masimo, ''Complainants''). 86 FR 46275–76 (Aug. 18, 2021). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-based physiological measurement devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 10,912,502 (''the '502 patent''), U.S. Patent 10,945,648 (''the '648 patent,'' and together with the '502 patent, ''Asserted Patents''), U.S. Patent No. 10,912,501, U.S. Patent No. 10,687,745, and U.S. Patent No. 7,761,127. *Id.* The Complaint further alleged that an industry in the United States exists and/or is in the process of being established. *Id.* The notice of investigation named Apple Inc. of Cupertino, California (''Apple'') as the sole respondent. *Id.* at 46276. The Commission's Office of Unfair Import Investigations (''OUII'') did not participate in the underlying investigation. *See id.*

In January 2023, the ALJ issued the final initial determination on violation (''FID''), which found that Apple violated section 337 as to only claims 24 and 30 of the '648 patent. In May 2023, the Commission determined to review the FID in part. *See* 88 FR 3224–44 (May 19, 2023).

In October 2023, the Commission issued its final determination in the underlying investigation, finding Apple in violation of section 337 as to claims 22 and 28 of the '502 patent and claims 12, 24, and 30 of the '648 patent. 88 FR 75032–33 (Nov. 1, 2023). To remedy Apple's violation, the Commission issued both a limited exclusion order (''LEO'') and a cease and desist order (together with the LEO, ''Remedial Orders''). *Id.*

On September 9, 2025, Masimo filed a petition with the Commission pursuant to Commission Rule 210.76 requesting clarification of, or in the alternative, a modification proceeding to modify, the Remedial Orders.

On November 18, 2025, the Commission instituted this combined modification and enforcement proceeding to determine whether Apple's second redesigned products infringe the Asserted Patents. 90 FR 51791–92 (Dec. 2, 2025). OUII did not participate in this proceeding. *See id.*

On March 18, 2026, the ALJ issued the EID, which ultimately concluded that the accused redesigned products did not infringe the asserted claims of the Asserted Patents. On March 25, 2026, Masimo and Apple each filed a petition for Commission review of the EID. On March 30, 2026, the parties each filed responses to the respective petitions.

The Commission has determined not to review the EID. This combined proceeding is hereby terminated in its entirety with the conclusion that the accused redesigned products do not infringe the Asserted Patents, and therefore, they should not be excluded pursuant to the terms of the LEO.

The Commission vote for this determination took place on April 17, 2026.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 17, 2026.

Susan Orndoff,

Supervisory Attorney.

[FR Doc. 2026–07779 Filed 4–21–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1751 (Final)]

Steel Concrete Reinforcing Bar From Algeria; Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of steel concrete reinforcing bar (''rebar'') from Algeria, provided for in subheadings 7213.10.00, 7214.20.00, and 7228.30.80 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2]

Background

The Commission instituted this investigation effective June 4, 2025, following receipt of a petition filed with the Commission and Commerce by Rebar Trade Action Coalition, Washington, DC. The Commission scheduled the final phase of the investigation following notification of a preliminary determination by Commerce that imports of rebar from Algeria were being sold at LTFV within the meaning of § 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 91 FR 11035 (March 6, 2026).

Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 30, 2025 (90 FR 61166). The Commission conducted its hearing on March 3, 2026. All persons who requested the opportunity were permitted to participate.

The Commission made this determination pursuant to § 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on April 17, 2026. The views of the Commission are contained in USITC Publication 5725 (April 2026), entitled *Steel Concrete Reinforcing Bar from Algeria: Investigation No. 731–TA–1751 (Final).*

By order of the Commission.

Issued: April 17, 2026.

Susan Orndoff,

Supervisory Attorney.

[FR Doc. 2026–07778 Filed 4–21–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1499]

Certain Electric Aircraft, Power Systems for Electric Aircraft, and Components Thereof; Notice of Investigation; Correction

AGENCY: U.S. International Trade Commission.

ACTION: Notice; correction.

SUMMARY: Correction is made to the scope of investigation on the delegation of public interest.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 14, 2026 (91 FR 19200) in FR Doc. 2026–07152, on page 19200, in the *Scope of Investigation* section, make the following corrections:

(1) Add after the listed paragraph (2) a new numbered paragraph to read: ''(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1).''

(2) Redesignate paragraphs (3) and (4) as paragraphs (4) and (5).

(3) On page 19201, add before the sentence ''By order of the Commission'' a new paragraph to read: ''This correction does not change the date of institution of this investigation.''

Issued: April 17, 2026.

Susan Orndoff,

Supervisory Attorney.

[FR Doc. 2026–07784 Filed 4–21–26; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

On April 15, 2026, a proposed Settlement Agreement between the United States, on behalf of the Environmental Protection Agency (''EPA''), and Congoleum Corporation, n/k/a CC Oldco Corporation (''Old Congoleum''), Liberty Mutual Insurance Company (''Liberty Mutual''), and the Liquidation Trust for Old Congoleum (''Liquidating Trust'') was filed in the United States Bankruptcy Court for the District of New Jersey in the Chapter 11 case captioned, *In re: Congoleum Corporation,* Case No.: 20–18488 (MBK) (Dkt. No. 827–1).

On July 13, 2020, Old Congoleum filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Two proofs of claim were filed in the Chapter 11 case on behalf of the EPA asserting that Old Congoleum is responsible pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') for costs incurred and to be incurred by the United States relating to the releases and threats of releases of hazardous substances at or in connection with: (1) the Henderson Road Superfund Site in Upper Merion Township, Montgomery County, Pennsylvania (''Henderson Road Site''); and (2) the Spectron, Inc. Superfund Site, in Cecil County, Maryland (''Spectron Site''). The proposed Settlement Agreement grants the United States an allowed claim of $423,169.50 for the Henderson Road Site, and an allowed claim of $26,154.91 for the Spectron Site. The allowed claims shall be paid in full by Liberty Mutual. In exchange for this payment, the United States covenants not to sue Old Congoleum or the Liquidation Trust for claims relating to the Henderson Site or the Spectron Site pursuant to Section 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607, and the United States agrees not to seek from Liberty Mutual any insurance proceeds under certain policies for environmental claims relating to the Henderson Site or the Spectron Site.

The publication of this notice opens a period for public comment on the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re: Congoleum Corporation,* D.J. Ref. No.: 90–11–3–12407. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

Any comments submitted in writing may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the Settlement Agreement may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing Settlement Agreement, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Jason A. Dunn,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2026–07765 Filed 4–21–26; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Innovation and Opportunity Act (WIOA) 2026 Lower Living Standard Income Level (LLSIL)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: Title I of WIOA requires the U.S. Secretary of Labor (Secretary) to update and publish the LLSIL tables annually, for uses described in the law (including determining eligibility for youth). WIOA defines the term ''low-income individual'' as (*inter alia*) one whose total family annual income does not exceed the higher level of the poverty line or 70 percent of the LLSIL. This issuance provides the Secretary's

annual LLSIL for 2026 and references the current 2026 Health and Human Services ''Poverty Guidelines.''

DATES: This notice is applicable April 22, 2026.

FOR FURTHER INFORMATION CONTACT: Contact Donald Haughton, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room C–4526, Washington, DC 20210 or email address: *haughton.donald.w@dol.gov. Federal Youth Employment Program Information:* Sara Hastings, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N–4464, Washington, DC 20210; or email: *hastings.sara@dol.gov.*

SUPPLEMENTARY INFORMATION: The purpose of WIOA is to provide workforce investment activities through statewide and local workforce investment systems that increase the employment, retention, and earnings of participants. WIOA programs are intended to increase the occupational skill attainment by participants and the quality of the workforce, thereby reducing welfare dependency and enhancing the productivity and competitiveness of the Nation.

LLSIL is used for several purposes under the WIOA. Specifically, WIOA section 3(36) defines the term ''low-income individual'' for eligibility purposes, and sections 127(b)(2)(C) and 132(b)(1)(B)(v)(IV) define the terms ''disadvantaged youth'' and ''disadvantaged adult'' in terms of the poverty line or LLSIL for State formula allotments. The Governor and State and local workforce development boards use the LLSIL for determining eligibility for youth and adults for certain services. ETA encourages Governors and State/local boards to consult the WIOA Final Rule and ETA guidance for more specific guidance in applying LLSIL to program requirements. The U.S. Department of Health and Human Services (HHS) published the most current poverty-level guidelines in the **Federal Register**, January 15, 2026. The HHS 2026 Poverty guidelines may also be found on the internet at *https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.*

ETA will have the 2026 LLSIL and the HHS Poverty guidelines available on its website at *www.dol.gov/agencies/eta/llsil.*

WIOA section 3(36)(B) defines LLSIL as ''that income level (adjusted for regional, metropolitan, urban and rural differences and family size) determined annually by the Secretary of Labor based on the most recent lower living family budget issued by the Secretary.'' The most recent lower living family budget was issued by the Secretary in fall 1981. The four-person urban family budget estimates, previously published by the U.S. Bureau of Labor Statistics (BLS), provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently, BLS provides data to ETA, which ETA then uses to develop the LLSIL tables, as provided on the ETA LLSIL website at *www.dol.gov/agencies/eta/llsil.*

This notice updates the LLSIL to reflect cost of living increases for 2025, by calculating the percentage change in the most recent 2025 Consumer Price Index for All Urban Consumers (CPI–U) for an area to the 2024 CPI–U and then applying this calculation to each of the previously published 2025 LLSIL figures. The 2026 LLSIL tables will be available on the ETA LLSIL website at *www.dol.gov/agencies/eta/llsil.*

The website contains updated figures for a four-person family in table 1, listed by region for both metropolitan and non-metropolitan areas. Incomes in all tables are rounded up to the nearest dollar. Since program eligibility for ''low-income individuals,'' ''disadvantaged adults,'' and ''disadvantaged youth'' may be determined by family income at 70 percent of the LLSIL, pursuant to WIOA section 3(36)(A)(ii) and section 3(36)(B), respectively, those figures are listed as well.

I. Jurisdictions

Jurisdictions included in the various regions, based generally on the Census Regions of the U.S. Department of Commerce, are as follows:

A. Northeast

Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the U.S. Virgin Islands.

B. Midwest

Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

C. South

Alabama, American Samoa, Arkansas, Delaware, District of Columbia, Florida, Georgia, Northern Marianas, Oklahoma, Palau, Puerto Rico, South Carolina, Kentucky, Louisiana, Marshall Islands, Maryland, Micronesia, Mississippi, North Carolina, Tennessee, Texas, Virginia, and West Virginia.

D. West

Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Additionally, the LLSIL Excel file provides separate figures for Alaska, Hawaii, and Guam.

Data for selected Metropolitan Statistical Areas (MSAs) are also available. These are based on annual CPI–U changes for a 12-month period ending in December 2025. The updated LLSIL figures for these MSAs and 70 percent of LLSIL are also available in the LLSIL Excel file.

The LLSIL Excel file also lists each of the various figures at 70 percent of the updated 2025 LLSIL for family sizes of one to six persons. Please note, for families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding 70 percent of the LLSIL figure, the figure is shaded.

The LLSIL Excel file also indicates 100 percent of LLSIL for family sizes of one to six and is used to determine self-sufficiency as noted at section 3(36)(A)(ii) and section 3(36)(B) of WIOA.

II. Use of These Data

Governors should designate the appropriate LLSILs for use within the State using the LLSIL Excel files on the website. The Governor's designation may be provided by disseminating information on MSAs and metropolitan and non-metropolitan areas within the State or it may involve further calculations. An area can be part of multiple LLSIL geographies. For example, an area in the State of New Jersey may have four or more LLSIL figures. All cities, towns, and counties that are part of a metro area in New Jersey are a part of the Northeast metropolitan; some of these areas can also be a portion of the New York City MSA. New Jersey also has areas that are part of the Philadelphia MSA, a less populated area in New Jersey may be a part of the Northeast non-metropolitan. If a workforce investment area includes areas that would be covered by more than one LLSIL figure, the Governor may determine which is to be used.

A State's policies and measures for the workforce investment system shall be accepted by the Secretary to the extent that they are consistent with WIOA and its regulations.

III. Disclaimer on Statistical Uses

It should be noted that publication of these figures is only for the purpose of meeting the requirements specified by WIOA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981 and has no plans to do so. The four-person urban family budget estimates series were terminated by BLS in 1982. The CPI–U adjustments used to update LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI–U. Thus, these figures should not be used for any statistical purposes and are valid only for those purposes under WIOA as defined in the law and regulations.

Henry Maklakiewicz,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2026–07771 Filed 4–21–26; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Audit and Finance committees of the Legal Services Corporation (LSC) Board of Directors will meet jointly on April 20, 2026. The meeting will begin on April 20 at 3:00 p.m. Eastern Time and will continue until the conclusion of the meeting agenda.

PLACE: Public Notice of Virtual Meeting.

LSC will conduct its April 20, 2026, meeting virtually via videoconference.

Public Observation: Unless otherwise noted herein, the meeting will be open to public observation via LSC's YouTube channel: *https://www.youtube.com/@LegalServicesCorp/streams.*

STATUS: Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public for the Board to ask auditors questions without management present and receive communication from the corporate auditors regarding governance under Auditing Standard 114.

Any portion of the closed sessions consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session.

A verbatim written transcript will be made of the closed session of the meeting. The transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), (7), (9) and (10), will not be available for public inspection. A copy of the General Counsel's certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Meeting Schedule

1. Monday, April 20, 2026—Joint Audit and Finance Committees Meeting Start Time—3:00 p.m. ET

a. Matters to be discussed include a presentation of fiscal year 2025 annual financial audit.

CONTACT PERSON FOR MORE INFORMATION: Kimberly Little, Board and Executive Coordinator, at (202) 295–1500. Questions may also be sent by electronic mail to the Office of the Corporate Secretary at *updates@lsc.gov.*

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

(Authority: 5 U.S.C. 552b.)

Dated: April 20, 2026.

Stefanie Davis,

Deputy General Counsel, Legal Services Corporation.

[FR Doc. 2026–07807 Filed 4–20–26; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NASA Document Number: 26–022]

Name of Information Collection: Flight Analog Projects (FAP) Crew Selection Questionnaire

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal of information collection.

SUMMARY: NASA, as part of its continuing effort to reduce paperwork and respondent burden, under the Paperwork Reduction Act, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by May 22, 2026.

ADDRESSES: Written comments and recommendations for this 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''.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to NASA PRA Clearance Officer, Stayce Hoult, NASA Headquarters, 300 E Street SW, JC0000, Washington, DC 20546, phone 256–714–8575, or email *stayce.d.hoult@nasa.gov* or *hq-ocio-pra-program@mail.nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This site contains a questionnaire to become a crew/experiment subject for Flight Analog Project (FAP) missions such as Pressure Chamber Analog, Mars Exploration Analog and other analog studies. The questionnaire is used to screen potential applicants for initial qualifications. In addition, the website where the questionnaire exists describes the FAP facilities and experiments conducted to inform and promote interest in public participating in different FAP missions.

NASA is committed to effectively performing the Agency's communication function in accordance with the Space Act Section 203 (a)(3) to ''provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof,'' and to enhance public understanding of, and participation in, the nation's aeronautical and space program.

II. Methods of Collection

Public website, Web Form.

III. Data

Title: Flight Analog Projects (FAP) Crew Selection Questionnaire.

OMB Number: 2700–0174

Type of review: Renewal of information collection.

Affected Public: Individuals.

Estimated Annual Number of Activities: 1.

Estimated Number of Respondents per Activity: 100.

Annual Responses: 100.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 25 hours.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden

(including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Stayce Hoult,

PRA Clearance Officer, National Aeronautics and Space Administration.

[FR Doc. 2026–07834 Filed 4–21–26; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331; NRC–2026–1719]

NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center; Applications for Amendments to Renewed Facility License Involving Proposed No Significant Hazards Consideration Determination and Containing Safeguards Information and Order Imposing Procedures for Access to Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC, the Commission) received and is considering issuance of three amendments to Renewed Facility License (RFL) No. DPR–49 for the Duane Arnold Energy Center (DAEC), which were requested by NextEra Energy Duane Arnold, LLC (NEDA) to support the potential reauthorization of power operations at the DAEC. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration (NSHC). Because potential parties may deem it necessary to obtain access to safeguards information (SGI) to meet Commission requirements for intervention, the NRC is issuing an order imposing procedures to obtain access to SGI for contention preparation by persons who file a hearing request or petition for leave to intervene.

DATES: Submit comments by May 22, 2026. Requests for a hearing or petitions for leave to intervene must be filed by June 22, 2026. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SGI is necessary to respond to this notice must request document access by May 4, 2026.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2026–1719. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301–415–1003; email: *Bridget.Curran@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–5–A85, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Justin Poole, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2048; email: *Justin.Poole@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2026–1719 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2026–1719.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin ADAMS Public Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking Website (*https://www.regulations.gov*). Please include Docket ID NRC–2026–1719 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

A. Background

DAEC consists of a single boiling-water reactor located in Linn County, Iowa. Originally licensed for operation on February 22, 1974, the NRC issued a renewed facility operating license for DAEC on December 16, 2010, with the renewed license term expiring on February 21, 2034.

By letter dated January 18, 2019, NEDA certified to the NRC that it planned to permanently cease power operations at DAEC in the fourth quarter of 2020. By letter dated March 2, 2020, NEDA updated its timeline and certified to the NRC that it planned to permanently cease power operations at DAEC on October 30, 2020. By letter dated August 27, 2020, NEDA certified to the NRC that power operations permanently ceased at DAEC on August

10, 2020, and in a letter dated October 12, 2020, that the fuel was permanently removed from the DAEC reactor vessel and placed in the spent fuel pool, in accordance with 10 CFR 50.82(a)(1). Upon the NRC's docketing of these certifications, the DAEC license no longer authorized operation of the reactor or emplacement or retention of fuel into the reactor vessel, as provided by 10 CFR 50.82(a)(2).

NEDA is seeking to return DAEC to power operations and has submitted several requests for NRC approval to support allowing the resumption of power operations through February 21, 2034, the previous expiration date of the plant's license. These requests include three license amendment requests (LARs), which are the subject of this notice, and an exemption request. Consistent with the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations, the NRC is not publishing a notice of opportunity for hearing on the exemption request.

B. License Amendment Requests

The NRC is considering issuance of amendments to RFL No. DPR–49 for DAEC that were requested by NEDA, to support reauthorization of power operations at DAEC. These LARs are the subject of this notice and are listed in tabular form in Section III of this document.

Before any issuance of the proposed license amendments, the NRC will need to make the findings required by the Act and the NRC's regulations. Pursuant to Section 189a.(2) of the Act, the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

The scope of this notice is limited to comments, requests for hearing, and petitions for leave to intervene related to the three LARs listed in tabular form in Section III of this document.

The NRC staff notes that, although the three LARs state that a categorical exclusion applies, the NRC staff is not relying on a categorical exclusion for these actions. The NRC staff will complete an environmental review of the potential environmental impacts of the proposed Federal actions related to reauthorizing power operations at DAEC, which include the three LARs, and will document its findings in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the NRC's regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' The NRC staff's environmental review will also document the NRC's interagency consultation requirements in accordance with Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act. The NRC staff will prepare an environmental assessment that will be used to determine whether an environmental impact statement is necessary or whether a finding of no significant impact is warranted to satisfy the NRC's NEPA obligations. A draft environmental assessment and draft finding of no significant impact, provided that a determination of no significant impact is reached, will be issued for public comment. The U.S. Department of Energy, Office of Energy Dominance Financing will serve as a cooperating agency on the NRC's environmental review.

III. Notice of Consideration of Issuance of Amendments to Renewed Facility License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the three LARs listed in tabular form in this notice involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is included in the amendment requests as referenced in the table in this notice.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in prevention of resumption of operation of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take this action on any amendment request before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the LAR involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing

would take place after issuance of the amendment. If the final determination is that the LAR involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and the NRC's public website (*https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate*).

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056), and on the NRC's public website (*https://www.nrc.gov/site-help/e-submittals.html*).

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to: (1) request a digital identification (ID) certificate which allows the participant (or their counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or their counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website (*https://www.nrc.gov/site-help/e-submittals/getting-started.html*). After a digital ID certificate is obtained and a docket is created, the participant must submit adjudicatory documents in the Portable Document Format. Guidance on submissions is available on the NRC's public website (*https://www.nrc.gov/site-help/electronic-sub-ref-mat.html*). A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed in order to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website (*https://www.nrc.gov/site-help/e-submittals.html*), by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available on the NRC's public website (*https://adams.nrc.gov/ehd*), unless otherwise excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing docket where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the topic, date, ADAMS accession number, and location in the application of NEDA's proposed NSHC determination for each of the three LARs that support the proposed resumption of power operation at DAEC. For further details with respect to these license amendment applications, see the applications, publicly available portions of which are available for public inspection in ADAMS. For additional direction on accessing information related to these documents, see the ''Obtaining Information and Submitting Comments'' section of this document.

Application to Revise the Renewed Facility License and Technical Specifications to Support Resumption of Power Operation	
Application Date	November 20, 2025.
ADAMS Accession No.	ML25324A300.
Location in Application of NSHC	Pages 60–63 of Enclosure 1.
Brief Description of Amendment	The proposed amendment would revise the renewed facility license including Appendix A, technical specifications, to support resumption of power operations at DAEC.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Steven Hamrick, Senior Attorney, Florida Power and Light Company, 801 Pennsylvania Ave. NW, Suite 220, Washington, DC 20004.
NRC Project Manager, Telephone Number	Justin Poole, 301–415–2048.
Application to Revise the Physical Security Plan to Support Resumption of Power Operation	
Application Date	December 17, 2025.
ADAMS Accession No.	ML25363A083.
Location in Application of NSHC	Pages 4–6 of Enclosure 1.
Brief Description of Amendment	The proposed amendment would revise the DAEC Physical Security Plan and update License Condition C.(5) to support resumption of power operations at DAEC.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Steven Hamrick, Senior Attorney, Florida Power and Light Company, 801 Pennsylvania Ave. NW, Suite 220, Washington, DC 20004.
NRC Project Manager, Telephone Number	Justin Poole, 301–415–0248.
Application to Revise the Emergency Plan to Support Resumption of Power Operation	
Application Date	January 30, 2026.
ADAMS Accession No.	ML26033A048.
Location in Application of NSHC	Pages 29–30 of Enclosure 1.
Brief Description of Amendment	The proposed amendment would replace the current DAEC Emergency Response Plan and emergency action levels with the NextEra Common Emergency Plan, including emergency actions levels, and a DAEC site-specific annex to support resumption of power operations at DAEC.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Steven Hamrick, Senior Attorney, Florida Power and Light Company, 801 Pennsylvania Ave. NW, Suite 220, Washington, DC 20004.
NRC Project Manager, Telephone Number	Justin Poole, 301–415–2048.

Order Imposing Procedures for Access to Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SGI. Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of opportunity to request a hearing and petition for leave to intervene, any potential party who believes access to SGI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mailing address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1]

The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's ''need to know'' the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of ''need to know'' as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding; [2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SGI under these procedures should be submitted as described in this paragraph.

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the National Background Investigation Services eApp system, a secure website that is owned and operated by the Defense Counterintelligence and Security Agency (DCSA). To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301–415–3710.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 will be provided in the background check request package supplied by the Office of Administration for each individual for whom a background check is being requested. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, subpart C, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for a Federal Bureau of Investigation identification and criminal history records check.

(d) A check or money order payable in the amount of $403.00[4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted, and

(e) If the requestor or any individual(s) who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(3)(b), (c), and (d) of this Order must be sent to the following address: U.S. Nuclear Regulatory Commission, Office of Administration, ATTN: Personnel Security Branch, Mail Stop: TWFN–07D04M, 11555 Rockville Pike, Rockville, MD 20852.

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraph C, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need to know the SGI requested.

F. If the NRC staff determines that the requestor has satisfied both E.(1) and E.(2), the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[5] by each individual who will be granted access to SGI.

G. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

H. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SGI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SGI contentions by that later deadline.

I. Review of Denials of Access.

(1) If the request for access to SGI is denied by the NRC staff either after a determination on standing and requisite need to know, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) for access to SGI, the Office of Administration, in accordance with 10 CFR 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to standing or need to know for SGI by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this

[3] The requestor will be asked to provide the requestor's full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor usually should be able to obtain access to the online form within 1 business day.

[4] This fee is subject to change pursuant to the DCSA's adjustable billing rates.

[5] Any motion for Protective Order or proposed Non-Disclosure Agreement or Affidavit for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the Office of Administration's adverse determination with respect to trustworthiness and reliability for access to SGI by filing a request for review in accordance with 10 CFR 2.336(f)(1)(iv).

(5) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

J. If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. Interlocutory review by the Commission on orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

K. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SGI, and motions for Protective Orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: April 20, 2026.

For the Nuclear Regulatory Commission.

Carrie Safford,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of opportunity to request a hearing and petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.,* showing technical competence for access to SGI); and including the application fee for the fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need to know. If NRC staff makes the finding of need to know and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (*i.e.,* preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no ''need to know'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate).
30	Deadline for NRC staff's reply to motions to reverse NRC staff determination(s).
190	(Receipt +180) If NRC staff finds standing, need to know, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and proposed Non-Disclosure Agreement or Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination under 10 CFR 2.336(f)(1)(iv).
A	If access is granted: Issuance of a decision by a presiding officer or other designated officer on motion for Protective Order for access to SGI (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Agreement or Affidavits. Access provided to SGI consistent with decision issuing the Protective Order.
A + 28	Deadline for submission of contentions whose development depends upon access to SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2026–07796 Filed 4–21–26; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collections for OMB Review; Comment Request; Multiemployer Plan Regulations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of information collections.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of collections of information in PBGC's regulations on

[6] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SGI request submitted to the NRC staff under these procedures.

multiemployer plans under the Employee Retirement Income Security Act of 1974 (ERISA). This notice informs the public of PBGC's request and solicits public comment on the collections of information.

DATES: Comments must be received on or before May 22, 2026 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collections should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find these particular information collections by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. All comments received will be posted without change to PBGC's website, *www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Comments may be submitted anonymously.

A copy of the request will be posted on PBGC's website at *www.pbgc.gov/employers-practitioners/federal-register.* It may also be obtained without charge by writing to the Disclosure Division (*disclosure@pbgc.gov*), Office of the General Counsel of PBGC, 445 12th Street SW, Washington, DC 20024–2101, or, calling 202–229–4040 during normal business hours. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Monica O'Donnell (*odonnell.monica@pbgc.gov*), Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–5507. If you are deaf or hard of hearing, or have a speech disability, please dial 711 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: OMB has approved and issued control numbers for seven collections of information in PBGC's regulations relating to multiemployer plans. These collections of information are described below. OMB approvals for these collections of information expire May 31, 2026. On January 12, 2026, PBGC published in the **Federal Register** (at 91 FR 1217) a notice informing the public of its intent to request an extension of these collections of information. No comments were received in response to this notice. PBGC is requesting that OMB extend its approval of these collections of information for 3 years. 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.

1. Extension of Special Withdrawal Liability Rules (29 CFR Part 4203) (OMB Control Number 1212–0023)

Sections 4203(f) and 4208(e)(3) of ERISA allow PBGC to permit a multiemployer plan to adopt special rules for determining whether a withdrawal from the plan has occurred, subject to PBGC approval.

The regulation specifies the information that a plan that adopts special rules must submit to PBGC about the rules, the plan, and the industry in which the plan operates. PBGC uses the information to determine whether the rules are appropriate for the industry in which the plan functions and do not pose a significant risk to the insurance system.

PBGC estimates that each year over the next 3 years, at most one plan sponsor submits a request each year under this regulation. The estimated annual burden of the collection of information is 4 hours and $15,000.

2. Variances for Sale of Assets (29 CFR Part 4204) (OMB Control Number 1212–0021)

If an employer's covered operations or contribution obligation under a plan ceases, the employer must generally pay withdrawal liability to the plan. Section 4204 of ERISA provides an exception, under certain conditions, where the cessation results from a sale of assets. Among other things, the buyer must furnish a bond or escrow, and the sale contract must provide for secondary liability of the seller.

The regulation establishes general variances (rules for avoiding the bond/escrow and sale-contract requirements) and authorizes plans to determine whether the variances apply in particular cases. It also allows buyers and sellers to request individual variances from PBGC. Plans and PBGC use the information to determine whether employers qualify for variances. PBGC estimates that each year over the next 3 years, 100 employers submit, and 100 plans respond to, variance requests under the regulation, and 1 employer submits a variance request to PBGC. The estimated annual burden of the collection of information is 1,050 hours and $702,000.

3. Reduction or Waiver of Complete Withdrawal Liability (29 CFR Part 4207) (OMB Control Number 1212–0044)

Section 4207 of ERISA allows PBGC to provide for abatement of an employer's complete withdrawal liability, and for plan adoption of alternative abatement rules, where appropriate.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must notify the bonding or escrow agent.

The regulation also permits a plan to adopt its own abatement rules and request PBGC approval. PBGC uses the information in such a request to determine whether the amendment should be approved.

PBGC estimates that each year over the next 3 years, at most 1 employer will submit and 1 plan will respond to an application for abatement of complete withdrawal liability, and no plan sponsors request approval of plan abatement rules from PBGC. The estimated annual burden of the collection of information is 0.5 hours and $1,000.

4. Reduction or Waiver of Partial Withdrawal Liability (29 CFR Part 4208) (OMB Control Number 1212–0039)

Section 4208 of ERISA provides for abatement, in certain circumstances, of an employer's partial withdrawal liability and authorizes PBGC to issue additional partial withdrawal liability abatement rules.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must notify the bonding or escrow agent.

The regulation also permits a plan to adopt its own abatement rules and request PBGC approval. PBGC uses the information in such a request to determine whether the amendment should be approved.

PBGC estimates that each year over the next 3 years, at most 1 employer will submit and 1 plan will respond to an application for abatement of partial withdrawal liability, and no plan sponsors request approval of plan abatement rules from PBGC. The estimated annual burden of the collection of information is 0.50 hours and $1,000.

5. Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR Part 4211) (OMB Control Number 1212–0035)

Section 4211(c)(5)(A) of ERISA requires PBGC to prescribe how plans can, with PBGC approval, change the way they allocate unfunded vested benefits to withdrawing employers for purposes of calculating withdrawal liability.

The regulation prescribes the information that must be submitted to PBGC by a plan seeking such approval. PBGC uses the information to determine how the amendment changes the way the plan allocates unfunded vested benefits and how the amendment will affect the risk of loss to plan participants and PBGC.

PBGC estimates that each year over the next 3 years, 10 plan sponsors will submit approval requests under this regulation. The estimated annual burden of the collection of information is 200 hours and $200,000.

6. Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR Part 4219) (OMB Control Number 1212–0034)

Section 4219(c)(1)(D) of ERISA requires that PBGC prescribe regulations for the allocation of a plan's total unfunded vested benefits in the event of a ''mass withdrawal.'' Section 4209(c) of ERISA deals with an employer's liability for de minimis amounts if the employer withdraws in a ''substantial withdrawal.''

The reporting requirements in the regulation give employers notice of a mass withdrawal or substantial withdrawal and advise them of their rights and liabilities. They also provide notice to PBGC so that it can monitor the plan, and they help PBGC assess the possible impact of a withdrawal event on participants and the multiemployer plan insurance program.

PBGC estimates that each year over the next 3 years, there will be 2 mass withdrawals and 1 substantial withdrawal. The plan sponsor of a plan subject to a withdrawal covered by the regulation provides notices of the withdrawal to PBGC and to employers covered by the plan, liability assessments to the employers, and a certification to PBGC that assessments have been made. For a mass withdrawal, there are 2 assessments and 2 certifications that deal with 2 different types of liability. For a substantial withdrawal, there is 1 assessment and 1 certification (combined with the withdrawal notice to PBGC). The estimated annual burden of the collection of information is 15 hours and $49,500.

7. Procedures for PBGC Approval of Plan Amendments (29 CFR Part 4220) (OMB Control Number 1212–0031)

Under section 4220 of ERISA, a plan may within certain limits adopt special plan rules regarding when a withdrawal from the plan occurs and how the withdrawing employer's withdrawal liability is determined. Any such special rule is effective only if, within 90 days after receiving notice and a copy of the rule, PBGC either approves or fails to disapprove the rule. The regulation provides rules for requesting PBGC's approval of an amendment. PBGC needs the required information to identify the plan; evaluate the risk of loss, if any, posed by the plan amendment; and determine whether to approve or disapprove the amendment.

PBGC estimates that each year over the next 3 years, at most 1 plan sponsor will submit an approval request under this regulation. The estimated annual burden of the collection of information is 2 hours and $8,000 dollars.

Joseph Krettek,

Assistant General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2026–07832 Filed 4–21–26; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2026–209 and K2026–208; MC2026–216 and K2026–214]

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 27, 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]

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

[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).

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. The comment due date discussed below does not apply to Section III proceedings (Docket Nos. MC2026–216 and K2026–214).

II. Public Proceeding(s)

1. *Docket No(s).:* MC2026–209 and K2026–208; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 111 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 17, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* April 27, 2026.

III. Summary Proceeding(s)

1. *Docket No(s).:* MC2026–216 and K2026–214; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 966, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 17, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

This Notice will be published in the **Federal Register**.

Danielle LeFlore,

Legal Assistant.

[FR Doc. 2026–07799 Filed 4–21–26; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage Negotiated Service Agreements, Priority Mail, and USPS Ground Advantage Negotiated Service Agreements

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* April 22, 2026.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), it filed with the Postal Regulatory Commission the following requests:

Date filed with postal regulatory commission	Negotiated service agreement product category and No.	MC Docket No.	K Docket No.
04/13/26	PM–GA 957	MC2026–202	K2026–201
04/13/26	PME–PM–GA 1500	MC2026–204	K2026–203
04/13/26	PM–GA 958	MC2026–203	K2026–202
04/13/26	PM–GA 959	MC2026–205	K2026–204
04/13/26	PM–GA 960	MC2026–206	K2026–205
04/15/26	PM–GA 961	MC2026–208	K2026–207
04/15/26	PM–GA 962	MC2026–210	K2026–209
04/15/26	PM–GA 963	MC2026–212	K2026–210
04/15/26	PM–GA 964	MC2026–213	K2026–211
04/16/26	PM–GA 965	MC2026–214	K2026–212
04/16/26	PM 954	MC2026–215	K2026–213
04/17/26	PM–GA 966	MC2026–216	K2026–214

Documents are available at *www.prc.gov*.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2026–07767 Filed 4–21–26; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105264; File No. SR–Phlx–2026–22]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Auction Mechanisms

April 17, 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 permit orders for the accounts of Market Makers assigned to the options class to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

be solicited for the initiating order [3] submitted for execution against an agency order into a Facilitation Mechanism, the Solicited Order Mechanism (''SOM'') or a Price Improvement Auction (''PIXL''), as well as a FLEX PIXL or FLEX SOM.

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 Supplementary Material .01 and .03 to Options 3, Section 11 (Auction Mechanisms), Options 3, Section 13(a)(7) (Price Improvement XL (''PIXL''), Options 3A, Section 12 (FLEX Price Improvement Mechanism (''FLEX PIXL'' or ''FLEX PIXL Auction'') and Supplementary Material .02 to Options 3A, Section 13 (FLEX Solicited Order Mechanism (''FLEX SOM'' or ''FLEX SOM Auction'') to permit orders by members in a Facilitation Mechanism, a SOM, a PIXL, a FLEX PIXL or a FLEX SOM to trade against the Agency Orders [4] for the accounts of Market Makers [5] assigned to the options class. Cboe Exchange, Inc. (''Cboe'') recently received approval to amend its rules in an identical manner.[6] The Exchange also proposes an amendment to Options 5, Section 4 relating to the handling of Immediate-or-Cancel Orders.[7]

Background

PIXL

A PIXL Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). There is no specific size requirement for a PIXL Auction. Upon submitting an Agency Order into a PIXL, the initiating member must also submit a contra-side paired order. The initiating order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order.[8] At the conclusion of a PIXL, the Agency Order will be executed in full at the best prices available, taking into consideration all Exchange quotes, orders and PAN responses.[9] Phlx's PIXL is very similar to Cboe's Automated Price Improvement Mechanism or ''AIM.'' [10] Options 3A, Section 12 describes a FLEX PIXL Auction. Phlx's FLEX PIXL is consistent with non-FLEX PIXL auction behavior.[11] Additionally, Phlx's FLEX PIXL is similar to Cboe Rule 5.73.

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[3] The ''initiating order'' is the order comprised of principal interest or a solicited order(s) submitted to trade against the order the submitting member represents as agent (the ''Agency Order'').

[4] Agency Orders are orders entered by a member that are represented as agent.

[5] A ''Market Maker'' means a Streaming Quote Trader or a Remote Streaming Quote Trader who enters quotations for his own account electronically into the System. *See* Options 1, Section 1(b)(29). A ''Streaming Quote Trader'' or ''SQT'' means a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the trading floor of the Exchange. An SQT may only submit quotes in classes of options in which the SQT is assigned. *See* Options 1, Section 1(b)(54). A ''Remote Streaming Quote Trader'' or ''RSQT'' means a Market Maker that is a member affiliated with an Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Lead Market Maker upon Exchange approval. An RSQT is also known as a Remote Market Maker (''RMM'') pursuant to Options 2, Section 11. A Remote Streaming Quote Organization (''RSQTO'') or Remote Market Maker Organization (''RMO'') are Exchange member organizations that have qualified pursuant to Options 2, Section 1. *See* Options 1, Section 1(b)(49).

[6] *See* Securities Exchange Act Release No. 105054 (March 19, 2026) (SR–Cboe–2025–90)[sic]. Cboe received approval to permit orders for the accounts of market-makers with an appointment in the applicable class on the Exchange, in all classes, to be solicited for the initiating order submitted for execution against an agency order into a simple AIM, simple SAM, FLEX AIM or FLEX SAM Auction.

[7] Immediate-or-Cancel is an order entered with a TIF of ''IOC'' that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. *See* Supplementary Material .02(d) to Options 3, Section 7.

[8] *See* Options 3, Section 11(b)(3) and (d)(2) and Section 13(b)(1)(F). *See also* Options 3A, Section 12(c)(5) and Section 13(c)(5). Responses in PIXL are called PAN responses.

[9] If the initiating member selected the single stop price option of the PIXL Auction (except if it is a Complex Order), PIXL executions will occur at prices that improve the stop price, and then at the stop price with up to 40% or such lower percentage requested by the initiating member. *See* Options 3, Section 13(b)(5)(B)(i). If the initiating member selected the auto-match option of the PIXL Auction, the Initiating member shall be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at each price point until a price point is reached where the balance of the order can be fully executed, except that the initiating member shall be entitled to receive up to 40% if there are multiple competing quotes, orders or PAN responses or such lower percentage requested by the Initiating member or 50% if there is only one competing quote, order or PAN response provided the initiating member had not designated a percentage designation of ''Surrender'' when initiating the Auction of the initial size of the PIXL Order at the final price point. *See* Options 3, Section 13(b)(5)(B)(ii). If the Initiating member selected the ''stop and NWT'' option of the PIXL Auction, then contracts are allocated first to quotes, orders and PAN responses at prices better than the NWT price (if any), beginning with the best price, then to quotes, orders and PAN responses at prices at the Initiating member's NWT price and better than the Initiating member's stop price, beginning with the NWT price. The Initiating member shall be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at each price point, except that the Initiating member shall be entitled to receive up to 40% if there are multiple competing quotes, orders or PAN responses or 50% if there is only one competing quote, order or PAN response of the initial size of the PIXL Order at the final price point including situations where the final price is the stop price after Public Customer interest has been satisfied but before remaining interest. In the case of an Initiating Order with a NWT price at the market, the Initiating member shall be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at all price points, except that the Initiating member shall be entitled to receive up to 40% if there are multiple competing quotes, orders or PAN responses or 50% if there is only one competing quote, order or PAN response of the initial size of the PIXL Order at the final price point including situations where the final price is the stop price after Public Customer interest has been satisfied but before remaining interest. *See* Options 3, Section 13(b)(5)(B)(iii). Scenarios for Complex Orders are noted at Options 3, Section 13(b)(5)(B)(iv)–(vii).

[10] An AIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). Upon submitting an Agency Order into an AIM Auction, the initiating Trading Permit Holder (''Initiating TPH'') must also submit a contra-side second order (''Initiating Order'') for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order. *See* Cboe Rule 5.37(c)(5). At the conclusion of an AIM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated a certain percentage (or more) of the Agency Order. *See* Cboe Rule 5.37(e).

[11] *See* Securities Exchange Act Release No. 103759 (August 21, 2025), 90 FR 41636 (August 26, 2025) (SR–Phlx–2025–38) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Electronic FLEX Options Rules). Footnote 138 notes that the Exchange's proposal will be consistent with current non-FLEX auction behavior, including current PIXL behavior.

SOM

Options 3, Section 11(d) and Options 3A, Section 13 contain the requirements applicable to the execution of Agency Orders using SOM. A SOM Auction is an electronic auction intended to provide a larger-sized (orders of 500 or more contracts) Agency Order with the opportunity to receive price improvement over the NBBO. Options 3, Section 13 and Options 3A, Section 12 contain the requirements applicable to the execution of orders the member represents as agent using PIXL. A PIXL Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). Upon submitting an Agency Order into a SOM, the initiating member must also submit a contra-side paired order. The initiating order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order.[12] At the conclusion of a SOM, execution will depend on whether there is sufficient size to execute the entire Agency Order at an improved price (or prices) [13] as the SOM is designated as all-or-none.[14] Phlx's SOM is very similar to Cboe's Solicited Auction Mechanism or ''SAM.'' [15] Options 3A, Section 13 describes a FLEX SOM Auction. Phlx's FLEX SOM is consistent with non-FLEX SOM auction behavior.[16] Additionally, Phlx's FLEX SOM is similar to Cboe Rule 5.74.

Facilitation Mechanism

Options 3, Section 11(b) describes a Facilitation Mechanism which is an electronic auction intended to provide a larger-sized Agency Order with the opportunity to receive price improvement over the NBBO. Block-sized orders (fifty (50) contracts or more pursuant to Options 3, Section 11(a)) may be entered into a Facilitation Mechanism by a member to facilitate a customer order it represents as agent. Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism pursuant to Options 3, Section 11(b). Under this mechanism, a member submits a Facilitation Order along with a matching contra-side order, and the System initiates an auction during which other participants may submit competing responses. At the conclusion of the auction, the facilitating member is entitled to a guaranteed participation right at the final execution price, provided the member's price matches or improves upon the best competing response. Pursuant to Options 3, Section 11(b)(4)(B), the facilitating member may be allocated up to forty percent (40%) (or such lower percentage requested by the member) of the original size of the facilitation order, but only after better-priced Responses, orders and quotes, as well as Public Customer Orders and Public Customer Responses at the facilitation price, are executed in full at such price point.

The Exchange notes that Cboe does not have a Facilitation Mechanism. The Phlx Facilitation Mechanism is similar to Cboe's SAM. The key differences are:

- the Phlx Facilitation Mechanism requires a minimum of 50 contracts pursuant to Options 3, Section 11(b) while a Cboe SAM requires a minimum of 500 contracts pursuant to Cboe Rule 5.39(a)(3);
- Cboe's SAM has an all-or-none allocation at Cboe Rule 5.39(e) while the Phlx Facilitation Mechanism must be willing to execute the entire size at Options 3, Section 11(b); and
- Cboe Rule 5.39 requires that a Cboe Trading Permit Holder submit for execution an order it represents as agent (''Agency Order'') against a solicited order(s) (which cannot have a Capacity F for the same EFID as the Agency Order into a SAM pursuant to Cboe Rule 5.39 wherein the Agency Order and Solicited Order cannot both be for the accounts of Priority Customers whereas the Phlx Facilitation Mechanism does not have similar limitations.

These aforementioned differences do not result in a different analysis as to the impact of permitting orders by members in a Facilitation Mechanism to trade against the Agency Orders for the accounts of Market Makers assigned to the options class. The Exchange's analysis below applies to the Facilitation Mechanism as it applies to a SOM, PIXL or FLEX SOM or FLEX PIXL.

Proposal

Currently, Supplementary Material .01 and .03 to Options 3, Section 11, Options 3, Section 13(a)(7), Options 3A, Section 12, and Supplementary Material .02 to Options 3A, Section 13 prohibit orders by members in a Facilitation Auction, SOM, PIXL, FLEX PIXL or FLEX SOM (collectively ''Paired Auctions''), respectively, to trade against the Agency Orders for the accounts of Market Makers assigned to the options class. The Exchange notes Phlx Market Makers may not be solicited as the contra-side for complex Facilitation Auctions, SOMs and PIXLs. Cboe does not similarly limit the contra-side for their complex AIM, complex SAM, complex FLEX AIM or complex FLEX SAM auctions.[17] The Exchange's proposal would therefore apply to both simple and complex orders.

While market participants other than assigned Market Makers may contribute liquidity to these Paired Auctions as either a contra-side order or responses, assigned Market Makers, who are the primary source of liquidity on the Exchange in their assigned options, are limited in the manner in which they may provide liquidity to these Paired Auctions. Given that contra-side orders that comprise initiating orders may be allocated a percentage of the Agency

[12] *See* Options 3, Section 11(b)(3) and (d)(2) and Section 13(b)(1)(F). *See also* Options 3A, Section 12(c)(5) and Section 13(c)(5). Responses in PIXL are called PAN responses.

[13] If at the time of execution there is insufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed against the solicited order at the proposed execution price so long as, at the time of execution: (i) the execution price is equal to or better than the best bid or offer on the Exchange, and (ii) there are no Public Customer Orders or Public Customer Responses on the Exchange that are priced equal to the proposed execution price. If there are Public Customer Orders or Public Customer Responses on the Exchange on the opposite side of the Agency Order at the proposed execution price and there is sufficient size to execute the entire size of the Agency Order, the Agency Order will be executed against the bid or offer, and the solicited order will be cancelled. *See* Options 3, Section 11(d)(3)(A). If at the time of execution there is sufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed at the improved price(s), provided the execution price is equal to or better than the best bid or offer on the Exchange, and the solicited order will be cancelled. *See* Options 3, Section 11(d)(3)(B). In each case the aggregate size of all orders, quotes and Responses at each price will be used to determine whether the entire agency order can be executed at an improved price (or prices).

[14] *See* Options 3, Section 11(d).

[15] A SAM Auction is an electronic auction intended to provide a larger-sized Agency Order with the opportunity to receive price improvement over the NBBO. Upon submitting an Agency Order into a SAM Auction, the initiating Trading Permit Holder (''Initiating TPH'') must also submit a contra-side second order (''Initiating Order'') for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order. *See* Cboe Rule 5.39(c)(5). At the conclusion of a SAM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated the entire Agency Order or none of the Agency Order. *See* Cboe Rule 5.39(e).

[16] *See* Securities Exchange Act Release No. 103759 (August 21, 2025), 90 FR 41636 (August 26, 2025) (SR–Phlx–2025–38) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Electronic FLEX Options Rules). Footnote 138 notes that the Exchange's proposal will be consistent with current non-FLEX auction behavior, including current SOM behavior.

[17] *See supra* note 6.

Order at the conclusion of the auctions, the limited ability of assigned Market Makers to participate in a Paired Auction may reduce the execution opportunities for these liquidity providers, which execution opportunities are available to other market participants who may be solicited or submit responses.

The Exchange believes that eliminating the prohibition against assigned Market Makers acting as the contra-side in Paired Auctions would enhance price improvement opportunities in the Paired Auctions. This is particularly true for retail and smaller Public Customer orders in a PIXL. Allowing assigned Market Makers registered with the Exchange to be facilitated or solicited as contra-side may result in exposure of more small Public Customer orders to potential price improvement via auction processes in a PIXL. The Exchange further notes that Options 3, Section 22(d) (Limitations on Order Entry) provides that, prior to or after submitting an order to Phlx, a member cannot inform another member or any other third party of any of the terms of the order for purposes of violating this Rule. This protection will remain in place under the proposed rule change to address any potential information leakage concerns in the Paired Auctions as Options 3, Section 22 applies to the Paired Auctions.

The Exchange believes that the restriction has become operationally outdated in current market structure. It is common practice that Agency Orders already involve the same Market Maker firm acting as both the contra-side (in an away Market Maker capacity) and auction respondent (as an assigned Market Maker registered on the Exchange). Eliminating this restriction would reduce an arbitrary and unnecessary burden and allow Market Makers to structure more efficient auction processes, which may ultimately promote greater competition among Market Makers and provide market participants with enhanced opportunities for price improvement.

The Exchange is proposing to amend Supplementary Material .01 and .03 to Options 3, Section 11, Options 3, Section 13(a)(7), Options 3A, Section 12, and Supplementary Material .02 to Options 3A, Section 13 to permit orders for the accounts of Market Makers in an assigned options class to be solicited for the initiating order submitted for execution against an Agency Order in all options. The Exchange believes providing assigned Market Makers with an additional way to participate in Paired Auctions will expand available liquidity for these Paired Auctions, which may increase execution and price improvement opportunities, particularly for Public Customer orders in a PIXL. The Exchange notes that no similar restriction applies to crossing transactions in open outcry trading.[18] Brokers seeking liquidity to execute against customer orders on the trading floor regularly solicit assigned Floor Market Makers in the applicable class for this liquidity, as they are generally the primary source of liquidity in a class. Therefore, the Exchange believes the proposed rule change will further align open outcry and Paired Auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as the contra-side in the Paired Auctions across all options at all times.

In addition to Cboe, the Exchange notes the electronic price improvement auction of another options exchange currently permits orders for the accounts of appointed market-makers to be solicited as the contra-side for that auction.[19]

Options 5, Section 4

The Exchange proposes to amend subparagraph (a) at Options 5, Section 4, Order Routing, which currently states, ''Immediate-or-Cancel (''IOC'') Orders will be cancelled immediately if not executed, and will not be routed.'' The Exchange proposes to instead state that, ''Immediate-or-Cancel (''IOC'') Orders will be rejected and will not be routed.'' While the current sentence reflects the operation of IOC Orders as provided in Supplementary Material .02(d) to Options 3, Section 7, within the context of routing, the sentence may be confusing. Options 5, Section 4 explains the manner in which various order types are handled differently for purposes of routing. An IOC Order will not rest on the order book by its definition and cannot route. The Exchange proposes to amend the language to be clear that IOC Orders are not subject to routing and therefore would be rejected. This proposed language is consistent with Supplementary Material .02(d) to Options 3, Section 7 and makes clear the treatment of IOC Orders for purposes of Options 5, Section 4.

Implementation

The Exchange proposes to implement these proposed changes on or before Q3 2026. The Exchange will issue an Options Trader Alert indicating the date the changes will be implemented.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

In particular, the Exchange believes the proposed rule change will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will provide the primary liquidity providers on the Exchange with an additional way to participate in Paired Auctions. Additionally, by permitting brokers to solicit primary liquidity providers in a class for Paired Auctions, the Exchange believes brokers will be able to more efficiently locate liquidity to fill their customer orders, particularly during times of volatility. As a result, the Exchange believes the proposed rule change will likely expand available liquidity for these Paired Auctions, which may create additional execution and price improvement opportunities for market participants at all times, which ultimately benefits investors.

The Exchange believes the proposed rule change is consistent with the Act because it will further align open outcry and Paired Auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as the contra-side in both types of auctions across all options. Currently, assigned Market Makers may be solicited with respect to crossing transactions on trading floors but may not be solicited with respect to Paired Auctions.[22] The Exchange believes there is no reason to restrict a Market Maker's ability to provide liquidity into Paired Auctions when they are able to similarly provide that liquidity in open outcry trading. As noted above, the electronic price improvement auction of another options exchange currently permits orders for

[18] *See* Phlx Options 8 Rules.

[19] *See* NYSE American, Inc. (''American'') Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. *See also https://www.nyse.com/markets/american-options/cube-customer-best-execution.*

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] Phlx's trading floor does not have a similar restriction. *See* Phlx Options 8 Rules.

the accounts of assigned market makers to be solicited as the contra-side orders for that auction.[23]

The Exchange believes the proposed rule change will promote competition in Paired Auctions, including competition to initiate Paired Auctions, which will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors. The Exchange believes the availability of this liquidity to Agency Orders will positively affect the experience for Agency Orders and overall quality of the auctions. Furthermore, the Exchange believes increasing the number of market participants available to be solicited may increase competition to provide initiating orders, which may lead to a Paired Auction being initiated at a better price. More market participants competing to provide initiating orders may lead to solicited parties providing more aggressive initial prices. The Exchange believes the ability of all market participants, including assigned Market Makers that did not submit an initiating order, to become the contra-side to a Paired Auction will continue to provide competition for executions against Agency Orders.

The Exchange believes any risk that assigned Market Makers may misuse the nonpublic information of an upcoming Paired Auction is de minimis. Supplementary Material .03 to Options 3, Section 22 provides that the exposure requirement applicable to principal transactions in Options 3, Section 22(b)[24] applies to the entry of orders with knowledge that there is a pre-existing unexecuted agency, proprietary, or solicited order on the Exchange. Member organizations may demonstrate that orders were entered without knowledge by providing evidence that effective information barriers between the persons, business units, and/or systems entering the orders onto the Exchange were in existence at the time the orders were entered. Such information barriers must be fully documented and provided to the Exchange upon request. Further, the Exchange notes that Options 3, Section 13(e) prohibits a pattern or practice of submitting orders or quotes or the purpose of disrupting or manipulating PIXL Auctions, and General 9, Section 21 requires members to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by members and their associated persons. Finally, Options 3, Section 22(d) (Limitations on Order Entry) provides that, prior to or after submitting an order to Phlx, a member cannot inform another member or any other third party of any of the terms of the order for purposes of violating the Rule.

The Exchange believes the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it will permit orders for accounts of assigned Market Makers to be solicited in the same manner as orders for the accounts of all other market participants. Currently, all market participants other than assigned Market Makers may be solicited as the contra-side and submit responses in Paired Auctions for all options. Given the additional costs and obligations associated with being an assigned Market Maker, the Exchange does not believe these Market Makers should have fewer execution opportunities with respect to volume submitted for execution through Paired Auctions and not for electronic execution against interest in the book. The Exchange believes the proposed rule change will provide all Market Makers on the Exchange with the same ability to participate in Paired Auctions in all options at all times, which may further increase execution and price improvement opportunities for market participants.

Cboe does not have an auction equivalent to the Facilitation Mechanism, however the Exchange's Facilitation Mechanism is similar to Cboe's SAM. The key differences noted in the Purpose section do not differentiate the Facilitation Mechanism for purposes of permitting orders by members in a Facilitation Mechanism to trade against the Agency Orders for the accounts of Market Makers assigned to the options class. The Exchange's aforementioned analysis applies to the Facilitation Mechanism as it applies to a SOM, PIXL or FLEX SOM or FLEX PIXL in the same manner as it applies to the Paired Auctions.

Options 5, Section 4

The Exchange's proposal to amend Options 5, Section 4(a) is consistent with the Act because it will bring greater clarity to the current rule text by clearly explaining that IOC Orders will not route.

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 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 it provides the same execution opportunities in Paired Auctions to assigned Market Makers that are currently available to all other market participants. Additionally, the proposed rule change will further align open outcry and Paired Auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as a contra-side in auctions across all options.

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 it relates to orders submitted into Paired Auctions on the Exchange. Additionally, the Exchange notes that, in addition to Cboe, the rules of at least one other options exchange permits orders for the accounts of assigned market makers to be solicited as contra-side orders for that exchange's electronic price improvement auction.[25] The Exchange believes the proposed rule change may improve price competition within Paired Auctions, because the primary liquidity providers will be able to increase participation in Paired Auctions.

Options 5, Section 4

The Exchange's proposal to amend Options 5, Section 4(a) does not impose an undue burden on competition, rather the proposal clarifies the current rule text.

[23] *See supra* notes 6 and 19.

[24] Members may not execute as principal against orders on the Limit Order book they represent as agent unless: (i) agency orders are first exposed on the Limit Order book for at least 1 second; (ii) the member organization has been bidding or offering on the Exchange for at least 1 second prior to receiving an agency order that is executable against such bid or offer or; (iii) the member organization utilizes the Facilitation Mechanism pursuant to Options 3, Section 11(b) and (c); (iv) the member organization utilizes PIXL pursuant to Options 3, Section 13; (v) the member organization utilizes Qualified Contingent Cross Orders pursuant to Options 3, Section 12(c) and (d); (vi) the member organization utilizes a Customer Cross Order pursuant to Options 3, Sections 12(a) or (b); or (vii) the member organization utilizes a Complex Order Exposure pursuant to Supplementary Material .01 to Options 3, Section 14. Member organizations may not execute as principal orders they represent as agent within the Solicitation Mechanism pursuant to Options 3, Section 11(d) and (e). *See* Options 3, Section 22(b).

[25] *See supra* note 26.

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 Act [26] and subparagraph (f)(6) of Rule 19b–4 thereunder.[27]

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–2026–22 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–2026–22. 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–2026–22 and should be submitted on or before May 13, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Vanessa A. Countryman,

Secretary.

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BILLING CODE 8011–01–P

[26] 15 U.S.C. 78s(b)(3)(A)(iii).

[27] 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.

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105274; File No. SR–CboeBZX–2026–027]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the BondBloxx Private Credit Trust Under BZX Rule 14.11(f), Trust Issued Receipts

April 20, 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 6, 2026, Cboe BZX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to list and trade shares of the BondBloxx Private Credit Trust (the ''Trust''), under BZX Rule 14.11(f), Trust Issued Receipts. The shares of the Trust are referred to herein as the ''Shares.''

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.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Trust under BZX Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts [3] on the Exchange.[4] The Trust seeks to provide attractive risk-adjusted returns primarily through distributions of current income from the Trust's portfolio, as further described below. The Trust has filed a registration

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in ''Investment Shares'' or ''Financial Instruments''. The term ''Investment Shares,'' as defined in Rule 14.11(f)(4)(A)(i), means a security (a) that is issued by a trust, partnership, commodity pool or other similar entity that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities; and (b) issued and redeemed daily at net asset value in amounts correlating to the number of receipts created and redeemed in a specified aggregate minimum number. The term ''Financial Instruments,'' as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[4] The Commission approved BZX Rule 14.11(f)(4) in Securities Exchange Act Release No. 68619 (January 10, 2013), 78 FR 3489 (January 16, 2013) (SR–BZX–2012–044).

statement on Form S–1 under the Securities Act of 1933.[5] [6]

Description of the Trust

BondBloxx Investment Management Corporation (the ''Advisor'') is the advisor to the Trust and is responsible for the overall management of the Trust's business activities. HCG Fund Management LP (the ''Sub-Advisor'') is responsible for the day-to-day management of the Trust's private credit assets. Brown Brothers Harriman & Co. serves as the administrator (the ''Administrator''), custodian (the ''Custodian''), and the transfer agent (the ''Transfer Agent''). CSC Delaware Trust Company, a Delaware trust company, is the sole trustee of the Trust.

If the Advisor or Sub-Advisor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Advisor or Sub-Advisor to the Trust shall erect and maintain a ''fire wall'' between the Advisor or Sub-Advisor and the broker-dealer with respect to access to information concerning the composition and/or changes to the Trust's portfolio. The Advisor and Sub-Advisor are not a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Advisor or the Sub-Advisor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new Advisor or the Sub-Advisor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

The Trust seeks to provide attractive risk-adjusted returns to shareholders primarily through distributions of current income from the Trust's portfolio. The Trust intends to achieve this objective by constructing a diversified portfolio of consumer and small business private credit assets. The Trust intends to target primarily whole loans that the Advisor believes will offer stable and predictable cash flows. The Trust generally intends to focus on loans that have short and medium terms (*e.g.,* less than 60 months) which, through principal amortization, tend to have low duration (*e.g.,* less than 30 months). The Trust believes that targeting assets with a combination of short duration and high cash yields will enhance the liquidity of the Trust's portfolio and provide the Trust the opportunity to earn attractive returns while managing the risk of losses in market value that can result from increases in interest rates. The Trust expects to acquire its initial portfolio of assets using the net proceeds of this offering.

Investable Instruments and Trust Liquidity

The Trusts permitted investments are the following instruments: personal installment loans, small business loans, point of sale loans, and asset backed securities that are backed by such loans (collectively ''Private Credit Assets''), investment grade bonds, U.S. Treasuries, shares of certain exchange traded funds, including certain exchange-traded funds of an affiliated Trust for which the Advisor acts as the investment adviser, that invest in U.S. Treasuries or other short-term, interest bearing assets and cash and cash equivalents.[7]

The Trust plans to participate in the rapidly growing market for small balance, short duration, amortizing loans enabled by Fintech lending platforms. The Advisor believes consumer and small business loans sourced through Fintech lending platforms offer investors attractive value propositions that have primarily been available to institutional investors. However, there is limited sell-side liquidity available in the market for Private Credit Assets. As such, the Advisor is proposing to utilize the following strategy to facilitate redemptions in the Trust:

1. The Trust will maintain a portion of the portfolio in cash and cash equivalents (the ''Liquidity Sleeve''). Under normal circumstances, the Trust expects to hold approximately 20% of the portfolio in these liquid assets.[8] The Advisor expects that it will generally be able to fulfill redemption orders using this position. The Advisor may also strategically increase the size of the Liquidity Sleeve in order to better facilitate anticipated redemptions by retaining, rather than distributing the paydowns from Private Credit Assets as further described below.

2. Under normal circumstances, the remaining 80% of the Trust's holdings will consist of Private Credit Assets. These assets consist generally of short duration, amortizing loans purchased with a weighted average life ranging from four to thirty-six months. The Trust acquires loans that have been originated and underwritten by fintech lending platforms, and selects such assets with the investment objective of generating consistent net asset returns at a premium to the net asset returns rates and with mitigated downside risk.[9]

[5] The Trust has filed an amended registration statement on Form S–1 under the Securities Act of 1933, dated November 20, 2025 (File No. 333–283852) (''Registration Statement''). The description of the Trust and the Shares contained herein are based on the Registration Statement. The Registration Statement for the Trust is not yet effective, and the Trust will not trade on the Exchange until such time that the Registration Statement is effective.

[6] The Trust intends to operate its business so that it is falls outside of the definition of an investment company under the Investment Company Act of 1940 (the ''1940 Act''). Section 3(a)(1)(C) of the 1940 Act generally defines an investment company as an entity primarily engaged in investing, reinvesting, or trading in securities and holds investment securities exceeding 40% of its total assets (exclusive of U.S. federal government securities and cash items) on a non-consolidated basis, which the Trust refers to as the 40% test. Excluded from the term ''investment securities,'' among other things, are securities issued by majority-owned subsidiaries that are not themselves investment companies and are not relying on the exclusions from the definition of investment company set forth in Section 3(c)(1) or Section 3(c)(7) of the 1940 Act. The Trust intends to comply with this 40% test by primarily conducting its business through its majority-owned subsidiaries, which are not classified as investment companies and not relying on either the Section 3(c)(1) or Section 3(c)(7) exclusions from registration under the 1940 Act. The Trust anticipates that its subsidiaries will primarily qualify for exclusions under Section 3(c)(5)(A) of the 1940 Act, which applies to issuers primarily engaged in the business of purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance and services, or Section 3(c)(5)(B) of the 1940 Act, which is available to entities primarily engaged in the business of making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance and services. These exceptions require that at least 55% of the subsidiaries' portfolios consist of qualifying assets that meet the requirements of the relevant exception.

[7] For purposes of this proposal, cash equivalents are short-term instruments with maturities of less than 3 months, specifically including U.S. Government securities, certificates of deposit, bankers' acceptances, repurchase and reverse repurchase agreements, bank time deposits, commercial paper, and money market funds. This definition is consistent with the definition of cash and cash equivalents in Exchange Rule 14.11(i)(4)(C)(iii).

[8] The Trust does not have a prescribed maximum or minimum permissible deviation from the 20% target allocation for the Liquidity Sleeve, and actual allocations may differ from that target, including for extended periods. The 20% figure represents an indicative objective rather than a fixed or binding constraint. The size of the Liquidity Sleeve is determined by the Advisor and Sub-Advisor based on cash flows, the timing and magnitude of subscriptions and redemptions, interest payments, the pace of investment into private credit assets, market conditions, portfolio construction considerations, and the overall size and growth of the Fund. Accordingly, the Liquidity Sleeve may represent a higher or lower percentage of the Fund's net assets over time.

[9] Downside risk is mitigated through a combination of platform underwriting standards, portfolio diversification, short duration and amortization profiles, and a disciplined asset selection process.

Realized yields will vary over time based on external factors such as market conditions, asset mix, and borrower performance. Due to the amortizing nature and short duration of the Private Credit Assets, the Trust expects to receive recurring monthly cash flows from interest and principal payments. Monthly cash yield—defined as cash flows received during the month from the Private Credit Asset holdings divided by the opening principal balance of those Private Credit Asset holdings—is expected to range from approximately 5% to 10% but may vary beyond this range due to external factors noted above. Cash flows received may be reinvested or retained at the discretion of the Trust to support portfolio management objectives, including liquidity management and asset allocation considerations, prior to any distributions to shareholders.

3. In the event that the cash and cash equivalents required to accommodate a series of redemptions or a single large redemption approaches the size of the Trust's Liquidity Sleeve, the Trust may:

a. Sell Private Credit Assets in the secondary market to raise cash;

b. Arrange a line of credit or other financing facility with a bank or broker dealer, using the portfolio of Private Credit Assets as collateral.

These options will likely come at a cost to the Trust or may not be available to the Trust depending on market conditions.

4. In the event that items 1–3 above do not provide sufficient cash and cash equivalents to the Liquidity Sleeve to accommodate redemptions in the Trust, redemptions may be suspended until the Trust accumulates enough cash to facilitate additional redemptions, which the Advisor does not expect to last for longer than approximately 2.5 months. In the event that the Advisor implements a restriction on redemptions, the Shares on the secondary market may trade at deep discount. The discount could potentially serve to prompt investors to buy shares and potentially trigger primary market activity.

The Advisor believes that the liquidity strategy laid out above will be sufficient to address concerns that may arise from the relative illiquidity of the secondary market for selling Private Credit Assets. Specifically, the Advisor believes that the 20% Liquidity Sleeve (with the flexibility to increase the sleeve during times of potentially high redemptions) will provide the Trust with sufficient liquidity to manage redemptions under the vast majority of market conditions. Additionally, because the Trust will target shorter duration loans that are underwritten to generate cash payments of interest and principal amortization to achieve its investment objective, even in the event that the Trust's Liquidity Sleeve is exhausted, it is expected to be replenished by the cash payments generated by the Private Credit Assets. In the event that the cash generated by the Private Credit Assets is insufficient to satisfy incoming redemptions the Trust would then have the ability to facilitate additional redemptions by selling certain of the Private Credit Assets and/or using the Private Credit Assets as collateral for a cash loan from a bank or broker dealer. If necessary, the Trust would temporarily suspend redemptions. However, as noted above, the Advisor does not expect such a suspension to last for longer than approximately 2.5 months because of the cash expected to be generated by the Private Credit Assets.

In addition to the specific liquidity strategy described above, the Advisor also notes that the small size of loans sourced through Fintech lending platforms will enable the Trust to hold a portfolio that is diversified by sector, source, vintage, count and geography, which will help to manage idiosyncratic risk and provide a diverse universe of lenders. Further to this point, the small loan size means that the Trust will need to hold a significant number of Private Credit Assets, further providing diversity and minimizing the risk that any single Private Credit Assets would have on the portfolio. The Advisor further believes that the cash yields and short duration through regular principal amortization will, in addition to enhancing the liquidity of the Trust, help manage volatility of returns.

Purchases and Redemptions of Creation Unites

The Trust will create and redeem Shares from time to time only in large blocks of a specified number of Shares or multiples thereof (''Creation Units''). A Creation Unit is a block of at least 50,000 Shares. Except when aggregated in Creation Units, the Shares are not redeemable securities. Creation Units are only redeemable by authorized participants.

On any Business Day, an authorized participant may place an order with the Advisor to create one or more Creation Units.[10] The total cash payment required to create each Creation Unit is the net asset value (''NAV'') of at least 50,000 Shares on the purchase order date plus the applicable transaction fee.

The procedures by which an authorized participant can redeem one or more Creation Units mirror the procedures for the purchase of Creation Units. On any Business Day, an authorized participant may place an order with the Transfer Agent to redeem one or more Creation Units. The redemption proceeds from the Trust consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of the Trust requested in the authorized participant's redemption order on the business day the redemption order is received by the Transfer Agent, less transaction fees.

Availability of Information

Pricing information will be available on the Advisor's website on a daily basis including: (a) the prior business day's NAV per Share; (b) the prior business day's BZX Official Closing Price; (c) calculation of the premium or discount of such BZX Official Closing Price against such NAV per Share; (d) a table showing the number of days the Shares traded at a premium or discount; (e) a line graph showing the premium or discount of the Shares; (f) the Trust's median bid-ask spread; and (g) historical distribution data. The NAV per Share will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.[11] The Trust's website will publish, on a daily basis, quantitative information regarding the Trust's holdings, including the platform, outstanding principal amount or receivable principal, market value, and percentage weight for each asset or, in the case of whole loans, for each origination vintage. In addition, certain portfolio-level characteristics, including sector allocations, asset type allocations, and credit risk information, will be published at least on a quarterly basis. The aforementioned information will be published as of the close of business and available on the Advisor's website at *www.bondbloxxetf.com.*

Generally, the Trust values its assets using market quotations when they are readily available. Whole loans and asset backed securities that Trust may hold may not have readily available market

[10] Authorized participants have a cut-off time of 2:00 p.m. ET to place creation and redemption orders and orders received after 2:00 p.m. will not be deemed to be received until the following business day.

[11] NAV means the total assets of the Trust including, but not limited to, all cash and cash equivalents and private credit assets, less any liabilities, divided by the total number of Shares outstanding. The Trust's NAV is determined as the close of regular trading on the Exchange (normally, 4:00 p.m. ET). The Advisor has delegated to the Administrator the responsibility of computing the Trust's NAV and NAV per share.

quotations. In accordance with the Advisor's valuation policies and procedures, the Sub-Advisor will fair value the Trust's private credit assets based on a discounted cash flow (''DCF'') analysis of the loan portfolio's expected future net cash flows over the lifetime of the loan, discounted by the expected return, The difference between the calculated net present value and carrying value of the loan portfolio reflects the valuation adjustment that will be updated daily. In accordance with the valuation policy and procedures, and independent third-party pricing service will provide the inputs for the DCF model, including daily loan tapes (*e.g.,* loan balances, payment history, interest rates, and FICO scores) along with forward outlook on the portfolio (*e.g.,* loss expectation). Additionally, the model may incorporate any publicly available information such as pricing from recent deals or information specific to the Fintech lending platform. The model will be updated for daily changes to reflect any new information regarding the borrower or loan. Further, daily cash balances will reflect ending account balances per the Trust's bank account; interest receivable will reflect accrued interest balances for the loan portfolio per the loan servicer's statement; and prepaid and other assets will reflect ending accrued balances per the general ledger.

The Sub-Advisor will review for reasonableness the fair values of the Private Credit Assets provided by the independent third-party pricing services prior to the Sub-Advisor finalizing the daily NAV. Third-party pricing service providers will be selected based on their experience with similar assets, their demonstrated expertise in fintech, their clearly articulated valuation methodologies and sophistication of modeling capabilities, their independence and objectivity and the quality of their deliverables, their reputation in the industry, and the Advisor's or Sub-Advisor's experience working with the pricing service provider, or other similar pricing service providers, with other vehicles. Further, to the extent that there are material changes in the selection criteria of the third-party pricing service provider or the inputs used or the methodology applied in valuing the Trust's private credit assets, the Trust will notify investors via a prospectus supplement, current report on Form 8–K or annual or quarterly reports, as applicable.

There is no single standard for determining the fair value of an asset. Rather, fair value calculations will involve significant professional judgment in the application of both observable and unobservable attributes, and as a result, the calculated NAV of the Trust's assets may differ from their actual realizable value or future fair value.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA''). Pricing information regarding cash equivalents in which the Trust will invest will be generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes will be included in the registration statement.

The Intraday Indicative Value (''IIV'') will be updated during Regular Trading Hours to reflect changes in the value of the Trust's holdings during the trading day. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. Eastern time). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

Initial and Continued Listing

The Shares will conform to the initial and continued listing criteria under BZX Rule 14.11(f)(4). The Exchange represents that, for initial and continued listing, the Fund and [sic] the Trust must be in compliance with Rule 10A–3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the Advisor of the Shares that the NAV per Share for the Trust will be calculated daily and will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Trust; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 8:00 a.m. until 8:00 p.m. ET and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

Surveillance

Trading of the Shares through the Exchange will be subject to the Exchange's existing surveillance for securities traded on the Exchange. The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, reference assets, and index, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) Interpretation and Policy .01 of BZX Rule 3.7 which imposes a duty of due diligence on its Members to learn the essential facts relating to every customer prior to trading the Shares; [12] (4) how information regarding the IIV and the Trust's holdings is disseminated; (5) the risks involved in trading the Shares during the Pre-Opening [13] and After Hours Trading Sessions [14] when an updated IIV will not be calculated or publicly disseminated; (6) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. Members purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Trust's registration statement. The Information Circular will also disclose the trading hours of the Shares and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares will be publicly available on the Advisor's website.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [16] 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) [17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange notes that the Commission has approved numerous series of Trust Issued Receipts [18] to be listed on U.S. national securities exchanges and several other vehicles holding private credit instruments have recently launched.[19]

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act because the Shares will be listed and traded on the Exchange pursuant to the existing criteria in BZX Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts. The Exchange has in place surveillance procedures that are adequately designed to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of ISG, and the Exchange may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Trust's portfolio will consist of Private Credit Assets—which will consist of personal installment loans, small business loans, point-of-sale loans, and asset-backed securities backed by such loans—as well as investment grade bonds, U.S. Treasuries, shares of certain exchange-traded funds, and cash and cash equivalents. The Trust's portfolio will be valued daily using a discounted cash flow methodology applied by an independent third-party pricing service, and the NAV per Share will be calculated and disseminated daily to all market participants at the same time. An IIV will be disseminated every 15 seconds during Regular Trading Hours through the facilities of the CTA and CQS high-speed lines and will be available through online information services such as Bloomberg and Reuters. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18, including when trading is not occurring in the financial instruments composing the Trust's portfolio or when other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade because the Trust will be subject to the full panoply of Exchange rules applicable to equity securities, including BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers, and Interpretation and Policy .01 of BZX Rule 3.7, which imposes a duty of due diligence on members to learn the essential facts relating to every customer prior to trading the Shares. Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares, including the procedures for purchases and redemptions of Shares in Creation Units, the risks involved in trading the Shares during the Pre-Opening and After Hours Trading Sessions when an updated IIV will not be calculated or publicly disseminated, and the

[12] Specifically, in part, Interpretation and Policy .01 of Rule 3.7 states ''[n]o Member shall recommend to a customer a transaction in any such product unless the Member has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks of the recommended position.''

[13] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. ET.

[14] The After Hours Trading Session is from 4 p.m. to 8:00 p.m. ET.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

[18] See Exchange Rule 14.11(f).

[19] *See* ''First Private-Credit ETFs Launch,'' December 3, 2024, *https://www.wsj.com/livecoverage/stock-market-today-dow-sp500-nasdaq-live-12-03-2024/card/first-private-credit-etfs-launch-s0032D60wa2zgI2uy7pY.*

prospectus delivery requirements applicable to the Trust.

The Exchange believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because the Shares will be listed and traded on the Exchange pursuant to BZX Rule 14.11(f)(4), and the Trust will comply with all applicable initial and continued listing requirements thereunder. The Trust and the Shares will be in compliance with Rule 10A–3 under the Act as a condition of initial and continued listing. A minimum of 100,000 Shares will be outstanding at the commencement of trading. The Advisor has represented to the Exchange that the NAV per Share will be calculated daily and made available to all market participants at the same time. Pricing information, including the prior business day's NAV per Share, the BZX Official Closing Price, premium/discount calculations, and historical distribution data, will be publicly available on the Advisor's website at *www.bondbloxxetf.com.* Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

The Exchange also believes that the proposed rule change is designed to protect investors and the public interest because the Trust will provide investors with access to a diversified portfolio of consumer and small business private credit assets that has primarily been available to institutional investors, while maintaining meaningful investor protections. The Trust will maintain a Liquidity Sleeve of approximately 20% of the portfolio in cash and cash equivalents under normal circumstances to facilitate redemptions, and the Trust's focus on short-duration, amortizing loans is designed to generate recurring monthly cash flows to replenish liquidity. The Advisor and Sub-Advisor are not broker-dealers and are not affiliated with broker-dealers; in the event either becomes affiliated with a broker-dealer, it will implement and maintain a firewall with respect to access to information concerning the composition and/or changes to the Trust's portfolio. All statements and representations made in this filing regarding the description of the portfolio, limitations on portfolio holdings, and the applicability of Exchange rules constitute continued listing requirements, and the Exchange will commence delisting procedures under Exchange Rule 14.12 if the Trust or the Shares are not in compliance with applicable listing requirements.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2026–027 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–2026–027. 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–2026–027 and should be submitted on or before May 13, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–07820 Filed 4–21–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 36094; File No. 812–15585]

Saba Capital Income & Opportunities Fund II, et al.

April 20, 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: Saba Capital Income & Opportunities Fund II, Saba Capital Income & Opportunities Fund, Saba Capital Management, L.P., and certain of

[20] 17 CFR 200.30–3(a)(12).

their affiliated entities as described in Appendix A to the application.

FILING DATES: The application was filed on June 7, 2024 and amended on January 22, 2025, August 12, 2025, February 6, 2026, and March 18, 2026.

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 15, 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: Michael D'Angelo, Saba Capital Management, L.P., *Michael.DAngelo@sabacapital.com;* and George M. Silfen, Alston & Bird LLP, *George.silfen@alston.com.*

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, or Thomas Ahmadifar, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' fourth amended application, filed March 18, 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. 2026–07854 Filed 4–21–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105262; File No. S7–2026–11]

Notice of Request for Exemptive Relief, Pursuant to Section 36(a) of the Securities Exchange Act of 1934, From Certain Aspects of Rule 17ad–22(e)(18)(iv) of the Securities Exchange Act of 1934 and Request for Comment

April 17, 2026.

I. Introduction

On December 13, 2023, the Securities and Exchange Commission (the ''Commission'') adopted,[1] among other things, Rule 17ad–22(e)(18)(iv)(A) (the ''Trade Submission Requirement'') [2] under the Securities Exchange Act of 1934 (''Exchange Act''). Under these amendments, covered clearing agencies that provide central counterparty services for U.S. Treasury securities (''U.S. Treasury securities CCAs'') [3] must establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation which require that any direct participant of a U.S. Treasury securities CCA submit for clearance and settlement all of the eligible secondary market transactions to which such direct participant is a counterparty and identify and monitor the U.S. Treasury securities CCA's direct participants' submission of transactions for clearing pursuant to the Trade Submission Requirement. An ''eligible secondary market transaction'' is, in turn, defined as (i) a repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities, in which one of the counterparties is a direct participant (''repo''); or (ii) a purchase or sale, between a direct participant and: (A) any counterparty, if the direct participant of the covered clearing agency brings together multiple buyers and sellers using a trading facility (such as a limit order book) and is a counterparty to both the buyer and seller in two separate transactions; or (B) a registered broker-dealer, government securities broker, or government securities dealer.[4]

An ''eligible secondary market transaction'' does not include any repo entered into between a direct participant and an affiliated counterparty (the ''Inter-Affiliate Exclusion''), provided that the affiliated counterparty submits for clearance and settlement all other repos to which the affiliated counterparty is a party (the ''outward-facing condition'').[5] An ''affiliated counterparty'' is any counterparty which meets the following criteria: (i) the counterparty is either a bank (as defined in 15 U.S.C. 78c(6)), broker (as defined in 15 U.S.C. 78c(4)), dealer (as defined in 15 U.S.C. 78c(5)), or futures commission merchant (as defined in 7 U.S.C. 1a(28)), or any entity regulated as a bank, broker, dealer (together with broker, ''BD''), or futures commission merchant (''FCM'') in its home jurisdiction (the ''bank/BD/FCM condition''); (ii) the counterparty holds, directly or indirectly, a majority ownership interest in the direct participant, or the direct participant, directly or indirectly, holds a majority ownership interest in the counterparty, or a third party, directly or indirectly, holds a majority ownership interest in both the direct participant and the counterparty; and (iii) the counterparty, direct participant, or third party referenced in paragraph (ii) of this definition as holding the majority ownership interest would be required to report its financial statements on a consolidated basis under U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial results of the majority-owned party or of both majority-owned parties.[6]

On April 10, 2026, a trade association submitted a letter to the Commission requesting exemptive relief in two areas related to the Trade Submission Requirement. First, the trade association requested exemptive relief to expand the Inter-Affiliate Exclusion to the Trade

[1] 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, 2737 (Jan. 16, 2024) (''Adopting Release'').

[2] 17 CFR 240.17ad–22(e)(iv)(A).

[3] The U.S. Treasury securities CCAs are the Fixed Income Clearing Corporation (''FICC''), the CME Securities Clearing Corp. (''CMESC''), and ICE Clear Credit, LLC (''ICC''). For purposes of this notice, the Commission refers generally to U.S. Treasury securities CCAs, as the issues raised by SIFMA apply equally to all U.S. Treasury securities CCAs, unless otherwise noted.

[4] 17 CFR 240.17ad–22(a).

[5] *Id.*

[6] *Id.*

Submission Requirement.[7] Specifically, the trade association requested that the definition of an ''affiliated counterparty'' be expanded to include all affiliates, except for investment company entities.[8] Second, the trade association requested that the outward-facing condition not include repo transactions between non-U.S. affiliates and non-U.S. counterparties, to the extent that the direct participant does not exceed a specific activity level threshold for those transactions, as discussed further below.[9] We are publishing this notice to provide interested persons with an opportunity to comment on these requests for exemptive relief.

II. Discussion and Requested Relief

As noted above, the trade association made certain requests for exemptive relief from the Inter-Affiliate Exclusion. The trade association stated that the relief is needed for critical treasury, liquidity, and collateral management reasons.[10] The trade association stated that repo transactions are a critical internal liquidity management tool for large financial institutions and allow affiliated entities, including non-U.S. affiliates, to hold U.S. dollars in a safe and liquid asset.[11] The trade association further stated that, although the Inter-Affiliate Exclusion does provide an exemption for the clearing requirement for certain inter-affiliate repos, the restrictions on its availability effectively negate its utility, with these restrictions being that only a limited number of affiliates are permitted to rely on the Inter-Affiliate Exemption, and that, in order to use the exemption, an affiliate must centrally clear all outward-facing repos pursuant to the outward-facing condition.[12]

The trade association stated that, because of the limitations of the bank/BD/FCM condition and the outward-facing condition, repo transactions for treasury, liquidity, and collateral risk management (''TLC Repo Transactions'') are potentially subject to a clearing requirement with negative consequences for the financial markets.[13] According to the trade association, these consequences would include:

- If an affiliate of a direct participant faced an immediate liquidity or collateral need after a U.S. Treasury securities CCA closes, the direct participant would not be able to get that liquidity or collateral to the affiliate via a repo transaction until a covered clearing agency opened, posing risk to the affiliate and to its customers and the broader financial market.[14] The trade association explained that this problem especially applies to non-U.S. affiliates operating in time zones outside of the U.S. Treasury securities CCA.[15]
- Increased affiliate clearing would create exposures to a covered clearing agency for the affiliates on both sides of the transaction, unnecessarily grossing up the corporate group's overall risk exposure to the covered clearing agency.[16] This could constrain a direct participant's capacity to clear third-party repo activity because, when calculating its risk limits, it would need to account for this inter-affiliate activity (*i.e.,* balance sheet capacity allocated to centrally cleared affiliate transactions that could be used to clear third-party repos would instead have to be used to clear affiliate repos).[17]
- Increased affiliate clearing would also make affiliate transactions needlessly more expensive, as both affiliates would need to post margin to the covered clearing agency, despite the fact that the group's overall consolidated exposure would be flat.[18]
- Increased affiliate clearing would also increase the systemic importance of a U.S. Treasury securities CCA and augment the complexities that could arise if operational issues or member defaults were to occur.[19]
- TLC Repo Transactions are an important tool for a firm to manage its applicable capital and liquidity requirements, as U.S. Treasury securities are a low-risk asset with deep liquidity that can be moved across the organization quickly as needed.[20] Imposing a clearing requirement on inter-affiliate transactions could lead to serious delays and cost increases for organizations for business-as-usual transactions used to comply with applicable regulations, which could increase systemic liquidity risk during market stress.[21]
- Given that TLC Repo Transactions are a crucial way to move liquidity across an organization quickly, TLC Repo Transactions may be relied upon heavily in an insolvency or resolution, and the clearing requirement could lead to serious delays when liquidity is needed most.[22]
- The trade association stated that repos are also an essential method for non-U.S. affiliates to hold and manage U.S. dollar assets, because such non-U.S. affiliates do not generally have direct access to Federal Reserve master accounts, making U.S. Treasury securities an important way to hold U.S. dollar assets.[23] In addition, a non-U.S. affiliate that holds U.S. dollars may prefer not to deposit the dollars with another affiliate, since credit exposure regulations in other jurisdictions may treat such a deposit as an unsecured exposure to the affiliate and a repo transaction may receive more favorable treatment under the applicable credit exposure regulations because the transaction is securities.[24] A clearing requirement could make holding Treasuries more expensive for non-U.S. affiliates, impeding their ability to hold these essential assets.[25]

In addition, the trade association stated that the outward-facing condition provides no flexibility to firms, imposing a blanket clearing requirement regardless of the actual level of risk.[26] The trade association further stated that, currently, a direct participant would be required to clear all repos with an affiliate that is not a bank, BD, or FCM (together, ''Limited Covered Affiliates''), and with respect to affiliates that are banks, BDs, or FCMs, a firm is faced

[7] *See* Letter from Robert Toomey, Head of Capital Markets, Managing Director/Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA'' or ''trade association''), dated April 10, 2026, *available at https://www.sifma.org/wp-content/uploads/2026/04/SIFMA-Section-36-Exemptive-Relief-Request-for-Interaffiliate-Transactions.pdf* (''SIFMA Letter'').

[8] *See* SIFMA Letter, *supra* note 7, at 7–8.

[9] *See id.* at 8–9.

[10] *See id.* at 3.

[11] *See id.*

[12] *See id.* at 2.

[13] *See id.* at 4.

[14] *See id.* at 5–6. In its letter, SIFMA referred specifically to FICC, which is currently the only operational U.S. Treasury securities CCA. SIFMA notes that, while it is possible that CMESC and ICC will have longer opening hours than FICC, it is not clear if any of the U.S. Treasury securities CCAs will offer 24/7/365 clearing services. *See id.* at 6.

[15] *See id.* at 6.

[16] *See id.*

[17] *See id.*

[18] *See id.*

[19] *See id.*

[20] *See id.* at 4.

[21] *See id.* at 5. Specifically, SIFMA stated that repos for treasury, liquidity, or collateral management assist firms in complying with the Basel III Liquidity Coverage Ratio, which requires firms to maintain consolidated access to high-quality liquid assets, such as U.S. Treasury securities, to meet stress-period outflows. *See id.* SIFMA also stated that banks use such repos to transfer liquidity to affiliates without facing the restrictions of the Federal Reserve Board's Regulation W, which places quantitative limits on the extensions of credit a bank may make to its affiliates but also exempts an extension of credit (including repos) from those limits to the extent they are secured by U.S. Treasury securities. *See id.*

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] *See id.* SIFMA further explained that repo transactions on other U.S. dollar-denominated assets may also be constrained by applicable capital and liquidity regulations (*e.g.,* less favorable treatment of U.S. agency mortgage-backed securities under the Basel III Liquidity Coverage Ratio in foreign jurisdictions). *See id.*

[26] *See id.* at 7.

with one of two options to comply with the Outward-Facing Condition: clear all Repo Transactions between the bank, BD, or FCM affiliate and the Direct Participant (*i.e.,* not take advantage of the Inter-Affiliate Exemption), or clear all the Limited Covered Affiliate's Outward-Facing Repo Transactions (which, as explained in more detail below, may not be feasible for non-U.S. affiliates that trade with non-U.S. counterparties).[27]

The trade association requested exemptive relief in two areas. First, the trade association asked that the Commission provide exemptive relief to make the Inter-Affiliate Exemption available to all affiliates, except ''investment company'' affiliates.[28] This request would expand the list of permitted affiliates with whom direct participants of a U.S. Treasury securities CCA could transact and rely upon the Inter-Affiliate Exclusion beyond the current set (*i.e.,* banks, broker-dealers, futures commission merchants, and their foreign equivalents) to include any entity that is not an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)), regardless of whether such investment company is registered or required to be registered under that act.[29] The trade association identified other potential types of entities that would then be encompassed within the rule as swap dealers, the top-tier bank holding company, and intermediate holding company affiliates, and stated that many of these affiliates, particularly the holding company entities, do not have external activity (*i.e.,* they are not customer-facing entities).[30]

The trade association explained that, by allowing additional types of affiliated counterparties to be able to use the Inter-Affiliate Exclusion, affiliates of direct participants of U.S. Treasury securities CCAs would be able to conduct uncleared repo transactions with their direct participant, which is essential to allowing affiliates to effectively manage liquidity and collateral needs without unnecessary costs and delays.[31] In addition, the trade association further explained that by allowing the use of additional types of affiliated counterparties, the outward-facing condition would still apply, unless another form of relief were available, meaning that a firm would still not be able to use ''back-to-back'' repo transactions to transfer risk to a direct participant.[32]

Second, the trade association requested that the Commission provide exemptive relief for non-U.S. affiliates, by exempting from the outward-facing condition to the Inter-Affiliate Exclusion repo transactions between non-U.S. affiliates and non-U.S. counterparties, including between two non-U.S. affiliates, to the extent that the direct participant is able to meet the following condition: the quotient of the following is less than 10 percent: (i) numerator transactions: uncleared repo transactions between all non-U.S. affiliates of the direct participant and their non-U.S. external counterparties,[33] divided by (ii) denominator transactions: the sum of (x) all cleared eligible secondary market transactions that are repo transactions of all of a firm's direct participants,[34] and (y) the numerator transactions.[35] Regarding the denominator transactions, the trade association stated that including both all cleared eligible secondary market transactions that are repo transactions of a firm's direct participants *and* the numerator transactions would therefore encompass repo transactions that are subject to the clearing requirement, along with most of the repo transactions benefiting from the proposed threshold.

The trade association stated that the outward-facing condition would require that two non-U.S. affiliates of a direct participant clear a repo transaction between themselves if either affiliate wished to enter into an uncleared repo transaction with a direct participant, which would impose costs and burdens for this activity, who often use repo transactions to conduct treasury, liquidity, and collateral management activities.[36]

Specifically, the trade association stated that it would be unduly burdensome to effectively require non-U.S. affiliates to become direct or indirect participants of a U.S. Treasury securities CCA to use the Inter-Affiliate Exclusion, especially because repo transactions between non-U.S. affiliates are likely to be rather small in comparison to a firm's overall activity in eligible secondary market transactions that are repo transactions.[37] The trade association also stated that, if a non-U.S. affiliate needed funding when U.S. Treasury securities CCAs are closed, which is particularly likely for non-U.S. affiliates who operate in different time zones worldwide, the non-U.S. affiliate would effectively be unable to obtain such funding through a repo transaction with another non-U.S. affiliate, causing unnecessary liquidity issues that could potentially have destabilizing ripple effects.[38]

The trade association stated that 10 percent was an appropriate threshold because it represents a relatively small amount of uncleared repo transactions in comparison to a firm's overall activity in cleared eligible secondary market transactions, but that it would still be useful to non-U.S. affiliates.[39] The trade association further stated that, as a practical matter, firms will almost certainly have to target a figure well below any regulatorily determined threshold to avoid inadvertently exceeding the threshold, such that making the threshold below 10 percent would make the requested relief of little practical use to firms, as the actual figure to which firms would need to manage would be too small to use in a meaningful way.[40]

Finally, the trade association also stated that if a firm finds that it has materially exceeded the 10 percent threshold, it should be required to

[27] *See id.* at 4.

[28] *See id.* at 7–8. SIFMA stated this limitation would ensure that neither any registered investment company nor any private fund (*i.e.,* an issuer that meets the definition of ''investment company'' under section 3(a)(1) of that Act, but relies on one of the exemptions from registration thereunder) may rely on this proposed exemptive relief to enter into uncleared repo transactions with an affiliated direct participant. *See id.* at 8.

[29] *See id.* at 7–8.

[30] *See id.* at 7.

[31] *See id.* at 8.

[32] *See id.*

[33] *See id.* at 8–9. SIFMA clarified that uncleared repo between two non-U.S. affiliates should be excluded from the numerator because they do not represent market-facing activity. *See id.* at 9.

[34] *See id.* at 9. SIFMA explained that this portion of the calculation refers to *all* of a firm's direct participants because this proposed condition should not be measured on a direct participant-by-direct participant basis, but rather across the entire organization. *See id.* at 10. In addition, SIFMA explained that cleared eligible secondary market transactions that are repo transactions of a firm's direct participant include those repo transactions that are subject to the clearing requirement but exclude those that are not (*e.g.,* repo transactions between a direct participant and natural persons or central banks). *See id.*

[35] *See id.* at 9. SIFMA stated that this calculation should be performed as an average of outstanding daily open notional balances over each of the last three quarters, with more weight given to more recent quarters. *See id.* at 10. SIFMA stated that this methodology would ensure that short-term fluctuations in a firm's repo transaction activity do not unduly affect whether the relief is available, providing more predictability and stability. *See id.* Additionally, SIFMA clarified that uncleared repos between two non-U.S. affiliates also should be excluded from the denominator for the same reason they should be excluded from the numerator. *See id.* at 10, n. 25.

[36] *See id.* at 9. SIFMA also stated that non-U.S. affiliates of direct participants engage in repos with non-U.S. counterparties who do not themselves engage in Repo Transactions at a level that makes onboarding them to clear through a U.S. Treasury securities CCA feasible. *See id.* at 6 (noting, as a example, FICC's operating hours and the relatively small list of approved jurisdictions for FICC's sponsored member service).

[37] *See id.* at 9.

[38] *See id.*

[39] *See id.* at 9.

[40] *See id.* at 10.

report this fact to the Commission.[41] The trade association further stated that if a firm reports multiple instances of exceeding the 10 percent threshold, the Commission may consider imposing a limited clearing requirement to address the issue, subject to a sufficient timeline for implementation,[42] and in any event, repos between two non-U.S. affiliates should not be subject to a clearing requirement.[43]

III. Request for Comment

We request and encourage any interested person to submit comments on the requested relief, including whether the Commission should grant exemptive relief. In particular, we solicit comments on the following questions:

1. Is the requested expansion of the types of affiliates that could qualify for the Inter-Affiliate Exclusion appropriate? Please explain.

2. Is the 10 percent threshold appropriate? Please explain why or why not, and if possible, provide data to demonstrate why it is or is not. Would another threshold be appropriate and why?

3. Are the calculations for the numerator and denominator appropriate? Please explain. Alternatively, should the numerator and denominator include repo transactions between two non-U.S. affiliates? Please explain.

4. Should the numerator transactions and denominator transactions be calculated as an average of outstanding daily open notional balances over each of the last three quarters with more weight given to more recent quarters? Please explain why or why not. Would another method or period of time be appropriate for the calculation and why?

5. Should the denominator transactions be measured across a direct participant's entire organization, as opposed to on a direct participant-by-direct participant basis? Please explain why or why not, and whether such an approach would also be appropriate for the numerator transaction.

6. Would the requested relief impact how market participants structure their repo transactions or access central clearing (*e.g.,* through an affiliated direct participant or by joining a U.S. Treasury securities CCA directly)? If so, please describe the impact and how this impact would occur.

7. Would the requested relief impact competition between different types of firms or based on the firm's organizational structure or size? If so, please describe the impact on competition and how this impact would occur.

8. Would the requested relief have any impact on existing U.S. reporting requirements (*e.g.,* FINRA's TRACE reporting or the requirements with respect to certain non-centrally cleared bilateral repo reporting established by the Office of Financial Research within the U.S. Department of the Treasury[44])? Please explain.

9. Would the requested relief have any impact on liquidity and/or overall resiliency of the U.S. Treasury markets? If so, please describe the impact on liquidity and overall resiliency and how the impact would occur.

10. Would the requested relief have any impact on foreign participation in U.S. Treasury markets? If so, please describe the impact on foreign participation and how the impact would occur.

11. Would the requested relief impact contagion risk[45] for U.S. Treasury securities CCAs, or systemic risk more broadly?

12. Would the requested relief impact any of the benefits that the Commission identified as arising from the Trade Submission Requirement, such as decreasing counterparty credit risk, decreasing the risk of a disorderly member default, increasing multilateral netting?[46]

13. Would the requested relief impact a U.S. Treasury securities CCA's ability to risk manage the transactions of its direct participants? If so, please describe the impact on a U.S Treasury securities CCA's risk management.

14. As an alternative to the requested relief, should the Commission issue an exemption for a direct participant's inter-affiliate transactions that are for treasury, liquidity, or collateral risk management purposes? If so, how should the Commission define such purposes, and what evidence could a direct participant use to demonstrate why such transactions are for treasury, liquidity, or collateral risk management purposes?

15. Should the Commission include a self-reporting mechanism to the Commission in the event that a particular direct participant materially exceeds the 10 percent threshold, or any other threshold the Commission may condition the relief upon? If the Commission were to include such a mechanism, please describe how that mechanism would work. Should the Commission consider providing such a mechanism with reporting to another entity, such as the covered clearing agency or agencies of which that entity is a direct participant, its regulator, or some other entity?

16. Additionally, what should be considered ''material'' when determining whether a firm has materially exceeded the 10 percent threshold, or any other threshold the Commission may condition the relief upon?

17. If self-reporting should be made to the covered clearing agency, how would this reporting mechanism differ, if at all, from Rule 17ad–22(e)(18)(iv)(B), which requires a covered clearing agency to identify and monitor its direct participants' submission of transactions for clearing as required by Rule 17ad–22(e)(18)(iv)(A), including how the covered clearing agency would address a failure to submit transactions in accordance with Rule 17ad–22(e)(18)(iv)(A)? Would some sort of self-reporting mechanism be burdensome to administer at one or more U.S. Treasury securities CCAs?

18. Should the Commission include a limited clearing requirement, subject to a sufficient timeline for implementation, for firms who report multiple instances of exceeding the 10 percent threshold, or any other threshold the Commission may condition the relief upon? If so, what should the limited clearing requirement be? What form would such a limited clearing requirement take? Should such limited clearing requirement necessarily exclude repos between two non-U.S. affiliates? What would be a sufficient timeline for implementation?

19. If the Commission were to grant the requested relief, should we modify any of the conditions in the request for exemptive relief? Should the Commission condition the requested relief on any additional requirements? If so, please describe what those conditions should be and why.

20. How does the relief requested interact, if at all, with the relief requested by the Institute for International Bankers (''IIB'')?[47] Are

[41] *See id.* at 11.

[42] *See id.* The trade association stated that such a clearing requirement should only be imposed to the extent needed to ensure the firm does not continue to exceed the 10% thresholds and should not be a blanket restriction on relying on the 10% non-U.S. affiliate relief. *See id.*

[43] *See id.*

[44] *See* 12 CFR part 1610.

[45] *See* Adopting Release, *supra* note 1, 89 FR at 2717, 2741–42.

[46] *See id.* at 2717–18.

[47] *See* Notice of Request for Exemptive Relief, Pursuant to section 36(a) of the Securities Exchange Act of 1934, from Certain Aspects of Rule 17ad–22(e)(18)(iv) of the Securities Exchange Act of 1934 and Request for Comment, Securities Exchange Act Release No. 104944 (Mar. 6, 2026), 91 FR 12030 (Mar. 11, 2026) (''IIB request'').

there any competitive concerns that could arise if the Commission granted the relief, as noticed, in these two contexts? If so, should the Commission modify the exemptive relief for either or both requests? In what ways should either or both requests for exemptive relief be modified? As an example, to address competitive concerns, should the Commission impose a percentage threshold relief as a condition to the relief sought by IIB? If so, should that percentage threshold and the method of calculation be the same or would it need to be different? Also, should the Commission include a limited clearing requirement, subject to a sufficient timeline for implementation, for firms who report multiple instances of exceeding that threshold? Please explain.

21. Please describe how the requested relief would or would not protect investors and the public interest, consistent with sections 17A and 36 of the Exchange Act.

22. Please describe how the requested relief would or would not help to facilitate the prompt and accurate clearance and settlement of securities transactions as well as the safeguarding of securities and funds, consistent with section 17A of the Exchange Act.

Comments should be received on or before May 29, 2026. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules-regulations/exchange-act-exemptive-notices-orders*)

or

- Send an email to *rule-comments@sec.gov.* Please include File Number S7–2026–11 on the subject line.

Paper Comments

- Send paper comments to Secretary, Vanessa A. Countryman, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–2026–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules-regulations/exchange-act-exemptive-notices-orders*). 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 publications submitted material that is obscene or subject to copyright protection.

For further information, you may contact Elizabeth Fitzgerald, Assistant Director, at (202) 551–6036, or Heather Percival, Senior Special Counsel, at (202) 551–3498, in the Division of Trading and Markets; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

By the Commission.

Dated: April 17, 2026.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026–07775 Filed 4–21–26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105265; File No. SR–GEMX–2026–15]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Auction Mechanisms

April 17, 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 Apri1 13, 2026, Nasdaq GEMX, LLC (''GEMX'' 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 permit orders for the accounts of Market Makers assigned to the options class to be solicited for the initiating order [3] submitted for execution against an agency order into a Facilitation Mechanism, the Solicited Order Mechanism (''SOM''), or a Price Improvement Mechanism (''PIM'').

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/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 Supplementary Material .01 and .03 to Options 3, Section 11 (Auction Mechanisms), Supplementary Material .06 to Options 3, Section 13 (Price Improvement Mechanism for Crossing Transactions) to permit orders by Members in a Facilitation Mechanism, a SOM, and a PIM to trade against the Agency Orders [4] for the accounts of Market Makers assigned to the options class. Cboe Exchange, Inc. (''Cboe'') recently received approval to amend its rules in an identical manner.[5] The Exchange also proposes an amendment to Options 5, Section 4 relating to the handling of Immediate-or-Cancel Orders.[6]

Background

PIM

A PIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). There is no specific size requirement for a PIM Auction. Upon submitting an Agency Order into a PIM, the initiating Electronic Access Member must also submit a contra-side paired order. The initiating order guarantees that the Agency Order will receive an execution at no worse than the auction price.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ''initiating order'' is the order comprised of principal interest or a solicited order(s) submitted to trade against the order the submitting Electronic Access Member represents as agent (the ''Agency Order'').

[4] Agency Orders are orders entered by a Member that are represented as agent.

[5] *See* Securities Exchange Act Release No. 105049 (March 19, 2026), 91 FR 14057 (March 24, 2026) (SR–Cboe–2025–090).

[6] Immediate-or-Cancel is an order entered with a TIF of ''IOC'' that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. *See* Supplementary Material .02(d) to Options 3, Section 7.

Upon commencement of an auction, market participants may submit responses to trade against the Agency Order.[7] At the conclusion of a PIM, the Agency Order will be executed in full at the best prices available, taking into consideration orders and quotes in the Exchange market and Improvement Orders.[8] GEMX's PIM is very similar to Cboe's Automated Price Improvement Mechanism or ''AIM.'' [9]

SOM

Options 3, Section 11(d) contains the requirements applicable to the execution of Agency Orders using SOM. A SOM Auction is an electronic auction intended to provide a larger-sized (orders of 500 or more contracts) Agency Order with the opportunity to receive price improvement over the NBBO. Options 3, Section 13 contains the requirements applicable to the execution of orders the Electronic Access Member represents as agent using PIM. A PIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). Upon submitting an Agency Order into a SOM, the initiating Electronic Access Member must also submit a contra-side paired order. The initiating order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order.[10] At the conclusion of a SOM, execution will depend on whether there is sufficient size to execute the entire Agency Order at an improved price (or prices) [11] as the SOM is designated as all-or-none.[12] GEMX's SOM is very similar to Cboe's Solicited Auction Mechanism or ''SAM.'' [13]

Facilitation Mechanism

Options 3, Section 11(b) describes a Facilitation Mechanism which is an electronic auction intended to provide a larger-sized Agency Order with the opportunity to receive price improvement over the NBBO. Block-sized orders (fifty (50) contracts or more pursuant to Options 3, Section 11(a)) may be entered into a Facilitation Mechanism by a Member to facilitate a customer order it represents as agent. Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism pursuant to Options 3, Section 11(b). Under this mechanism, a Member submits a Facilitation Order along with a matching contra-side order, and the System initiates an auction during which other participants may submit competing responses. At the conclusion of the auction, the facilitating Member is entitled to a guaranteed participation right at the final execution price, provided the Member's price matches or improves upon the best competing response. Pursuant to Options 3, Section 11(b)(4)(B), the facilitating Member may be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order, but only after better-priced Responses, orders and quotes, as well as Primary Customer Orders and Primary Customer Responses at the facilitation price, are executed in full at such price point.

The Exchange notes that Cboe does not have a Facilitation Mechanism. The GEMX Facilitation Mechanism is similar to Cboe's SAM. The key differences are:

- the GEMX Facilitation Mechanism requires a minimum of 50 contracts pursuant to Options 3, Section 11(b) while a Cboe SAM requires a minimum of 500 contracts pursuant to Cboe Rule 5.39(a)(3);
- Cboe's SAM has an all-or-none allocation at Cboe Rule 5.39(e) while the GEMX Facilitation Mechanism must be willing to execute the entire size at Options 3, Section 11(b); and
- Cboe Rule 5.39 requires that a Cboe Trading Permit Holder submit for execution an order it represents as agent (''Agency Order'') against a solicited order(s) (which cannot have a Capacity F for the same EFID as the Agency Order into a SAM pursuant to Cboe Rule 5.39 wherein the Agency Order and Solicited Order cannot both be for the accounts of Priority Customers whereas the GEMX Facilitation Mechanism does not have similar limitations.

These aforementioned differences do not result in a different analysis as to the impact of permitting orders by Members in a Facilitation Mechanism to trade against the Agency Orders for the accounts of Market Makers assigned to the options class. The Exchange's analysis below applies to the Facilitation Mechanism as it applies to a SOM or PIM.

Proposal

Currently, Supplementary Material .01 and .03 to Options 3, Section 11, Supplementary Material .06 to Options 3, Section 13 prohibit orders by Members in a Facilitation Auction, SOM, or PIM (collectively ''Paired Auctions''), respectively, to trade against the Agency Orders for the accounts of Market Makers assigned to the options class.

While market participants other than assigned Market Makers may contribute liquidity to these Paired Auctions as either a contra-side order or responses, assigned Market Makers, who are the primary source of liquidity on the Exchange in their assigned options, are limited in the manner in which they

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[7] *See* Options 3, Section 13(c)(2). Responses in PIM are called Improvement Orders.

[8] The Agency Order will receive executions at multiple price levels if there is insufficient size to execute the entire order at the best price. *See* Options 3, Section 13(d).

[9] An AIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). Upon submitting an Agency Order into an AIM Auction, the initiating Trading Permit Holder (''Initiating TPH'') must also submit a contra-side second order (''Initiating Order'') for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order. *See* Cboe Rule 5.37(c)(5). At the conclusion of an AIM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated a certain percentage (or more) of the Agency Order. *See* Cboe Rule 5.37(e).

[10] *See* Options 3, Section 11(b)(3) and (d)(2) and Section 13(c)(2). Responses in PIM are called Improvement Orders.

[11] If at the time of execution there is insufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed against the solicited order at the proposed execution price so long as, at the time of execution: (i) the execution price is equal to or better than the best bid or offer on the Exchange, and (ii) there are no Priority Customer Orders or Priority Customer Responses on the Exchange that are priced equal to the proposed execution price. If there are Priority Customer Orders or Priority Customer Responses on the Exchange on the opposite side of the Agency Order at the proposed execution price and there is sufficient size to execute the entire size of the Agency Order, the Agency Order will be executed against the bid or offer, and the solicited order will be cancelled. *See* Options 3, Section 11(d)(3)(A). If at the time of execution there is sufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed at the improved price(s), provided the execution price is equal to or better than the best bid or offer on the Exchange, and the solicited order will be cancelled. *See* Options 3, Section 11(d)(3)(B). In each case the aggregate size of all orders, quotes and Responses at each price will be used to determine whether the entire agency order can be executed at an improved price (or prices).

[12] *See* Options 3, Section 11(d).

[13] A SAM Auction is an electronic auction intended to provide a larger-sized Agency Order with the opportunity to receive price improvement over the NBBO. Upon submitting an Agency Order into a SAM Auction, the initiating Trading Permit Holder (''Initiating TPH'') must also submit a contra-side second order (''Initiating Order'') for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order. *See* Cboe Rule 5.39(c)(5). At the conclusion of a SAM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated the entire Agency Order or none of the Agency Order. *See* Cboe Rule 5.39(e).

may provide liquidity to these Paired Auctions. Given that contra-side orders that comprise initiating orders may be allocated a percentage of the Agency Order at the conclusion of the auctions, the limited ability of assigned Market Makers to participate in a Paired Auction may reduce the execution opportunities for these liquidity providers, which execution opportunities are available to other market participants who may be solicited or submit responses.

The Exchange believes that eliminating the prohibition against assigned Market Makers acting as contra in Paired Auctions would enhance price improvement opportunities in the Paired Auctions. This is particularly for retail and smaller Priority Customer orders in a PIM. Allowing assigned Market Makers registered with the Exchange to be facilitated or solicited as contras may result in exposure of more small Priority Customer orders to potential price improvement via auction processes in a PIM. The Exchange further notes that Options 3, Section 22(d) (Limitations on Order Entry) provides that, prior to or after submitting an order to GEMX, a Member cannot inform another Member or any other third party of any of the terms of the order for purposes of violating this Rule. This protection will remain in place under the proposed rule change to address any potential information leakage concerns in the Paired Auctions as Options 3, Section 22 applies to the Paired Auctions.

The Exchange believes that the restriction has become operationally outdated in current market structure. It is common practice that Agency Orders already involve the same Market Maker firm acting as both the contra-side (in an away Market Maker capacity) and auction respondent (as an assigned Market Maker registered on the Exchange). Eliminating this restriction would reduce an arbitrary and unnecessary burden and allow Market Makers to structure more efficient auction processes, which may ultimately promote greater competition among Market Makers and provide market participants with enhanced opportunities for price improvement.

The Exchange is proposing to amend Supplementary Material .01 and .03 to Options 3, Section 11, Supplementary Material .06 to Options 3, Section 13 to permit orders for the accounts of Market Makers in an assigned options class to be solicited for the initiating order submitted for execution against an Agency Order in all options. The Exchange believes providing assigned Market Makers with an additional way to participate in Paired Auctions will expand available liquidity for these Paired Auctions, which may increase execution and price improvement opportunities, particularly for Priority Customer orders in a PIM. The Exchange notes that no similar restriction applies to crossing transactions in open outcry trading.[14] Brokers seeking liquidity to execute against customer orders on the trading floor regularly solicit assigned Floor Market Makers in the applicable class for this liquidity, as they are generally the primary source of liquidity in a class. Therefore, the Exchange believes the proposed rule change will further align open outcry and Paired Auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in Paired Auctions across all options at all times.

In addition to Cboe, the Exchange notes the electronic price improvement auction of another options exchange currently permits orders for the accounts of appointed market-makers to be solicited as the contra orders for that auction.[15]

Options 5, Section 4

The Exchange proposes to amend subparagraph (a) at Options 5, Section 4, Order Routing, which currently states, ''Immediate-or-Cancel (''IOC'') Orders will be cancelled immediately if not executed, and will not be routed.'' The Exchange proposes to instead state that, ''Immediate-or-Cancel (''IOC'') Orders will be rejected and will not be routed.'' While the current sentence reflects the operation of IOC Orders as provided in Supplementary Material .02(d) to Options 3, Section 7, within the context of routing, the sentence may be confusing. Options 5, Section 4 explains the manner in which various order types are handled differently for purposes of routing. An IOC Order will not rest on the order book by its definition and cannot route. The Exchange proposes to amend the language to be clear that IOC Orders are not subject to routing and therefore would be rejected. This proposed language is consistent with Supplementary Material .02(d) to Options 3, Section 7 and makes clear the treatment of IOC Orders for purposes of Options 5, Section 4.

Implementation

The Exchange proposes to implement these proposed changes on or before Q3 2026. The Exchange will issue an Options Trader Alert indicating the date the changes will be implemented.

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 Section 6(b)(5) of the Act,[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes the proposed rule change will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will provide the primary liquidity providers on the Exchange with an additional way to participate in Paired Auctions. Additionally, by permitting brokers to solicit primary liquidity providers in a class for Paired Auctions, the Exchange believes brokers will be able to more efficiently locate liquidity to fill their customer orders, particularly during times of volatility. As a result, the Exchange believes the proposed rule change will likely expand available liquidity for these Paired Auctions, which may create additional execution and price improvement opportunities for market participants at all times, which ultimately benefits investors.

The Exchange believes the proposed rule change is consistent with the Act because it will further align open outcry and Paired Auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as the contra-side in both types of auctions across all options. Currently, assigned Market Makers may be solicited with respect to crossing transactions on trading floors but may not be solicited with respect to Paired Auctions.[18] The Exchange believes there is no reason to restrict a Market Maker's ability to provide liquidity into Paired Auctions when they are able to similarly provide that liquidity in open outcry trading. As noted above, the electronic price improvement auction of another options exchange currently permits orders for the accounts of assigned market makers

[14] *See e.g.,* Nasdaq Phlx LLC (''Phlx'') Options 8 Rules.

[15] *See* NYSE American, Inc. (''American'') Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. *See also https://www.nyse.com/markets/american-options/cube-customer-best-execution.*

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] Phlx's trading floor does not have a similar restriction. *See* Phlx Options 8 Rules.

to be solicited as the contra-side orders for that auction.[19]

In particular, the Exchange believes the proposed rule change will promote competition in Paired Auctions, including competition to initiate Paired Auctions, which will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors. The Exchange believes the availability of this liquidity to Agency Orders will positively affect the experience for Agency Orders and overall quality of the auctions. Furthermore, the Exchange believes increasing the number of market participants available to be solicited may increase competition to provide initiating orders, which may lead to a Paired Auction being initiated at a better price. More market participants competing to provide initiating orders may lead to solicited parties providing more aggressive initial prices. The Exchange believes the ability of all market participants, including assigned Market Makers that did not submit an initiating order, to become the contra-side to a Paired Auction will continue to provide competition for executions against Agency Orders.

The Exchange believes any risk that assigned Market Makers may misuse the nonpublic information of an upcoming Paired Auction is de minimis. Supplementary Material .03 to Options 3, Section 22 provides that the exposure requirement applicable to principal transactions in Options 3, Section 22(b)[20] applies to the entry of orders with knowledge that there is a pre-existing unexecuted agency, proprietary, or solicited order on the Exchange. Members may demonstrate that orders were entered without knowledge by providing evidence that effective information barriers between the persons, business units, and/or systems entering the orders onto the Exchange were in existence at the time the orders were entered. Such information barriers must be fully documented and provided to the Exchange upon request. Further, the Exchange notes that Supplementary Material .01 to Options 3, Section 13 prohibits a pattern or practice of submitting orders or quotes or the purpose of disrupting or manipulating PIM Auctions, and Options 9, Section 9 requires Members to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by Members and their associated persons. Finally, Options 3, Section 22(d) (Limitations on Order Entry) provides that, prior to or after submitting an order to GEMX, a Member cannot inform another Member or any other third party of any of the terms of the order for purposes of violating the Rule.

The Exchange believes the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it will permit orders for accounts of assigned Market Makers to be solicited in the same manner as orders for the accounts of all other market participants. Currently, all market participants other than assigned Market Makers may be solicited as the contra-side and submit responses in Paired Auctions for all options. Given the additional costs and obligations associated with being an assigned Market Maker, the Exchange does not believe these Market Makers should have fewer execution opportunities with respect to volume submitted for execution through Paired Auctions and not for electronic execution against interest in the book. The Exchange believes the proposed rule change will provide all Market Makers on the Exchange with the same ability to participate in Paired Auctions in all options at all times, which may further increase execution and price improvement opportunities for market participants.

Cboe does not have an auction equivalent to the Facilitation Mechanism, however the Exchange's Facilitation Mechanism is similar to Cboe's SAM. The key differences noted in the Purpose section do not differentiate the Facilitation Mechanism for purposes of permitting orders by Members in a Facilitation Mechanism to trade against the Agency Orders for the accounts of Market Makers assigned to the options class. The Exchange's aforementioned analysis applies to the Facilitation Mechanism as it applies to a SOM, and PIM in the same manner as it applies to the Paired Auctions.

Options 5, Section 4

The Exchange's proposal to amend Options 5, Section 4(a) is consistent with the Act because it will bring greater clarity to the current rule text by clearly explaining that IOC Orders will not route.

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 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 it provides the same execution opportunities in Paired Auctions to assigned Market Makers that are currently available to all other market participants. Additionally, the proposed rule change will further align open outcry and Paired Auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as a contra-side in auctions across all options.

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 it relates to orders submitted into Paired Auctions on the Exchange. Additionally, the Exchange notes that, in addition to Cboe, the rules of at least one other options exchange permits orders for the accounts of assigned market makers to be solicited as contra-side orders for that exchange's electronic price improvement auction.[21] The Exchange believes the proposed rule change may improve price competition within Paired Auctions, because the primary liquidity providers will be able to increase participation in Paired Auctions.

Options 5, Section 4

The Exchange's proposal to amend Options 5, Section 4(a) does not impose an undue burden on competition, rather the proposal clarifies the current rule text.

[19] *See supra* notes 5 and 15.

[20] Electronic Access Members may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second, (ii) the Electronic Access Member has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer, or (iii) the Member utilizes the Facilitation Mechanism pursuant to Options 3, Section 11(b) and (c); (iv) the Member utilizes the Price Improvement Mechanism for Crossing Transactions pursuant to Options 3, Section 13; (v) the Member utilizes Qualified Contingent Cross Orders pursuant to Options 3, Section 12(c) and (d); (vi) the Member utilizes a Customer Cross Order pursuant to Options 3, Sections 12(a) or (b); or (vii) the Member utilizes a Complex Order Exposure pursuant to Supplementary Material .01 to Options 3, Section 14. Electronic Access Members may not execute as principal orders they represent as agent within the Solicitation Mechanism pursuant to Options 3, Section 11(d) and (e). *See* Options 3, Section 22(b).

[21] *See supra* note 15.

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 Act [22] and subparagraph (f)(6) of Rule 19b–4 thereunder.[23]

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–GEMX–2026–15 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–GEMX–2026–15. 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–GEMX–2026–15 and should be submitted on or before May 13, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Vanessa A. Countryman,

Secretary.

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BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 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.

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105268; File No. S7–24–89]

Joint Industry Plan; Notice of Filing of Amendment No. 1, and Order Instituting Proceedings To Determine Whether To Approve or Disapprove an Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis, as Modified by Amendment No. 1 Thereto, To Extend the Processor's Hours of Operation

April 17, 2026.

I. Introduction

On January 12, 2026,[1] the Participants [2] in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Exchange Act''),[3] and Rule 608(a) of Regulation National Market System (''NMS'') thereunder,[4] a proposal to amend the UTP Plan to extend the Processor's [5] hours of operation (''Extended Hours Proposal''). The Extended Hours Proposal represents the Fifty-Fifth Amendment to the UTP Plan. The Extended Hours Proposal was published for comment in the **Federal Register** on January 27, 2026.[6] No comment letters were received.

On April 7, 2026, the Participants filed an amendment to the Extended Hours Proposal (''Amendment No. 1''), which amended and superseded the Extended Hours Proposal in its entirety, as set forth in Item II.B.[7] The Commission is publishing this notice to solicit comments on the Extended Hours Proposal, as modified by Amendment No. 1, and is instituting proceedings, under Rule 608(b)(2)(i) of Regulation NMS,[8] to determine whether to approve or disapprove the Extended Hours Proposal, as modified by Amendment No. 1, or to approve the Extended Hours Proposal, as modified by Amendment No. 1, with any changes or subject to any conditions the Commission deems necessary or appropriate.

[1] *See* Letter from Jeff Kimsey, Chair, UTP Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Jan. 12, 2026). The Participants also filed amendments to the Second Restatement of the Consolidated Tape Association Plan and the Restated Consolidated Quotation Plan. *See also,* Letter from Jeff Kimsey, Chair, CTA/CQ Plans Operating Committee, to Vanessa Countryman, Secretary, Commission (Jan. 12, 2026).

[2] The Participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc, NYSE Texas, Inc., and 24X National Exchange LLC. Effective as of March 12, 2026, the UTP Plan was amended to reflect the new name of Nasdaq BX, Inc. as Nasdaq Texas, Inc. and Texas Stock Exchange LLC was added as a participant to the UTP Plan. *See* Securities Exchange Act Release No. 105091 (Mar. 27, 2026), 91 FR 16255 (Apr. 1, 2026).

[3] 15 U.S.C. 78k–1.

[4] 17 CFR 242.608(a).

[5] Section III of the UTP Plan defines Processor as the entity selected by the Participants to perform the processing functions set forth in the UTP Plan. Capitalized terms that are not defined herein are defined the UTP Plan.

[6] *See* Securities Exchange Act Release No. 104670 (Jan. 22, 2026), 91 FR 3609 (''Notice'').

[7] *See* Letter from Jeff Kimsey, Chair, UTP Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Apr. 7, 2026).

[8] 17 CFR 242.608(b)(2)(i).

II. Extended Hours Proposal

A. Summary of Notice Published January 27, 2026

The Participants proposed to amend the UTP Plan to extend the Processor's hours of operation to receive and disseminate Quotation Information, Transaction Reports, and related information in Eligible Securities from 9:00 p.m. Eastern Time (''ET'') Sunday to 8:00 p.m. ET Friday; provided however, that the Processor will pause operations at 8:00 p.m. ET on Monday through Thursday for one hour to accommodate technical refreshes for the Processor, Participants and other market participants.[9] In the event of a holiday where U.S. markets are closed, the Processor would not operate from 8:00 p.m. ET the day before the holiday through 9:00 p.m. ET the day of the holiday.[10] The Processor would consider a trade date to start at 8:00 p.m. ET on the day before Regular Trading Hours begin and end at 8:00 p.m. ET on the same day as when Regular Trading Hours begin.[11] Other than extending the hours of operation, the Processor will operate as it currently does.[12]

As proposed, Participants that utilize the extended hours would be required to pay for the development and operating costs and expenses which are incurred by the Processor to accommodate the extended hours.[13] Participants that utilize the extended hours at a later time would be required to pay a proportionate share of the aggregate development costs previously paid by other Participants, and contribute to the operating costs from the point at which it begins operating during the extended hours.[14]

B. Notice and Description of Amendment No. 1

Set forth in this Section II.B. is the description of the proposed Amendment No. 1, along with information required by Rules 601(a) and 608(a) under the Exchange Act,[15] as prepared and submitted by the Participants to the Commission.[16] Set forth in Exhibit A is the text of the Amendment No. 1 marked to show the proposed changes, prepared and submitted by the Participants as Addendum 1.

(a) Rule 608(a)

1. Purpose of the Amendments

The purpose of the amendments is to extend the Processor's hours of operation to receive and disseminate Quotation Information, Transaction Reports, and related information in Eligible Securities from 9:00 p.m. ET Sunday to 8:00 p.m. ET Friday; provided, however, that the Processor will pause operations at 8:00 p.m. ET on Monday through Thursday for an hour to accommodate technical refreshes for the Processor, Participants, and other market participants.

As background, a number of Participants have recently proposed extending their hours of operation.[17] Those proposals provided for trading days of varying lengths (*e.g.,* 23 hours versus 22 hours) along with hours of operation that did not overlap. Further, under those proposals, the extended trading hours could not be implemented unless the Equity Data Plans[18] (1) established a mechanism to collect, consolidate, process and disseminate quotation and transaction information at all times during the extended trading hours that is equivalent to the mechanism established for Regular Trading Hours;[19] and (2) notified the relevant exchanges of their readiness.

Following the approval of some of those individual Participant proposals by the SEC, all the Participants have worked jointly to outline a plan for the collection, consolidation, processing, and dissemination of quotation and transaction information during the extended hours proposed by the Participants. Following extensive discussions among the Participants and the Advisory Committee of the UTP Plan and the CTA/CQ Plans, the Participants have developed the proposal contained herein (''Proposal'') to implement hours of operation to be set as close as technologically feasible to 24 hours per day, as well as agreed to particular hours of operation.

With respect to the hours of operation, the Participants have agreed to operate from 9:00 p.m. ET Sunday to 8:00 p.m. ET Friday; provided, however, that the Processor would pause operations at 8:00 p.m. ET on Monday through Thursday for an hour to accommodate technical refreshes for the Processor, Participants, and other market participants. In the event of a holiday where U.S. markets are closed, the Processor would not operate from 8:00 p.m. ET the day before the holiday through 9:00 p.m. ET the day of the holiday. For example, if the markets are closed for a holiday on a Thursday, then the Processor would not operate from 8:00 p.m. ET on Wednesday to 9:00 p.m. ET on Thursday. With respect to a holiday where U.S. markets close early the day before the holiday (and because on such early close days, late trading sessions end at 5:00 p.m. ET), the Processor will not operate from 5:00 p.m. ET the day before the holiday through 9:00 p.m. ET the day of the holiday.

With respect to the pause from 8:00 p.m. ET to 9:00 p.m. ET on Monday through Thursday, the Processor would endeavor to reduce the length of the pause where technically feasible. In the event the length of the pause is reduced, the Operating Committee would amend the UTP Plan and notify the industry of the reduction at least 90 days prior to implementation of a reduction. The Participants determined that having a pause at 8:00 p.m. ET would lessen the cost, complexity, and burden of designing a system that did not have a pause. In particular, if the Processor did not pause at 8:00 p.m. ET, the design would have required designing, funding, and building a duplicate system to handle a 24-hour trading session as the Processor's systems require at least some downtime for system refreshes. Further, the Participants understand that other market participants would consider the proposed pause useful to refresh their own systems prior to beginning the next day's trading session.[20]

With respect to when a trade date starts and ends, the Processor would consider a trade date to be between[21] 8:00 p.m. ET on the day before Regular Trading Hours begin and 8:00 p.m. ET on the same day as when Regular

[9] *See* Notice, *supra* note 6, at 3609.

[10] *See id.*

[11] *See id.* at 3609–3610.

[12] *See id.* at 3609.

[13] *See id.* at 3610.

[14] *See id.*

[15] *See* 17 CFR 242.601(a); 242.608(a).

[16] *See* Amendment No. 1, *supra* note 7.

[17] *See, e.g.,* Securities Exchange Act Release No. 34–101777 (Nov. 27 2024), 89 FR 97092 (Dec. 6, 2024) (File No. 10–242 (24X)); Securities Exchange Act Release No. 34–102400 (Feb. 11, 2025), 90 FR 9794 (Feb. 18, 2025) (SR–NYSEARCA–2024–89).

[18] The ''Equity Data Plans'' are collectively the UTP Plan, the Second Restatement of the CTA Plan (the ''CTA Plan'') and the Restated CQ Plan (the ''CQ Plan'' and collectively with the CTA Plan, the ''CTA/CQ Plans''), and the CT Plan LLC.

[19] The Participants propose amending the Plan to include a definition of ''Regular Trading Hours,'' cross-referencing the definition in Rule 600 of Regulation NMS of the Exchange Act.

[20] Although there may be certain days where a pause will not be required for a refresh, the Participants believe that it will reduce confusion and complexity to have the Processor open at the same time each trading day.

[21] As part of this Amendment No. 1, the Participants have modified the language from the original filing. Specifically, instead of stating that a trade date starts and ends at particular times, the Plan language now states that the trade date is between particular times. This language is consistent with how the UTP Plan describes hours of operation and avoids the issue of overlapping trade dates at 8:00 p.m. ET.

Trading Hours begin.[22] In other words, Wednesday's trading day would be between 8:00 p.m. ET on Tuesday and 8:00 p.m. ET on Wednesday. The Participants believe that having the start of a trade date prior to the opening of markets would reduce complexity and burden as the alternative would have required a new trading date to start in the middle of a trading session (*i.e.,* at midnight). Additionally, the Participants believe that starting the trading date at the specified time would align with current practice for venues already trading during the proposed extended hours.

Consistent with current practice for existing hours of operation, the Participants have agreed to the following provisions regarding the Processor's operation during extended trading hours:

- For transactions reported outside the hours of 9:30 a.m. ET and 4:00 p.m. ET, such transactions will be designated as ''.T'' trades to denote their execution outside normal market hours.[23]
- Late trades will be reported in accordance with the rules of the Participant in whose market the transaction occurred and can be reported at any time the Processor is able to receive Transaction Reports.[24]
- Transactions reported outside the hours of 9:30 a.m. ET and 4:00 p.m. ET will be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but will not be included in the calculation of the daily high, low, or last sale.
- Quote Credits may be earned only in connection with quotations transmitted by a Participant to the Processor during Regular Trading Hours.[25]

In approving the Proposal, the Participants have agreed that only Participants that utilize the extended hours described herein would be required to pay for the development and operating costs and expenses which would not have been incurred by the Processor had it not made the changes described herein. Further, the Participants have agreed that to the extent any additional Participant begins utilizing the extended hours described herein at a later time, such additional Participant will be required to pay a proportionate share of the aggregate development costs previously paid by other Participants. The Participants agree that such additional Participant will contribute to the operating costs of the extended operating hours from the point at which it begins utilizing the extended hours, but that previously-incurred operating costs will not be reapportioned when a Participant begins utilizing the extended hours.

The UTP Plan already contains provisions[26] relating to the allocation of development costs for technical enhancements made at the request of a Participant and solely for its use; however, unlike the CQ/CTA Plans, the UTP Plan is silent on the allocation of operating costs.[27] The Participants accordingly believe it is reasonable to amend the cost allocation provisions of the UTP Plan with respect to operating costs to effectuate the Participants' agreement above, which itself provides for a reasonable method to apportion the costs and expenses of the Proposal. Such proposed amendments would also eliminate the current inconsistency between the UTP and CTA/CQ Plans on the issue of cost allocation for such system enhancements, enhance the transparency of the Equity Data Plans as to how such costs will be borne and divided, and eliminate potential conflicts in the future among Participants about their individual financial responsibility for the enhancements described in this Proposal.[28]

The Participants believe that the proposed allocation of the incremental development and operating costs associated with the extended hours is consistent with the Exchange Act because it reflects a reasonable, cost-causation-based approach that is designed to promote the economically efficient operation of the Plan while avoiding unreasonable discrimination. Specifically, the amendments provide that only those Participants that elect to utilize the extended hours will bear the development costs and operational expenses that would not have been incurred absent the extended-hours functionality, thereby avoiding imposing costs on Participants that do not use (and do not benefit from) the extended-hours capability. In addition, requiring a Participant that begins utilizing the extended hours at a later date to pay a proportionate share of previously incurred development costs is designed to prevent free-riding and to treat similarly situated Participants in a comparable manner.

2. Governing or Constituent Documents

No changes as a result of amendments.

3. Implementation of Amendments

All of the Participants have manifested their approval of the proposed amendments by means of their execution of the UTP Plan Amendment. The Participants also solicited the Advisory Committee for its thoughts and any comments on the amendments.

If this amendment is approved by the Commission, the amendment, including the proposed changes to the language of the UTP Plan, will not become operative until the Operating Committee determines that market conditions will support the extended hours of operation. The specific market conditions to be considered by the Operating Committee include, but are not limited to, the following:

- Depository Trust & Clearing Corporation (''DTCC'') offers clearing during the extended hours of operation.[29]
- The Processor has implemented changes to symbol directory messages as specified in a previously approved change request, which requires the Processors to disseminate specified reference information for Eligible Securities in symbol directory messages.
- Listing markets are able to support the changes to the symbol directory messages, including corporate actions information.
- The Processor will be able to disseminate all quotes and trades, including off-exchange trades, during the extended trading hours.

The Processors and listing markets anticipate meeting the final three requirements before the planned December 6, 2026 launch of the extended hours.

The Participants request the SEC determine whether dissemination of

[22] Setting the start of the trading day in this amendment is only applicable to the operation of the Processor. The Operating Committee does not have the authority to set the start of the trading day for rules and regulations that might be dependent on when a trading day begins.

[23] This language is consistent with current UTP Plan provisions and current Processor specifications.

[24] This language is consistent with current UTP Plan provisions and current Processor specifications.

[25] The Participants are proposing removing a reference in Section VI.C.1 of the UTP Plan that currently states that the best bid and offer will cease being calculated at 6:30 p.m. ET.

[26] *See* UTP Plan, Section XIII.A.

[27] *See* CQ Plan Section VIII.(b); CTA Plan Section XI.(b).

[28] The fact that the current Equity Data Plans will shortly be supplanted by the CT Plan does not eliminate the need to amend the cost allocations of the current UTP and CTA/CQ Plans as proposed here. Subject to SEC approval and Processor readiness, and satisfaction of market conditions to support extended hours of operation as discussed above, the Participants are working to make extended trading hours available in December 2026, before the CT Plan will become operative.

[29] Based on publicly available information, DTCC will support the extended hours by the second quarter of 2026.

real-time Trade Reporting Facility (''TRF'') information outside of Regular Hours is a prerequisite for implementation.

4. Development and Implementation Phases

The Operating Committee expects that the implementation of the amendment will occur on December 6, 2026. Prior to the implementation, the Processor will announce testing dates.

5. Analysis of Impact on Competition

The amendments proposed herein do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934 (the ''Act'') because the amendments implement the extended trading hours as approved by the Commission as part of proposals by the Participants. Similarly, the Participants do not believe that the proposed amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act because the amendments implement the extended trading hours as approved by the Commission as part of proposals by the Participants. Additionally, the implementation decisions were made after extensive discussion among the Participants (including those with pending proposals to offer extended trading hours) as well as the Advisory Committee. The amendments were designed with a view to maximizing industry benefit while being agnostic to current proposals from Participants. While certain specific aspects of the amendments differ from the proposals by the Participants, the Participants have agreed to these changes after discussing the practicality of implementing extended trading hours. The Participants do not believe that the design choices discussed herein impose a burden on competition because the Participants have developed an approach that minimizes downtime of the system while also ensuring that the Processor, the Participants, and other market participants have the opportunity to refresh their systems during the pause prior to the start of a trading day. The Participants believe that implementing the pause will minimize the technological burden of the expanded trading hours.

The Participants believe that the amendments related to the allocation of costs is necessary and appropriate as it, (1) aligns the UTP Plan with the CQ/CTA Plans with respect to allocating costs, and (2) ensures that only those Participants that utilize the extended trading hours are required to pay for the costs associated with its development and operation. The Participants further believe that reapportioning development costs is appropriate so that if a Participant begins trading during the extended hours after the initial development costs have been paid by first users, such Participant should not be able to avoid paying a share of the development costs. Otherwise, a Participant could avoid paying for such development costs by slightly delaying its extension of hours. On the other hand, the Participants believe it is appropriate to not reapportion the operating costs as such operating costs are incurred in real time and directly reflect the ongoing use of the system. Unlike development costs, which are borne before tangible operational benefits are realized, operating expenses are linked to actual usage of the system. As a result, traditional free-riding problems are not raised since there is no opportunity to defer or avoid operating expenses without also losing the ability to receive the benefits of the extended trading hours.

6. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

No changes as a result of amendments.

7. Approval by Sponsors in Accordance With Plan

Section IV(C)(1)(a) of the UTP Plan requires the Participants to unanimously approve the amendments proposed herein. They have so approved it as of the date specified in Amendment No. 55.

8. Description of Operation of Facility Contemplated by the Proposed Amendment

Other than extending the hours of operations, the Processor will operate as it currently does.

9. Terms and Conditions of Access

No changes as a result of amendments.

10. Method of Determination and Imposition, and Amount of, Fees and Charges

The Participants have agreed that only Participants that utilize the extended hours described herein would be required to pay for the development and operating costs and expenses which would not have been incurred by the Processor had it not made the changes described herein. Further, the Participants have agreed that to the extent any additional Participant begins utilizing the extended hours described herein at a later time, such additional Participant will be required to pay a proportionate share of the aggregate development costs previously paid by other Participants. The Participants agree that such additional Participant will contribute to the operating costs of the extended operating hours from the point at which it begins utilizing the extended hours, but that previously-incurred operating costs will not be reapportioned when a Participant begins utilizing the extended hours.

The UTP Plan already contains provisions relating to the allocation of development costs for technical enhancements made at the request of a Participant and solely for its use; however, unlike the CQ/CTA Plans, the UTP Plan is silent on the allocation of operating costs. The Participants accordingly believe it is reasonable to amend the cost allocation provisions of the UTP Plan with respect to operating costs to effectuate the Participants' agreement above, which itself provides for a reasonable method to apportion the costs and expenses of the Proposal. Such proposed amendments would also eliminate the current inconsistency between the UTP and CTA/CQ Plans on the issue of cost allocation for such system enhancements, enhance the transparency of the Equity Data Plans as to how such costs will be borne and divided, and eliminate potential conflicts in the future among Participants about their individual financial responsibility for the enhancements described in this Proposal.

Additionally, the Participants have proposed utilizing the following methodology for considering whether quotations and transactions during the extended hours are incorporated into the revenue allocation formula, which aligns with current practice:

- Transactions reported outside the hours of 9:30 a.m. ET and 4:00 p.m. ET will be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but will not be included in the calculation of the daily high, low, or last sale.
- Quote Credits may be earned only in connection with quotations transmitted by a Participant to the Processor during Regular Trading Hours.

11. Method and Frequency of Processor Evaluation

No changes as a result of amendments.

12. Dispute Resolution

No changes as a result of amendments.

(b) Rule 601(a)

1. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

No changes as a result of amendments.

2. Reporting Requirements

Other than extending the hours of operations, the Processor will operate as it currently does.

3. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Other than extending the hours of operations, the Processor will operate as it currently does.

4. Manner of Consolidation

Other than extending the hours of operations, the Processor will operate as it currently does.

5. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Other than extending the hours of operations, the Processor will operate as it currently does.

6. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

No changes as a result of amendments.

7. Terms of Access to Transaction Reports

No changes as a result of amendments.

8. Identification of Marketplace of Execution

No changes as a result of amendments.

III. Proceedings To Determine Whether To Approve or Disapprove the Extended Hours Proposal

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[30] and Rules 700 and 701 of the Commission's Rules of Practice,[31] to determine whether to approve or disapprove the Extended Hours Proposal, as modified by Amendment No. 1, or to approve the Extended Hours Proposal, as modified by Amendment No. 1, with any changes or subject to any conditions the Commission deems necessary or appropriate. The Commission is instituting proceedings to have sufficient time to consider the issues raised by the Extended Hours Proposal, as modified by Amendment No. 1. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Extended Hours Proposal, as modified by Amendment No. 1, to inform the Commission's analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission ''shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the [Exchange] Act.'' [32] Rule 608(b)(2) further provides that the Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.[33] In the Notice, the Commission sought comment on the Extended Hours Proposal, including whether the Extended Hours Proposal is consistent with the Exchange Act.[34] In this order, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[35] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Extended Hours Proposal, as modified by Amendment No. 1, is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act consistent with Rule 608 of Regulation NMS.[36]

In addition, the Commission is instituting proceedings to allow for additional analysis of whether modifications to the Extended Hours Proposal, as modified by Amendment No. 1, or conditions to its approval, such as limiting the consideration of other market conditions by the Operating Committee before implementing the Extended Hours Proposal, as modified by Amendment No. 1, are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act consistent with Rule 608 of Regulation NMS.[37]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the plan participants that filed the NMS plan filing.'' [38] The description of the NMS plan filing, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.[39] Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that the NMS plan filing is consistent with the Exchange Act and the applicable rules and regulations thereunder.[40]

IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Extended Hours Proposal, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the Extended Hours Proposal, as modified by Amendment No. 1, is consistent with the Exchange Act, the rules and regulations thereunder.[41] The Commission asks that commenters address the sufficiency and merit of the Participant's statements in support of the Extended Hours Proposal, as modified by Amendment No. 1, in addition to any other comments they may wish to submit about the Extended Hours Proposal, as modified by Amendment No. 1.

[30] 17 CFR 242.608(b)(2)(i).

[31] 17 CFR 201.700; 17 CFR 201.701.

[32] 17 CFR 242.608(b)(2).

[33] *Id.*

[34] *See* Notice, *supra* note 6, at 3611–3612.

[35] 17 CFR 242.608(b)(2)(i).

[36] 17 CFR 242.608(b)(2).

[37] 17 CFR 242.608(b)(2).

[38] 17 CFR 201.700(b)(3)(ii).

[39] *Id.*

[40] *Id.*

[41] *See* 17 CFR 242.608(b)(2).

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[42] any request for an opportunity to make an oral presentation.[43]

Interested persons are invited to submit written data, views, and arguments regarding whether the Extended Hours Proposal, as modified by Amendment No. 1, should be approved or disapproved by May 13, 2026. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 27, 2026. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number S7–24–89 (UTP Plan Extended Hours Proposal) 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 S7–24–89 (UTP Plan Extended Hours Proposal). This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal offices of the Participants. 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 S7–24–89 (UTP Plan Extended Hours Proposal) and should be submitted on or before May 13, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Vanessa A. Countryman,

Secretary.

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[42] 17 CFR 242.608(b)(2)(i).

[43] Rule 700(c)(2) of the Commission's Rules of Practice provides that ''[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.'' 17 CFR 201.700(c)(2).

[44] 17 CFR 200.30–3(a)(85).

EXHIBIT A

ADDENDUM 1

To the Fifty-Fifth
Amendment to the UTP Plan

PROPOSED AMENDMENTS TO THE UTP PLAN

MARKED TO SHOW CHANGES FROM THE EXISTING PLAN
(Additions are double-underlined; Deletions are [~~struck through and bracketed~~].)

VI. Functions of the Processor

* * * * *

C. Dissemination of Information

* * * * *

1. Best Bid and Offer

The Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the FINRA Participant(s) that constitutes FINRA' s single Best Bid and Offer quotations, and shall also calculate and disseminate on the UTP Quote Data Feed a national best bid and asked quotation with size based upon Quotation Information for Eligible Securities received from Participants. The Processor shall not calculate the best bid and offer for any individual Participant, including FINRA.

The Participant responsible for each side of the best bid and asked quotation making up the national best bid and offer shall be identified by an appropriate symbol. If the quotations of more than one Participant shall be the same best price, the largest displayed size among those shall be deemed to be the best. If the quotations of more than one Participant are the same best price and best displayed size, the earliest among those measured by the time reported shall be deemed to be the best. A reduction of only bid size and/or ask size will not change the time priority of a Participant's quote for the purposes of determining time reported, whereas an increase of the bid size and/or ask size will result in a new time reported. The consolidated size shall be the size of the Participant that is at the best.

If the best bid/best offer results in a locked or crossed quotation, the Processor shall forward that locked or crossed quote on the appropriate output lines (i.e., a crossed quote of bid 12, ask 11.87 shall be disseminated). [~~The Processor shall normally cease the calculation of the best bid/best offer after 6:30 p.m., Eastern Time.~~]

* * * * *

XI. Hours of Operation

A. [~~Quotation Information may be entered by Participants as to all Eligible Securities in which they make a market between 9:30 a.m. and 4:00 p.m. Eastern Time ("ET") on all days the Processor is in operation. Transaction Reports shall be entered between 9:30 a.m. and 4:01:30 p.m. ET by Participants as to all Eligible Securities in which they execute transactions between 9:30 a.m. and 4:00 p.m. ET on all days the Processor is in operation.~~] The Processor will receive and disseminate Quotation Information and Transaction Reports in Eligible Securities from 9:00 p.m. Eastern Time ("ET") Sunday to 8:00 p.m. ET Friday; provided, however, that the Processor will pause operations at 8:00 p.m. ET on Monday through Thursday for one hour to accommodate technical refreshes for the Processor, Participants, and other market participants. In the event of a holiday where U.S. markets are closed, the Processor will not operate from 8:00 p.m. ET the day before the holiday through 9:00 p.m. ET the day of the holiday. With respect to a holiday where U.S. markets close early the day before the holiday, the Processor will not operate from 5:00 p.m. ET the day before the holiday through 9:00 p.m. ET the day of the holiday. The Processor will begin receiving and disseminating Quotation Information and Transaction Reports at the same time each day.

B. The Processor will consider a trade date to be between 8:00 p.m. ET on the day before Regular Trading Hours begin and 8:00 p.m. ET on the same day as when Regular Trading Hours begin. For purposes of this Section XI, Regular Trading Hours shall have the meaning specified in Rule 600 of Regulation NMS of the Act for "regular trading hours."

[~~B~~]C. [~~Participants that execute transactions in Eligible Securities outside the hours of 9:30 a.m. ET and 4:00 p.m., ET, shall be report such transactions as follows: (i) transactions in Eligible Securities executed between 4:00 a.m. and 9:29:59 a.m. ET and between 4:00:01 and 8:00 p.m. ET, shall be designated as ".T" trades to denote their execution outside normal market hours; (ii) transactions in Eligible Securities executed after 8:00 p.m. and before 12:00 a.m. (midnight) shall be reported to the Processor between the hours of 4:00 a.m. and 8:00 p.m. ET on the next business day (T+1), and shall be designated "as/of" trades to denote their execution on a prior day, and be accompanied by the time of execution; (iii) transactions in Eligible Securities executed between 12:00 a.m. (midnight) and 4:00 a.m. ET shall be transmitted to the Processor between 4:00 a.m. and 9:30 a.m. ET, on trade date, shall be designated as ".T" trades to denote their execution outside normal market hours, and shall be accompanied by the time of execution;~~] Transactions in Eligible Securities outside the hours of 9:30 a.m. ET and 4:00 p.m. ET, shall be designated as ".T" trades to denote their execution outside Regular Trading Hours. [(~~iv~~) t]Transactions reported pursuant to this provision of the Plan shall be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but shall not be included in the calculation of the daily high, low, or last sale.

[~~C~~]D. Late trades shall be reported in accordance with the rules of the Participant in whose Market the transaction occurred and can be reported [~~between the hours of 4:00 a.m. and 8:00 p.m.~~] at any time the Processor is able to receive Transaction Reports.

[~~D. The Processor shall collect, process and disseminate Quotation Information in Eligible Securities at other times between 4:00 a.m. and 9:30 a.m. ET, and after 4:00 p.m. ET, when any Participant or FINRA Participant is open for trading, until~~

~~8:00 p.m. ET (the "Additional Period"); provided, however, that the national best bid and offer quotation will not be disseminated before 4:00 a.m. or after 8:00 p.m. ET. Participants that enter Quotation Information or submit Transaction Reports to the Processor during the Additional Period shall do so for all Eligible Securities in which they enter quotations.~~]

E. Participant or Participants that report Quotation Information and Transaction Reports between 9:00 p.m. ET and 4:00 a.m. ET have agreed to pay all development and operating costs and expenses which would not have been incurred by the Processor had it not made the Quotation Information and Transaction Reports available between 9:00 p.m. ET and 4:00 a.m. ET. To the extent an additional Participant begins to report Quotation Information or Transaction Reports between 9:00 p.m. ET and 4:00 a.m. ET, such additional Participant shall be required to pay a proportionate share of the aggregate development costs previously paid by other Participants. Previously incurred operating costs shall not be reapportioned should any other Participant subsequently make use of the enhancement.

* * * * *

XIII. Financial Matters

A. Development Costs

Any Participant becoming a signatory to this Plan after June 26, 1990, shall, as a condition to becoming a Participant, pay to the other Plan Participants a proportionate share of the aggregate development costs previously paid by Plan Participants to the Processor, which aggregate development costs totaled $439,530, with the result that each Participant's share of all development costs is the same.

Each Participant shall bear the cost of implementation of any technical enhancements to the Nasdaq system made at its request and solely for its use as well as the ongoing operating expense for such technical enhancements, subject to reapportionment of development costs should any other Participant subsequently make use of the enhancement, or the development thereof. Previously incurred operating costs shall not be reapportioned should any other Participant subsequently make use of the enhancement.

* * * * *

Exhibit 1

* * * * *

4. Quoting Share. The Quoting Share of a Participant in an Eligible Security shall be determined by multiplying (A) an amount equal to fifty percent of the Security Income Allocation for the Eligible Security by (B) the Participant's Quote Rating in the Eligible Security. A Participant's Quote Rating in an Eligible Security shall be determined by dividing (A) the sum of the Quote Credits earned by the Participant in such Eligible Security during the calendar year by (B) the sum of the Quote Credits earned by all Participants in such Eligible Security during the calendar year. A Participant shall earn one Quote Credit for each second of time (with a minimum of one full second) multiplied by

dollar value of size that an automated best bid (offer) transmitted by the Participant to the Processor during [~~r~~]Regular [~~t~~]Trading [~~h~~]Hours is equal to the price of the national best bid (offer) in the Eligible Security and does not lock or cross a previously displayed automated quotation. Regular Trading Hours shall have the meaning specified in Rule 600 of Regulation NMS of the Act for "regular trading hours." An automated bid (offer) shall have the meaning specified in Rule 600 of Regulation NMS of the Act for an "automated quotation." The dollar value of size of a quote shall be determined by multiplying the price of a quote by its size.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105273; File No. SR–CboeEDGX–2026–021]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 21.19 and 21.21 To Permit Orders for the Accounts of Market-Makers With an Appointment in the Applicable Class To Be Solicited for the Initiating Order for a Simple AIM or Simple SAM Auction

April 20, 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 7, 2026, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend Rules 21.19 and 21.21 to permit orders for the accounts of Market-Makers with an appointment in the applicable class on the Exchange, in all classes, to be solicited for the Initiating Order submitted for execution against an Agency Order into a simple AIM or simple SAM Auction.

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.

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 Rules 21.19 (Automated Improvement Mechanism (''AIM'' or ''AIM Auction'')) and 21.21 (''Solicitation Auction Mechanism (''SAM'' or ''SAM Auction'')), to permit orders for the accounts of Market-Makers with an appointment in the applicable class on the Exchange, in all classes, to be solicited for the Initiating Order [3] submitted for execution against an Agency Order into a simple AIM Auction pursuant to Rule 21.19 or a simple SAM Auction pursuant to Rule 21.21.

By way of background, Rule 21.19 contains the requirements applicable to the execution of certain customer orders (''Agency Orders'') using AIM. An AIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). Rule 21.21 contains the requirements applicable to the execution of Agency Orders using SAM. Similarly, a SAM Auction is an electronic auction intended to provide a larger-sized Agency Order with the opportunity to receive price improvement over the NBBO. Upon submitting an Agency Order into an AIM or SAM Auction, the initiating Member (''Initiating Member'') must also submit a contra-side second order (''Initiating Order'') for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order.[4] At the conclusion of an AIM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated a certain percentage (or more) of the Agency Order.[5] At the conclusion of a SAM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated the entire Agency Order or none of the Agency Order.[6]

Currently, the introductory paragraphs of Rules 21.19 and 21.21 prohibit orders for the account of any Market-Maker registered in the applicable series on the Exchange to be solicited to execute against the Agency Order in a simple AIM or simple SAM Auction, respectively.

While market participants other than appointed Market-Makers may contribute liquidity to these crossing auctions as either contra orders or responses, appointed Market-Makers, who are the primary source of liquidity on the Exchange in their appointed classes, are limited in the manner in which they may provide liquidity to these auctions. Given that contra orders that comprise Initiating Orders may be allocated a percentage of the Agency Order at the conclusion of the auctions, the limited ability of appointed Market-Makers to participate in simple AIM and simple SAM Auctions may reduce the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ''Initiating Order'' is the order comprised of principal interest or a solicited order(s) submitted to trade against the order the submitting Member (the ''Initiating Member'') represents as agent (the ''Agency Order'').

[4] *See* Rules 21.19(c)(5) and 21.21(c)(5).

[5] *See* Rule 21.19(e).

[6] *See* Rule 21.21(e).

execution opportunities for these liquidity providers, which execution opportunities are available to other market participants who may be solicited or submit responses.

The Exchange believes that eliminating the prohibition against appointed Market-Makers acting as contra in single-leg AIM and SAM orders would enhance price improvement opportunities, particularly, in the case of AIM Auctions, for retail and smaller Customer orders. Allowing local appointed Market-Makers to be solicited as contras may result in exposure of more small customer orders to potential price improvement via auction processes. The Exchange notes that appointed Market-Makers may be solicited as contras for complex AIM and SAM Auctions, which function in a substantially similar manner as AIM and SAM for simple orders.[7] The Exchange further notes that Rule 18.4 prohibits Members from misusing material, nonpublic information (for example, advanced knowledge of auctioned orders), so protections will remain in place under the proposed rule change to address any potential information leakage concerns.

Additionally, the restriction has become operationally outdated in current market structure. As noted above, it is common practice that AIM orders already involve the same Market-Maker firm acting as both contra (via an away Market-Maker) and auction respondent (via an appointed Market-Maker). Eliminating this restriction would reduce an arbitrary and unnecessary burden allow Market-Maker firms to structure more efficient auction processes, which may ultimately promote greater competition among Market-Makers and provide Customers with enhanced opportunities for price improvement.

The Exchange is proposing to amend Rules 21.19 and 21.21 to permit orders for the accounts of Market-Makers with an appointment in the applicable class to be solicited for the Initiating Order submitted for execution against an Agency Order in all classes into a simple AIM Auction pursuant to Rule 21.19 or a simple SAM Auction pursuant to Rule 21.21. The Exchange believes providing appointed Market-Makers with an additional way to participate in electronic auctions will expand available liquidity for these auctions, which may increase execution and price improvement opportunities for customers' orders.

[7] *See* Rules 21.22 and 21.23.

The Exchange notes the electronic crossing price improvement auction of another options exchange currently permits orders for the accounts of appointed market-makers to be solicited as the contra orders for that auction.[8] The Exchange also notes that a similar proposal submitted by its affiliated exchange, Cboe Exchange, Inc. (''Cboe Exchange'') was recently approved by the Securities and Exchange Commission (the ''Commission'').[9]

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.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] 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) [12] 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 promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will provide the primary liquidity providers on the Exchange with an additional way to participate in electronic auctions. Additionally, by permitting brokers to solicit primary liquidity providers in a class for electronic auctions, the Exchange believes brokers will be able to more efficiently locate liquidity to fill their customer orders, particularly during times of volatility. As a result, the Exchange believes the proposed rule change will likely expand available liquidity for these auctions, which may create additional execution and price improvement opportunities for customers at all times, which ultimately benefits investors.

The Exchange believes the proposed rule change will promote competition in AIM and SAM Auctions, including competition to initiate AIM and SAM Auctions, which will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors. The Exchange believes the availability of this liquidity to Agency Orders will positively affect the experience for Agency Orders and overall quality of the auctions. Furthermore, the Exchange believes increasing the number of market participants available to be solicited may increase competition to provide Initiating Orders, which may lead to an AIM or SAM Auction being initiated at a better price. More market participants competing to provide Initiating Orders may lead to solicited parties providing more aggressive initial prices. The Exchange believes the ability of all market participants, including appointed Market-Makers that did not submit an Initiating Order, to submit responses to an AIM or SAM Auction will continue to provide competition for executions against Agency Orders.

The Exchange believes any risk that appointed Market-Makers may misuse the nonpublic information of an upcoming AIM or SAM Auction is de minimis. Currently, that risk is present for non-appointed Market-Makers, but the Exchange has not observed any trends of solicited market participants separately submitting unrelated orders as a result of knowledge of impending AIM or SAM Auctions. The Exchange notes Rule 21.19, Interpretation and Policy .02 prohibits a pattern or practice of submitting orders or quotes for the purpose of disrupting or manipulating AIM Auctions, and Rule 18.4 requires Members to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by Members and their associated persons. Finally, the Exchange believes the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it will be permit orders for accounts of appointed Market-Makers to be solicited in the same manner as orders for the

[8] *See* NYSE American, Inc. (''American'') Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. *See also https://www.nyse.com/markets/american-options/cube-customer-best-execution.*

[9] *See* Securities Exchange Act Release No. 105049 (March 19, 2026), 91 FR 14057 (March 24, 2026) (SR–CBOE–2025–090) (''Cboe Exchange Approval'').

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

accounts of all other market participants. Currently, all market participants other than appointed Market-Makers may be solicited as the contra and submit responses in AIM or SAM Auctions for all classes. Given the additional costs and obligations associated with being an appointed Market-Maker, the Exchange does not believe these Market-Makers should have fewer execution opportunities with respect to volume submitted for execution through AIM or SAM auctions and not for electronic execution against interest in the book. The Exchange believes the proposed rule change will provide all Market-Makers on the Exchange with the same ability to participate in AIM and SAM Auctions in all classes at all times, which may further increase execution and price improvement opportunities for customers.

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 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 it provides the same execution opportunities in AIM and SAM Auctions to appointed Market-Makers that are currently available to all other market participants.

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 it relates to orders submitted into auction mechanisms on the Exchange. Additionally, the Exchange notes that the proposal is identical to a previously Commission-approved rule [13] and that the rules of at least one other options exchange permits orders for the accounts of appointed market-makers to be solicited as contra orders for that exchange's electronic crossing price improvement auction.[14] The Exchange believes the proposed rule change may improve price competition within AIM and SAM Auctions, because the primary liquidity providers will be able to increase participation in AIM and SAM Auctions.

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

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the 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 Exchange states that the proposed rule change is not novel and raises no unique issues not previously considered by the Commission, as it is nearly identical to a previously Commission-approved rule change.[19] For that reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[20]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–CboeEDGX–2026–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGX–2026–021. 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–CboeEDGX–2026–021 and should be submitted on or before May 13, 2026.

[13] *See* Cboe Exchange Approval.

[14] *See* NYSE American, Inc. (''American'') Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. *See also https://www.nyse.com/markets/american-options/cube-customer-best-execution.*

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 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.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] *See* Cboe Exchange Approval.

[20] 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).

[21] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–07821 Filed 4–21–26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105260; File No. SR–NYSE–2026–17]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Rules To Enable the Trading of Securities on the Exchange in Tokenized Form

April 17, 2026.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 9, 2026, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Rule 7.50 and amendments to Rules 1.1, 7.36, 7.37 and 7.41 to enable the trading of securities on the Exchange in tokenized form during the pendency of a pilot program to be operated by the Depository Trust Company (''DTC'') pursuant to the terms of a December 11, 2025 Securities and Exchange Commission (''Commission'') Staff no-action letter. The proposed rule change is available on the Exchange's website at *www.nyse.com* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Rule 7.50 (Tokenized Securities) and amend Rule 1.1 (Definitions), Rule 7.36 (Order Ranking and Display), Rule 7.37 (Order Execution and Routing), and Rule 7.41 (Clearance and Settlement) to enable the trading of securities on the Exchange in tokenized form during the pendency of a pilot program to be operated by DTC pursuant to the terms of a December 11, 2025 Commission Staff no-action letter[4] (''DTC Pilot Program''). As described below, the proposed rule change is based on the rules of The Nasdaq Stock Market LLC (''Nasdaq'').

Background and Proposed Rule Change

The proposed rule change would establish that Exchange member organizations that are eligible to participate in the DTC Pilot Program (''DTC Eligible Participants'')[5] may trade tokenized versions of those equity securities and exchange traded products on the Exchange that are eligible for tokenization as part of the DTC Pilot Program (''DTC Eligible Securities''), pursuant to the terms of the No-Action Letter. Pursuant to the proposed changes, DTC Eligible Securities would be able to trade on the Exchange within the current national market system, using DTC to clear and settle trades in token form, per order handling instructions that DTC Eligible Participants may select upon entering their orders for DTC Eligible Securities on the Exchange.[6]

The Exchange's rules do not currently permit the trading of tokenized securities on the Exchange and, unless the Exchange adopts the proposed rules, the Exchange would lack a clear framework for DTC Eligible Participants to designate, at order entry, that a DTC Eligible Security be cleared and settled in tokenized form pursuant to the DTC Pilot Program.[7]

The Exchange accordingly proposes to amend its rules to enable the trading of DTC Eligible Securities in tokenized form on the Exchange during the pendency of the DTC Pilot Program, subject to the same conditions and restrictions as the Nasdaq rule change approved by the Commission. The Exchange believes that the existing regulatory structure mandated by Congress applies to tokenized securities, regardless of whether such securities have certain unique properties like the ability to be settled on a blockchain, much like it did when the Commission allowed securities to be decimalized and electronified and when exchange traded funds and other novel securities were initially approved. The Exchange believes that no significant exemptions or parallel market structure constructs are needed for tokenized securities to trade alongside other securities, and that the markets can accommodate tokenization while continuing to provide the benefits and protections of the national market system.[8]

To tackle the challenge of trading tokenized equities, the Exchange offers a simple proposal that accommodates an approach to tokenization that DTC is pursuing in the DTC Pilot Program. The Exchange believes that this approach

[22] 17 CFR 200.30–3(a)(12) and (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* No-Action Letter Request Related to The Depository Trust Company's Development of the DTCC Tokenization Services, dated December 11, 2025, available at *https://www.sec.gov/files/tm/no-action/dtc-nal121125.pdf* (the ''No-Action Letter'').

[5] ''DTC Eligible Participant'' would be defined in proposed rule 7.37(c)(10) as ''a member organization that is eligible to participate in the Depository Trust Company's ('DTC') three-year tokenization pilot program, pursuant to its terms and those of the Securities and Exchange Commission Staff no-action letter, dated December 11, 2025 (the 'No-Action Letter').''

[6] The Exchange is assessing various methods of tokenization and trading of tokenized securities. If the Exchange plans to adopt any particular alternative to the DTC approach, then it will file rule proposals with the Commission before doing so.

[7] Nasdaq recently amended its rules to enable the trading of securities in tokenized form during the pendency of the DTC Pilot Program. *See* Securities Exchange Act Release No. 105047 (March 18, 2026), 91 FR 13900 (March 23, 2026) (SR–NASDAQ–2025–072) (Order Approving Proposed Rule Change, as Modified by Amendment No. 2, to Amend the Exchange's Rules to Enable the Trading of Securities on the Exchange in Tokenized Form) (''Nasdaq Approval Order''). *See also* Securities Exchange Act Release No. 104693 (Jan. 27, 2026), 91 FR 4138 (Jan. 30, 2026) (SR–NASDAQ–2025–072) (Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 2, To Amend the Exchange's Rules To Enable the Trading of Securities on the Exchange in Tokenized Form) (''Nasdaq Amendment No. 2'').

[8] Section 11A of the Act states that ''[t]he linking of all markets for qualified securities . . . will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders'' such that Congress directed the Commission to ''use its authority under this chapter to facilitate the establishment of a national market system for securities.'' 15 U.S.C. 78k–1(a). Permitting the trading of tokenized securities on the Exchange will further these policy objectives.

will leverage existing structures, players, and rules in a way that is beneficial to investors and in the markets' best interests.

The proposed rules provide that the term ''tokenized'' refers to digital representations of paper securities that utilize digital ledger or blockchain technology, as opposed to ''traditional'' securities, which are also digital representations of paper securities, but do not utilize blockchain technology. As long as DTC Eligible Securities are fungible with, have the same CUSIP number and trading symbol as, and afford their holders the same rights and privileges as traditional securities of an equivalent class, the Exchange will trade DTC Eligible Securities in tokenized form together with traditional securities on the same order book and according to the same execution priority rules. A tokenized DTC Eligible Security would be deemed to provide the same rights and privileges as a traditional security if, among other things, it conveys an equity interest in an underlying company, a right to receive any dividends that the company issues to its shareholders, a right to exercise any voting rights that shareholders are due, and a right to receive a share of the residual assets of the company upon liquidation. The Exchange will not treat tokenized instruments as equivalent to their traditional counterparts if they do not convey such rights or share the same CUSIP and trading symbol; instead, the Exchange will treat these instruments as distinct (*e.g.,* derivative securities or American Depositary Receipts).[9]

As noted above, the Exchange proposes to trade DTC Eligible Securities within the confines of existing securities laws and rules. All existing Exchange rules that currently apply to non-tokenized securities will continue to apply, without modification, except as set forth below.

To effectuate these changes, the Exchange proposes to adopt Rule 7.50 and amendments to Rules 1.1, 7.36, 7.37 and 7.41, as follows.

Rule 1.1

The Exchange proposes to amend the definition of ''Security'' in Rule 1.1(w) to add a clause similar to that in Equity 1, Nasdaq Section 1 providing that the definition of security encompasses securities that are either listed on the Exchange or traded on the Exchange pursuant to unlisted trading privileges. As amended, Rule 1.1(w) would provide as follows (proposed additions italicized):

> The terms 'security' and 'securities' mean any security as defined in Section 3(a)(10) under the Securities Exchange Act of 1934, *as amended, that is either listed on the Exchange or traded on the Exchange pursuant to unlisted trading privileges*; provided, however, that for purposes of Rule 7E, such terms mean any NMS stock.

Rule 7.50

The Exchange proposes a new Rule 7.50 under Section 6 of Rule 7P titled ''Tokenized Securities.'' [10] As proposed, Rule 7.50 would provide that a security may be traded on the Exchange in either traditional form (a digital representation of ownership and rights, but without utilizing a distributed ledger technology (defined as ''blockchain'' technology) or, for the duration and under the terms of the DTC Pilot Program, in tokenized form (a digital representation of ownership and rights which utilizes blockchain technology). Proposed Rule 7.50 would further provide that DTC Eligible Participants may trade DTC Eligible Securities in tokenized form on the Exchange during the duration of, and pursuant to the terms of, the DTC Pilot Program.

In addition, proposed Rule 7.50 would provide that the Exchange would publish Trader Updates periodically to identify a current list of those DTC Eligible Securities that may trade in tokenized form on the Exchange.

Under proposed Rule 7.50, a share of a tokenized DTC Eligible Security will be tradable on the Exchange together with, and with the same execution priority as, its traditional counterpart, but only if the tokenized security is fungible with, shares the same CUSIP number and trading symbol, and affords its shareholders the same rights and privileges as does a share of an equivalent class of the traditional security. The proposed language is substantially the same as language that Nasdaq added to Equity 1, Nasdaq Section 1 (except for references to the Exchange's membership [sic], cross-references to Exchange rules and grammatical differences).

Rule 7.36

The Exchange proposes to amend Rule 7.36, which governs order ranking and display, to add a new Commentary .01 providing that the mere fact that an order contains tokenized securities or indicates a preference of a DTC Eligible Participant to clear and settle DTC Eligible Securities in tokenized form will not affect the priority in which the Exchange executes that order. The language of proposed Rule 7.36.01 is substantially the same as Equity 4, Nasdaq Rule 4757 (except for cross-references to Exchange rules and grammatical differences).

Rule 7.37

The Exchange proposes to amend Rule 7.37, which governs routing, to add a new subsection (c)(10) that would provide that when the Exchange routes orders in DTC Eligible Securities that DTC Eligible Participants have designated for clearing and settlement in tokenized form in accordance with proposed Rule 7.41, Commentary 01, the Exchange will communicate this tokenization instruction to DTC upon receiving an execution for an order that was routed to another trading venue. The proposed language in Rule 7.37(c)(10) is substantially the same as Equity 4, Nasdaq Rule 4758 (except for cross-references to Exchange rules, grammatical differences, the addition of defined terms, and the addition of the definition of ''DTC Eligible Participant,'' which the Exchange proposes to define in Rule 7.37(c)(10) and Nasdaq has defined in Equity 4, Nasdaq Rule 4756).

Rule 7.41

The Exchange proposes to add a new Commentary .01 to Rule 7.41, which governs clearance and settlement, describing how a DTC Eligible Participant can communicate its desire to clear and settle a DTC Eligible Security in tokenized form.

Proposed Commentary .01 to Rule 7.41 would provide that a DTC Eligible Participant (as defined in Rule 7.37(c)(10)) that wishes for its order in a DTC Eligible Security to clear and settle in tokenized form as part of the DTC Pilot Program must notate its preference upon entry of the order in the Exchange systems by selecting a tokenization flag that the Exchange designates for this purpose, in accordance with the Exchange's procedures. When a DTC Eligible Participant enters an order for a DTC Eligible Security with the tokenization flag selected, the Exchange will communicate the DTC Eligible Participant's tokenization preference to DTC on a post-trade basis. The flag will indicate the DTC Eligible Participant's preference as to what form the security will take (*i.e.,* token or traditional) and may also include other information or instructions that DTC may require the DTC Eligible Participant to enter, in accordance with DTC's rules, policies, and procedures, and the terms of the No-Action Letter, to effectuate the flag,

[9] This rule proposal does not address whether and how the Exchange may choose to trade these non-fungible tokenized instruments in the future pursuant to a proposed Rule change.

[10] Section 6, currently titled ''Reserved,'' would have its title changed to ''Tokenized Securities.''

such as the DTC Eligible Participant's selection of a blockchain and a digital wallet address for a tokenized DTC Eligible Security (the Exchange will issue a Trader Update prior to requiring a DTC Eligible Participant to enter any such information or instructions to the flag, other than its tokenization preference). DTC will then carry out the DTC Eligible Participant's tokenization preference, as set forth in the flag, as well as any instructions attendant thereto to the extent that the flag or instruction is executable in accordance with DTC's rules, policies, and procedures, and the terms of the No-Action Letter. Proposed Rule 7.41.01 is substantially the same as Equity 4, Nasdaq Rule 4756 (except for references to the Exchange's membership, cross-references to Exchange rules, grammatical differences, and the movement of the definition of DTC Eligible Participant to proposed Rule 7.37(c)(10)).

Proposed Commentary .01 to Rule 7.41 further provides that Exchange systems will not determine whether a member organization is a DTC Eligible Participant or whether a security is a DTC Eligible Security at the time of order entry and selection of the tokenization flag. The Exchange also will not determine whether DTC is able to execute a tokenization order for other reasons, including because the DTC Eligible Participant wishes to mint the token to a blockchain that is not compatible with the DTC Pilot Program or to a digital wallet that is not registered with DTC.[11] Thus, if at the time of order entry, a member organization is not a DTC Eligible Participant, the security selected for tokenization is not a DTC Eligible Security, or there are other reasons why DTC cannot execute a tokenization preference or instruction, the order will be settled in traditional (non-tokenized) form, in accordance with DTC's rules, policies, and procedures. It is the sole responsibility of member organizations to determine for themselves whether they are DTC Eligible Participants, whether the securities subject to an order are DTC Eligible Securities, whether the blockchains and wallets to which they wish to mint tokens are compatible with the DTC Pilot Program, and whether the tokenization instruction is otherwise consistent with the terms of that program and the No-Action Letter.[12]

General Considerations

Other than as described above, from an Exchange system and matching engine perspective, the Exchange's trading procedures and behavior will be the same regardless of whether a DTC Eligible Participant opts to trade tokenized or traditional shares of a DTC Eligible Security.[13] Among other things, the following aspects of the Exchange's current trading system and procedures will not change when trading tokenized securities:

- All Exchange order types and modifiers will be available for use with tokenized securities;
- All Exchange routing strategies will be available for orders in tokenized securities;
- Orders in tokenized securities may participate in all of the Exchange's trading sessions, including Core Open Auctions and Closing Auctions (as defined in Rule 7.35), subject to generally applicable eligibility criteria;
- Member organizations may utilize their existing connectivity to enter orders in tokenized securities;
- The Exchange's fee schedule will not vary based upon whether shares that member organizations execute are tokenized or traditional in nature;
- Market data feeds will not differentiate between tokenized and traditional securities;
- The Exchange will comply with any Commission requirements to report tokenization data to the Consolidated Audit Trail;
- Market surveillance of tokenized and traditional securities will rely upon the same underlying data, which will continue to be accessible by the Exchange and the Financial Industry Regulatory Authority (''FINRA'');
- Trades in tokenized securities handled by DTC will continue to settle on a T+1 basis;
- The Exchange's clearly erroneous and risk management measures will cover tokenized securities; and
- Trading of tokenized securities under this proposal is not expected to alter the existing proxy distribution process.[14]

This proposal to offer trading in tokenized securities will become effective once the requisite infrastructure and post-trade settlement services have been established by DTC. The Exchange understands that DTC is working to develop the necessary infrastructure, services, and procedures to facilitate such tokenization and the related post-trade settlement infrastructure and services.[15] On December 11, 2025, the No-Action Letter was issued, which enables DTC to begin providing services that support the Exchange's proposal as soon as this development is complete.

Securities that are DTC Eligible Securities—meaning that they are eligible for tokenization and de-tokenization as part of the DTC tokenization pilot program—will be limited to the following, for purposes of this proposal: (i) securities in the Russell 1000 Index at the time the service launches as well as any additions to the index thereafter and notwithstanding the subsequent removal of any securities from the index; and (ii) exchange traded funds that track major indices. These categories of DTC Eligible Securities will be the only tokenized equities that are available to trade on the Exchange under this proposal.

The Exchange will alert its member organizations in a Trader Update at least 30 calendar days before the Exchange begins trading DTC Eligible Securities in tokenized form on its market.

DTC states that it will provide tokenization services on a pilot basis, as described above, for a period of three years after launch, after which time DTC will sunset the service.[16] Thus, the Exchange will revisit this rule proposal when it knows what, if anything, will replace the service after it sunsets.

[11] According to the No-Action Letter, any DTC participant would be permitted—at the DTC participant's election—to participate in the DTC pilot tokenization services, with certain exceptions for participants for which DTC has U.S. tax withholding or reporting obligations, or a Treasury International Capital reporting obligation. *See* No-Action Letter, *supra* note 4.

Additionally, the No-Action Letter states that DTC will not execute a tokenization instruction if a DTC Eligible Participant cannot pass DTC's risk management and compliance controls. *See id.* If a transaction would result in a participant breaching its Net Debit Cap (as defined in the No-Action Letter), then the control would not allow that transaction to process until it could do so without breaching the cap. *See id.*

[12] If the Exchange develops the functionality that would allow it to check for eligibility at order entry, it will submit a rule proposal to effectuate that functionality at the appropriate time.

[13] The Exchange's pricing structure and rates will not vary depending upon whether a transaction involves a share of a tokenized security. *See also supra* note 7.

[14] According to DTC, a DTC Eligible Participant may need to issue a de-tokenization instruction or DTC may need to force conversion of the Tokenized Entitlement into a Book-Entry Entitlement in order to receive a distribution or replacement security or to issue instructions in relation to the corporate action. In such situations, DTC would, to the extent feasible, provide the relevant participants with advance notice of the need to provide such instruction or DTC's need to take such action. *See* n. 4, *supra.* ''Tokenized Entitlement'' and ''Book-Entry Entitlement'' are used as defined in the No-Action Letter. *See id.* at 2–3.

[15] *See id.*

[16] *See* DTCC, No-Action Letter and DTC Tokenization Service FAQ, at 1, available at *https://www.dtcc.com/-/media/Files/Downloads/digital-assets/dtc-tokenization-service-faq.pdf.*

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest by strengthening the Exchange's ability to oversee and police its marketplace.

The Exchange believes that the proposed rule change is consistent with the Act because it would enable the trading of tokenized securities within the existing framework of the national market system, without requiring wholesale exemptions from investor protections. The proposed amendments are narrowly tailored to accommodate the DTC Pilot Program while preserving the integrity, efficiency, and investor protections of the Exchange's existing trading rules. The Exchange believes that all existing Commission and Exchange rules that currently apply to non-tokenized securities will continue to apply, without modification, to the trading of tokenized securities, except as expressly provided herein. The Exchange also believes that the proposed rule change is not designed to permit unfair discrimination between customers, brokers and dealers, consistent with Section 6(b)(5) of the Act.[19] The proposal is not designed to permit unfair discrimination between brokers and dealers because the proposed changes will apply equally to all similarly situated member organizations seeking to trade tokenized securities on the Exchange.

The Exchange further believes the proposed rule change furthers the objectives of Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices. The proposed rule change ensures that tokenized securities may only be traded on the Exchange if they are fungible with, share the same CUSIP number and trading symbol as, and afford their holders the same rights and privileges as, traditional securities of an equivalent class. By tethering tokenized securities to their traditional counterparts in this manner, the proposal eliminates the potential for price dislocation, manipulation, and investor confusion that could arise from the trading of tokenized instruments outside the national market system. In addition, all Exchange rules, including rules governing clearly erroneous transactions, short sales, risk management, and market surveillance will apply equally to tokenized and traditional securities. Market surveillance of tokenized and traditional securities will rely upon the same underlying data, which will continue to be accessible by the Exchange and FINRA. Trades in tokenized securities handled by DTC will continue to settle on a T+1 basis. The Exchange's clearly erroneous and risk management measures will cover tokenized securities.

The Exchange also believes the proposed rule change furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission has previously approved rules of another national securities exchange—Nasdaq—enabling the trading of tokenized securities. The Exchange's proposal to adopt comparable rules to allow DTC Eligible Participants to trade DTC Eligible Securities in tokenized form on the Exchange, subject to the same conditions and restrictions as approved for Nasdaq, promotes a fair, consistent, and interoperable national market system framework for tokenized securities trading. Member organizations will be able to access tokenized securities trading across multiple exchanges on equivalent terms, promoting competition and efficient price discovery. The Exchange will comply with any Commission requirements to report tokenization data to the Consolidated Audit Trail, further supporting the integrity and transparency of the national market system.

In addition, the Exchange believes that the proposed rule change is not designed to permit unfair discrimination between customers, brokers and dealers, consistent with Section 6(b)(5) of the Act[20] because the proposed changes will apply equally to all similarly situated member organizations seeking to trade tokenized securities on the Exchange. All DTC Eligible Participants will be subject to the same conditions for tokenized trading, including the requirement to select a tokenization flag at order entry, and all DTC Eligible Securities will be subject to the same fungibility, CUSIP, and rights requirements. The Exchange will not impose conditions on tokenized trading that favor any particular member organization or class of securities over any other.

Finally, the Exchange believes the proposed rule change is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, consistent with Section 6(b)(5) of the Act. The Exchange's proposal is expressly designed to work in coordination with the DTC Pilot Program, pursuant to the No-Action Letter. The proposed rules establish a clear and workable framework for the Exchange, DTC, and Exchange member organizations to cooperate in enabling the clearing and settlement of tokenized securities through the existing post-trade infrastructure. This cooperative approach, leveraging DTC's established role as the nation's central securities depository, ensures that tokenized securities trading occurs within a safe, regulated, and transparent framework that protects investors and promotes the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would enable the trading of tokenized securities on the Exchange in a manner that is consistent with the approved rules of another national securities exchange for the same purpose. Facilitating access to tokenized securities across multiple exchanges promotes competition and is in the interest of investors and the investing public. The proposed rule change does not impose any barriers to entry for member organizations and does not create any competitive disadvantages between and among market participants. The Exchange believes the proposed rule changes, taken together, will strengthen the Exchange's ability to carry out its role and responsibilities as a self-regulatory organization in connection with the trading of tokenized securities. As such, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that its proposal will be particularly attractive because it will provide for the trading of

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(5).

tokenized DTC Eligible Securities in a manner that is familiar to market participants and investors and which is consistent with existing laws and rules. Under this proposal, the extent to which member organizations will need to modify their back-end systems and practices to accommodate tokenized securities trading should be minimal; those systems may simply need to account for the availability of the new flag and be set up to provide any information that the flag requires to the Exchange. The Exchange notes that member organizations on the Exchange will remain free to trade, clear and settle securities in traditional form, including both DTC Eligible Securities and other securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [21] and Rule 19b–4(f)(6) [22] 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 Act [23] and Rule 19b–4(f)(6) [24] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2026–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2026–17. 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–NYSE–2026–17 and should be submitted on or before May 13, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026–07782 Filed 4–21–26; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6).

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 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 the Exchange's 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.

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105277; File No. SR–CBOE–2026–035]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 4.21 (Series of FLEX Options)

April 20, 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 9, 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. (''Cboe'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to amend Rule 4.21 (Series of FLEX Options). The proposed amendment relates to Flexible Exchange (''FLEX'') Equity Options where the underlying security is an exchange-traded fund (''ETF'') that is eligible for cash settlement. Specifically, the proposed amendments would: (1) permit newly FLEX-eligible ETFs that satisfy the requirements of Rule 4.21(b)(5)(A)(ii) based on the previous one-month period of trading statistics to be eligible for cash settlement as a contract term; (2) establish tiered criteria governing the treatment of cash-settled FLEX ETF Options where the underlying ETF ceases to satisfy the requirements of Rule 4.21(b)(5)(A)(ii) at the time of the Exchange's bi-annual review; and (3) eliminate the existing provision limiting cash settlement as a contract term to no more than 50 underlying ETFs. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 4.21 (Series of FLEX Options), as it relates to FLEX Equity Options where the underlying security is an ETF that is eligible for cash settlement. Specifically, the proposed amendments would: (1) permit newly FLEX-eligible ETFs that satisfy the requirements of Rule 4.21(b)(5)(A)(ii) based on the previous one-month period of trading statistics to be eligible for cash settlement as a contract term; (2) establish tiered criteria governing the treatment of cash-settled FLEX ETF Options where the underlying ETF ceases to satisfy the requirements of Rule 4.21(b)(5)(A)(ii) at the time of the Exchange's bi-annual review; and (3) eliminate the existing provision limiting cash settlement as a contract term to no more than 50 underlying ETFs.

Background

Prior to the adoption of the rules described herein, FLEX Equity Options were generally required to be settled by physical delivery of the underlying security upon exercise. FLEX Index Options, by contrast, have long been settled by delivery in cash. Cash settlement was also available for customized equity options transacted in the over-the-counter (''OTC'') market, where settlement restrictions do not apply. The absence of a cash-settled exchange-traded alternative for equity-based FLEX Options created a gap between the exchange-traded and OTC markets that exchange-traded participants sought to bridge.

On August 1, 2023, the Exchange submitted a filing with the Commission, which became immediately effective, adopting cash settlement as an optional contract term for certain FLEX Equity Options where the underlying security is an ETF.[3] Specifically, Rule 4.21(b)(5)(A)(ii) permits cash settlement for FLEX Equity Options where the underlying ETF has, measured over the prior six-month period, an average daily notional value of $500 million or more and a national average daily volume (''ADV'') of at least 4,680,000 shares.

The Exchange adopted these specific thresholds to limit cash-settled FLEX ETF Options to the most highly liquid and actively-traded ETFs, thereby mitigating concerns about susceptibility to manipulation at settlement. With respect to the notional value threshold, the Exchange determined that average daily notional value is an appropriate proxy for manipulation resistance because, as a general matter, the more expensive an underlying ETF's price, the less cost-effective manipulation becomes, and the more volume traded in an ETF, the more difficult manipulation of its price becomes. With respect to the ADV threshold, the Exchange determined that a requirement of 4,680,000 shares per day is appropriate because it represents average trading in the underlying ETF of approximately 200 shares per second, a level of continuous trading activity that the Exchange believes meaningfully limits the ability to influence the ETF's price for purposes of establishing a settlement value. The Exchange acknowledged that no security is immune from all manipulation, but determined that the combination of these two requirements would appropriately limit cash settlement of FLEX ETF Options to underlying securities that are less susceptible to manipulation.

Under this framework, the Exchange conducts a bi-annual review on January 1 and July 1 of each year to identify qualifying ETFs, with newly eligible ETFs permitted to list cash-settled FLEX options beginning on February 1 and August 1, respectively. The rule caps the number of eligible underlying ETFs at 50; if more than 50 ETFs satisfy the criteria, the Exchange selects the top 50 by highest ADV. This cap was designed to prevent the scope of cash-settled FLEX ETF Options from expanding considerably without a corresponding evaluation of whether the level of the requirements remains reasonable, while still providing flexibility to add ETFs given that the initial list of eligible ETFs numbered well below 50 at the time of adoption. In the event a previously eligible ETF fails to satisfy the criteria at the time of a bi-annual review, any new positions overlying that ETF must be physically settled and any existing open cash-settled positions may be traded only to close. This provision was designed to address how to wind down outstanding cash-settled positions in an ETF that no longer qualifies under the liquidity and volume criteria, thereby addressing manipulation concerns while still permitting market participants to exit existing positions.

In connection with the adoption of this framework, the Exchange committed to conducting a five-year review of cash-settled FLEX ETF Option trading activity and furnishing the Commission with five annual reports. Pursuant to this commitment, the Exchange has submitted two annual monitoring reports to the Commission covering the periods of August 1, 2023 through July 31, 2024 and August 1, 2024 through July 31, 2025, respectively. The reports assessed trading volume and open interest in cash-settled FLEX ETF options relative to physically settled options on the same underlying ETFs, market maker participation, position limit activity, and manipulation concerns. The Exchange had no recommendations for enhancements to the listing standards based on either review.

In both review periods, neither the Exchange nor any affiliated Cboe securities exchange had an open investigation, inquiry, or enforcement matter relating to the manipulation of cash-settled FLEX ETF options or their underlying ETFs. Financial Industry Regulatory Authority (''FINRA''), acting as the Exchange's regulatory services provider for position limit surveillance, confirmed the same finding for both periods. While both reports note that certain regulatory matters arose during each period involving the applicable ETFs or related physically-settled options, the Exchange's surveillance and investigatory staff confirmed in each instance that the activity did not appear to relate to manipulation of an ETF for the purpose of benefiting a cash-settled FLEX ETF option position.

Both review periods reflected broad and stable market maker participation across the eligible underlying ETFs. The highest levels of FLEX market maker participation were observed in SPY (9 to 12 per month), QQQ (6 to 10 per month), and IWM (3 to 15 per month). Participation in less actively traded eligible ETFs was more limited but consistent across both periods, reflecting a well-supported and liquid product across the eligible universe.

[3] *See* Securities Exchange Act No. 98044 (August 2, 2023) 88 FR 53548 (August 8, 2023) (SR–CBOE–2023–036) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow Certain Flexible Exchange Equity Options To Be Cash Settled).

Proposal

The Exchange proposes to amend Rule 4.21(b)(5)(A)(ii) to refine two aspects of the framework governing cash-settled FLEX ETF Options and to eliminate the 50–ETF cap. First, the Exchange proposes to permit newly FLEX-eligible ETFs to qualify for cash settlement as a contract term based on one month of trading statistics outside of the Exchange's regular bi-annual review cycle. Second, the Exchange proposes to replace the existing provision governing ETFs that cease to satisfy the eligibility criteria with a tiered framework that more precisely calibrates treatment to the actual state of open interest in cash-settled FLEX ETF Options overlying the affected ETF. Third, the Exchange proposes to eliminate the existing cap limiting cash settlement as a contract term to no more than 50 underlying ETFs.

One-Month Lookback for Newly Eligible ETFs

Under the current rule, the Exchange determines eligible underlying ETFs bi-annually, on January 1 and July 1 of each year, using six months of prior trading statistics, with newly eligible ETFs permitted to list cash-settled FLEX options beginning on February 1 and August 1, respectively. No mechanism currently exists to add newly FLEX-eligible ETFs to the eligible list between bi-annual reviews. As a result, an ETF that becomes FLEX-eligible after a bi-annual review has been conducted may not be considered for cash-settled FLEX ETF Option eligibility for up to six months, even if it otherwise satisfies the notional value and ADV requirements of Rule 4.21(b)(5)(A)(ii). The Exchange proposes to address this gap by permitting, outside of the regular bi-annual review, the Exchange to determine that a newly FLEX-eligible ETF satisfies the notional value and trading volume requirements based on the previous one-month period of trading statistics. Any ETF satisfying such requirements on that basis shall be eligible for cash settlement as a contract term.

The Exchange believes a one-month lookback is appropriate in this context because an ETF that has newly become FLEX-eligible and simultaneously satisfies both the $500 million average daily notional value threshold and the 4,680,000-share ADV requirement over the prior month has already demonstrated the degree of liquidity and trading activity that the eligibility criteria are designed to capture. The Exchange believes its annual monitoring reports demonstrate the existing criteria have proven to be an effective proxy for identifying ETFs that are not readily susceptible to manipulation. Requiring newly eligible ETFs to await the next bi-annual review before becoming eligible for cash settlement would delay investor access to the product.

Tiered Criteria for ETFs Ceasing To Satisfy Eligibility Requirements

Under the current rule, if the Exchange determines at the time of a bi-annual review that an underlying ETF ceases to satisfy the eligibility criteria, any new position overlying that ETF must be physically settled and any existing open cash-settled positions may be traded only to close. While this provision addresses the wind-down of cash-settled activity in a straightforward manner, it does not distinguish between ETFs with active open interest and those with no meaningful cash-settled activity, nor does it account for the possibility that an ETF may temporarily fall below the eligibility thresholds and subsequently recover.

The Exchange proposes to replace this provision with a tiered framework that more precisely calibrates the treatment of an ineligible ETF to the actual state of the market for cash-settled FLEX ETF Options overlying that ETF. Under the proposed framework, if no open interest in cash-settled FLEX Equity Options overlying the ETF exists during the previous six-month period at the time of the bi-annual review determination, the existing treatment will apply: any new position must be physically settled and any open cash-settled positions may be traded only to close. Where open interest in cash-settled FLEX Equity Options overlying the ETF does exist during the previous six-month period, the Exchange will permit the opening of new cash-settled positions in that ETF for a period of one year from the date of the bi-annual review, after which any new position must be physically settled and any remaining open cash-settled positions may be traded only to close. This one-year continuation period is intended to provide market participants holding or seeking to manage existing cash-settled positions with a reasonable and predictable runway to do so, rather than abruptly restricting new position activity at the time of the bi-annual review determination.

The proposed framework also includes a recovery provision: if the underlying ETF satisfies the eligibility criteria at the time of either bi-annual review conducted during the one-year continuation period, that period will terminate and the ETF will resume full eligibility for cash settlement as a contract term. The Exchange believes this provision appropriately accounts for the possibility that an ETF's trading statistics may fluctuate around the eligibility thresholds and prevents an unnecessarily disruptive wind-down in cases where the ETF promptly returns to eligibility.

Elimination of the 50–ETF Cap

The Exchange also proposes to eliminate the existing provision limiting cash settlement as a contract term to no more than 50 underlying ETFs. The cap was adopted at the outset of the program to prevent the scope of cash-settled FLEX ETF Options from expanding considerably without a corresponding evaluation of whether the level of the eligibility requirements remained reasonable. While the number of ETFs satisfying the eligibility criteria remained well below 50 during the initial period of the program's operation, the number of qualifying ETFs has grown over the two-year period to exceed that threshold,[4] such that the cap now operates as an active constraint on the availability of cash-settled FLEX ETF Options on ETFs that otherwise satisfy the established eligibility criteria. The Exchange does not believe this result is consistent with the purpose of the cap, which was intended as a programmatic guardrail rather than a permanent numerical ceiling. As noted above, the Exchange's two annual reviews have identified no manipulation concerns. Given the same eligibility criteria and position and exercise limits would apply to any cash-settled FLEX ETF option, as would the Exchange's surveillance program, the Exchange believes the 50–ETF cap is no longer necessary. The Exchange believes these protections and the eligibility criteria themselves sufficiently mitigate any manipulation concerns associated with cash-settled FLEX ETF Options.

The Exchange also notes that, consistent with its commitment in the original proposal, it will continue to furnish the Commission with annual reports for the remainder of the five-year review period. The Exchange believes that the continued reporting commitment, together with the proposed amendments, appropriately positions the cash-settled FLEX ETF Option framework to address the operational gaps identified through the Exchange's review to date while preserving the monitoring mechanisms that allow the Exchange and the Commission to evaluate the ongoing impact of the program.

[4] As of February 1, 2026, 60 ETFs were eligible.

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.

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act because each of the proposed amendments is designed to refine an existing, Commission-approved framework in a manner that is reasonably calibrated to address identified operational gaps while preserving and reinforcing the manipulation-mitigating features of that framework.

One-Month Lookback for Newly Eligible ETFs

The Exchange believes the proposed one-month lookback for newly FLEX-eligible ETFs is consistent with the Act because it removes an impediment to the offering of cash-settled FLEX ETF Options on ETFs that have already demonstrated the liquidity and trading activity that the eligibility criteria are designed to capture, without compromising the manipulation-resistant features of those criteria. Under the current rule, an ETF that becomes FLEX-eligible[7] after a bi-annual review has been conducted must wait up to six months before it may be considered for cash-settled FLEX ETF Option eligibility, even if it satisfies both the $500 million average daily notional value threshold and the 4,680,000-share ADV requirement at the time it becomes FLEX-eligible. The Exchange believes this gap is not necessary to protect against manipulation. An ETF that satisfies both thresholds over the prior one-month period has demonstrated the same depth of liquidity and breadth of trading activity that the six-month bi-annual review is designed to identify as indicative of reduced susceptibility to manipulation. As noted above, the Exchange's annual monitoring reports have demonstrated the existing eligibility criteria are an effective and reliable proxy for identifying ETFs that are not readily susceptible to manipulation, and the Exchange has identified no manipulation concerns in connection with cash-settled FLEX ETF Options or their underlying ETFs during that period. The Exchange therefore believes that permitting a one-month lookback for newly FLEX-eligible ETFs between bi-annual reviews removes an impediment to and perfects the mechanism of a free and open market and protects investors and the public interest by providing timely investor access to a cash-settlement alternative on ETFs that satisfy the established eligibility criteria, while maintaining the protections afforded by those criteria.[8]

Tiered Criteria for ETFs Ceasing To Satisfy Eligibility Requirements

The Exchange believes the proposed tiered framework for ETFs that cease to satisfy the eligibility criteria at the time of a bi-annual review is consistent with the Act because it is reasonably designed to prevent fraudulent and manipulative acts and practices while also promoting just and equitable principles of trade and protecting investors. The current rule applies a single, uniform wind-down treatment to any ETF that falls below the eligibility thresholds at bi-annual review, regardless of whether active open interest in cash-settled FLEX ETF Options overlying that ETF exists. The Exchange believes this one-size-fits-all approach does not adequately account for the legitimate interests of market participants that hold existing cash-settled positions or that need the ability to open new positions to manage existing risk exposure in an ETF that has temporarily fallen below the thresholds.

The proposed tiered framework addresses this concern in a manner consistent with the Act's investor protection and anti-manipulation objectives. Where no open interest in cash-settled FLEX ETF Options overlying the affected ETF has existed during the previous six-month period, the current treatment would continue to apply, because the Exchange believes an immediate restriction on new cash-settled positions would not disrupt market participants' activity. Where open interest does exist at the time of the bi-annual review, the proposed one-year continuation period provides market participants with a reasonable and predictable runway to manage existing positions, which the Exchange believes promotes just and equitable principles of trade. The Exchange further believes that the recovery provision, under which the continuation period terminates and full eligibility is restored if the ETF satisfies the criteria at either bi-annual review during the one-year period, is consistent with the Act because it prevents an unnecessarily disruptive wind-down where an ETF's trading statistics temporarily dip below the eligibility thresholds and then recover, and it reinforces the principle that the eligibility criteria, rather than arbitrary timing, are the appropriate determinant of cash-settlement eligibility. Taken together, the Exchange believes the tiered framework is a reasonable means to address manipulation concerns while not unduly burdening market participants with existing cash-settled positions, as it eliminates the current immediate disruption to their investment strategies.

Elimination of the 50–ETF Cap

The Exchange believes the elimination of the 50–ETF cap is consistent with the Act because the cap is no longer necessary to protect against the concerns it was designed to address and, as currently operative, functions as an impediment to the offering of cash-settled FLEX ETF Options on ETFs that otherwise satisfy the established eligibility criteria. The cap was adopted at the outset of the program to prevent the scope of cash-settled FLEX ETF Options from expanding considerably without a corresponding evaluation of whether the level of the eligibility requirements remained reasonable. While the number of qualifying ETFs remained well below 50 during the initial period of the program's operation, that number has more recently grown to exceed the cap, such that the cap now actively restricts the availability of cash-settled FLEX ETF Options on ETFs that fully satisfy the notional value and ADV requirements of Rule 4.21(b)(5)(A)(ii). The Exchange believes that retaining this arbitrary restriction is inconsistent with the Act's objectives because the two-year monitoring record demonstrates that the eligibility criteria themselves limit the

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] For example, an ETF option may become eligible to be listed on the Exchange (and FLEX eligible) on January 15, but even it satisfies the cash-settled FLEX criteria well before the next bi-annual review in July, the ETF would not be eligible for cash-settled FLEX until that July review.

[8] This is a similar concept to the one in Rule 4.3, Interpretation and Policy .01(b)(2) that permits ''expedited'' listing of options on securities with significant market capitalization at their initial public offerings.

availability of cash settlement to FLEX ETF Options. The liquidity and trading activity requirements mitigate manipulation concerns for any ETF that satisfies those requirements, not just the top 50. During the first two years of availability of cash-settled FLEX ETF Options, the Exchange has identified (and its annual monitoring reports demonstrated) no manipulation concerns in connection with cash-settled FLEX ETF Options or their underlying ETFs. The Exchange believes the eligibility criteria, position and exercise limits, and surveillance program applicable to the 50 ETFs eligible for FLEX options with cash-settlement provide adequate protections against manipulation and market disruption to all ETFs that satisfy the criteria, regardless of the number of qualifying ETFs. The Exchange therefore believes that eliminating the cap removes an impediment to and perfects the mechanism of a free and open market, protects investors and the public interest, and is otherwise consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose any burden on intramarket competition. The proposed amendments apply uniformly to all market participants that trade cash-settled FLEX ETF Options on the Exchange. All newly FLEX-eligible ETFs would be eligible for the one-month lookback, and any ETF that satisfies the eligibility criteria within that one-month lookback would be eligible for cash-settlement, and cash-settled FLEX options on such ETFs would be available to all market participants. The tiered framework for ETFs ceasing to satisfy the eligibility criteria applies in the same manner to all market participants holding or seeking to open positions in cash-settled FLEX ETF Options overlying the affected ETF, and the one-year continuation period and recovery provision provide all such participants with the same predictable and equitable treatment. The elimination of the 50–ETF cap permits any ETF that satisfies the eligibility criteria to be eligible for FLEX cash-settlement rather than arbitrarily restricting that product availability to 50 ETFs. The Exchange believes the proposed rule promotes competition, as it would treat all ETFs that satisfy the eligibility criteria for cash-settled FLEX Options in the same manner.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition. Cash-settled FLEX ETF Options with the same underlying ETF may be listed on multiple exchanges, and the proposed amendments do not restrict the ability of other exchanges to adopt similar or competing frameworks.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2026–035 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–2026–035. 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–CBOE–2026–035 and should be submitted on or before May 13, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–07818 Filed 4–21–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105276; File No. SR–NSCC–2026–004]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Concerning New Transaction Reporting Capability for Members That Maintain Clearing Relationships With Another Member

April 20, 2026.

I. Introduction

On February 26, 2026, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2026–004, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder.[2] The Proposed Rule Change would amend the NSCC Rules & Procedures to offer a new transaction reporting capability which allows NSCC to disclose the Clearing Data of a Member (''Disclosing Member'') to another Member (''Receiving Member'') with which it maintains a clearing relationship, as identified by their Market Participant Identifier (''MPID''), subject to the authorization of the Disclosing Member (''MPID Transaction Reporting'').[3] The Proposed Rule

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The NSCC Rules & Procedures are available at *https://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.* Capitalized terms not otherwise defined herein are defined in the NSCC Rules.

Change was published for comment in the **Federal Register** on March 6, 2026.[4] The Commission has received no comments on the changes proposed.

For the reasons discussed below, the Commission is approving the Proposed Rule Change.

II. Background

NSCC offers services including clearance, settlement, risk management, central counterparty services, and a guarantee for nearly all broker-to-broker trades related to equity securities, corporate and municipal debt, American depository receipts, exchange traded funds, and unit investment trusts.[5] As a Central Counterparty (''CCP''), NSCC ensures that matched trades are settled and acts as the legal counterparty for all its Members' net settlement obligations.

NSCC Members that are not Limited or Sponsored Members [6] engage in various trade reporting and clearing activities. Such NSCC Members can clear their own trades (*i.e.,* Self-Clearing), submit transactions for themselves or other Members as Special Representatives or Qualified Special Representatives (''QSRs''),[7] use NSCC's Correspondent Clearing Service for submitting trades, or help clear trades for other broker/dealers acting as introducing or executing brokers.[8] Self-Clearing Members also have the option to process certain trades through another NSCC Member clearing firm.[9]

The Universal Trade Capture system (''UTC'') at NSCC validates and reports equity transactions that are submitted to NSCC by participants throughout the trading day.[10] Eligible securities are forwarded to NSCC's Continuous Net Settlement (''CNS'') system. Trades ineligible for CNS either settle trade-for-trade or are included in NSCC's multilateral net balance order process. UTC provides for the processing of a common input record from all marketplaces which validates trade inputs like security details, quantity, price, date, and information about both clearing and executing brokers, then provides near real-time transaction output to Members in one unified format.[11]

With limited exceptions, NSCC releases Clearing Data or Clearing Fund Data about a participant's transactions solely to that participant, and will release such data only upon their written request.[12] For ''cleared away'' transactions (*i.e.,* when a Member who is self-clearing also has activity that ''clears away'' with another Member), Members do not receive UTC reports and must get their transaction data directly from the clearing Member.[13]

NSCC proposes amendments to its Rules to enhance UTC to allow certain Members that are clearing activity through another Member to receive UTC trade capture output. This service utilizes a Member's MPID to designate each Member's trade data.[14] The MPID, a unique four-character alphanumeric code issued by the Financial Industry Regulatory Authority (''FINRA''),[15] identifies member firms or registered participants when reporting trades, orders, and other transactions.[16] NSCC states that, through MPID Transaction Reporting, Members will be able to receive reports for all NSCC-cleared activities, including when a Self-Clearing Member clears through another NSCC Member.[17]

III. Description of the Proposed Rule Change

The Proposed Rule Change would update the NSCC Rulebook to allow MPID Transaction Reporting for Members clearing through another NSCC Member. Section (a) of Rule 49, which governs NSCC's release of Clearing Fund Data and Clearing Data, would be amended to enable NSCC to release participant Clearing Data to another participant with whom it has a clearing relationship consistent with the newly proposed Addendum M, and upon receipt of proper authorization. This authorization must indicate that the participant has granted NSCC permission to share specific Clearing Data with another participant with whom it maintains a clearing relationship. The inclusion of an MPID on trade data submitted to NSCC likewise allows NSCC to identify the clearing relationships between Members.[18]

The Proposed Rule Change would also add Addendum M to clarify procedures for when a Disclosing Member may wish to authorize MPID Transaction Reporting to a specified Receiving Member on an ongoing basis. In these instances, the Proposed Rule Change outlines three requirements: (1) the Disclosing Member and Receiving Member must have a clearing relationship; (2) the disclosed Clearing Data relates only to NSCC-processed transactions by the Disclosing Member on behalf of the Receiving Member; and (3) both the Disclosing and Receiving Member have executed and delivered the required authorization agreements. The message will be sent in near real-time, in the same format as the current UTC messaging.

IV. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act 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 NSCC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.[19] 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.

As described above in Section III, NSCC proposes to amend the Rules to allow NSCC to offer a new transaction

[4] *See* Securities Exchange Act Release No. 104920 (Mar. 3, 2026), 91 FR 11106 (Mar. 6, 2026) (File No. SR–NSCC–2026–004) (''Notice of Filing'')

[5] *See* Financial Stability Oversight Counsel 2024 Annual Report, Note 153, available at *https://home.treasury.gov/system/files/261/FSOC2024AnnualReport.pdf.*

[6] *See* Rule 2, *supra* note 3, for descriptions of the different membership types

[7] A Member acting as a Special Representative or QSR may submit for trade recording any transaction calling for delivery of Cleared Securities or Cleared Securities that are also debt securities between it and another person, or other transactions provided through the Obligation Warehouse in accordance with Rule 51. *See* Rule 7, Sec. 1, *supra* note 3.

[8] *See* Notice of Filing, 91 FR at 11107, *supra* note 4.

[9] *Id.*

[10] *See, e.g., https://www.dtcc.com/clearing-and-settlement-services/equities-trade-capture/utc.*

[11] *See* Notice of Filing, 91 FR at 11107, *supra* note 4. *See also https://www.dtcc.com/clearing-and-settlement-services/equities-trade-capture/utc.*

[12] *See* NSCC Rule 49, *supra* note 3. NSCC's Rules define ''Clearing Data'' as transaction data which is received by NSCC for inclusion in NSCC's clearance and/or settlement process, or such data, reports or summaries thereof, which may be produced as a result of processing such transaction data, and ''Clearing Fund Data'' as information regarding a participant's clearing fund, margin and other similar requirements and deposits at NSCC, or such data, reports or summaries thereof, which may be produced by NSCC from time to time. *Id.*

[13] *See* Notice of Filing, 91 FR at 11107, *supra* note 4.

[14] *Id.*

[15] A market participant may have multiple MPIDs, obtained through a written request to FINRA Market Operations, after identifying the purpose(s) and system(s) for which multiple MPIDs will be used. *See* FINRA Rule 6170, *available at https://www.finra.org/rules-guidance/rulebooks/finra-rules/6170#the-rule.*

[16] *See* FINRA Rule 7220b, *available at https://www.finra.org/rules-guidance/rulebooks/finra-rules/7220b.*

[17] *See* Notice of Filing, 91 FR at 11107, *supra* Note 4.

[18] *Id* at 11106.

[19] 15 U.S.C. 78q–1(b)(3)(F).

reporting capability for Members that maintain clearing relationships with another Member, as identified by their MPID, and would provide procedures for ongoing transaction reporting between Members. Specifically, the Proposed Rule Change provides for an authorization process to allow NSCC to share Clearing Data with such Members authorized by the Disclosing Member to receive such information, including for those Members who have ''cleared away'' their transactions and would thus only be able to receive Clearing Data directly from the submitting member. By providing NSCC with the authority to disseminate Clearing Data to those Members with whom a Disclosing or Receiving Member engages in ongoing clearing activity, the Proposed Rule Change should allow for a more efficient dissemination of information related to the transactions it clears and thereby promote the prompt and accurate clearance and settlement of securities transactions.

Furthermore, as described in Section III, NSCC proposes to amend the Rules to clearly outline eligible Members, eligible transactions, and the process to authorize the use of this service. Having clear and accurate Rules should help Members to better understand their rights and obligations regarding NSCC services in connection with the proposed MPID Transaction Reporting service. Better enabling NSCC Members to understand, comply with, and thus utilize the Rules would promote the prompt and accurate clearance and settlement of securities transactions.

For the reasons stated above, the Proposed Rule Change is reasonably designed to promote the prompt and accurate clearance and settlement of securities transactions. Therefore, the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.[20]

V. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A of the Act and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[21] that proposed rule change SR–NSCC–2026–004, be, and hereby is, *approved*.[22]

[20] *Id.*

[21] 15 U.S.C. 78s(b)(2).

[22] In approving the Proposed Rule Change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–07822 Filed 4–21–26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105269; File No. SR–CTA/CQ–2026–01]

Consolidated Tape Association; Notice of Filing of Amendment No. 1, and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Fortieth Substantive Amendment to the Second Restatement of the CTA Plan and Thirty-First Substantive Amendment to the Restated CQ Plan, as Modified by Amendment No. 1 Thereto, To Extend the Processor's Hours of Operation

April 17, 2026.

I. Introduction

On January 12, 2026,[1] the Participants[2] in the Second Restatement of the Consolidated Tape Association Plan (''CTA Plan'') and the Restated Consolidated Quotation Plan (''CQ Plan'') (collectively ''CTA/CQ Plans'' or ''Plans'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Exchange Act'')[3] and Rule 608(a) of Regulation National Market System (''NMS'') thereunder,[4] a proposal to amend the Plans to extend the Processor's[5] hours of operation (''Extended Hours Proposal''). The Extended Hours Proposal represents the Fortieth Substantive Amendment to the CTA Plan and the Thirty-First Substantive Amendment to the CQ Plan. The Extended Hours Proposal was published for comment in the **Federal Register** on January 27, 2026.[6] No comment letters were received.

On April 7, 2026, the Participants filed an amendment to the Extended Hours Proposal (''Amendment No. 1''), which amended and superseded the Extended Hours Proposal in its entirety, as set forth in Item II.B.[7] The Commission is publishing this notice to solicit comments on the Extended Hours Proposal, as modified by Amendment No. 1, and is instituting proceedings, under Rule 608(b)(2)(i) of Regulation NMS,[8] to determine whether to approve or disapprove the Extended Hours Proposal, as modified by Amendment No. 1, or to approve the Extended Hours Proposal, as modified by Amendment No. 1, with any changes or subject to any conditions the Commission deems necessary or appropriate.

II. Extended Hours Proposal

A. Summary of Notice Published January 27, 2026

The Participants proposed to amend the Plans to extend the Processor's hours of operation to receive and disseminate quotation information, last sale price information, and related information in Eligible Securities from 9:00 p.m. Eastern Time (''ET'') Sunday to 8:00 p.m. ET Friday; provided, however, that the Processor will pause operations at 8:00 p.m. ET on Monday through Thursday for one hour to accommodate technical refreshes for the Processor, Participants, and other market participants.[9] In the event of a holiday where U.S. markets are closed, the Processor would not operate from 8:00 p.m. ET the day before the holiday through 9:00 p.m. ET the day of the holiday.[10] The Processor would consider a trade date to start at 8:00 p.m. ET on the day before Regular Trading

[23] 17 CFR 200.30–3(a)(12).

[1] *See* Letter from Jeff Kimsey, Chair, CTA/CQ Plans Operating Committee, to Vanessa Countryman, Secretary, Commission (Jan. 12, 2026). The Participants also filed amendments to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis. *See also,* Letter from Jeff Kimsey, Chair, UTP Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Jan. 12, 2026).

[2] The Participants are: 24X National Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Texas, Inc.

[3] 15 U.S.C. 78k–1.

[4] 17 CFR 242.608(a).

[5] Section I. of the CTA Plan defines Processor as the organization designated as recipient and processor of last sale price information furnished by Participants pursuant to the CTA Plan, as described in Section V. of the CTA Plan. Section I of the CQ Plan defines Processor as the organization designated as recipient and processor of quotation information furnished by Participants pursuant to the CQ Plan, as described in Section V. of the CQ Plan. Capitalized terms that are not defined herein are defined in the Plans.

[6] *See* Securities Exchange Act Release No. 104665 (Jan. 22, 2026), 91 FR 3602 (''Notice'').

[7] *See* Letter from Jeff Kimsey, Chair, CTA/CQ Plans Operating Committee, to Vanessa Countryman, Secretary, Commission (Apr. 7, 2026).

[8] 17 CFR 242.608(b)(2)(i).

[9] *See* Notice, *supra* note 6, at 3602.

[10] *See id.* at 3603.

Hours begin and end at 8:00 p.m. ET on the same day as when Regular Trading Hours begin.[11] Other than extending the hours of operation, the Processor will operate as it currently does.[12]

As proposed, Participants that utilize the extended hours would be required to pay for the development and operating costs and expenses which are incurred by the Processor to accommodate the extended hours.[13] Participants that utilize the extended hours at a later time would be required to pay a proportionate share of the aggregate development costs previously paid by other Participants, and contribute to the operating costs from the point at which it begins operating during the extended hours.[14]

B. Notice and Description of Amendment No. 1

Set forth in this Section II.B. is the description of the proposed Amendment No. 1, along with information required by Rules 601(a) and 608(a) under the Exchange Act,[15] as prepared and submitted by the Participants to the Commission.[16] Set forth in Exhibit A and Exhibit B is the text of the Amendment No. 1 marked to show the proposed changes to the respective Plans, as prepared and submitted by the Participants.

(a) Rule 608(a)

1. Purpose of the Amendments

The purpose of the amendments is to extend the Processor's hours of operation to receive and disseminate quotation information, last sale price information, and related information in Eligible Securities from 9:00 p.m. ET Sunday to 8:00 p.m. ET Friday; provided, however, that the Processor will pause operations at 8:00 p.m. ET on Monday through Thursday for an hour to accommodate technical refreshes for the Processor, Participants, and other market participants.

As background, a number of Participants have recently proposed extending their hours of operation.[17] Those proposals provided for trading days of varying lengths (*e.g.,* 23 hours versus 22 hours) along with hours of operation that did not overlap. Further, under those proposals, the extended trading hours could not be implemented unless the Equity Data Plans[18] (1) established a mechanism to collect, consolidate, process and disseminate quotation and transaction information at all times during the extended trading hours that is equivalent to the mechanism established for Regular Trading Hours; [19] and (2) notified the relevant exchanges of their readiness.

Following the approval of some of those individual Participant proposals by the SEC, all the Participants have worked jointly to outline a plan for the collection, consolidation, processing, and dissemination of quotation and transaction information during the extended hours proposed by the Participants. Following extensive discussions among the Participants and the Advisory Committee of the UTP Plan and the Plans, the Participants have developed the proposal contained herein (''Proposal'') to implement hours of operation to be set as close as technologically feasible to 24 hours per day, as well as agreed to particular hours of operation.

With respect to the hours of operation, the Participants have agreed to operate from 9:00 p.m. ET Sunday to 8:00 p.m. ET Friday; provided, however, that the Processor would pause operations at 8:00 p.m. ET on Monday through Thursday for an hour to accommodate technical refreshes for the Processor, Participants, and other market participants. In the event of a holiday where U.S. markets are closed, the Processor would not operate from 8:00 p.m. ET the day before the holiday through 9:00 p.m. ET the day of the holiday. For example, if the markets are closed for a holiday on a Thursday, then the Processors would not operate from 8:00 p.m. ET on Wednesday to 9:00 p.m. ET on Thursday. With respect to a holiday where U.S. markets close early the day before the holiday (and because on such early close days, late trading sessions end at 5:00 p.m. ET), the Processor will not operate from 5:00 p.m. ET the day before the holiday through 9:00 p.m. ET the day of the holiday.

With respect to the pause from 8:00 p.m. ET to 9:00 p.m. ET on Monday through Thursday, the Processor would endeavor to reduce the length of the pause where technically feasible. In the event the length of the pause is reduced, the Operating Committee would amend the Plans and notify the industry of the reduction at least 90 days prior to implementation of a reduction. The Participants determined that having a pause at 8:00 p.m. ET would lessen the cost, complexity, and burden of designing a system that did not have a pause. In particular, if the Processor did not pause at 8:00 p.m. ET, the design would have required designing, funding, and building a duplicate system to handle a 24-hour trading session as the Processor's systems require at least some downtime for system refreshes. Further, the Participants understand that other market participants would consider the proposed pause useful to refresh their own systems prior to beginning the next day's trading session.[20]

With respect to when a trade date starts and ends, the Processor would consider a trade date to be between [21] 8:00 p.m. ET on the day before Regular Trading Hours begin and 8:00 p.m. ET on the same day as when Regular Trading Hours begin.[22] In other words, Wednesday's trading day would be between 8:00 p.m. ET on Tuesday and 8:00 p.m. ET on Wednesday. The Participants believe that having the start of a trade date prior to the opening of markets would reduce complexity and burden as the alternative would have required a new trading date to start in the middle of a trading session (*i.e.,* at midnight). Additionally, the Participants believe that starting the trading date at the specified time would align with current practice for venues already trading during the proposed extended hours.

Consistent with current practice for existing hours of operation, the Participants have agreed to the following provisions regarding the Processor's operation during extended trading hours:

[11] *See id.*

[12] *See id.* at 3602.

[13] *See* id. at 3603.

[14] *See id.*

[15] *See* 17 CFR 242.601(a); 242.608(a).

[16] *See* Amendment No. 1, *supra* note 7.

[17] *See, e.g.,* Securities Exchange Act Release No. 34–101777 (Nov. 27, 2024), 89 FR 97092 (Dec. 6, 2024) (File No. 10–242 (24X)); Securities Exchange Act Release No. 34–102400 (Feb. 11, 2025), 90 FR 9794 (Feb. 18, 2025) (SR–NYSEARCA–2024–89).

[18] The ''Equity Data Plans'' are collectively the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (the ''UTP Plan''), the CQ Plan, the CTA Plan, and the CT Plan LLC.

[19] The Participants propose amending the Plans to include a definition of ''Regular Trading Hours,'' cross-referencing the definition in Rule 600 of Regulation NMS of the Exchange Act.

[20] Although there may be certain days where a pause will not be required for a refresh, the Participants believe that it will reduce confusion and complexity to have the Processor open at the same time each trading day.

[21] As part of this Amendment No. 1, the Participants have modified the language from the original filing. Specifically, instead of stating that a trade date starts and ends at particular times, the Plan language now states that the trade date is between particular times. This language is consistent with how the UTP Plan describes hours of operation and avoids the issue of overlapping trade dates at 8:00 p.m. ET.

[22] Setting the start of the trading day in this amendment is only applicable to the operation of the Processor. The Operating Committee does not have the authority to set the start of the trading day for rules and regulations that might be dependent on when a trading day begins.

• For transactions reported outside the hours of 9:30 a.m. ET and 4:00 p.m. ET, such transactions will be designated as ''.T'' trades to denote their execution outside normal market hours.[23]

• Late trades will be reported in accordance with the rules of the Participant in whose market the transaction occurred and can be reported at any time the Processor is able to receive last sale price information.[24]

• Transactions reported outside the hours of 9:30 a.m. ET and 4:00 p.m. ET will be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but will not be included in the calculation of the daily high, low, or last sale.

• Quote Credits may be earned only in connection with quotations transmitted by a Participant to the Processor during Regular Trading Hours.

Consistent with the current language of the Plans,[25] the Participants have agreed that only Participants that utilize the extended hours described herein would be required to pay for the development and operating costs and expenses which would not have been incurred by the Processor had it not made the changes described herein. Further, the Participants have agreed that to the extent any additional Participant begins utilizing the extended hours described herein at a later time, such additional Participant will be required to pay a proportionate share of the aggregate development costs previously paid by other Participants. The Participants agree that such additional Participant will contribute to the operating costs of the extended operating hours from the point at which it begins utilizing the extended hours, but that previously-incurred operating costs will not be reapportioned when a Participant begins utilizing the extended hours.

As part of the amendments, the Participants have proposed moving existing language related to costs and making minor changes for readability.[26] This existing language in the CQ Plan referred to additional expenses related to operation outside 9:00 a.m. ET and 6:30 p.m. ET; however, the Participants already operate outside of this time period and there are no additional expenses to allocate from the Processor's operation outside of this time period based on current operations. The extended hours proposed herein, however, will result in additional expenses that will need to be allocated. Consequently, the Participants propose updating the current allocation language to focus solely on the extended hours proposed herein.

The Participants believe that the proposed allocation of the incremental development and operating costs associated with the extended hours is consistent with the Exchange Act because it reflects a reasonable, cost-causation-based approach that is designed to promote the economically efficient operation of the Plans while avoiding unreasonable discrimination. Specifically, the amendments provide that only those Participants that elect to utilize the extended hours will bear the development costs and operational expenses that would not have been incurred absent the extended-hours functionality, thereby avoiding imposing costs on Participants that do not use (and do not benefit from) the extended-hours capability. In addition, requiring a Participant that begins utilizing the extended hours at a later date to pay a proportionate share of previously incurred development costs is designed to prevent free-riding and to treat similarly situated Participants in a comparable manner.

2. Governing or Constituent Documents

No changes as a result of amendments.

3. Implementation of Amendments

All of the Participants have manifested their approval of the proposed amendments by means of their execution of the Plans. The Participants also solicited the Advisory Committee for its thoughts and any comments on the amendments.

If these amendments are approved by the Commission, the amendments, including the proposed changes to the language of the Plans, will not become operative until the Operating Committee determines that market conditions will support the extended hours of operation. The specific market conditions to be considered by the Operating Committee include, but are not limited to, the following:

• Depository Trust & Clearing Corporation (''DTCC'') offers clearing during the extended hours of operation.[27]

• The Processor has implemented changes to symbol directory messages as specified in a previously approved change request, which requires the Processors to disseminate specified reference information for Eligible Securities in symbol directory messages.

• Listing markets are able to support the changes to the symbol directory messages, including corporate actions information.

• The Processor will be able to disseminate all quotes and trades, including off-exchange trades, during the extended trading hours.

The Processors and listing markets anticipate meeting the final three requirements before the planned December 6, 2026 launch of the extended hours.

The Participants request the SEC determine whether dissemination of real-time Trade Reporting Facility (''TRF'') information outside of Regular Hours is a prerequisite for implementation.

4. Development and Implementation Phases

The Operating Committee expects that the implementation of the amendment will occur on December 6, 2026. Prior to the implementation, the Processor will announce testing dates.

5. Analysis of Impact on Competition

The amendments proposed herein do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934 (the ''Act'') because the amendments

[23] This language is consistent with current UTP Plan provisions and current Processor specifications.

[24] This language is consistent with current UTP Plan provisions and current Processor specifications.

[25] Although the approach is consistent with the current language of the Plans, the Participants have proposed revisions to the language to improve readability and align the language with the proposed language in the UTP Plan.

[26] The Participants have proposed amendments to the UTP Plan to implement the cost allocation methodology described herein. The UTP Plan already contains provisions relating to the allocation of development costs for technical enhancements made at the request of a Participant and solely for its use; however, unlike the Plans, the UTP Plan is silent on the allocation of operating costs. *See* UTP Plan, Section XIII.A.; CQ Plan Section VIII.(b); CTA Plan Section XI.(b). The amendments to the UTP Plan would eliminate the current inconsistency between the UTP Plan and the Plans on the issue of cost allocation for such system enhancements, enhance the transparency of the Equity Data Plans as to how such costs will be borne and divided, and eliminate potential conflicts in the future among Participants about their individual financial responsibility for the enhancements described in this Proposal. The fact that the current Equity Data Plans will shortly be supplanted by the CT Plan does not eliminate the need to amend the cost allocations of the current UTP and CTA/CQ Plans as proposed here. Subject to SEC approval and Processor readiness, and satisfaction of market conditions to support extended hours of operation as discussed above, the Participants are working to make extended trading hours available in December 2026, before the CT Plan will become operative.

[27] Based on publicly available information, DTCC will support the extended hours by the second quarter of 2026.

implement the extended trading hours as approved by the Commission as part of proposals by the Participants. Similarly, the Participants do not believe that the proposed amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act because the amendments implement the extended trading hours as approved by the Commission as part of proposals by the Participants.

Additionally, the implementation decisions were made after extensive discussion among the Participants (including those with pending proposals to offer extended trading hours) as well as the Advisory Committee. The amendments were designed with a view to maximizing industry benefit while being agnostic to current proposals from Participants. While certain specific aspects of the amendments differ from the proposals by the Participants, the Participants have agreed to these changes after discussing the practicality of implementing extended trading hours. The Participants do not believe that the design choices discussed herein impose a burden on competition because the Participants have developed an approach that minimizes downtime of the system while also ensuring that the Processor, the Participants, and other market participants have the opportunity to refresh their systems during the pause prior to the start of a trading day. The Participants believe that implementing the pause will minimize the technological burden of the expanded trading hours.

6. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

No changes as a result of amendments.

7. Approval by Sponsors in Accordance With Plan

Section IV.(c)(i) of the CQ Plan and Section IV.(b)(i) of the CTA Plan require the Participants to unanimously approve the amendments proposed herein. They have so approved it as of the date specified in the below amendments.

8. Description of Operation of Facility Contemplated by the Proposed Amendment

Other than extending the hours of operations, the Processor will operate as it currently does.

9. Terms and Conditions of Access

No changes as a result of amendments.

10. Method of Determination and Imposition, and Amount of, Fees and Charges

Consistent with the current language of the Plans, the Participants have agreed that only Participants that utilize the extended hours described herein would be required to pay for the development and operating costs and expenses which would not have been incurred by the Processor had it not made the changes described herein. Further, the Participants have agreed that to the extent any additional Participant begins utilizing the extended hours described herein at a later time, such additional Participant will be required to pay a proportionate share of the aggregate development costs previously paid by other Participants. The Participants agree that such additional Participant will contribute to the operating costs of the extended operating hours from the point at which it begins utilizing the extended hours, but that previously-incurred operating costs will not be reapportioned when a Participant begins utilizing the extended hours.

As part of the amendments, the Participants have proposed moving existing language related to costs and making minor changes for readability. This existing language in the CQ Plan referred to additional expenses related to operation outside 9:00 a.m. ET and 6:30 p.m. ET; however, the Participants already operate outside of this time period and there are no additional expenses to allocate from the Processor's operation outside of this time period based on current operations. The extended hours proposed herein, however, will result in additional expenses that will need to be allocated. Consequently, the Participants propose updating the current allocation language to focus solely on the extended hours proposed herein.

Additionally, the Participants have proposed utilizing the following methodology for considering whether quotations and transactions during the extended hours are incorporated into the revenue allocation formula, which aligns with current practice:

- Transactions reported outside the hours of 9:30 a.m. ET and 4:00 p.m. ET will be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but will not be included in the calculation of the daily high, low, or last sale.
- Quote Credits may be earned only in connection with quotations transmitted by a Participant to the Processor during Regular Trading Hours.

11. Method and Frequency of Processor Evaluation

No changes as a result of amendments.

12. Dispute Resolution

No changes as a result of amendments.

(b) Rule 601(a)

1. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

No changes as a result of amendments.

2. Reporting Requirements

Other than extending the hours of operations, the Processor will operate as it currently does.

3. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Other than extending the hours of operations, the Processor will operate as it currently does.

4. Manner of Consolidation

Other than extending the hours of operations, the Processor will operate as it currently does.

5. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Other than extending the hours of operations, the Processor will operate as it currently does.

6. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

No changes as a result of amendments.

7. Terms of Access to Transaction Reports

No changes as a result of amendments.

8. Identification of Marketplace of Execution

No changes as a result of amendments.

III. Proceedings To Determine Whether To Approve or Disapprove the Extended Hours

Proposal

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[28] and Rules 700 and 701 of the Commission's

[28] 17 CFR 242.608(b)(2)(i).

Rules of Practice,[29] to determine whether to approve or disapprove the Extended Hours Proposal, as modified by Amendment No. 1, or to approve the Extended Hours Proposal, as modified by Amendment No. 1, with any changes or subject to any conditions the Commission deems necessary or appropriate. The Commission is instituting proceedings to have sufficient time to consider the issues raised by the Extended Hours Proposal, as modified by Amendment No. 1. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Extended Hours Proposal, as modified by Amendment No. 1, to inform the Commission's analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission ''shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the [Exchange] Act.'' [30] Rule 608(b)(2) further provides that the Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.[31] In the Notice, the Commission sought comment on the Extended Hours Proposal, including whether the Extended Hours Proposal is consistent with the Exchange Act.[32] In this order, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[33] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Extended Hours Proposal, as modified by Amendment No. 1, is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act consistent with Rule 608 of Regulation NMS.[34]

In addition, the Commission is instituting proceedings to allow for additional analysis of whether modifications to the Extended Hours Proposal, as modified by Amendment No. 1, or conditions to its approval, such as limiting the consideration of other market conditions by the Operating Committee before implementing the Extended Hours Proposal, as modified by Amendment No. 1, are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act consistent with Rule 608 of Regulation NMS.[35]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the plan participants that filed the NMS plan filing.'' [36] The description of the NMS plan filing, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.[37] Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that the NMS plan filing is consistent with the Exchange Act and the applicable rules and regulations thereunder.[38]

IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Extended Hours Proposal, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the Extended Hours Proposal, as modified by Amendment No. 1, is consistent with the Exchange Act, the rules and regulations thereunder.[39] The Commission asks that commenters address the sufficiency and merit of the Participant's statements in support of the Extended Hours Proposal, as modified by Amendment No. 1, in addition to any other comments they may wish to submit about the Extended Hours Proposal, as modified by Amendment No. 1.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[40] any request for an opportunity to make an oral presentation.[41]

Interested persons are invited to submit written data, views, and arguments regarding whether the Extended Hours Proposal, as modified by Amendment No. 1, should be approved or disapproved by May 13, 2026. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 27, 2026. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–CTA/CQ–2026–01 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–CTA/CQ–2026–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal offices of the Participants.

[29] 17 CFR 201.700; 17 CFR 201.701.

[30] 17 CFR 242.608(b)(2).

[31] *Id.*

[32] *See* Notice, *supra* note 6, at 3605.

[33] 17 CFR 242.608(b)(2)(i).

[34] 17 CFR 242.608(b)(2).

[35] 17 CFR 242.608(b)(2).

[36] 17 CFR 201.700(b)(3)(ii).

[37] *Id.*

[38] *Id.*

[39] *See* 17 CFR 242.608(b)(2).

[40] 17 CFR 242.608(b)(2)(i).

[41] Rule 700(c)(2) of the Commission's Rules of Practice provides that ''[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.'' 17 CFR 201.700(c)(2).

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 withholdentirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CTA/CQ–2026–01 and should be submitted on or before May 13, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Vanessa A. Countryman,

Secretary.

BILLING CODE 8011–01–P

[42] 17 CFR 200.30–3(a)(85).

EXHIBIT A

To the Thirty-First
Amendment to the Restated CQ Plan

PROPOSED AMENDMENTS TO THE RESTATED CQ PLAN

MARKED TO SHOW CHANGES FROM THE EXISTING PLAN
(Additions are double-underlined; Deletions are [~~struck through and bracketed~~].)

VIII. Operational Matters.

(a) No change.

(b) Hours of operation. [~~The Processor shall receive and make available quotation information pursuant to this CQ Plan between 9:00 a.m. and 6:30 p.m., eastern time, Monday through Friday (or during such other period on those days as the Operating Committee, by affirmative vote of all its members, may specify) while one or more Participants is open for trading. In addition, the Processor shall receive and make available quotation information pursuant to this CQ Plan during any other period (an "additional period") during which any one or more Participants wish to furnish quotation information to the Processor, provided that such Participant or Participants have agreed to pay all costs and expenses which would not have been incurred by the Processor had it not made the quotation information available during such additional period ("additional period costs and expenses"). Additional period costs and expenses shall include the cost of operating during the additional period to which such costs and expenses are attributable to that portion of the equipment associated with making quotation information available as is utilized for such purposes.~~]

(i) The Processor will receive and disseminate quotation information from 9:00 p.m. Eastern Time ("ET") Sunday to 8:00 p.m. ET Friday; provided, however, that the Processor will pause operations at 8:00 p.m. ET on Monday through Thursday for one hour to accommodate technical refreshes for the Processor, Participants, and other market participants. In the event of a holiday where U.S. markets are closed, the Processor will not operate from 8:00 p.m. ET the day before the holiday through 9:00 p.m. ET the day of the holiday. With respect to a holiday where U.S. markets close early the day before the holiday, the Processor will not operate from 5:00 p.m. ET the day before the holiday through 9:00 p.m. ET the day of the holiday. The Processor will begin receiving and disseminating quotation information at the same time each day.

(ii) The Processor will consider a trade date to be between 8:00 p.m. ET on the day before Regular Trading Hours begin and 8:00 p.m. ET on the same day as when Regular Trading Hours begin. Regular Trading Hours shall have the meaning specified in Rule 600 of Regulation NMS of the Act for "regular trading hours."

(iii) Participant or Participants that report quotation information between 9:00 p.m. ET and 4:00 a.m. ET have agreed to pay all development and operating costs and expenses which would not have been incurred by the Processor had it not made the quotation information available between 9:00

p.m. ET and 4:00 a.m. ET. To the extent an additional Participant begins to report quotation information between 9:00 p.m. ET and 4:00 a.m. ET, such additional Participant shall be required to pay a proportionate share of the aggregate development costs previously paid by other Participants. Previously incurred operating costs shall not be reapportioned should any other Participant subsequently make use of the enhancement.

* * * * *

EXHIBIT B

To the Fortieth
Amendment to the CTA Plan

PROPOSED AMENDMENTS TO THE SECOND RESTATEMENT OF THE CTA PLAN

MARKED TO SHOW CHANGES FROM THE EXISTING PLAN
(Additions are double-underlined; Deletions are [~~struck through and bracketed~~].)

XI. Operational Matters

(a) No change.

(b) Hours of operation. [~~The Processor shall disseminate last sale price information reported to it relating to Eligible Securities during the hours any Participant which regularly reports to the Processor during the full trading day 51% or more of the last sale prices reported over CTA Network A or CTA Network B is open for trading. In addition, the Processor shall disseminate last sale price information at other times (the "additional period") during which any exchange Participant is open for trading; provided, however, that the Processor shall not disseminate such prices during the additional period unless the Participant or Participants which report prices to the Processor for dissemination during the additional period have agreed to pay all costs and expenses which would not have been incurred in the generation or dissemination of the consolidated tape had the Processor not disseminated last sale price information reported to it during the additional period, including the cost of operating that portion of the equipment associated with the generation or dissemination of the consolidated tape during the additional period as is utilized for such purpose during such period, such cost to be an allocated portion of the total cost of operating such portion of such equipment during a 22 hour operating day (the total of such costs and expenses being hereinafter referred to as "additional period costs and expenses").~~]

(i) The Processor will receive and disseminate last sale price information from 9:00 p.m. Eastern Time ("ET") Sunday to 8:00 p.m. ET Friday; provided, however, that the Processor will pause operations at 8:00 p.m. ET on Monday through Thursday for one hour to accommodate technical refreshes for the Processor, Participants, and other market participants. In the event of a holiday where U.S. markets are closed, the Processor will not operate from 8:00 p.m. ET the day before the holiday through 9:00 p.m. ET the day of the holiday. With respect to a holiday where U.S. markets close early the day before the holiday, the Processor will not operate from 5:00 p.m. ET the day before the holiday through 9:00 p.m. ET the day of the holiday. The Processor will begin receiving and disseminating last sale price information at the same time each day.

(ii) The Processor will consider a trade date to be between 8:00 p.m. ET on the day before Regular Trading Hours begin and 8:00 p.m. ET on the same day as when Regular Trading Hours begin. For purposes of this paragraph (b), Regular Trading Hours shall have the meaning specified in Rule 600 of Regulation NMS of the Act for "regular trading hours."

(iii) Transactions in Eligible Securities outside the hours of 9:30 a.m. ET and 4:00 p.m. ET, shall be designated as ".T" trades to denote their execution outside Regular Trading Hours. Transactions reported pursuant to this provision of the CTA Plan shall be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but shall not be included in the calculation of the daily high, low, or last sale.

(iv) Late trades shall be reported in accordance with the rules of the Participant in whose Market the transaction occurred and can be reported at any time the Processor is able to receive last sale price information.

(v) Participant or Participants that report last sale price information to the Processor between 9:00 p.m. ET and 4:00 a.m. ET have agreed to pay all costs and expenses which would not have been incurred by the Processor had it not made the last sale price information available between 9:00 p.m. ET and 4:00 a.m. ET. To the extent an additional Participant begins to report last sale price information between 9:00 p.m. ET and 4:00 a.m. ET, such additional Participant shall be required to pay a proportionate share of the aggregate development costs previously paid by other Participants. Previously incurred operating costs shall not be reapportioned should any other Participant subsequently make use of the enhancement.

XII. Financial Matters.

(a)(i) – (a)(iii) No change

(iv) Quoting Share. The Quoting Share of a Participant in an Eligible Security shall be determined by multiplying (A) an amount equal to fifty percent of the Security Income Allocation for the Eligible Security by (B) the Participant's Quote Rating in the Eligible Security. A Participant's Quote Rating in an Eligible Security shall be determined by dividing (A) the sum of the Quote Credits earned by the Participant in such Eligible Security during the calendar year by (B) the sum of the Quote Credits earned by all Participants in such Eligible Security during the calendar year. A Participant shall earn one Quote Credit for each second of time (with a minimum of one full second) multiplied by dollar value of size that an automated best bid (offer) transmitted by the Participant to the Processor during R[~~r~~]egular T[~~t~~]rading H[~~h~~]ours is equal to the price of the national best bid (offer) in the Eligible Security and does not lock or cross a previously displayed automated quotation. Regular Trading Hours shall have the meaning specified in Rule 600 of Regulation NMS of the Act for "regular trading hours." An automated bid (offer) shall have the meaning specified in Rule 600 of Regulation NMS of the Act for an "automated quotation." The dollar value of size of a quote shall be determined by multiplying the price of a quote by its size.

(a)(v) – (a)(viii) No change

(b) – (c) No change

(c) No change

* * * * *

[FR Doc. 2026–07783 Filed 4–21–26; 8:45 am]
BILLING CODE 8011–01–C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105263; File No. SR–NasdaqTX–2026–017]

Self-Regulatory Organizations; Nasdaq Texas, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NTX Options Price Improvement Auction

April 17, 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 13, 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 NTX Options Rules to permit orders for the accounts of Market Makers assigned to the options class to be solicited for the Initiating Order [3] submitted for execution against an agency order into a Price Improvement Auction (''PRISM'').

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 Options 3, Section 13, Price Improvement Auction (''PRISM''), to permit orders by Participants in a PRISM Auction to trade against the PRISM Orders [4] for the accounts of Market Makers assigned to the options class. Cboe Exchange, Inc. (''Cboe'') recently received approval to amend its rules in an identical manner.[5] The Exchange also proposes an amendment to Options 5, Section 4 relating to the handling of Immediate-or-Cancel Orders.[6]

Background

A PRISM Auction is an electronic auction intended to provide a PRISM Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). There is no specific size requirement for a PRISM Auction. Upon submitting a PRISM Order into a PRISM, the Initiating Participant must also submit a contra-side paired order.[7] The Initiating Order guarantees that the PRISM Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the PRISM Order.[8] At the conclusion of a PRISM Auction, the PRISM Order will be executed in full at the best prices available, taking into consideration all Exchange quotes, orders and PAN responses.[9] NTX Options' PRISM is very similar to Cboe's Automated Price Improvement Mechanism or ''AIM.'' [10]

Proposal

Currently, Options 3, Section 13(i)(F) prohibits orders by Participants in a PRISM to trade against the PRISM Orders for the accounts of Market Makers assigned to the options class.

While market participants other than assigned Market Makers may contribute liquidity to a PRISM Auction as either a contra-side order or a response, assigned Market Makers, who are the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ''Initiating Order'' is the order comprised of principal interest or a solicited order(s) submitted to trade against the order the submitting Participant represents as agent (the ''PRISM Order'').

[4] PRISM Orders are orders entered by a Participant and represented as agent.

[5] *See* Securities Exchange Act Release No. 105049 (March 19, 2026), 91 FR 14057 (March 24, 2026) (SR–Cboe–2025–090).

[6] ''Immediate-or-Cancel'' or ''IOC'' is a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled.. *See* Options 3, Section 7(b)(2).

[7] Each of these auctions requires a paired order.

[8] *See* Options 3, Section 13(ii)(A)(4). Responses in PRISM are called PAN responses.

[9] If the Initiating Participant selected the single stop price option of the PRISM Auction, PRISM executions will occur at prices that improve the stop price, and then at the stop price with up to 40% or such lower percentage requested by the Initiating Participant of the initial size of the PRISM Order after Public Customer interest is satisfied being allocated to the Initiating Participant at the stop price. However, if only one other quote, order or PAN response matches the stop price, then the Initiating Participant may be allocated up to 50% of the contracts executed at such price, provided the Initiating Participant had not designated a percentage designation of ''Surrender'' when initiating the Auction. *See* Options 3, Section 13(ii)(E)(2)(a). If the Initiating Participant selected the auto-match option of the PRISM Auction the Initiating Participant shall be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at each price point until a price point is reached where the balance of the order can be fully executed, except that the Initiating Participant shall be entitled to receive up to 40% (multiple competing quotes, orders or PAN responses) or 50% (one competing quote, order or PAN response) of the initial size of the PRISM Order at the final price point including situations where the stop price is the final price after Public Customer interest has been satisfied but before remaining interest. *See* Options 3, Section 13(ii)(E)(2)(b). If the Initiating Participant selected the ''stop and NWT'' option of the PRISM Auction then allocation would be first to quotes, orders and PAN responses at prices better than the NWT price (if any), beginning with the best price, at each price point and next, to quotes, orders and PAN responses at prices at the Initiating Participant's NWT price and better than the Initiating Participant's stop price, beginning with the NWT price. The Initiating Participant shall be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at each price point, except that the Initiating Participant shall be entitled to receive up to 40% (multiple competing quotes, orders or PAN responses) or 50% (one competing quote, order or PAN response) of the initial size of the PRISM Order at the final price point including situations where the final price is the stop price, after Public Customer interest has been satisfied but before remaining interest. In the case of an Initiating Order with a NWT price at the market, the Initiating Participant shall be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at all price points, except that the Initiating Participant shall be entitled to receive up to 40% (multiple competing quotes, orders or PAN responses) or 50% (one competing quote, order or PAN response) of the initial size of the PRISM Order at the final price point including situations where the final price is the stop price, after Public Customer interest has been satisfied but before remaining interest. *See* Options 3, Section 13(ii)(E)(2)(c).

[10] An AIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). Upon submitting an Agency Order into an AIM Auction, the initiating Trading Permit Holder (''Initiating TPH'') must also submit a contra-side second order (''Initiating Order'') for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order. *See* Cboe Rule 5.37(c)(5). At the conclusion of an AIM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated a certain percentage (or more) of the Agency Order. *See* Cboe Rule 5.37(e).

primary source of liquidity on the Exchange in their assigned options, are limited in the manner in which they may provide liquidity to a PRISM Auction. Given that contra-side orders that comprise Initiating Orders may be allocated a percentage of the PRISM Order at the conclusion of the PRISM Auction, the limited ability of appointed Market Makers to participate in a PRISM Auction may reduce the execution opportunities for these liquidity providers, which execution opportunities are available to other market participants who may be solicited or submit responses.

The Exchange believes that eliminating the prohibition against assigned Market Makers acting as contra in a PRISM Auction would enhance price improvement opportunities, particularly for retail and smaller Public Customer orders. Allowing assigned Market Makers registered with the Exchange to be facilitated or solicited as contras may result in exposure of more small Public Customer orders to potential price improvement in a PRISM Auction. The Exchange further notes that Options 3, Section 22(d) (Limitations on Order Entry) provides that, prior to or after submitting an order to NTX Options, an Options Participant cannot inform another Participant or any other third party of any of the terms of the order for purposes of violating this Rule. This protection will remain in place under the proposed rule change to address any potential information leakage concerns in a PRISM Auction as Options 3, Section 22 applies to a PRISM Auction.

The Exchange believes that the restriction has become operationally outdated in current market structure. It is common practice that Agency Orders already involve the same Market Maker firm acting as both the contra-side (in an away Market Maker capacity) and auction respondent (as an assigned Market Maker registered on the Exchange). Eliminating this restriction would reduce an arbitrary and unnecessary burden and allow Market Makers to structure more efficient auction processes, which may ultimately promote greater competition among Market Makers and provide market participants with enhanced opportunities for price improvement.

The Exchange is proposing to amend Options 3, Section 13(i)(F) to permit orders for the accounts of Market Makers in an assigned options class to be solicited for the initiating order submitted for execution against an PRISM Order in all options into a PRISM Auction. The Exchange believes providing assigned Market Makers with an additional way to participate in a PRISM Auction will expand available liquidity for this auction, which may increase execution and price improvement opportunities for Public Customers orders in a PRISM. The Exchange notes that no similar restriction applies to crossing transactions in open outcry trading.[11] Brokers seeking liquidity to execute against customer orders on the trading floor regularly solicit assigned Floor Market Makers in the applicable class for this liquidity, as they are generally the primary source of liquidity in a class. Therefore, the Exchange believes the proposed rule change will further align open outcry and the PRISM Auction and the execution and price improvement opportunities available in both these auctions by permitting the same participants to be solicited as the contra-side in a PRISM Auction across all options at all times.

In addition to Cboe, the Exchange notes the electronic price improvement auction of another options exchange currently permits orders for the accounts of appointed market-makers to be solicited as the contra orders for that auction.[12]

Options 5, Section 4

The Exchange proposes to amend subparagraph (a) at Options 5, Section 4, Order Routing, which currently states, ''Immediate-or-Cancel (''IOC'') Orders will be cancelled immediately if not executed, and will not be routed.'' The Exchange proposes to instead state that, ''Immediate-or-Cancel (''IOC'') Orders will be rejected and will not be routed.'' While the current sentence reflects the operation of IOC Orders as provided in Options 3, Section 7(b)(2), within the context of routing, the sentence may be confusing. Options 5, Section 4 explains the manner in which various order types are handled differently for purposes of routing. An IOC Order will not rest on the order book by its definition and cannot route. The Exchange proposes to amend the language to be clear that IOC Orders are not subject to routing and therefore would be rejected. This proposed language is consistent with Options 3, Section 7(b)(2) and makes clear the treatment of IOC Orders for purposes of Options 5, Section 4.

Implementation

The Exchange proposes to implement these proposed changes on or before Q3 2026. The Exchange will issue an Options Trader Alert indicating the date the changes will be implemented.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes the proposed rule change will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will provide the primary liquidity providers on the Exchange with an additional way to participate in a PRISM Auction. Additionally, by permitting brokers to solicit primary liquidity providers in a class for a PRISM Auction the Exchange believes brokers will be able to more efficiently locate liquidity to fill their customer orders, particularly during times of volatility. As a result, the Exchange believes the proposed rule change will likely expand available liquidity for a PRISM Auction, which may create additional execution and price improvement opportunities for customers at all times, which ultimately benefits investors.

The Exchange believes the proposed rule change is consistent with the Act because it will further align open outcry and PRISM Auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in both types of auctions across all options. Currently, assigned Market Makers may be solicited with respect to crossing transactions on trading floors but may not be solicited with respect to electronic transactions.[15] The Exchange believes there is no reason to restrict Market Makers' ability to provide liquidity into electronic auctions when they are able to similarly provide that liquidity in open outcry trading. As noted above, the electronic price improvement auction of another options exchange currently permits orders for

[11] *See e.g.,* Nasdaq Phlx LLC Rules at Options 8 Rules.

[12] *See* NYSE American, Inc. (''American'') Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. *See also https://www.nyse.com/markets/american-options/cube-customer-best-execution.*

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] Phlx's trading floor does not have a similar restriction. *See* Phlx Options 8 Rules.

the accounts of assigned market makers to be solicited as the contra orders for that auction.[16]

In particular, the Exchange believes the proposed rule change will promote competition in PRISM Auctions, including competition to initiate PRISM Auctions, which will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors. The Exchange believes the availability of this liquidity to PRISM Auctions will positively affect the experience for PRISM Orders and overall quality of the auctions. Furthermore, the Exchange believes increasing the number of market participants available to be solicited may increase competition to provide initiating orders, which may lead to a PRISM Auction being initiated at a better price. More market participants competing to provide initiating orders may lead to solicited parties providing more aggressive initial prices. The Exchange believes the ability of all market participants, including appointed market makers that did not submit an initiating order, to submit responses to a PRISM Auction will continue to provide competition for executions against PRISM Orders.

The Exchange believes any risk that assigned Market Makers may misuse the nonpublic information of an upcoming PRISM Auction is de minimis. Options 3, Section 13(v) prohibits a pattern or practice of submitting orders or quotes or the purpose of disrupting or manipulating PRISM Auctions, and Options 9, Section 9 requires Participants to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by Members and their associated persons. Finally, Options 3, Section 22(d) (Limitations on Order Entry) provides that, prior to or after submitting an order to NTX Options, an Options Participant cannot inform another Options Participant or any other third party of any of the terms of the order for purposes of violating the Rule.

The Exchange believes the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it will permit orders for accounts of assigned Market Makers to be solicited in the same manner as orders for the accounts of all other market participants. Currently, all market participants other than assigned Market Makers may be solicited as the contra and submit responses in PRISM Auctions for all options. Given the additional costs and obligations associated with being an assigned Market Maker, the Exchange does not believe these Market Makers should have fewer execution opportunities with respect to volume submitted for execution through PRISM Auctions and not for electronic execution against interest in the book. The Exchange believes the proposed rule change will provide all Market Makers on the Exchange with the same ability to participate in PRISM Auctions in all options at all times, which may further increase execution and price improvement opportunities for market participants.

Options 5, Section 4

The Exchange's proposal to amend Options 5, Section 4(a) is consistent with the Act because it will bring greater clarity to the current rule text by clearly explaining that IOC Orders will not route.

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 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 it provides the same execution opportunities in PRISM Auctions to assigned Market Makers that are currently available to all other market participants. Additionally, the proposed rule change will further align open outcry and electronic auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contra-side in auctions across all options.

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 it relates to orders submitted into PRISM Auctions on the Exchange. Additionally, the Exchange notes that, in addition to Cboe, the rules of at least one other options exchange permits orders for the accounts of assigned market makers to be solicited as contra orders for that exchange's electronic price improvement auction.[17] The Exchange believes the proposed rule change may improve price competition within PRISM Auctions, because the primary liquidity providers will be able to increase participation in PRISM Auctions.

Options 5, Section 4

The Exchange's proposal to amend Options 5, Section 4(a) does not impose an undue burden on competition, rather the proposal clarifies the current rule text.

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 Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

[16] *See supra* notes 5 and 12.

[17] *See supra* note 12.

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

• Send an email to *rule-comments@sec.gov*. Please include file number SR–NasdaqTX–2026–017 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–2026–017. 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–2026–017 and should be submitted on or before May 13, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026–07780 Filed 4–21–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105266; File No. SR–ISE–2026–18]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Auction Mechanisms

April 17, 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 13, 2026, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit orders for the accounts of Market Makers assigned to the options class to be solicited for the initiating order [3] submitted for execution against an agency order into a Facilitation Mechanism, the Solicited Order Mechanism (''SOM'') or a Price Improvement Mechanism (''PIM'') as well as a FLEX PIM or FLEX SOM.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/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 Supplementary Material .01 and .03 to Options 3, Section 11 (Auction Mechanisms), Supplementary Material .06 to Options 3, Section 13 (Price Improvement Mechanism for Crossing Transactions), Options 3A, Section 12 (FLEX Price Improvement Mechanism (''FLEX PIM'' or ''FLEX PIM Auction'')) and Supplementary Material .02 to Options 3A, Section 13 (FLEX Solicited Order Mechanism (''FLEX SOM'' or ''FLEX SOM Auction'')) to permit orders by Members in a Facilitation Mechanism, a SOM, a PIM, a FLEX PIM or a FLEX SOM to trade against the Agency Orders [4] for the accounts of Market Makers assigned to the options class. Cboe Exchange, Inc. (''Cboe'') recently received approval to amend its rules in an identical manner.[5] The Exchange also proposes an amendment to Options 5, Section 4 relating to the handling of Immediate-or-Cancel Orders.[6]

Background

PIM

A PIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). There is no specific size requirement for a PIM Auction. Upon submitting an Agency Order into a PIM, the initiating Electronic Access Member must also submit a contra-side paired order. The initiating order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order.[7] At the conclusion of a PIM, the Agency Order will be executed in full at the best prices available, taking into consideration orders and quotes in the Exchange market and Improvement Orders.[8] ISE's PIM is very similar to Cboe's Automated Price Improvement Mechanism or ''AIM.'' [9] Options 3A, Section 12 describes a FLEX PIM Auction. ISE's FLEX PIM is consistent with non-FLEX PIM auction behavior.[10]

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ''initiating order'' is the order comprised of principal interest or a solicited order(s) submitted to trade against the order the submitting Electronic Access Member represents as agent (the ''Agency Order'').

[4] Agency Orders are orders entered by a Member that are represented as agent.

[5] *See* Securities Exchange Act Release No. 105049 (March 19, 2026), 91 FR 14057 (March 24, 2026) (SR–Cboe–2025–090).

[6] Immediate-or-Cancel is an order entered with a TIF of ''IOC'' that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. *See* Supplementary Material .02(d) to Options 3, Section 7.

[7] *See* Options 3, Section 13(c)(2). Responses in PIM are called Improvement Orders. *See also* Options 3A, Section 13(c)(5).

[8] The Agency Order will receive executions at multiple price levels if there is insufficient size to execute the entire order at the best price. *See* Options 3, Section 13(d).

[9] An AIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). Upon submitting an Agency Order into an AIM Auction, the initiating Trading Permit Holder (''Initiating TPH'') must also submit a contra-side second order (''Initiating Order'') for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order. *See* Cboe Rule 5.37(c)(5). At the conclusion of an AIM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated a certain percentage (or more) of the Agency Order. *See* Cboe Rule 5.37(e).

[10] *See* Securities Exchange Act Release No. 101720 (November 22, 2024), 89 FR 94986 (November 29, 2024) (SR–ISE–2024–12) (Notice of

Additionally, ISE's FLEX PIM is similar to Cboe Rule 5.73.

SOM

Options 3, Section 11(d) and Options 3A, Section 13 contain the requirements applicable to the execution of Agency Orders using SOM. A SOM Auction is an electronic auction intended to provide a larger-sized (orders of 500 or more contracts) Agency Order with the opportunity to receive price improvement over the NBBO. Options 3, Section 13 and Options 3A, Section 12 contain the requirements applicable to the execution of orders the Electronic Access Member represents as agent using PIM. A PIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). Upon submitting an Agency Order into a SOM, the initiating Electronic Access Member must also submit a contra-side paired order. The initiating order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order.[11] At the conclusion of a SOM, execution will depend on whether there is sufficient size to execute the entire Agency Order at an improved price (or prices) [12] as the SOM is designated as all-or-none.[13] ISE's SOM is very similar to Cboe's Solicited Auction Mechanism or ''SAM.'' [14] Options 3A, Section 13 describes a FLEX SOM Auction. ISE's FLEX SOM is consistent with non-FLEX SOM auction behavior.[15] Additionally, ISE's FLEX SOM is similar to Cboe Rule 5.74.

Facilitation Mechanism

Options 3, Section 11(b) describes a Facilitation Mechanism which is an electronic auction intended to provide a larger-sized Agency Order with the opportunity to receive price improvement over the NBBO. Block-sized orders (fifty (50) contracts or more pursuant to Options 3, Section 11(a)) may be entered into a Facilitation Mechanism by a Member to facilitate a customer order it represents as agent. Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism pursuant to Options 3, Section 11(b). Under this mechanism, a Member submits a Facilitation Order along with a matching contra-side order, and the System initiates an auction during which other participants may submit competing responses. At the conclusion of the auction, the facilitating Member is entitled to a guaranteed participation right at the final execution price, provided the Member's price matches or improves upon the best competing response. Pursuant to Options 3, Section 11(b)(4)(B), the facilitating Member may be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order, but only after better-priced Responses, orders and quotes, as well as Primary Customer Orders and Primary Customer Responses at the facilitation price, are executed in full at such price point.

The Exchange notes that Cboe does not have a Facilitation Mechanism. The ISE Facilitation Mechanism is similar to Cboe's SAM. The key differences are:

- the ISE Facilitation Mechanism requires a minimum of 50 contracts pursuant to Options 3, Section 11(b) while a Cboe SAM requires a minimum of 500 contracts pursuant to Cboe Rule 5.39(a)(3);
or-none allocation at Cboe Rule 5.39(e) while the ISE Facilitation Mechanism must be willing to execute the entire size at Options 3, Section 11(b); and
- Cboe Rule 5.39 requires that a Cboe Trading Permit Holder submit for execution an order it represents as agent (''Agency Order'') against a solicited order(s) (which cannot have a Capacity F for the same EFID as the Agency Order into a SAM pursuant to Cboe Rule 5.39 wherein the Agency Order and Solicited Order cannot both be for the accounts of Priority Customers whereas the ISE Facilitation Mechanism does not have similar limitations.

These aforementioned differences do not result in a different analysis as to the impact of permitting orders by Members in a Facilitation Mechanism to trade against the Agency Orders for the accounts of Market Makers assigned to the options class. The Exchange's analysis below applies to the Facilitation Mechanism as it applies to a SOM, PIM or FLEX SOM or FLEX PIM.

Proposal

Currently, Supplementary Material .01 and .03 to Options 3, Section 11, Supplementary Material .06 to Options 3, Section 13, Options 3A, Section 12, and Supplementary Material .02 to Options 3A, Section 13 prohibit orders by Members in a Facilitation Auction, SOM, PIM, FLEX PIM or FLEX SOM (collectively ''Paired Auctions''), respectively, to trade against the Agency Orders for the accounts of Market Makers assigned to the options class. The Exchange notes Market Makers may not be solicited as the contra-side for complex Facilitation Auctions, SOMs and PIMs. Cboe does not similarly limit the contra-side for their complex AIM, complex SAM, complex FLEX AIM or complex FLEX SAM auctions.[16] The Exchange's proposal would therefore apply to both simple and complex orders.

While market participants other than assigned Market Makers may contribute liquidity to these Paired Auctions as

Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rules To List and Trade FLEX Options). Footnote 136 notes that the Exchange's proposal will be consistent with current non-FLEX auction behavior, including current PIM behavior.

[11] *See* Options 3, Section 11(b)(3) and (d)(2) and Section 13(c)(2). Responses in PIM are called Improvement Orders. *See also* Options 3A, Section 12(c)(5) and Section 13(c)(5).

[12] If at the time of execution there is insufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed against the solicited order at the proposed execution price so long as, at the time of execution: (i) the execution price is equal to or better than the best bid or offer on the Exchange, and (ii) there are no Priority Customer Orders or Priority Customer Responses on the Exchange that are priced equal to the proposed execution price. If there are Priority Customer Orders or Priority Customer Responses on the Exchange on the opposite side of the Agency Order at the proposed execution price and there is sufficient size to execute the entire size of the Agency Order, the Agency Order will be executed against the bid or offer, and the solicited order will be cancelled. *See* Options 3, Section 11(d)(3)(A). If at the time of execution there is sufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed at the improved price(s), provided the execution price is equal to or better than the best bid or offer on the Exchange, and the solicited order will be cancelled. *See* Options 3, Section 11(d)(3)(B). In each case the aggregate size of all orders, quotes and Responses at each price will be used to determine whether the entire agency order can be executed at an improved price (or prices).

[13] *See* Options 3, Section 11(d).

[14] A SAM Auction is an electronic auction intended to provide a larger-sized Agency Order with the opportunity to receive price improvement over the NBBO. Upon submitting an Agency Order into a SAM Auction, the initiating Trading Permit Holder (''Initiating TPH'') must also submit a contra-side second order (''Initiating Order'') for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order. *See* Cboe Rule 5.39(c)(5). At the conclusion of a SAM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated the entire Agency Order or none of the Agency Order. *See* Cboe Rule 5.39(e).

[15] *See* Securities Exchange Act Release No. 101720 (November 22, 2024), 89 FR 94986 (November 29, 2024) (SR–ISE–2024–12) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rules To List and Trade FLEX Options). Footnote 136 notes that the Exchange's proposal will be consistent with current non-FLEX auction behavior, including current SOM behavior.

[16] *See supra* note 5.

either a contra-side order or responses, assigned Market Makers, who are the primary source of liquidity on the Exchange in their assigned options, are limited in the manner in which they may provide liquidity to these Paired Auctions. Given that contra-side orders that comprise initiating orders may be allocated a percentage of the Agency Order at the conclusion of the auctions, the limited ability of assigned Market Makers to participate in a Paired Auction may reduce the execution opportunities for these liquidity providers, which execution opportunities are available to other market participants who may be solicited or submit responses.

The Exchange believes that eliminating the prohibition against assigned Market Makers acting as contra in Paired Auctions would enhance price improvement opportunities in the Paired Auctions. This is particularly for retail and smaller Priority Customer orders in a PIM. Allowing assigned Market Makers registered with the Exchange to be facilitated or solicited as contras may result in exposure of more small Priority Customer orders to potential price improvement via auction processes in a PIM. The Exchange further notes that Options 3, Section 22(d) (Limitations on Order Entry) provides that, prior to or after submitting an order to ISE, a Member cannot inform another Member or any other third party of any of the terms of the order for purposes of violating this Rule. This protection will remain in place under the proposed rule change to address any potential information leakage concerns in the Paired Auctions as Options 3, Section 22 applies to the Paired Auctions.

The Exchange believes that the restriction has become operationally outdated in current market structure. It is common practice that Agency Orders already involve the same Market Maker firm acting as both the contra-side (in an away Market Maker capacity) and auction respondent (as an assigned Market Maker registered on the Exchange). Eliminating this restriction would reduce an arbitrary and unnecessary burden and allow Market Makers to structure more efficient auction processes, which may ultimately promote greater competition among Market Makers and provide market participants with enhanced opportunities for price improvement.

The Exchange is proposing to amend Supplementary Material .01 and .03 to Options 3, Section 11, Supplementary Material .06 to Options 3, Section 13, Options 3A, Section 12, and Supplementary Material .02 to Options 3A, Section 13 to permit orders for the accounts of Market Makers in an assigned options class to be solicited for the initiating order submitted for execution against an Agency Order in all options. The Exchange believes providing assigned Market Makers with an additional way to participate in Paired Auctions will expand available liquidity for these Paired Auctions, which may increase execution and price improvement opportunities, particularly for Priority Customer orders in a PIM. The Exchange notes that no similar restriction applies to crossing transactions in open outcry trading.[17] Brokers seeking liquidity to execute against customer orders on the trading floor regularly solicit assigned Floor Market Makers in the applicable class for this liquidity, as they are generally the primary source of liquidity in a class. Therefore, the Exchange believes the proposed rule change will further align open outcry and Paired Auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in Paired Auctions across all options at all times.

In addition to Cboe, the Exchange notes the electronic price improvement auction of another options exchange currently permits orders for the accounts of appointed market-makers to be solicited as the contra orders for that auction.[18]

Options 5, Section 4

The Exchange proposes to amend subparagraph (a) at Options 5, Section 4, Order Routing, which currently states, ''Immediate-or-Cancel (''IOC'') Orders will be cancelled immediately if not executed, and will not be routed.'' The Exchange proposes to instead state that, ''Immediate-or-Cancel (''IOC'') Orders will be rejected and will not be routed.'' While the current sentence reflects the operation of IOC Orders as provided in Supplementary Material .02(d) to Options 3, Section 7, within the context of routing, the sentence may be confusing. Options 5, Section 4 explains the manner in which various order types are handled differently for purposes of routing. An IOC Order will not rest on the order book by its definition and cannot route. The Exchange proposes to amend the language to be clear that IOC Orders are not subject to routing and therefore would be rejected. This proposed language is consistent with Supplementary Material .02(d) to Options 3, Section 7 and makes clear the treatment of IOC Orders for purposes of Options 5, Section 4.

Implementation

The Exchange proposes to implement these proposed changes on or before Q3 2026. The Exchange will issue an Options Trader Alert indicating the date the changes will be implemented.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes the proposed rule change will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will provide the primary liquidity providers on the Exchange with an additional way to participate in Paired Auctions. Additionally, by permitting brokers to solicit primary liquidity providers in a class for Paired Auctions, the Exchange believes brokers will be able to more efficiently locate liquidity to fill their customer orders, particularly during times of volatility. As a result, the Exchange believes the proposed rule change will likely expand available liquidity for these Paired Auctions, which may create additional execution and price improvement opportunities for market participants at all times, which ultimately benefits investors.

The Exchange believes the proposed rule change is consistent with the Act because it will further align open outcry and Paired Auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as the contra-side in both types of auctions across all options. Currently, assigned Market Makers may be solicited with respect to crossing transactions on trading floors but may not be solicited with respect to Paired Auctions.[21] The Exchange believes there is no reason to

[17] *See e.g.,* Nasdaq Phlx LLC (''Phlx'') Options 8 Rules.

[18] *See* NYSE American, Inc. (''American'') Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. *See also https://www.nyse.com/markets/american-options/cube-customer-best-execution.*

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] Phlx's trading floor does not have a similar restriction. *See* Phlx Options 8 Rules.

restrict a Market Maker's ability to provide liquidity into Paired Auctions when they are able to similarly provide that liquidity in open outcry trading. As noted above, the electronic price improvement auction of another options exchange currently permits orders for the accounts of assigned market makers to be solicited as the contra-side orders for that auction.[22]

In particular, the Exchange believes the proposed rule change will promote competition in Paired Auctions, including competition to initiate Paired Auctions, which will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors. The Exchange believes the availability of this liquidity to Agency Orders will positively affect the experience for Agency Orders and overall quality of the auctions. Furthermore, the Exchange believes increasing the number of market participants available to be solicited may increase competition to provide initiating orders, which may lead to a Paired Auction being initiated at a better price. More market participants competing to provide initiating orders may lead to solicited parties providing more aggressive initial prices. The Exchange believes the ability of all market participants, including assigned Market Makers that did not submit an initiating order, to become the contra-side to a Paired Auction will continue to provide competition for executions against Agency Orders.

The Exchange believes any risk that assigned Market Makers may misuse the nonpublic information of an upcoming Paired Auction is de minimis. Supplementary Material .03 to Options 3, Section 22 provides that the exposure requirement applicable to principal transactions in Options 3, Section 22(b)[23] applies to the entry of orders with knowledge that there is a pre-existing unexecuted agency, proprietary, or solicited order on the Exchange. Members may demonstrate that orders were entered without knowledge by providing evidence that effective information barriers between the persons, business units, and/or systems entering the orders onto the Exchange were in existence at the time the orders were entered. Such information barriers must be fully documented and provided to the Exchange upon request. Further, the Exchange notes that Supplementary Material .01 to Options 3, Section 13 prohibits a pattern or practice of submitting orders or quotes or the purpose of disrupting or manipulating PIM Auctions, and Options 9, Section 9 requires Members to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by Members and their associated persons. Finally, Options 3, Section 22(d) (Limitations on Order Entry) provides that, prior to or after submitting an order to ISE, a Member cannot inform another Member or any other third party of any of the terms of the order for purposes of violating the Rule.

The Exchange believes the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it will permit orders for accounts of assigned Market Makers to be solicited in the same manner as orders for the accounts of all other market participants. Currently, all market participants other than assigned Market Makers may be solicited as the contra-side and submit responses in Paired Auctions for all options. Given the additional costs and obligations associated with being an assigned Market Maker, the Exchange does not believe these Market Makers should have fewer execution opportunities with respect to volume submitted for execution through Paired Auctions and not for electronic execution against interest in the book. The Exchange believes the proposed rule change will provide all Market Makers on the Exchange with the same ability to participate in Paired Auctions in all options at all times, which may further increase execution and price improvement opportunities for market participants.

Cboe does not have an auction equivalent to the Facilitation Mechanism, however the Exchange's Facilitation Mechanism is similar to Cboe's SAM. The key differences noted in the Purpose section do not differentiate the Facilitation Mechanism for purposes of permitting orders by Members in a Facilitation Mechanism to trade against the Agency Orders for the accounts of Market Makers assigned to the options class. The Exchange's aforementioned analysis applies to the Facilitation Mechanism as it applies to a SOM, PIM or FLEX SOM or FLEX PIM in the same manner as it applies to the Paired Auctions.

Options 5, Section 4

The Exchange's proposal to amend Options 5, Section 4(a) is consistent with the Act because it will bring greater clarity to the current rule text by clearly explaining that IOC Orders will not route.

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 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 it provides the same execution opportunities in Paired Auctions to assigned Market Makers that are currently available to all other market participants. Additionally, the proposed rule change will further align open outcry and Paired Auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as a contra-side in auctions across all options.

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 it relates to orders submitted into Paired Auctions on the Exchange. Additionally, the Exchange notes that, in addition to Cboe, the rules of at least one other options exchange permits orders for the accounts of assigned market makers to be solicited as contra-side orders for that exchange's electronic price improvement auction.[24] The Exchange believes the proposed rule change may improve price competition within Paired Auctions, because the primary liquidity providers will be able to increase participation in Paired Auctions.

[22] *See supra* notes 5 and 18.

[23] Electronic Access Members may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second, (ii) the Electronic Access Member has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer, or (iii) the Member utilizes the Facilitation Mechanism pursuant to Options 3, Section 11(b) and (c); (iv) the Member utilizes the Price Improvement Mechanism for Crossing Transactions pursuant to Options 3, Section 13; (v) the Member utilizes Qualified Contingent Cross Orders pursuant to Options 3, Section 12(c) and (d); (vi) the Member utilizes a Customer Cross Order pursuant to Options 3, Sections 12(a) or (b); or (vii) the Member utilizes a Complex Order Exposure pursuant to Supplementary Material .01 to Options 3, Section 14. Electronic Access Members may not execute as principal orders they represent as agent within the Solicitation Mechanism pursuant to Options 3, Section 11(d) and (e). *See* Options 3, Section 22(b).

[24] *See supra* note 18.

Options 5, Section 4

The Exchange's proposal to amend Options 5, Section 4(a) does not impose an undue burden on competition, rather the proposal clarifies the current rule text.

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 Act [25] and subparagraph (f)(6) of Rule 19b–4 thereunder.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–ISE–2026–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–ISE–2026–18. 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–ISE–2026–18 and should be submitted on or before May 13, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Vanessa A. Countryman,

Secretary.

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[25] 15 U.S.C. 78s(b)(3)(A)(iii).

[26] 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.

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105267; File No. SR–MRX–2026–16]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Auction Mechanisms

April 17, 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 Apri1 13, 2026, Nasdaq MRX, LLC (''MRX'' 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit orders for the accounts of Market Makers assigned to the options class to be solicited for the initiating order [3] submitted for execution against an agency order into a Facilitation Mechanism, the Solicited Order Mechanism (''SOM'') or a Price Improvement Mechanism (''PIM'').

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/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 Supplementary Material .01 and .03 to Options 3, Section 11 (Auction Mechanisms), Supplementary Material .06 to Options 3, Section 13 (Price Improvement Mechanism for Crossing Transactions) to permit orders by Members in a Facilitation Mechanism, a SOM, and a PIM to trade against the Agency Orders [4] for the accounts of Market Makers assigned to the options class. Cboe Exchange, Inc. (''Cboe'') recently received approval to amend its rules in an identical manner.[5] The Exchange also proposes an amendment to Options 5, Section 4 relating to the

[3] The ''initiating order'' is the order comprised of principal interest or a solicited order(s) submitted to trade against the order the submitting Electronic Access Member represents as agent (the ''Agency Order'').

[4] Agency Orders are orders entered by a Member that are represented as agent.

[5] *See* Securities Exchange Act Release No. 105049 (March 19, 2026), 91 FR 14057 (March 24, 2026) (SR–Cboe–2025–090).

handling of Immediate-or-Cancel Orders.[6]

Background

PIM

A PIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). There is no specific size requirement for a PIM Auction. Upon submitting an Agency Order into a PIM, the initiating Electronic Access Member must also submit a contra-side paired order. The initiating order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order.[7] At the conclusion of a PIM, the Agency Order will be executed in full at the best prices available, taking into consideration orders and quotes in the Exchange market and Improvement Orders.[8] MRX's PIM is very similar to Cboe's Automated Price Improvement Mechanism or ''AIM.'' [9]

SOM

Options 3, Section 11(d) contains the requirements applicable to the execution of Agency Orders using SOM. A SOM Auction is an electronic auction intended to provide a larger-sized (orders of 500 or more contracts) Agency Order with the opportunity to receive price improvement over the NBBO. Options 3, Section 13 contains the requirements applicable to the execution of orders the Electronic Access Member represents as agent using PIM. A PIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). Upon submitting an Agency Order into a SOM, the initiating Electronic Access Member must also submit a contra-side paired order. The initiating order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order.[10] At the conclusion of a SOM, execution will depend on whether there is sufficient size to execute the entire Agency Order at an improved price (or prices) [11] as the SOM is designated as all-or-none.[12] MRX's SOM is very similar to Cboe's Solicited Auction Mechanism or ''SAM.'' [13]

Facilitation Mechanism

Options 3, Section 11(b) describes a Facilitation Mechanism which is an electronic auction intended to provide a larger-sized Agency Order with the opportunity to receive price improvement over the NBBO. Block-sized orders (fifty (50) contracts or more pursuant to Options 3, Section 11(a)) may be entered into a Facilitation Mechanism by a Member to facilitate a customer order it represents as agent. Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism pursuant to Options 3, Section 11(b). Under this mechanism, a Member submits a Facilitation Order along with a matching contra-side order, and the System initiates an auction during which other participants may submit competing responses. At the conclusion of the auction, the facilitating Member is entitled to a guaranteed participation right at the final execution price, provided the Member's price matches or improves upon the best competing response. Pursuant to Options 3, Section 11(b)(4)(B), the facilitating Member may be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order, but only after better-priced Responses, orders and quotes, as well as Primary Customer Orders and Primary Customer Responses at the facilitation price, are executed in full at such price point.

The Exchange notes that Cboe does not have a Facilitation Mechanism. The MRX Facilitation Mechanism is similar to Cboe's SAM. The key differences are:

- the MRX Facilitation Mechanism requires a minimum of 50 contracts pursuant to Options 3, Section 11(b) while a Cboe SAM requires a minimum of 500 contracts pursuant to Cboe Rule 5.39(a)(3);
- Cboe's SAM has an all-or-none allocation at Cboe Rule 5.39(e) while the MRX Facilitation Mechanism must be willing to execute the entire size at Options 3, Section 11(b); and
- Cboe Rule 5.39 requires that a Cboe Trading Permit Holder submit for execution an order it represents as agent (''Agency Order'') against a solicited order(s) (which cannot have a Capacity F for the same EFID as the Agency Order into a SAM pursuant to Cboe Rule 5.39 wherein the Agency Order and Solicited Order cannot both be for the accounts of Priority Customers whereas the MRX Facilitation Mechanism does not have similar limitations.

These aforementioned differences do not result in a different analysis as to the impact of permitting orders by Members in a Facilitation Mechanism to trade against the Agency Orders for the accounts of Market Makers assigned to the options class. The Exchange's analysis below applies to the

[6] Immediate-or-Cancel is an order entered with a TIF of ''IOC'' that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. *See* Supplementary Material .02(d) to Options 3, Section 7.

[7] *See* Options 3, Section 13(c)(2). Responses in PIM are called Improvement Orders.

[8] The Agency Order will receive executions at multiple price levels if there is insufficient size to execute the entire order at the best price. *See* Options 3, Section 13(d).

[9] An AIM Auction is an electronic auction intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer (''NBBO'')). Upon submitting an Agency Order into an AIM Auction, the initiating Trading Permit Holder (''Initiating TPH'') must also submit a contra-side second order (''Initiating Order'') for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order. *See* Cboe Rule 5.37(c)(5). At the conclusion of an AIM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated a certain percentage (or more) of the Agency Order. *See* Cboe Rule 5.37(e).

[10] *See* Options 3, Section 11(b)(3) and (d)(2) and Section 13(c)(2). Responses in PIM are called Improvement Orders.

[11] If at the time of execution there is insufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed against the solicited order at the proposed execution price so long as, at the time of execution: (i) the execution price is equal to or better than the best bid or offer on the Exchange, and (ii) there are no Priority Customer Orders or Priority Customer Responses on the Exchange that are priced equal to the proposed execution price. If there are Priority Customer Orders or Priority Customer Responses on the Exchange on the opposite side of the Agency Order at the proposed execution price and there is sufficient size to execute the entire size of the Agency Order, the Agency Order will be executed against the bid or offer, and the solicited order will be cancelled. *See* Options 3, Section 11(d)(3)(A). If at the time of execution there is sufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed at the improved price(s), provided the execution price is equal to or better than the best bid or offer on the Exchange, and the solicited order will be cancelled. *See* Options 3, Section 11(d)(3)(B). In each case the aggregate size of all orders, quotes and Responses at each price will be used to determine whether the entire agency order can be executed at an improved price (or prices).

[12] *See* Options 3, Section 11(d).

[13] A SAM Auction is an electronic auction intended to provide a larger-sized Agency Order with the opportunity to receive price improvement over the NBBO. Upon submitting an Agency Order into a SAM Auction, the initiating Trading Permit Holder (''Initiating TPH'') must also submit a contra-side second order (''Initiating Order'') for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order. *See* Cboe Rule 5.39(c)(5). At the conclusion of a SAM Auction, depending on the contra-side interest (including auction responses) available, the Initiating Order may be allocated the entire Agency Order or none of the Agency Order. *See* Cboe Rule 5.39(e).

Facilitation Mechanism as it applies to a SOM or PIM.

Proposal

Currently, Supplementary Material .01 and .03 to Options 3, Section 11, Supplementary Material .06 to Options 3, Section 13 prohibit orders by Members in a Facilitation Auction, SOM, or PIM (collectively ''Paired Auctions''), respectively, to trade against the Agency Orders for the accounts of Market Makers assigned to the options class. The Exchange notes Market Makers may not be solicited as the contra-side for complex Facilitation Auctions, SOMs and PIMs. Cboe does not similarly limit the contra-side for their complex AIM, complex SAM.[14] The Exchange's proposal would therefore apply to both simple and complex orders.

While market participants other than assigned Market Makers may contribute liquidity to these Paired Auctions as either a contra-side order or responses, assigned Market Makers, who are the primary source of liquidity on the Exchange in their assigned options, are limited in the manner in which they may provide liquidity to these Paired Auctions. Given that contra-side orders that comprise initiating orders may be allocated a percentage of the Agency Order at the conclusion of the auctions, the limited ability of assigned Market Makers to participate in a Paired Auction may reduce the execution opportunities for these liquidity providers, which execution opportunities are available to other market participants who may be solicited or submit responses.

The Exchange believes that eliminating the prohibition against assigned Market Makers acting as contra in Paired Auctions would enhance price improvement opportunities in the Paired Auctions. This is particularly for retail and smaller Priority Customer orders in a PIM. Allowing assigned Market Makers registered with the Exchange to be facilitated or solicited as contras may result in exposure of more small Priority Customer orders to potential price improvement via auction processes in a PIM. The Exchange further notes that Options 3, Section 22(d) (Limitations on Order Entry) provides that, prior to or after submitting an order to MRX, a Member cannot inform another Member or any other third party of any of the terms of the order for purposes of violating this Rule. This protection will remain in place under the proposed rule change to address any potential information leakage concerns in the Paired Auctions as Options 3, Section 22 applies to the Paired Auctions.

The Exchange believes that the restriction has become operationally outdated in current market structure. It is common practice that Agency Orders already involve the same Market Maker firm acting as both the contra-side (in an away Market Maker capacity) and auction respondent (as an assigned Market Maker registered on the Exchange). Eliminating this restriction would reduce an arbitrary and unnecessary burden and allow Market Makers to structure more efficient auction processes, which may ultimately promote greater competition among Market Makers and provide market participants with enhanced opportunities for price improvement.

The Exchange is proposing to amend Supplementary Material .01 and .03 to Options 3, Section 11, Supplementary Material .06 to Options 3, Section 13 to permit orders for the accounts of Market Makers in an assigned options class to be solicited for the initiating order submitted for execution against an Agency Order in all options. The Exchange believes providing assigned Market Makers with an additional way to participate in Paired Auctions will expand available liquidity for these Paired Auctions, which may increase execution and price improvement opportunities, particularly for Priority Customer orders in a PIM. The Exchange notes that no similar restriction applies to crossing transactions in open outcry trading.[15] Brokers seeking liquidity to execute against customer orders on the trading floor regularly solicit assigned Floor Market Makers in the applicable class for this liquidity, as they are generally the primary source of liquidity in a class. Therefore, the Exchange believes the proposed rule change will further align open outcry and Paired Auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as contras in Paired Auctions across all options at all times.

In addition to Cboe, the Exchange notes the electronic price improvement auction of another options exchange currently permits orders for the accounts of appointed market-makers to be solicited as the contra orders for that auction.[16]

Options 5, Section 4

The Exchange proposes to amend subparagraph (a) at Options 5, Section 4, Order Routing, which currently states, ''Immediate-or-Cancel (''IOC'') Orders will be cancelled immediately if not executed, and will not be routed.'' The Exchange proposes to instead state that, ''Immediate-or-Cancel (''IOC'') Orders will be rejected and will not be routed.'' While the current sentence reflects the operation of IOC Orders as provided in Supplementary Material .02(d) to Options 3, Section 7, within the context of routing, the sentence may be confusing. Options 5, Section 4 explains the manner in which various order types are handled differently for purposes of routing. An IOC Order will not rest on the order book by its definition and cannot route. The Exchange proposes to amend the language to be clear that IOC Orders are not subject to routing and therefore would be rejected. This proposed language is consistent with Supplementary Material .02(d) to Options 3, Section 7 and makes clear the treatment of IOC Orders for purposes of Options 5, Section 4.

Implementation

The Exchange proposes to implement these proposed changes on or before Q3 2026. The Exchange will issue an Options Trader Alert indicating the date the changes will be implemented.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes the proposed rule change will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will provide the primary liquidity providers on the Exchange with an additional way to participate in Paired Auctions. Additionally, by permitting brokers to solicit primary liquidity providers in a class for Paired Auctions, the Exchange believes brokers will be able to more efficiently locate liquidity

[14] *See supra* note 5.

[15] *See e.g.,* Nasdaq Phlx LLC (''Phlx'') Options 8 Rules.

[16] *See* NYSE American, Inc. (''American'') Rule 971.1NY and NYSE Pillar Options FIX Gateway Protocol Specification, Section 5.2, New Cross Order. *See also https://www.nyse.com/markets/american-options/cube-customer-best-execution.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

to fill their customer orders, particularly during times of volatility. As a result, the Exchange believes the proposed rule change will likely expand available liquidity for these Paired Auctions, which may create additional execution and price improvement opportunities for market participants at all times, which ultimately benefits investors.

The Exchange believes the proposed rule change is consistent with the Act because it will further align open outcry and Paired Auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to be solicited as the contra-side in both types of auctions across all options. Currently, assigned Market Makers may be solicited with respect to crossing transactions on trading floors but may not be solicited with respect to Paired Auctions.[19] The Exchange believes there is no reason to restrict a Market Maker's ability to provide liquidity into Paired Auctions when they are able to similarly provide that liquidity in open outcry trading. As noted above, the electronic price improvement auction of another options exchange currently permits orders for the accounts of assigned market makers to be solicited as the contra-side orders for that auction.[20]

In particular, the Exchange believes the proposed rule change will promote competition in Paired Auctions, including competition to initiate Paired Auctions, which will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors. The Exchange believes the availability of this liquidity to Agency Orders will positively affect the experience for Agency Orders and overall quality of the auctions. Furthermore, the Exchange believes increasing the number of market participants available to be solicited may increase competition to provide initiating orders, which may lead to a Paired Auction being initiated at a better price. More market participants competing to provide initiating orders may lead to solicited parties providing more aggressive initial prices. The Exchange believes the ability of all market participants, including assigned Market Makers that did not submit an initiating order, to become the contra-side to a Paired Auction will continue to provide competition for executions against Agency Orders.

The Exchange believes any risk that assigned Market Makers may misuse the nonpublic information of an upcoming Paired Auction is de minimis. Supplementary Material .03 to Options 3, Section 22 provides that the exposure requirement applicable to principal transactions in Options 3, Section 22(b)[21] applies to the entry of orders with knowledge that there is a pre-existing unexecuted agency, proprietary, or solicited order on the Exchange. Members may demonstrate that orders were entered without knowledge by providing evidence that effective information barriers between the persons, business units, and/or systems entering the orders onto the Exchange were in existence at the time the orders were entered. Such information barriers must be fully documented and provided to the Exchange upon request. Further, the Exchange notes that Supplementary Material .01 to Options 3, Section 13 prohibits a pattern or practice of submitting orders or quotes or the purpose of disrupting or manipulating PIM Auctions, and Options 9, Section 9 requires Members to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by Members and their associated persons. Finally, Options 3, Section 22(d) (Limitations on Order Entry) provides that, prior to or after submitting an order to MRX, a Member cannot inform another Member or any other third party of any of the terms of the order for purposes of violating the Rule.

The Exchange believes the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it will permit orders for accounts of assigned Market Makers to be solicited in the same manner as orders for the accounts of all other market participants. Currently, all market participants other than assigned Market Makers may be solicited as the contra-side and submit responses in Paired Auctions for all options. Given the additional costs and obligations associated with being an assigned Market Maker, the Exchange does not believe these Market Makers should have fewer execution opportunities with respect to volume submitted for execution through Paired Auctions and not for electronic execution against interest in the book. The Exchange believes the proposed rule change will provide all Market Makers on the Exchange with the same ability to participate in Paired Auctions in all options at all times, which may further increase execution and price improvement opportunities for market participants.

Cboe does not have an auction equivalent to the Facilitation Mechanism, however the Exchange's Facilitation Mechanism is similar to Cboe's SAM. The key differences noted in the Purpose section do not differentiate the Facilitation Mechanism for purposes of permitting orders by Members in a Facilitation Mechanism to trade against the Agency Orders for the accounts of Market Makers assigned to the options class. The Exchange's aforementioned analysis applies to the Facilitation Mechanism as it applies to a SOM, and PIM in the same manner as it applies to the Paired Auctions.

Options 5, Section 4

The Exchange's proposal to amend Options 5, Section 4(a) is consistent with the Act because it will bring greater clarity to the current rule text by clearly explaining that IOC Orders will not route.

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 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 it provides the same execution opportunities in Paired Auctions to assigned Market Makers that are currently available to all other market participants. Additionally, the proposed rule change will further align open outcry and Paired Auctions and the execution and price improvement opportunities available in both auctions by permitting the same participants to

[19] Phlx's trading floor does not have a similar restriction. *See* Phlx Options 8 Rules.

[20] *See supra* notes 5 and 16.

[21] Electronic Access Members may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second, (ii) the Electronic Access Member has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer, or (iii) the Member utilizes the Facilitation Mechanism pursuant to Options 3, Section 11(b) and (c); (iv) the Member utilizes the Price Improvement Mechanism for Crossing Transactions pursuant to Options 3, Section 13; (v) the Member utilizes Qualified Contingent Cross Orders pursuant to Options 3, Section 12(c) and (d); (vi) the Member utilizes a Customer Cross Order pursuant to Options 3, Sections 12(a) or (b); or (vii) the Member utilizes a Complex Order Exposure pursuant to Supplementary Material .01 to Options 3, Section 14. Electronic Access Members may not execute as principal orders they represent as agent within the Solicitation Mechanism pursuant to Options 3, Section 11(d) and (e). *See* Options 3, Section 22(b).

be solicited as a contra-side in auctions across all options.

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 it relates to orders submitted into Paired Auctions on the Exchange. Additionally, the Exchange notes that, in addition to Cboe, the rules of at least one other options exchange permits orders for the accounts of assigned market makers to be solicited as contra-side orders for that exchange's electronic price improvement auction.[22] The Exchange believes the proposed rule change may improve price competition within Paired Auctions, because the primary liquidity providers will be able to increase participation in Paired Auctions.

Options 5, Section 4

The Exchange's proposal to amend Options 5, Section 4(a) does not impose an undue burden on competition, rather the proposal clarifies the current rule text.

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 Act[23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

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–MRX–2026–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MRX–2026–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's 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–MRX–2026–16 and should be submitted on or before May 13, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Vanessa A. Countryman,

Secretary.

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[22] *See supra* note 15.

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 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.

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105261; File No. S7–2026–07]

Reopening of Comment Period; Notice of Request for Exemptive Relief, Pursuant to Section 36(a) of the Securities Exchange Act of 1934, From Certain Aspects of Rule 17ad–22(e)(18)(iv) of the Securities Exchange Act of 1934 and Request for Comment

April 17, 2026.

I. Introduction

On December 13, 2023, the Commission adopted,[1] among other things, Rule 17ad–22(e)(18)(iv)(A) (the ''Trade Submission Requirement'')[2] under the Exchange Act. The Trade Submission Requirement requires a covered clearing agency that provides central counterparty services for transactions in U.S. Treasury securities (''U.S. Treasury securities CCA'')[3] to establish, implement, maintain and enforce written policies and procedures reasonably designed to require that any direct participant must submit for clearance and settlement all ''eligible secondary market transactions'' to which that direct participant is a counterparty. An ''eligible secondary market transaction'' is, in turn, defined as (i) a repurchase or reverse repurchase agreement collateralized by U.S. Treasury securities, in which one of the counterparties is a direct participant (''repo''); or (ii) a purchase or sale, between a direct participant and: (A) any counterparty, if the direct participant of the covered clearing agency brings together multiple buyers and sellers using a trading facility (such as a limit order book) and is a counterparty to both the buyer and seller in two separate transactions; or (B) a registered broker-dealer, government securities broker, or government securities dealer.[4]

On February 27, 2026, a trade association submitted a letter to the Commission requesting exemptive relief from the Trade Submission Requirement for certain Non-U.S. Transactions, specifically, the transactions of foreign financial institutions who are direct participants of a U.S. Treasury securities

[1] 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, 2737 (Jan. 16, 2024).

[2] 17 CFR 240.17ad–22(e)(18)(iv)(A).

[3] The U.S. Treasury securities CCAs are the Fixed Income Clearing Corporation, the CME Securities Clearing Corp., and ICE Clear Credit, LLC.

[4] 17 CFR 240.17ad–22(a).

CCA when transacting with non-U.S. clients. On March 6, 2026, the Commission published the Notice to request and encourage interested persons to comment on the request for exemptive relief pursuant to Section 36 of the Exchange Act, including whether the Commission should grant the request.[5] As part of the Notice, the Commission included specific questions to which it is soliciting comments.

The comment period for the Notice closed on April 10, 2026. The Commission believes that providing the public with additional time to consider and comment on the matters addressed in the Notice would benefit the Commission in its consideration of whether to grant the request for exemptive relief. Specifically, the Commission requests comments on (i) whether the relief requested interacts, if at all, with the relief requested by the Securities Industry and Financial Markets Association (''SIFMA''),[6] and (ii) whether there are any competitive concerns that could arise if the Commission granted the relief requested as noticed, including, but not limited to, the potential impact on liquidity in the U.S. Treasury market. Therefore, the Commission is reopening the comment period for the Notice until May 29, 2026.

II. Request for Comment

We request and encourage any interested person to submit comments on the requested relief, including whether the Commission should grant exemptive relief.

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 S7–2026–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa A. Coutryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–2026–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules-regulations/exchange-act-exemptive-notices-orders*). 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 publications submitted material that is obscene or subject to copyright protection.

For further information, you may contact Elizabeth Fitzgerald, Assistant Director, at (202) 551–6036, or Heather Percival, Senior Special Counsel, at (202) 551–3498, in the Division of Trading and Markets; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

By the Commission.

Dated: April 17, 2026.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026–07776 Filed 4–21–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0025]

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension: Rule 30e–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 30e–1 (17 CFR 270.30e–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') generally requires a registered investment company (''fund'') to transmit to its shareholders, at least semi-annually, reports containing the information that is required to be included in such reports by the fund's registration statement form under the Investment Company Act. The purpose of the collection of information required by rule 30e–1 is to provide fund shareholders with current information about the operation of their funds in accordance with Section 30 of the Investment Company Act.

The table below summarizes our estimates associated with rule 30e–1.

ESTIMATED BURDENS

	Internal annual burden hours		Wage rate [1]	Internal time costs	Annual external cost burden
Open-end Funds					
Estimated annual burden of rule 30e–1 per.	107 hours	×	$580 (blended rate for attorney and computer programmer) [2].	$62,060	$12,924.
Number of open-end funds	× 12,709 funds [3]			× 12,709 funds	× 12,709 funds.
Total annual burden	1,359,863 hours			$788,720,540	$164,251,116.
Closed-end Funds					
Estimated annual burden of rule 30e–1 per.	110 hours [4]	×	$580 (blended rate for attorney and computer programmer) [2].	$60,060	$14,664.

[5] Notice of Request for Exemptive Relief, Pursuant to Section 36(a) of the Securities Exchange Act of 1934, From Certain Aspects of Rule 17ad–22(e)(18)(iv) of the Securities Exchange Act of 1934 and Request for Comment, Exchange Act Release No. 104944 (Mar. 6, 2026), 91 FR 12030 (Mar. 11, 2026) (''Notice'').

[6] Notice of Request for Exemptive Relief, Pursuant to Section 36(a) of the Securities Exchange Act of 1934, From Certain Aspects of Rule 17ad–22(e)(18)(iv) of the Securities Exchange Act of 1934 and Request for Comment, Exchange Act Release No. 105262 (Apr. 17, 2026).

ESTIMATED BURDENS—Continued

	Internal annual burden hours		Wage rate [1]	Internal time costs	Annual external cost burden
Number of closed-end funds	× 694 funds			× 694 funds	× 694 funds.
Total annual burden	76,340 hours			$41,681,640	$10,176,816.
Separate Accounts					
Estimated annual burden of rule 30e–1 per.	88 hours	×	$580 (blended rate for attorney and computer programmer) [2].	$51,040	$12,424.
Number of separate accounts that are management investment companies that offer variable annuity contracts.	× 15 accounts			× 15 accounts	× 15 accounts.
Total annual burden	1,320 hours			$765,600	$186,360.
Total Final Estimated Burdens Including Amendments					
Current burden estimates	1,738,428				$155,164,791.
Revised burden estimates	1,437,523				$174,614,292.

[1] To calculate the occupational hourly rates used in this release, the Commission uses occupational mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for [''Securities, Commodity Contracts, and Other Financial Investments and Related Activities'' (NAICS 523)] [the private sector]. *See Occupational Employment and Wage Statistics,* U.S. Bureau of Labor Statistics, *https://www.bls.gov/oes/; see also Standard Occupational Classification,* U.S. Bureau of Labor Statistics, *https://www.bls.gov/soc/* (describing occupational classification system used by BLS); Exec. Off. of the President, Off. of Mgmt. & Budget, North American Industry Classification System (2022), *available at https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf* (describing the industry classification system used by BLS and other agencies). The mean hourly wage for each occupation is adjusted for changes in the seasonally adjusted employment cost index for private wages and salaries between the data reference period and when the data are released by BLS. *See Employment Cost Index,* U.S. Bureau of Labor Statistics, *https://www.bls.gov/eci/.* The adjusted mean hourly wage is then multiplied by a factor that accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as an average over the 10 most recently available years of data of the ratio of the Bureau of Economic Analysis's annual gross output data for [NAICS 523] [the private sector] to total annual wages across all occupations for [NAICS 523] [the private sector] in the OEWS data. *See Gross Output by Industry,* U.S. Bureau of Economic Analysis, *https://www.bea.gov/data/industries/gross-output-by-industry; Occupational Employment and Wage Statistics,* U.S. Bureau of Labor Statistics, *https://www.bls.gov/oes/.* The final product is the occupational hourly rate. *See generally* Updated Methodology for Calculating Occupational Hourly Rates (Dec. 19, 2025), *available at https://www.sec.gov/files/method-occupational-hourly-rates.pdf.*

[2] $744 attorney + $416 computer programmer/2 = $580.

[3] Includes all open-end funds, including ETFs, registered on Form N–1A.

[4] We have reduced the added burden of prior amendment to the requirements under rule 30e–1 for closed-end funds from 24 hours to 22 hours to account for the fact that these burdens did not apply equally to all closed end funds. *See* Securities Offering Reform for Closed-End Investment Companies, Investment Company Act Release No. 33836 (April 8, 2020).

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under rule 30e–1 is mandatory. The information provided under rule 30e–1 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Written comments are invited on: (a) whether 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.

Dated: April 17, 2026.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026–07777 Filed 4–21–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105278; File No. SR–NASDAQ–2026–034]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Nasdaq Options Market Data Feeds With Those of Other Nasdaq Options Markets

April 20, 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 16, 2026, The Nasdaq Stock Market LLC (the ''Exchange'' or ''Nasdaq'') 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 harmonize market data feeds for the Nasdaq Options Market with those of its affiliated options exchanges Nasdaq ISE, LLC, Nasdaq PHLX, LLC, Nasdaq GEMX, LLC, and Nasdaq MRX, LLC.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on in or before August 2026. The Exchange will announce the operative date to members and member organizations in an Options Trader Alert.

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 harmonize the market data feed descriptions for the Nasdaq Options Market at Options 3, Section 23(a), with those of its affiliated options exchanges Nasdaq ISE, LLC (''ISE''), Nasdaq PHLX, LLC (''PHLX''), Nasdaq GEMX, LLC (''GEMX''), and Nasdaq MRX, LLC (''MRX'') as part of a technology migration.

This harmonization will introduce two new data feeds, the Nasdaq Options Market Order Feed (''Order Feed'') and the Nasdaq Options Market Trades Feed (''Trades Feed''), and modify the descriptions of the Nasdaq Options Market Depth of Market Feed (''Depth of Market Feed'') and Nasdaq Options Market Top of Market Feed (''Top of Market Feed'') to conform to the definitions of comparable feeds in the ISE, PHLX, GEMX, and MRX exchanges.[3]

Current Market Data Feeds for the Nasdaq Options Market

Today, the Nasdaq Options Market (''NOM'') offers two data feeds: Nasdaq ITCH to Trade Options (''ITTO'') and Best of Nasdaq Options (''BONO'').

ITTO is a data feed that provides full order and quote depth information for individual orders and quotes on the NOM book and last sale information for trades executed on NOM. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the series is available for trading on NOM and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening (size of matched contracts and size of the imbalance).

BONO is a data feed that provides the NOM Best Bid and Offer and last sale information for trades executed on NOM. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on NOM and identifies if the series is available for closing transactions only.

Proposed Market Data Feeds for the Nasdaq Options Market

The Exchange proposes to modify its existing depth of book and top of book feeds and introduce two new feeds, an order feed and a trades feed, to harmonize the Nasdaq Options Market data feeds with those of ISE, PHLX, GEMX and MRX.[4]

Depth of Market Feed

The Exchange proposes two non-substantive changes to its depth of book feed. First, the name of the feed will be changed from ''Nasdaq ITCH to Trade Options (ITTO)'' to ''Nasdaq Options Market Depth of Market Feed ('Depth of Market Feed')'' to conform to the nomenclature used by the ISE,[5] PHLX,[6] GEMX,[7] and MRX[8] exchanges. Second, the naming convention for the order book will be changed from ''NOM book'' to ''order book,'' to clarify the reference and to conform to the other definitions. The proposed definition of the new Depth of Market Feed will read as follows:

Nasdaq Options Market Depth of Market Feed (''Depth of Market Feed'') is a data feed that provides full order and quote depth information for individual orders and quotes on the order book and last sale information for trades executed on NOM. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on NOM and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening (size of matched contracts and size of the imbalance).

In addition, the Exchange proposes conforming changes in Options 7, Section 3 (Nasdaq Options Market—Ports and Other Services) and Section 4 (Nasdaq Options Market Data Distributor Fees) to change references from ITTO to ''Depth of Market Feed.''

Top of Market Feed

The Exchange proposes a number of changes to the Top of Market Feed.

First, the Exchange proposes to change the name of the feed from ''Best of Nasdaq Options (BONO)'' to ''Nasdaq Options Market Top of Market Feed'' to conform to the nomenclature used by Nasdaq's affiliated exchanges.

Second, the Exchange proposes to modify the description of the contents of the Nasdaq Options Market Top of Market Feed, removing inclusion of last sale information for trades executed on NOM and providing greater detail on what will be included.

The rulebook currently states that BONO includes ''last sale information for trades executed on NOM.'' The Exchange proposes to move last sale information from its top of market into a new Trades Feed, described in detail below. This will conform the Nasdaq Options Market Top of Market Feed to the comparable feeds for ISE,[9] PHLX,[10] GEMX,[11] and MRX,[12] which all disseminate last sale information in a separate trades feed.

This separation will enhance customer choice. Customers will be able to purchase Best Bid and Offer and Last

[3] Similar modifications to market data feed definitions for the Nasdaq Texas, LLC options market will be submitted in a separate filing.

[4] A Spread feed, which is offered by the ISE, PHLX and MRX exchanges, will not be introduced to the Nasdaq Options Market because it pertains to complex orders, which are not processed in the Nasdaq Options Market.

[5] Nasdaq ISE, Options 3, Section 23(a)(1).

[6] Nasdaq PHLX, Options 3, Section 23(a)(3).

[7] Nasdaq GEMX, Options 3, Section 23(a)(1).

[8] Nasdaq MRX, Options 3, Section 23(a)(1).

[9] Nasdaq ISE, Options 3, Section 23(a)(3).

[10] Nasdaq PHLX, Options 3, Section 23(a)(1).

[11] Nasdaq GEMX, Options 3, Section 23(a)(3).

[12] Nasdaq MRX, Options 3, Section 23(a)(3).

Sale information separately or together, as they see fit. The new feed structure will also facilitate the ingestion of information by customers because multiple Nasdaq-affiliated exchanges will be employing the same architecture to ingest data.

The proposal will also add specificity to the description of the Top of Market Feed. Rather than describe the top of book feed as ''a data feed that provides the NOM Best Bid and Offer . . . for trades executed on NOM,'' the proposed new description specifies that the Top of Market Feed ''calculates and disseminates the Exchange's best bid and offer position, with aggregate size based on displayable order and quote interest in the System.'' [13] This is not a substantive change, but rather a more detailed description of the information currently provided.

Third, the Exchange proposes introducing a sentence stating that ''[t]he data contained in the Top of Market data feed is identical to the data simultaneously sent to the processor for the OPRA and subscribers of the data feed.'' This is not a substantive change to the feed or the manner in which it is disseminated, but rather describes and codifies the current practice of providing top of market information to OPRA, which is also done by all other Nasdaq-affiliated options exchanges.

The proposed definition of the new Top of Market Feed will read as follows:

Nasdaq Options Market Top of Market (''Top of Market Feed'') calculates and disseminates the Exchange's best bid and offer position, with aggregate size based on displayable order and quote interest in the System. The data contained in the Top of Market data feed is identical to the data simultaneously sent to the processor for the OPRA and subscribers of the data feed. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on NOM and identifies if the series is available for closing transactions only.

In addition, the Exchange proposes conforming changes in Options 7, Section 3 (Nasdaq Options Market—Ports and Other Services) and Section 4 (Nasdaq Options Market Data Distributor Fees) to change references from ''BONO'' to ''Top of Market Feed.''

Order Feed

The Exchange proposes to add the Nasdaq Options Market Order Feed to provide pricing information on new orders resting on the NOM Order book (*e.g.,* price, quantity and Attributable Order tags when provided by a Member). The data provided for each options series will include the symbols (series and underlying security), displayed order types, order attributes, put or call indicator, expiration date, the strike price of the series, and whether the series is available for trading on NOM and identifies if the series is available for closing transactions only. The feed will also provide auction and exposure notifications and order imbalances on opening/reopening (size of matched contracts and size of the imbalance).

The Order Feed will disseminate more detailed information on orders, and provide customers with the option to purchase an orders-only feed, either alone or in combination with other feeds. The proposed change will also facilitate the ingestion of information on NOM by conforming it to the feeds made available on ISE,[14] PHLX,[15] GEMX,[16] and MRX.[17]

The proposed definition of the new Top of Market Feed will read as follows:

Nasdaq Options Market Order Feed (''Order Feed'') provides pricing information on new orders resting on the NOM Order book (*e.g.,* price, quantity and Attributable Order tags when provided by a Member). The data provided for each options series includes the symbols (series and underlying security), displayed order types, order attributes, put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on NOM and identifies if the series is available for closing transactions only. The feed also provides auction and exposure notifications and order imbalances on opening/reopening (size of matched contracts and size of the imbalance).

Trades Feed

The Exchange proposes to add the Nasdaq Options Market Trades Feed to provide customers with the choice of ingesting last trade information alone or in combination with other feeds. The data provided in the Trades Feed for each option series will include the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, whether the option series is available for trading on NOM, and identifies if the series is available for closing transactions only.

The proposal will expand customer choice by offering last sale information either alone or in combination with other data feeds, at the customer's option. The proposal will also facilitate the ingestion of information for customers by conforming the NOM market data feed structure to those on ISE,[18] PHLX,[19] GEMX,[20] and MRX.[21]

The proposed definition of the new Trades Feed will read as follows:

Nasdaq Options Market Trades Feed (''Trades Feed'') displays last trade information. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on NOM and identifies if the series is available for closing transactions only.

Fees

Fees for the proposed Order Feed and Trades Feed will be proposed in a separate filing.

Implementation

The Exchange will implement this rule change in or before August 2026. The Exchange will announce the operative date to members and member organizations in an Options Trader Alert.

2. Statutory Basis

The Exchange believes that this proposal is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] 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 foregoing is true for three reasons. First, these changes are an essential element of Nasdaq's overall plan to standardize market data feeds across Nasdaq-affiliated options exchanges, which will allow certain customers to ingest data more efficiently, without impacting the processes of other customers. Second, the apportionment

[13] Capacity information, such as whether the order is entered by a Professional or a Customer, is not disseminated in the Top of Market Feed because the Nasdaq Options Market is an anonymous venue and does not gather such information.

[14] Nasdaq ISE, Options 3, Section 23(a)(2).

[15] Nasdaq PHLX Rulebook, Options 3, Section 23(a)(2).

[16] Nasdaq GEMX Rulebook, Options 3, Section 23(a)(2).

[17] Nasdaq MRX, Options 3, Section 23(a)(2).

[18] Nasdaq ISE, Options 3, Section 23(a)(4).

[19] Nasdaq PHLX, Options 3, Section 23(a)(4).

[20] Nasdaq GEMX, Options 3, Section 23(a)(4).

[21] Nasdaq MRX, Options 4, Section 23(a)(4).

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

of market data across four feeds rather than consolidation on two will allow customers to tailor their acquisition to only the data they need. Third, the revised definitions provide additional specificity regarding the contents of each feed for investors.

Optimization: The proposed changes will enable subscribers to ingest data more efficiently by using the same set of specifications to ingest market data from multiple markets. This will allow subscribers to onboard and maintain access to market data more efficiently, which may result in cost savings for subscribers. The PHLX, ISE, MRX and GEMX feeds already follow this standard format; this proposal will add a fifth exchange to that list.[24]

Customer choice: The proposed structure of four specialized feeds will allow subscribers to purchase only the data they need. This is more efficient than requiring customers to distill information from one or two large data feeds, which can be quite burdensome given the quantity of data generated by options trading. The four-feed structure also allows customers to configure their hardware to balance system loads more efficiently.

We expect our customers to take advantage of these additional options. Our experience with the ISE Exchange shows that nearly a third of customers take either the top of market feed only (approximately 17%) or the trades feed only (about 14%), while the remaining customers take both. We expect the same pattern to hold true for NOM: about a third of customers will take one feed or the other, ingesting less data than would be required for a combined feed, and the remaining customers will decide to take both feeds.

Specificity: As described above, the descriptions of the Top of Market and Depth of Market Feeds add additional detail regarding the content of the feeds. This will better inform customers in selecting feeds and enable them to purchase the information they deem most valuable.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because the proposed changes do not alter the ability of non-affiliated options markets to propose changes to their respective rulebooks to offer similar feeds, or alternative feeds to compete against these products, in response to these changes.

Nothing in the proposal burdens intra-market competition (the competition among consumers of exchange data) because the proposed feeds will be available to any market participant on a non-discriminatory basis.

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 Act[25] and subparagraph (f)(6) of Rule 19b–4 thereunder.[26]

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–2026–034 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–NASDAQ–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 at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2026–034 and should be submitted on or before May 13, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–07829 Filed 4–21–26; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 40002094]

Frontier Fund I Alpha, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Frontier Fund I Alpha, LP, 2550 S Clark Street, Suite 610, Arlington, VA 22202, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small business concern, has sought an exemption under Section 312 of the Act and 13 CFR 107.730, *Financings which Constitute Conflicts of Interest* of the Code of Federal Regulations. Frontier Fund I Alpha, LP is seeking a written

[24] As noted above, a separate filing to conform the Nasdaq Texas Exchange to this market data structure is planned.

[25] 15 U.S.C. 78s(b)(3)(A)(iii).

[26] 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.

[27] 17 CFR 200.30–3(a)(12).

exemption from SBA for a proposed financing to iCOUNTER, 12240 Inwood Road, Suite 430, Dallas, TX 75244.

The financing is brought within the purview of 13 CFR 107.730(a) of the Code of Regulations because iCOUNTER is an Associate of Frontier Fund I Alpha, LP because Associate John Watters owns a greater than ten percent interest in iCOUNTER, is a venture partner in America's Frontier Fund, is a paid consultant to Frontier Fund I Alpha, LP, a Limited Partner to Frontier Fund I Alpha, LP, and holds a 3% interest in Frontier Fund I Alpha GP, LLC, and therefore this transaction is considered Financing which constitute conflicts of interest requiring SBA's prior written exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Paul Salgado,

Director, Investment Portfolio Management, Office of Investment and Innovation.

[FR Doc. 2026–07798 Filed 4–21–26; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[License No. 02020679]

Deerpath Funding Advantage IV, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Deerpath Funding Advantage IV, LP 500 East Broward Blvd., Suite 2300, Fort Lauderdale, FL 33394, Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the proposed purchase of securities from Associates of Deerpath Funding Advantage IV, LP, has sought an exemption under Section 312 of the Act and 13 CFR 107.730, *Financings which Constitute Conflicts of Interest* of the Code of Federal Regulations. Deerpath Funding Advantage IV, LP is seeking a written exemption from SBA for a proposed transaction with certain non-SBIC Deerpath Capital funds in which securities of a portfolio concern would be purchased by Deerpath Funding Advantage IV, LP.

The financing is brought within the purview of 13 CFR 107.730(a) of the Regulations because the non-SBIC Deerpath Capital funds are Associates of Deerpath Funding Advantage IV, LP as they are under Common Control and therefore this transaction is considered a Financing which constitutes a conflict of interest requiring SBA's prior written exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Paul Salgado,

Director, Investment Portfolio Management, Office of Investment and Innovation.

[FR Doc. 2026–07797 Filed 4–21–26; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2026–1344]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Flight Operations Quality Assurance (FOQA) Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: 30-Day notice and request for comments; extension of a currently approved information collection: 91 FR 3766.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request from the Office of Management and Budget (OMB) approval to renew an information collection request (ICR). The collection involves the voluntary submission of information gained through the Flight Operations Quality Assurance (FOQA) Program. FOQA is a voluntary safety program designed to improve aviation safety through the proactive use of flight-recorded data. The information collected will allow operators to use this data to identify and correct deficiencies in all areas of flight operations. A **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 28, 2026. This 30-day notice is concurrent with submitting the information collection renewal request to the Office of Management and Budget (OMB). Comments received on this notice will be seen by OMB and the FAA as the requesting agency.

DATES: Written comments should be submitted by May 22, 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: Sandra Ray, Flight Standards, Office of Safety Standards, Safety Management Branch (AFS–940) by email at: *sandra.ray@faa.gov;* phone: 412–546–7344.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0660.

Title: Flight Operations Quality Assurance (FOQA) Program.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 28, 2026 (91 FR 3766). Flight Operations Quality Assurance (FOQA) is a voluntary safety program designed to improve aviation safety through the proactive use of flight-recorded data. Operators will use this data to identify and correct deficiencies in all areas of flight operations.

Properly used, FOQA data can reduce or eliminate safety risks, as well as minimize deviations from regulations. Through access to de-identified aggregate FOQA data, the Federal Aviation Administration (FAA) can identify and analyze national trends and target resources to reduce operational risks in the National Airspace System (NAS), air traffic control (ATC), flight operations and airport operations.

The FAA and the air transportation industry have sought additional means for addressing safety problems and identifying potential safety hazards. Based on the experiences of foreign air carriers, the results of several FAA-

sponsored studies, and input received from government/industry safety forums, the FAA concluded that wide implementation of FOQA programs could have significant potential to reduce air carrier accident rates below current levels. The value of FOQA programs is the early identification of adverse safety trends, which, if uncorrected, could lead to accidents. A key element in FOQA is the application of corrective action and follow-up to ensure that unsafe conditions are effectively remediated.

Respondents: 69 Air Carriers (57 with existing programs and 12 with new programs).

Frequency: Once for certificate holders requesting a new program, monthly for certificate holders with an existing program.

Estimated Average Burden per Response: 100 hours for new respondents, 30 hours annually for existing respondents.

Estimated Total Annual Burden: 100 hours for new respondents, 7.5 hours for existing respondents totaling 400 hours for new respondents and 2,070 for existing respondents.

Issued in Washington, DC.

Hugh J. Thomas,

Acting Deputy Executive Director, Flight Standards Service.

[FR Doc. 2026–07840 Filed 4–21–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Space Launch and Reentry Licensing and Permitting User Fees

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

ACTION: Policy statement.

SUMMARY: This document provides notice of the FAA imposing commercial space launch and reentry licensing and permitting user fees, as required under statute.

FOR FURTHER INFORMATION CONTACT: James A. Hatt, Manager, Space Policy Division, Office of Commercial Space Transportation, Federal Aviation Administration, 1200 New Jersey Ave. SW, Washington, DC 20591, 202–549–2325, *James.A.Hatt@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commercial Space Launch Act of 1984, as amended and codified at 51 U.S.C. 50901 through 50924 (''Act''), authorizes the Secretary of Transportation, and the Administrator of the FAA through delegation,[1] to oversee, license, and regulate commercial launch and reentry activities, and the operation of launch and reentry sites as carried out by United States citizens or within the United States. The Act's requirements are implemented in parts 400 through 460 of title 14 of the Code of Federal Regulations (14 CFR).

On July 4, 2025, President Trump signed the One Big Beautiful Bill Act (Pub. L. 119–21) establishing a fee beginning in 2026 for each launch or reentry carried out under a license or permit issued under section 50904 (51 U.S.C. 50924, as established by section 4004 of Pub. L. 119–21, title IV, § 40004(a), 139 Stat. 132 (July 4, 2025)). Section 50924 further directs the Secretary of Transportation to collect and deposit the fees in a newly established ''Office of Commercial Space Transportation Launch and Reentry Licensing and Permitting Fund'' located in the Treasury of the United States. The user fee is to be assessed in an amount equal to the lesser of two amounts prescribed by two fee schedules. Both fee schedules set forth specific rates for each calendar year. One fee schedule establishes the rate that is to be assessed for each pound of the weight of the payload, while the other one provides a maximum user fee.

For the purpose of collecting the user fees required by 51 U.S.C. 50924, FAA will begin including terms and conditions that outline the fee assessment and collection procedures as set forth by 51 U.S.C. 50924 in experimental permits and vehicle operator licenses subject to those fees. Regardless of whether the permit or license contains those terms and conditions, operators are still liable for user fees under 51 U.S.C. 50924 for all launches and reentries conducted in 2026 under a license or and permit issued under section 50904.

II. Fee Assessment and Payment Process Under 51 U.S.C. 50924

51 U.S.C. 50924 requires FAA to assess the user fees based on the weight of the payload on each launch or reentry carried out under a license or permit issued pursuant to 51 U.S.C. 50904 during 2026 or a subsequent year. For each launch or reentry, vehicle operators are currently required to provide FAA with the weight of the payload at least 60 days prior to each mission.[2] FAA will use the payload weight provided by vehicle operators as part of their pre-flight reporting submission to calculate the user fee owed for the launch or reentry and will issue a fee notification to the vehicle operator reflecting the amount due. As reflected in the terms and conditions that FAA will incorporate into all new licenses and permits, vehicle operators will then have thirty (30) days from the date of the issuance of the fee notification in order to submit payment for the user fee in accordance with the instructions provided in the fee notification. This includes notifications for fees accrued since January 1, 2026, which FAA intends to issue later in 2026.

Endnotes

[1] *See* 49 CFR 1.83(b).

[2] *See, e.g.,* 14 CFR 450.43(i) and .213(b)(1).

Issued in Washington, DC.

Minh A. Nguyen,

Deputy Associate Administrator, Office of Commercial Space Transportation.

[FR Doc. 2026–07789 Filed 4–21–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2026–4170]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Alternative Pilot Physical Examination and Education Requirements (BasicMed)

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The Federal Aviation Administration Extension, Safety, and Security Act of 2016 (Pub. L. 114–190) (FESSA) was enacted on July 15, 2016. Section 2307 of FESSA, Medical Certification of Certain Small Aircraft Pilots, directed the FAA to ''issue or revise regulations to ensure that an individual may operate as pilot in command of a covered aircraft'' without having to undergo the medical certification process prescribed by FAA regulations if the pilot and aircraft meet certain prescribed conditions as outlined in FESSA. This collection enables those eligible airmen to establish their eligibility with the FAA.

DATES: Written comments should be submitted by June 22, 2026.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By Mail: Christopher Morris, AFS–830, 800 Independence Ave. SW, Washington, DC 20591.

By Email: chris.morris@faa.gov.

FOR FURTHER INFORMATION CONTACT: Brad Zeigler by email at: *bradley.c.zeigler@faa.gov;* phone: 202–267–9601.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0770.

Title: Alternative Pilot Physical Examination and Education Requirements (BasicMed).

Form Numbers: FAA form 8700–2.

Type of Review: Renewal.

Background: The FAA will use this information to determine that individual pilots have met the requirements of section 2307 of Public Law 114–190. It is important for the FAA to know this information as the vast majority of pilots conducting operations described in section 2307 of Public Law 114–190 must either hold a valid medical certificate or be conducting operations using the requirements of section 2307 as an alternative to holding a medical certificate.

The FAA published a final rule, Alternative Pilot Physical Examination and Education Requirements, to implement the provisions of section 2307, on January 11, 2017.

Respondents: Approximately 50,000 individuals.

Frequency: Course: Once every two years; medical exam: once every four years.

Estimated Average Burden per Response: 21 minutes.

Estimated Total Annual Burden: 17,500 hours.

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

Eugene H. McClure, III,

Manager, General Aviation and Commercial Division, Office of Safety Standards, Flight Standards Service.

[FR Doc. 2026–07774 Filed 4–21–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funding Opportunity for the Fiscal Year 2025 and 2026 Consolidated Rail Infrastructure and Safety Improvements Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Federal Railroad Administration has published a Notice of Funding Opportunity (NOFO), which details the application requirements and procedures to obtain grant funding for eligible projects under the Fiscal Year (FY) 2025 and 2026 Consolidated Rail Infrastructure and Safety Improvements (CRISI). The total funding available for awards under the NOFO is up to $2,039,246,480. The full text of the NOFO can be found on FRA's website: *https://railroads.dot.gov/elibrary/fy-2025-2026-nofo-crisi* and at *https://www.Grants.gov* using the funding opportunity ID FR–CRS–26–001.

DATES: Applications for funding under this solicitation are due no later than 11:59 p.m. Eastern Time (ET) June 22, 2026. Applications that are incomplete or received after 11:59 p.m. ET June 22, 2026 will not be considered for funding. FRA reserves the right to modify this deadline. See Section 4 of the NOFO for additional information on the application process.

ADDRESSES: Applicants must submit all application materials, in their entirety, through *https://www.Grants.gov.* FRA is committed to ensuring that information is available in appropriate alternative formats to meet the requirements of persons who have a disability. If you require an alternative version of files provided, please contact *FRA-NOFO-Support@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, grant application submission, and processing questions, please contact *Deborah.Kobrin@dot.gov.*

SUPPLEMENTARY INFORMATION: The full text of the NOFO can be found on FRA's website: *https://railroads.dot.gov/elibrary/fy-2025-2026-nofo-crisi* and at *https://www.Grants.gov* using the funding opportunity ID FR–CRS–26–001. The total funding available for awards under the issued NOFO is up to $2,039,246,480.

David A. Fink,

Administrator.

[FR Doc. 2026–07823 Filed 4–21–26; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funding Opportunity for the Fiscal Years 2025–2026 Federal-State Partnership for Intercity Passenger Rail Program for Projects Located on the Northeast Corridor (Partnership-NEC)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Federal Railroad Administration has published a Notice of Funding Opportunity (NOFO), which details the application requirements and procedures to obtain grant funding for eligible projects for the Fiscal Years 2025–2026 Federal-State Partnership for Intercity Passenger Rail Program for projects located on the Northeast Corridor (Partnership-NEC). The total funding available for awards under the NOFO is up to $4,750,212,830. The full text of the NOFO can be found on FRA's website: *https://railroads.dot.gov/elibrary/fy-2025-2026-nofo-nec-partnership,* and at *https://www.Grants.gov* using the funding opportunity ID FR–FSP–26–001.

DATES: Applications for funding under this solicitation are due no later than 11:59 p.m. Eastern Time (ET) May 5, 2026. Applications that are incomplete or received after 11:59 p.m. ET May 5, 2026, will not be considered for funding. FRA reserves the right to modify this deadline. See Section 4 of the NOFO for additional information on the application process.

ADDRESSES: Applicants must submit all application materials, in their entirety, through *https://www.Grants.gov.* FRA is committed to ensuring that information is available in appropriate alternative formats to meet the requirements of persons who have a disability. If you require an alternative version of files provided, please contact *lou.lorello@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, grant application submission,

and processing questions, please contact *FRA-NOFO-Support@dot.gov.*

SUPPLEMENTARY INFORMATION: The full text of the NOFO can be found on FRA's website: *https://railroads.dot.gov/elibrary/fy-2025-2026-nofo-nec-partnership,* and at *https://www.Grants.gov* using the funding opportunity ID FR–FSP–26–001. The total funding available for awards under the issued NOFO is up to $4,750,212,830.

David A. Fink,

Administrator.

[FR Doc. 2026–07824 Filed 4–21–26; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0224; Notice No. 2026–03]

Hazardous Materials: Notice of Public Meetings in 2026 for International Standards on the Transport of Dangerous Goods

AGENCY: Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Safety, U.S. Department of Transportation

ACTION: Notice of 2026 public meetings.

SUMMARY: This notice announces that the Pipeline and Hazardous Materials Safety Administration (PHMSA) Office of Hazardous Materials Safety (OHMS) will host three public meetings during 2026 in advance of certain international meetings. The first meeting will be held in preparation for the 68th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) scheduled for June 29 to July 8, 2026, in Geneva, Switzerland. The second meeting will be held in preparation for the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) Working Group 26 (WG/26) tentatively scheduled for October 2026 in Montreal, Canada. The third meeting will be held in preparation for the 69th session of the UNSCOE TDG scheduled for November 23 to December 1, 2026, in Geneva, Switzerland. For each of these meetings, PHMSA will solicit public input on current proposals.

Time and Location: Each public meeting will take place approximately five weeks preceding the international meeting either at Department of Transportation Headquarters, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 with a remote participation option, or in a fully remote capacity. Specific information for each meeting will be posted when available on the PHMSA website at *www.phmsa.dot.gov/international-program/international-program-overview* under ''Upcoming Events.'' This information will include the public meeting date, time, remote access login, conference dial-in number, and details for advance registration.

FOR FURTHER INFORMATION CONTACT: Steven Webb or Aaron Wiener, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, by phone at 202–366–8553.

SUPPLEMENTARY INFORMATION: The purpose of PHMSA's public meetings held in advance of certain international meetings is to allow the public to give input on the current proposals being considered by the international standards setting bodies.

The 68th and 69th sessions of UNSCOE TDG will represent the third and fourth meetings scheduled for the 2025–2026 biennium. UNSCOE TDG will consider proposals for the 25th Revised Edition of the *United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations* (Model Regulations), which may be implemented into relevant domestic, regional, and international regulations starting January 1, 2029. Copies of working documents, informal documents, the agenda, and the post-meeting final report may be obtained from the United Nations Transport Division's website at *www.unece.org/trans/danger/danger.html.*

The ICAO DGP–WG/26 meeting will represent the first meeting of the 2026–2027 biennium. ICAO DGP will consider proposals for the 2029–2030 edition of the *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284). Copies of working papers, information papers, the agenda, and the post-meeting final report may be obtained from the ICAO DGP website at *https://www.icao.int/dangerous-goods/panel.*

Signed in Washington, DC, on April 20, 2026.

William Quade,

Acting Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2026–07847 Filed 4–21–26; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No.: DOT–OST–2024–0127]

Solicitation of Proposals for Annual Combating Human Trafficking in Transportation Impact Awards

AGENCY: Office of the Secretary of Transportation, U.S. Department of Transportation.

ACTION: Notice; Solicitation of Proposals for Annual Awards.

SUMMARY: The annual Combating Human Trafficking in Transportation Impact Awards (the awards) seek to raise awareness among transportation stakeholders about human trafficking and increase training and prevention to combat the crime. The awards are a component of the Department of Transportation (DOT) Transportation Leaders Against Human Trafficking initiative. Additional information regarding the Department's counter-trafficking activities can be found at *www.transportation.gov/stophumantrafficking.*

The awards serve as an incentive for transportation stakeholders to creatively develop impactful and innovative counter-trafficking tools, initiatives, campaigns, and technologies that can help stop these heinous crimes, and as a platform to publicize and share the success of those efforts. The awards are open to individuals and entities, including non- governmental organizations, transportation industry associations, research institutions, and state and local government entities and organizations. Entrants compete for three cash awards: up to $100,000 for first place, up to $50,000 for second place, and up to $25,000 for third place. These prizes are to be awarded to the individual(s) or entities selected for creating the most impactful and innovative counter-trafficking initiative or technology. DOT seeks to incentivize individuals and entities to think creatively in developing innovative solutions to combat human trafficking in the transportation industry, and to share those innovations with the broader community.

DATES: Submissions will be accepted from April 22, 2026 through 11:59pm EST on June 22, 2026 using the following Microsoft Forms link: *https://forms.office.com/g/eK20xQ50P2.*

FOR FURTHER INFORMATION CONTACT: For more information and to register your intent to compete individually or as part of a team, visit *www.transportation.gov/*

stophumantrafficking, email *trafficking@dot.gov,* or contact the Office of International Transportation and Trade at (202) 366–4398 on weekdays between 9:00 a.m. and 5:00 p.m. EST.

SUPPLEMENTARY INFORMATION:

Awards Approving Official: The U.S. Secretary of Transportation (Secretary).

Subject of Awards Competition: The Combating Human Trafficking in Transportation Impact Awards recognize impactful, innovative, and shareable approaches to combating human trafficking in the transportation industry that can be replicated by others.

Problem

As many as 27.6 million men, women, and children worldwide are held against their will and trafficked into forced labor and commercial sex. Transportation figures prominently in human trafficking enterprises when traffickers move victims, which uniquely positions the industry to combat the crime.

Challenge

The Department is looking for the best innovators to develop original, impactful, unique, and shareable human trafficking tools, initiatives, campaigns, and technologies that can help stop these heinous crimes in the transportation industry.

Eligibility

To be eligible to participate in the Combating Human Trafficking in Transportation Impact Awards competition, private entities must be incorporated in and maintain a primary place of business in the United States, and individuals must be citizens or permanent residents of the United States. There is no charge to enter the competition. Past entrants who did not win first place are encouraged to reapply. Submissions proposing solutions for sectors that have not yet been awarded a cash prize, such as transit, intercity rail, freight rail, maritime, rideshare, taxi, private car service, pipelines, and state DOTs are also encouraged to apply.

Rules, Terms, and Conditions

The following additional rules apply:

1. Entrants shall submit a project to the competition in accordance with the rules promulgated by the Department in this Notice;

2. Entrants must indemnify, defend, and hold harmless the Federal Government from and against all third-party claims, actions, or proceedings of any kind and from any and all damages, liabilities, costs, and expenses relating to or arising from participant's submission or any breach or alleged breach of any of the representations, warranties, and covenants of participant hereunder. Entrants are financially responsible for claims made by a third party;

3. Entrants may not be a Federal entity, Federal employee acting within the scope of their employment, or a family member of a Federal Employee;

4. Entrants may not be an employee or family member of an employee of the U.S. Department of Transportation;

5. Prior first place awardees are not eligible to reenter for a substantially similar project;

6. The competition is subject to all applicable Federal laws and regulations. Participation constitutes the entrants' full and unconditional agreement to these rules and to the Secretary's decisions, which are final and binding in all matters related to this competition;

7. Entries must be original, be the work of the entrant, and must not violate any rights of other parties. All entries remain the property of the entrant. Each entrant represents and warrants that:

- The entrant is the sole author, creator, and owner of the submission;
- The entry is not the subject of any actual or threatened litigation or claim;
- The entry does not and will not violate or infringe upon the intellectual property rights, privacy rights, publicity rights, or other legal rights of any third party; and
- The entry does not and will not contain any harmful computer code (sometimes referred to as ''malware,'' ''viruses,'' or ''worms'').

8. Any use of Artificial Intelligence (AI) tools in preparation of the submission must be disclosed in the proposal. If AI tools were used, indicate what AI tool(s) were used, the approximate percentage of the proposal that was generated or assisted by AI, and briefly describe the purpose (*e.g.,* language enhancement, content generation) of such use. Entrants remain fully responsible for verifying the accuracy, originality, and ethical integrity of all content, including AI-generated portions. The Department reserves the right to reject any proposals that may have used AI in an unethical or illegal manner.

9. By submitting an entry in this competition, entrants agree to assume any and all risks and waive any claims against the Federal Government and its related entities (except in the case of willful misconduct) for any injury, death, damage, or loss of property, revenue or profits, whether direct, indirect, or consequential, arising from their participation in this competition, whether the injury, death, damage, or loss arises through negligence of otherwise; provided, however, that by registering or submitting an entry, entrants do not waive claims against the Department arising out of the unauthorized use or disclosure by the agency of the intellectual property, trade secrets, or confidential information of the entrant;

10. The Secretary or the Secretary's designees have the right to request additional supporting documentation regarding the proposal from the entrants;

11. Each entrant grants to the Department, as well as other Federal agencies with which it partners, the right to use names, likenesses, proposal materials, photographs, voices, opinions, and hometowns and states for the Department's promotional purposes in any media, in perpetuity, worldwide, without further payment or consideration;

12. If selected for an award, the entrant grants the Department and any parties acting on their behalf, a royalty-free, non-exclusive, irrevocable, worldwide license to publicize entrant's name. Such authority includes posting or linking to the entry on Department websites, including the Competition website, and partner websites, and inclusion of the entry in any other media, worldwide;

13. Entrants that are Federal grant recipients may not use Federal funds to develop submissions or to fund efforts in support of a submission;

14. Federal contractors may not use Federal funds from a contract to develop submissions or to fund efforts in support of a submission; and

15. The submission period begins on April 22, 2026. Submissions must be sent by 11:59pm EST on June 22, 2026. The timeliness of submissions will be determined by the time stamp of the Microsoft Form submission. Competition administrators assume no responsibility for lost or untimely submissions for any reason.

Submission Requirements

Applicants must submit entries using the following Microsoft Forms link: *https://forms.office.com/g/eK20xQ50P2.* Please contact *trafficking@dot.gov* between the weekday hours of 9:00am and 5:30pm EST for any submission issues involving Microsoft Forms.

Expression of Interest: While not required, entrants are strongly encouraged to send brief expressions of interest to DOT prior to submitting

entries. The expressions of interest should be sent by May 22, 2026 to trafficking@dot.gov, and include the following elements: (1) Name and title of entrant(s); (2) Telephone and email address; and (3) A synopsis of the proposal, limited to no more than two pages.

Please ensure your submission package includes *EACH* of the following elements:

General Submission Information

1. Entity

List the name of the entity or organization(s) or the name(s) and title(s) of the individual(s) submitting a proposal.

2. Point of Contact

Provide the name, title, phone, email, website URL, and mailing address for a single individual to serve as the proposal/project point of contact.

3. Type

What type of entity are you? Authority, association, operator, NGO, research institution, individual, or other? If other, please specify. Is your organization national, state, local, or tribal?

4. Mode(s)

Which transportation mode(s) does the proposal/project focus on? Options include aviation, bus (commercial), bus (school), bus (transit), highways and roadways, maritime and ports, pipelines, rail (passenger), rail (freight), transit, trucking, rideshare, taxi, and private car service.

5. Access

Will the outputs of the proposal/project remain free for beneficiaries?

6. Eligibility Statement

A statement of eligibility by private entities indicating that they are incorporated in and maintain a primary place of business in the United States, or a statement of eligibility by individuals indicating that they are citizens or permanent residents of the United States.

Background & Partners

7. Background

Provide a brief background regarding the submitting organization(s) or individual(s) with an emphasis on: (A) counter-trafficking expertise, and (B) expertise relevant to your proposal/project. Where applicable, include the number and type of stakeholders served, the number and type of participants trained, etc.

8. Partners

If applicable, provide a brief background for each partner who will be engaged in the proposal/project development and/or implementation with an emphasis on: (A) their counter-trafficking expertise, and (B) their expertise relevant to your proposal/project. Where applicable, include the number and type of stakeholders served, the number and type of participants trained, etc. Partnerships necessary for proposal/project development and/or implementation must be secured *prior* to submission.

Project/proposal Overview

9. Title

State the title of your proposal/project.

10. Summary (1–2 sentences)

A high-level summary of the proposal/project including *all* deliverable(s) and whether it will focus on labor trafficking, sex trafficking, or both.

11. Focus Area(s)

Proposals may address one or more of the following DOT Advisory Committee on Human Trafficking elements of a comprehensive approach to counter-trafficking. Please indicate which of the following elements the concept addresses:

- Leadership and Funding
- Policies and Reporting
- Partnerships
- Training and Awareness
- Research, Data, and Information-Sharing
- Victim and Survivor Support

12. Anticipated Beneficiaries

Identify the anticipated beneficiaries.

Proposal/Project Details

13. Description

Provide a comprehensive overview of the proposal/project. Ensure that *each* deliverable is supported by a description of how it will be developed and implemented. If supporting statistics are included, ensure the citations reference the original source (official or peer reviewed).

14. Transportation Intersection

- Describe how the concept relates to the issue of human trafficking in the transportation industry.
- Describe how the concept presents a logical workable solution and approach to addressing human trafficking in the transportation industry.

15. Originality

- Indicate whether the concept is unique or a variation of an existing idea.
- If unique, clearly describe its unique merits.

16. Applicability

- Identify whether the concept is local, regional, or national in focus.
- If not national, identify whether the submission can be scaled nationally.

17. Survivor-Informed

- Describe how the concept integrates principles of a trauma-informed, victim-centered approach.
- Detail how survivors of human trafficking were consulted in the development of the concept, what recommendations they made, and to what extent their recommendations were adopted. Describe how survivor input will inform its implementation.
- If the concept involves reporting, indicate which survivor-informed and trauma-informed source individuals will be directed to report to.

18. Practicality

- In your submission, clearly outline anticipated resources, and each cost to be incurred by executing the concept.
- Describe how the concept will be implemented in a way that requires a finite amount of resources (*e.g.,* fixed costs, low or no marginal costs, and a clear path to implementation and scale beyond an initial investment).

19. Logic Model

Ensure the logic model flowchart of the submission addresses all of the following areas for designing and managing your proposal/project:

- Inputs (*e.g.,* funding, staff, expertise, research and data, materials, technology)
- Activities (*e.g.,* internal policies, partnering, training, public awareness campaigns, data tracking, evaluation)
- Outputs (*e.g.,* partnerships, materials disseminated, campaigns, participants trained, publications, tips reported, online engagement, survey results)
- Outcomes (*e.g.,* increased engagement, policies, reporting, coordination, interventions, service referrals, survivor support)

20. Emerging Technologies

If an emerging technology is an element of your proposal/project, precisely describe how the technology will function (*e.g.,* automation, detection, integration, analytics, detection, modelling, etc.). Describe the state of readiness and reliability of the technology.

21. Data Collection

If the concept involves collecting tips, describe how the proposal/project will: A) protect Personally Identifiable Information, and B) avoid duplicative reporting.

22. Measurement

Describe how the impact of your project will be measured both quantitatively and qualitatively.

23. Impact

- Describe how your concept is anticipated to make a significant impact and/or contribution to the fight against human trafficking in the transportation industry.
- Describe the anticipated breadth and depth of the impact of your proposal.
- Describe how many and precisely what type of stakeholders are expected to be reached through the proposed efforts.

Supporting Information

24. Letters of Support

Letters of support from subject matter experts or industry are encouraged for all proposals and *required* for all partnerships necessary for implementation. Letters of support should address the technical merit of the concept, originality, impact, practicality, measurability and/or applicability. For submissions inclusive of letters of support, provide an itemized list with the name, title, and organization providing each letter.

25. Supporting Documents (no page limit)

Any supporting documents may include paper(s) and/or technologies, programs, video/audio files, and other related materials, describing the proposal/project and addressing the selection criteria. As applicable, this can include a description of success of a previous or substantially similar proposal and/or documentation of impact. DOT may request additional information, including supporting documentation, more detailed contact information, releases of liability, and statements of authenticity to guarantee the originality of the work. Failure to respond in a timely manner may result in disqualification.

Initial Screening

The Office of International Transportation and Trade's Counter-Trafficking Initiative (CTI) will initially review proposals to determine whether all required submission elements are included, and to determine compliance with eligibility requirements.

Evaluation

After the Initial Screening, CTI, with input from the relevant Operating Administrations, will judge entries based on the following factors: technical merit, originality, impact, practicality, measurability, and applicability. The Secretary will make the final selection. The Department reserves the right to not award the prize if the selecting official believes that no submission demonstrates sufficient potential for substantive transformative impact.

Evaluation Factors

Technical Merit

- Alignment of the submission with the DOT Advisory Committee on Human Trafficking's comprehensive approach to counter-trafficking.
- Whether the submission development and implementation will be informed by both counter-trafficking and transportation expertise.
- The concept relates to the issue of human trafficking in the transportation industry.
- The proposal presents a logical and workable solution and approach to addressing human trafficking in the transportation industry.
- The proposal specifies how it will integrate a trauma-informed, victim-centered approach.
- The proposal addresses how survivors of human trafficking were consulted in the development of the concept, what recommendations they made, to what extent their recommendations were adopted, and how their input will inform its implementation.
- If emerging technology is an element of the proposal/project, the submission describes precisely how the technology will function (*e.g.,* automation, detection, integration, analytics, detection, modelling, etc.) and the state of readiness and reliability of that technology.
- If the concept involves reporting, the submission specifies whether individuals will be directed to report to a survivor-informed and trauma-informed source.
- If the concept involves collecting tips, the submission addresses how the proposal/project will: A) protect Personally Identifiable Information, and B) avoid duplicative reporting.

Originality

- The proposal identifies whether the concept is unique or a variation of an existing idea. If unique, the submission clearly describes its unique merits.

Impact/Measurability

- The outputs of the proposal/project remain free for beneficiaries.
- The proposal will make a significant impact on and/or contribution to the fight against human trafficking in the transportation industry.
- The proposal clearly describes the breadth of impact.
- The submission clearly outlines how the proposal will be measured both quantitatively and qualitatively.
- The proposal specifies how many and what type of stakeholders are expected to be reached.
- The proposal describes how it will result in measurable improvements.

Practicality

- If partners are necessary for implementation, the submission includes letters of recommendation (or support) from those partners.
- The submission clearly identifies the anticipated beneficiaries of the concept.
- The budget clearly outlines anticipated resources and each cost to be incurred in executing the concept.
- The proposal can be implemented in a way that requires a finite amount of resources and identifies whether the submission has fixed costs, low or no marginal costs, and a clear path to implementation and scale beyond an initial investment.

Applicability

- The submission identifies whether the concept is local, regional, or national, and if not national, whether it can be scaled nationally.

Awards

Up to three winning entries may be announced. Award winners will receive up to a $100,000 cash prize for first place, up to $50,000 for second place, and up to $25,000 for third place. A plaque with the first-place winner(s) name and the date of the award will be on display at the U.S. Department of Transportation, and a display copy of the plaque(s) will be sent to the winner. Two additional plaques will be awarded to recognize the second and third place runners up. At the Department's discretion, DOT may pay for invitational travel expenses to Washington, DC for up to two individuals or representatives of the first-place winner and runners up, should selectees be invited to present their submission(s) for DOT officials.

Authority: 15 U.S.C. 3719 (America COMPETES Act).

Issued in Washington, DC on April 20, 2026.

Daniel J. Edwards,

Principal Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2026–07846 Filed 4–21–26; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending March 31, 2026. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name or initials
ABE	KENTARO	RICHARD
ABEL	LINDA	CAROLINE
ABOHIJLIH	LAITH	YOUSEF YASIN
ACHERMANN	ERIC	ANDRE
ACHIWA	REIKO	
ACHKARIAN	STEPHANIE	
ACHLIOPTAS	DEMETRIOS	
ACKER	AMY	
ACKERMANN	ELVIRA	
ACKERMANN	HORST	
ADACHI	MITSURU	MICHAEL
ADILMAN	SANDRA	LOIS
ADRIAENSSENS	MARK	JAAK
ADRIAN	MICHAEL	HENRY
AHMAD	SAM	OSAMA
AKHTAR	MIRZA	DAVID
AKUTAGAWA	MICHIKO	
AL-ATHEL	MOHAMMED	SULTAN
AL-ATIKI	ZEYAD	FAHAD
ALAZARD	GERAUD	ANTOINE
ALBATRO	LOUIS	ALEXANDRE GEORGES
ALBATRO	VALERIE	ISABELLE
ALBERS	STEFAN	WILHELM
ALBRECHT	NICOLAS	MORTIZ
ALEMAN	YARROD	
ALEXANDER	BRIAR	ELIZABETH
ALEXANDRESCU	CRISTINA	MIHAELA
ALEXANDRESCU	PETRE	CRISTIAN
AL-GHADEER	AYMAN	ABDUL AZIZ
AL-GHAMDI	SALEM	MOHAMMED
AL-HASSAN	NORA	MOHAMED
ALHUSSAIN	HAMAD	ALI
ALLEN	LEWIS	SAMUEL
ALMAHMOUD	MOHMMAD	ABDULAZIZ
ALMARIO	WHITNEY	NICOLE
ALNOOH	KHALID	SAUD
AL-RASHEED	NAHAR	SALEH
AL-SALAM	HAITHEM	WALEED
AL-SAUD	MOHAMMED	BIN MANSOR M
AL-SAUD	SAUD	MANSOR
ALSHUAIBI	RYAN	SALEH
ALSTROM	ERIC	PER JERKER
ALTENSCHMIDT	CHANCHAL	
ALTENSCHMIDT	DAVID	RALF
ALTSCHAEFFL	MAIKO	
ALTSHUL	JULIAN	MICHAEL
AMAKO	AYAKO	
AMLUNG	MAELLE	SOPHIE
AMMENTORP	HARLAND	HANNER
ANAGNOSTOPOULOS	ARGYRO	
ANAGNOSTOPOULOS	JOHN	
ANAGNOSTOPOULOS	PRISCILLA	
ANDREWS	ROBERT	BRUCE COLLINGWOOD
ANDRIESSENS	ANNE	MARIE
ANGUS	TIFFANI	KAY
APKARIAN	KAMY	
ARAI	FUMIYO	
ARAMOWICZ	JOHN	THOMAS JR.
ARASI	THOMAS	

Last name	First name	Middle name or initials
ARGENAL	ROBERTO	CLAUDIO
ARNOLD	JOHN	LORDLEY
ARON	LIAM	GABRIEL
ASANTE PUSCHMANN	BEVERLY	ABENAA
ASHBY	SCOTT	BRADLEY
ASTOR	ELOISE	MARY
ASTOR	JESSICA	NANCY
ATIYA	MARTIN	THEODOR
ATWATER	JOHN	DOUGLAS
AUCLAIR	CHARLOTTE	TACDERAS
AUSTIN	JESSICA	MARIE
AWAD	NADIA	ISAM
BADOT	LAURENCE	JEAN MARIE J
BAHARAV	LEA	LEWITTES
BAHGAT	ERFAN	MOHAMED
BAISCH	JEREMY	MICHAEL
BALASUNDARANATHAN	TS	
BANKS	WINIFRED	RAE
BAPTISTA	JULIANA	ULIANI ZIMMERMANN
BARP HUESSER	BEATRICE	
BARRETT	PIA	GEORGINA
BARRETT-LENNARD	CHARLES	ELLIS
BARRICK	SCOTT	DOUGLAS
BARTH	GREGORY	LEONARD
BAUKNECHT	ELAINE	CECILE
BAYEVSKY	ALESKEY	
BAZAROVA	NICOLE	
BEALS	MELISSA	MARY
BEAUREGARD	PHILIP	JOHN
BECK	KATHRYN	LAUREN
BECKER	DANIEL	WALTER
BELL	JONATHAN	JAMES
BELLORD	SUSAN	JANE
BELT	EVA	EMILIA
BELTRAMI	DAMIANO	FRANCESCO
BENBOW	ROWAN	JOHN
BENBOW	SASHA	MAY
BENDEL	ANDREW	
BERCHET	VICTOR	JOSEPH
BERGER	HOWARD	PHILLIP
BERGMAN	KRISTINA	ANDREA
BERGSTROM	THOMAS	PER
BERKOVITZ	JOSEPH	ZVI
BERLOVE	NOAH	MOURAD
BERTSCHINGER	PATRICK	ALEXANDER
BEVERIDGE	DAVID	JEAN
BEVERIDGE	LORNA	
BEYDOUN	AYMAN	
BIANCHI	MIRCO	DAVIDE
BISHOP	AMANDA	D
BITNER	SOPHIE	JOSEPHINE
BITO	KENTA	
BJOERNSTAD	OLE	LANDMARK
BLACK	EMMA	KATHARINA
BLACKBURN	MAX	BENJAMIN LOUIS
BLACKWELL	JUSTIN	CALVIN
BLACKWELL	MARY	LOU
BLAKE	ELYSIA	D
BLANCO	JOANNA	RENEE
BLANCO	PHILLIP	JAMES
BLANDIN	PATRICK	
BLONDEAU-ANDREWS	CHARLES	ALEXANDRE
BLYTHE	LUCYNDA	RUTH
BOBKOV	ANDREI	SERGEEVICE
BODDEN	ADAM	MICHAEL DAVID
BOESL	DOMINIC	CHRISTOPHE
BOLAND	BRENNA	MEGHAN
BOLLIET	CATHERINE	
BONDUELLE	QUENTIN	DAMIEN
BOOTHROYD-ROBERTS	KATHLEEN	
BOROVAY	LINDSAY	ANNE
BOSE	ANDREW	EVAN
BOURAQADI SAADANI	SALMANE	
BOURQUE	ARIANNE	MICHELE

Last name	First name	Middle name or initials
BOUSQUET	ARNAUD	RAYMOND
BRADLEY	MARK	THOMAS
BRADLEY	SARAH	ELIZABETH
BRAMESFELD	GOETZ	
BRAND	SCOTT	ROLAND
BRANDI	THEODORE	FREDERIC
BRANDSTETTER	CLEMENS	
BRATTON	SHEA	PHILIP
BRAZELTON	JOHN	LEE
BREEN	EMMANUEL	JOHN
BRENNINKMEYER	MARISA	MERCEDES
BREYMAYER	JASMIN	
BRICCHI	MAXIMILIANO	LUIS
BRIEN	MARGUERITE	
BRIGGS	EVELYN	CLAIRE
BRIMER	MICHAEL	HENRY
BRINKMAN	SHELLEY	BRENDA
BROADBRIDGE	DAWN	MARIE
BROCHU	CHARLES	STEVEN
BRODHEAD	JOHN	DALZELL
BROEDELET	ASHLEIGH	RAYE
BRONS	CAROLINA	MARIA
BRONS	MARTIN	ALFREDO
BRONS	PATRICIO	GUILLERMO
BROOKMAN	BARBARA	DESIREE
BROWNE	GABRIEL	ROMAN
BROWNE	SEBASTIAN	DOMINICK
BRUEGGER	ESTHER	
BRUMMITT	DAVID	ROGER
BRUMMITT	JANET	
BRUNDELL	CHRISTIAN	THOMAS
BUCKLAND	THOMAS	WILLIAM
BUCKMAN	JOHN	GILL
BUJARD	NICOLE	REGINE
BULLA	MICHAEL	CLEMENS
BULLEN	PATRICIA	LYNN
BURDICK	MAYUMI	SASSA
BUREIKO	ANDREI	
BUREIKO	SVETLANA	
BURGENER	DOMINIQUE	MICHELLE
BURGER	NICOLA	RAFAEL
BURKHARDT	ALFRED	
BURNS	ELLIOT	JAMES
BURNS	HELEN	KATHLEEN WAUGH
BUSKARIOL	MATTHEW	BENJAMIN
BUTLER	EMILY	MARIE
BUTSON	PRYCE	MADISON KENNETH
BUTTERY	HARRY	JOHN CHRISTIANS
CACKLER	OWEN	KENNETH
CAIRNS	KATE	FRANCES
CALIBUYOT	YUKI	MATSUSHITA
CALLIS	DEBORRA	ANN
CALNAN	LEILA	MARIE
CAMPOPIANO	JAVIER	EZEQUIEL
CANARIS KRAAV	LINDA	MARIE
CAOUETTE	ANNEMARIE	JOHANNE
CARABIN	HELENE	MARIE JEANNE
CARLEN	ANNE	LOUISE
CARLETON	ALISON	BLYTHE
CARMICHAEL	CARLA	REKA
CARPENTER	ROBERT	MICHAEL
CARR	MARGARETTA	MARIE
CARROLL	MICHAEL	WILLIAM
CARSS	ELIZABETH	ANNE MARGERY
CARTIER	JUSTINE	
CARVER	CLIVE	NATHAN
CASSAR	MATTHEW	ALEXANDER ANTHONY
CATOLFI SALVONI	ALESSANDRO	
CATOLFI SALVONI	ALLEGRA	
CELI	ELLEN	ANN
CELI	SALVATORE	
CERFON	ANTOINE	JULIEN
CERNY	SEBASTIAN	BRADLEY
CHAE	IN	OCK

Last name	First name	Middle name or initials
CHAN	HENRY	PAK GIN
CHAO	ADRIEN	SHUI-HWA
CHAPMAN	JACK	MICHAEL
CHAPMAN	TOBY	CHARLES ROWLERSON
CHAPMAN-SMITH	CATHERINE	MARGARET
CHARANJIVA	ARJUN	
CHARRINGTON	BENJAMIN	JAMES EDWARD
CHART	RICHARD	MICHAEL
CHEN	CALVIN	
CHEN	WENLAI	JAMES
CHEN	YILIN	
CHEW	SEIN	YEANG
CHICANI	ELIAS	GABRIEL
CHIDESTER	KATE	ELIZABETH
CHIN	LISA	CHRISTINE
CHO	YONGNAM	
CHOI	HWANHEE	
CHONG	JASON	JINWOO
CHOQUETTE	OLIVIER	
CHOW	AMELIA	HI LING
CHRISTIAN	RACHEL	ANDREWS
CHRISTIANSON	ALDEN	LAEL LOKKEN
CHURCHILL	THOMAS	EDWARD
CHUTE	JAMES	FRANCIS CHAPMAN
CLARK	LISA	ANNE
CLARK	MEGAN	MAY
CLARKE	VICTORIA	CELESTE
CLAUDE	CHANTAL	
CLEGG	TOM	GEOFFREY
CLEMENTS	JEFFREY	ALAN
COBAKIAT	CLAUDINE	JOYCE CHAN
COBB-CLARK	MATTHEW	WILLIAM
COERS	BENJAMIN	JAKOB
COHEN	ALICE	CATHERINE MARY
COLBIN	KAILA	JOHANNA
COLE	KENNETH	DWIGHT
COLEMAN	MILES	CHANEY
COLLINS	PATRICIA	ANNE
COLTHOFF	ALLY	AUGUSTA SPENCER LEWIN ROM
COMPTON	VICTORIA	ANNE
CONLEY	NANCY	ANN
COOK	RICHARD	DENNE
COOK-PEDERSEN	TONYA	KARISSA
COOPER	RANDY	ALLEN
COPE	DAVID	HAROLD
CORDIER	ALICE	ANNE
CORDINA	GIAN	LUCA
CORDINA	LINDA	LEE
CORDINGLEY	SHANDA	PALMER
COSTELLOE	ISAAC	JAMES
COULTER	DEBORAH	JANET
COUTIN ANDERSON	CHRISTIE	MARIE
COWLARD	ROSS	WILLIAM
COX	RUTH	MARGARET
COX	ZAHARA	ISABELLE
CRAGO	MARTHA	
CRAIG	BRITTANY	VICTORIA
CRAIG	CAROL	JANE
CRAWFORD	FANNY	LOUISE ANNE
CREO	CLARE	ELIZABETH
CRISWELL	TIMOTHY	OWEN
CSERESNYES	REKA	MARIA
CUNNINGHAM-DUNLOP	MARGARET	JANE
CURIK	GARY	MICHAEL
CURLEY	WENDY	ELEANOR LLOYD
CUTTEN	NIKOLAS	GIOVANNI CARGILL
DA COSTA	CELINNE	
DABOV	STOYAN	VASILEV
DALDOSSI	MONIQUE	
DALLEY	JULIANA	CAMILLE
DALY	STEPHEN	ANDREW MACKENZIE
DALZIEL	FRANCES	LOUISE
DAMIANO	MICHAEL	DOMINIC
DAMOUZEHTASH	ALIREZA	

Last name	First name	Middle name or initials
DANIEL	LINK	DAVID
DARPHIN	XENIA	
DARTING	KRISTIAN	WILLIAMS
DARWAZAH	KAREEM	SAID
DASHNEY	DARLENE	LYNN
DASHNEY	RAYMOND	J.
D'AUTHEVILLE	CAMILLE	BEATRICE
DAVIS	CAROLINE	ANNE
DAVIS	CHRISTOPHER	IAIN
DAVIS	SETH	NICHOLAS PHILLIPS
DAVIS	VICTORIA	JANE
DAY	JASON	
DE AQUINO	PAULO	HENRIQUE
DE BAAR	NIENKE	JOHANNA PIETERNELLA
DE BETAK	ALEXANDRE	DAVID
DE BRUINE	PHILIP	WILLEM JOOST
DE CASTELLA MACKAY	CLARE	ROSALIND
DE GEUS	CORNELIUS	JAN
DE GONTAUT BIRON	MARC	JEAN ARMAND
DE PROFT	ENZO	LOUIS
DEL FANTE	MOIRA	NORAH
DELEURAN	KATHRINE	KOLD
D'ELIA	ARIANE	GERDA
DELORME	JACQUES	
DENTON	CHERYL	RENEE
DEPPE	JULIA	STEFANIE
DESNOUES	GILBERT	ROLLAND RENE
DESNOYERS	CLAUDIE	THERESE L
DICKE	WILLIAM	CHARLES
DIDSBURY	LEONA	PEARL
DINGERMANN	FELIX	JOSEF
DISCHINGTON	BJORN	TORE
DJURFELDT	LISA	LYNN
DOAN	WILLIAM	CARL
DOBRETZ	KEVIN	DAVID
DOBSON	MADELAINE	CHIDESTER
DODD	ROBERT	WILLIAM
DOMINGO	ANNA	
DONNELLY	JOY	MICHELE
DOTY	DORIS	ELLEN
DOWKER	ZACHARY	JAY
DOYLE	HEATHER	JOAN
DRISCOLL	CONRAD	FRITZ
DRONEY	MARGARET	
DUGUAY	MARC	MICHEL
DUNCOMBE	JANET	MOORE
DUNLAP	SHANNON	ROSANNE
DUNN	SUK	
DURNEY	DAVID	ROBERT
DUWEL	ELKE	KEHAULANI
EARNSHAW	KATHERINE	KEI
EAVES	KELLY	MALONEY
EBANKS	ERICA	LYNN
EBRIGHT	NICOLE	LYNN
ECHEVARRIA III	JOSE	BELEN
EDBERG	VINCENT	GOSTA DANIEL
EDDINS	KATHARINA	VERENA
EDIGER	ZACHARY	JOHN
EDWARDS	BRIANA	BOYD
EDWARDS	MARCUS	ALLEN
EEG-HENRIKSEN	RIKKE	
EGLINTON	CHARLOTTE	KATE
EHRENBERG-COLL	NIEVES	
EICKENHORST	NATALIE	ANNE
EISENMAN	DORITA	VIVIENNE
ELDRIDGE	TODD	ALAN
ELLIOTT	JASON	ANDREW
ELLISON	ELIZABETH	ARIANE
ENDELMAN	THOMAS	MICHAEL
ENGLERT	JULIUS	FREDERICK
ENGQVIST	IDA	ANDREWS
ENOMOTO	KINUKO	
ENTZ	LOREN	ALBERT
ERNST	NICOLAS	WOLFGANG MORITZ

Last name	First name	Middle name or initials
ESCORBORES-MUELLER	YUDELKY	
ESTES	AGNES	
ESTOK	KELSEY	ANNE
ESTRELLA	ALANA	JOSEPHINE
ETIENNE	JONATHAN	PHILIP
EVANS	DANIEL	THOMAS
EVANS	SIMON	JOHN
FAGERLAND	GLENN	HARALD
FAHEY	ELIZABETH	ANN
FAIRBANKS	TODD	PAUL
FAIRHALL	YUMIKO	
FELKEL	MAXIMILIAN	
FERNANDEZ ACERO	CLAUDIA	
FERRABEE	JONATHAN	DUNTON
FEUCHT	SABINE	KARIN
FICHTNER	TEX	THOMAS
FIDDICK	KYLA	DENISE
FIEGE	MAXIMILIAN	
FIERET	FRANCISCA	CAROL
FILIPPONE	GUIDO	
FISCH	BENJAMIN	FELIX
FLOUTY	MARIE	
FLOYD	ELIZABETH	ALISON
FLYNN	PETER	STUART
FONTANA	ANNMARIE	
FORMAN	DAVID	KAREL
FORSEKE	KARIN	BIRGITTA
FOSCALE	CARLO	MARIA FRANCESCO LUIGI
FOSTER	AMY	EVANGELINE
FOX	CRAIG	GEORGE
FOX	MICHAEL	ALLEN
FRAHM	BETTINA	BRIGITTE
FRANZ-LIEN	JEFFREY	ROY
FRASER	HEATHER	ALEXANDER
FRASER	IONA	VIOLET
FRASER	JAMES	DOUGLAS
FREDBECK	MATTHEW	RYAN
FREMSTAD	ANNE	ELIZABETH
FREY	ETHAN	GREGORY SNYDER
FREYER	JULIE	ELISABETH
FRIESEN	BETTY-ANNE	
FRY	AARON	ALEXANDER
FUGGER-BABENHAUSEN	NIKOLAUS	FRANZ ANSELM MARIA
FUHRMAN	JANE	MARIE
FUJIMOTO	MAYU	
FUJINO	JUN	
FUNG	NANCY	MANCHI
FURMAN	CRAIG	STEPHEN
FURUTAN	BAYAN	CHANDER
GABE	KYOKO	
GAGESCH	GEOFFREY	MICHAEL
GAGNON	NATHALIE	
GALLAGHER	STEPHEN	VINCENT
GALLINAUGH	JOHN	REDMOND
GALLOWAY	JUDITH	ANN
GANI	SHAHID	
GANZERT	VALERIE	SUSAN
GARCIA-MCENTIRE	JORDI	
GARDINER	KALAN	ROSE
GARDNER	GAYLE	LYN
GARDNER	KAREN	ANNE
GARVER JR	THEODORE	MEYER
GARZA	VICTORIA	FAVIOLA
GAVIGNET	PATRICIA	TESSIER
GEHRING	MICHELLE	DIANE
GELPKE	AGLAIA	SUSANNA
GELPKE	SUSAN	DORAN
GELSTON	CHASE	TIMOTHY
GEORGE	SHELLEY	ANNE
GERARD	CHRISTOPHER	P
GERBER	DANIEL	BRENDAN
GETHER	IDA	MARIE
GHAZI	HELMY	FOUAD
GIDLEY-KITCHIN	THOMAS	EDWARD

Last name	First name	Middle name or initials
GILLESPIE	JAMES	ANDREW
GILMAN	RALPH	STEVENS
GINGERICH	CASSANDRA	VIVIENNE
GINGERICH	JOEL	ROGER
GINGRICH	JILL	ANN
GINTZ	BRADLEY	DARRELL
GIRARD	CAROLINE	
GIROUARD	JOSEPH	GEORGE
GIURIANI	FEDERICO	
GLIER	KAREN	MARIE
GLISMANN	CHRISTOPH	CORNELIUS
GOLD	DALE	WARREN
GOLDBLATT	URIE	
GOLDBLATT	YAEL	
GOLDSMITH	MELANIE	BEE
GOMEZ-REINO GARRIDO	MARIA	JESUS
GONIN	ESTELLE	ANNE MARIE
GONIN	MATTHIEU	MARC PIERRE
GOODYEAR	MARIA	DEL CARMEN ECHAVARREN
GOSSELIN	MELANIE	
GOSSETT	CHARLES	DOUGLAS
GOVER	ANNE	HUNTINGTON
GOW	MARK	DAVID ARCHER
GRAHAM	CAITLIN	MICHELLE
GRAHAM	ROBERT	MICHAEL
GRANT	MILES	ALAN LEON
GREEN	BRENDA	ANNE
GREEN	CHRISTOPHER	EDWARD
GREEN	MEG	EMILIA
GREEN	SARA	DENNISON
GREIG	CAROLINE	JANE
GRIGNET	GISELE	MARIE
GRIMSHAW	PAUL	KENNETH
GRITON	HORTENSE	ANNE
GRODEM	ASE	
GROSS	KAREN	ANN
GROSS	NICOLAS	DOMINIQUE
GROVE III	WILLIAM	EDGAR
GROVER	MELANIE	JEANNE
GRUENDLER	REBECCA	ALEXANDRA
GU	JOHN	
GUO	YUQIN	
HAAS	ODED	
HABERLAG	MANFRED	DIETMAR
HADDON	MICHAEL	THOMAS
HADRIS	MARK	CHRISTOPHER
HAGENSLI	NIELS	FREDRIK
HAGGAN	TITUS	PHILIP
HAGIWARA	YUKO	
HAINES	CHIHIRO	T
HAKIM	NATHAN	YOSSI
HALL	STEPHANIE	JEAN
HALL	TIMOTHY	JACOB
HAMAD	WILLIAM	A
HAMADA	YUMIKO	
HAMILTON	ANNE	LORRAINE
HAN	GUOXIANG	
HANBIDGE	BARBARA	ANNE
HANBURY	CLEMENTINE	ISABELLA BUCHANAN
HANBURY	ELIZABETH	EVELYN HUGER
HANBURY	GEORGE	SNOWDEN
HAQQ	TANIA	NICOLE
HARDING	WILLIAM	THOMAS
HARRINGTON	VALERIE	CHRISTINE
HARRISON	PAUL	DAVID
HARVEY	ALENA	ANN
HARVEY	JOAN	DOREEN
HARVEY	RHIANNON	MAREE
HAUGLI	HANNE	
HAUSBERGER	MARKUS	GUENTHER
HAUSSILA	VILLE	HERMNNI
HAYASHI	BRENDA	KAY
HAYDEN	ANYA	ELIZABETH
HAYEEM	CHERYL	PETRA

Last name	First name	Middle name or initials
HAYMAN	GARRETH	GORDON
HAYNES	CLARE	ELIZABETH
HEBER	JULIA	
HECK	THOMAS	FITZGERALD
HEDGE	MICHAEL	GEORGE ERIC
HENDERSON	ANDREA	
HENDRICH	BRIAN	DAVID
HENNENBURG	HEATHER	LINN
HENNING	JOANNE	KATHERINE
HENNING JR.	ROBERT	FRANCIS
HENRICI	CHRISTOPH	CARL HERMANN
HENZLIK	KIRK	PHILLIP
HETHERINGTON	TONY	JOHN
HEUER	MARTIN	W
HEWITT	ADAM	HARDING
HICKEY-BROWN	CAMILLA	E
HIGGINS	CAROL	ANN
HIGGINS	KURT	JAMES STEWART
HIGGINS	MAX	JAMES STEWART
HIGGINS	NICHOLAS	JAMES STEWART
HILHORST	DIDIER	PATRICK
HILL	LAURA	MONTANA
HINTEREGGER	ERWIN	
HIPPS	KAYLA	CATHERINE
HIRST	TANYA	HELEN
HIRTH	JOHN	LUDWIG
HIZLICAN DOBOSZ	SERA	
HOBEYCHI	ZYAD	
HODGE	NICHOLAS	JAMES
HOECHNER	GILA	
HOFFMANN	LUCY	CAMILLA
HOLE	OLIVIA	KATHERINE
HOLLAND	KATHLEEN	CARNEY
HOLLIDGE	JULIANNE	JOSEPHINE
HOLMES	NICOLE	I
HOLT	NEIL	KENNETH
HONJO-ARCHER	JUSTINE	YUKI
HOONAKKER	PETER	L
HOPE	AMELIA	KREITZER
HOPKINS	HIDEKO	ITO
HORNER	SHANNAN	JUNE
HOULIHAN	SUSAN	ANN
HOUVENAGHEL	ANN	LUTGARD PALMA
HOWARD	ALEXANDRA	CAMILLE ANNE
HOWARD	JONATHAN	CRISTOPHER
HOWARD	LEONARD	DRAGAN VINCENT
HOWARTH	NATALIE	JEAN
HRON	PATRICK	ALAN
HUANG	TRACY	SHUHWA
HUANG	XIN	YOU
HUBBARD	JOHN	BRIAN
HUBER	FABIAN	MICHAEL
HUBER	KEIKO	
HUENER	TESS	SABRINA
HUGHES-LARGE	JENNIFER	MARGARET
HUGOSSON	BO	CHRISTER
HULTS	JESSE	DAVID
HUMPHREY	VALERIE	MAE
HUNG	KATHLEEN	
HUNTER	AMBER	MORGAN
HUNZIKER	ANDREAS	
HUPPERT	JULIAN	LEON
HUTCHINSON	IAN	JAMES
HUTCHINSON	PEGGY	MARCELLA
HWANG	JOSEPH	JENG SHONG
HYDE	IZACH	ALEXANDER
IDIART	PATRICK	GENE
IJAZ	ADAM	ISMAEL
ILIC	ANNA	TARCHINI
INABA	YOKO	
INNES	NATALIE	MARIE KATRINE
IP	WAI	CHUNG
IRAGUI	INES	VICTORIA
ISELIN	ALANNAH	PATRICIA

Last name	First name	Middle name or initials
ISELY	KAREN	ANN
ISHII	YOSHITAKA	
ISHIKAWA	EMIKO	
ISHIZEKI	ANNA	
ISLER	ALEXANDRA	LISA
ITO	MIHO	
ITO	TAI	
ITSCHNER	HIRO	ROBERT
IZQUIERDO	FERNANDO	JOSE
JACK	CIARA	MICHELE
JACKSON	CHRISTOPHER	WILLIAM
JACOB	RESA	LESLEY
JACOBI	LARS	FREDERICK
JACOBI	ROSEMARY	DIANE
JAIN	ANUJA	
JAIN	SAURABH	
JALOWAYSKI	SCOTT	ALLEN
JANISZEWSKI	MARIANO	
JANNINK	CATHARINE	
JANSSENS	HEATHER	MAY ELISABETH
JASTI	KALYANI	
JAUNIN	NOEMIE	MADELEINE
JAYSON	JUDIANNE	SIMA
JEAN	ARIELLE	MARIE
JENEST	ROBIN	LEE
JENNINGS	DARON	GRANT
JENSEN	THOMAS	LETH
JEONG	HYE	KYONG
JESSING	PETER	ALAN
JESTIN	JERRY	JAY
JIANG	YUANLIN	
JIN	SHENGYE	
JODOIN	SAYURI	TANIA
JOHANSSON	STEFAN	NILS EDVIN
JOHNS	BRENTON	PHILLIP
JOHNSEN	JENNIFER	ANNETTE KEIM
JOHNSON	ANDRE	CHRISTOPHER
JOHNSON	ETHAN	BENJAMIN
JOHNSON	NICHOLAS	EDWARD
JOHNSON	REGINE	SIEDER
JOHNSON	SAMANTHA	
JONES	BOBBIE	LEE
JONES	CHRIS	ANN
JONES	CODY	DANIEL
JONES	KATHERINE	ST CLAIRE
JONES	MAXIMILIAN	MAGNUS
JONES	ROSE	MARIE
JONES	ROSE	MARIE CLAIRE
JONES	SIAN ADELAIDE	DOWLING WYATT
JONGEN	OLIVIA	MEGAN
JOSHI	SHASHIKANT	
JOSPIN	ISABELLE	DOMINIQUE
JOY	GREGORY	ANDREW
JULIEN	NATHALIE	M
KACK	EMMY	CHARLOTTA
KADISH	LORI	MEGAN
KAHN	WACHIRA	
KARADY	CRISTINA	CALI
KARIM	CHARLES	
KARKLINS	ALEXIS	MIKELIS SAULGRIEZIS
KASCH	MADELEINE	LEIGHT
KATO	FUMIE	
KATO	HIDETOSHI	
KATO	KUMIKO	
KATTAN	ALYA	ALYSSA
KATTAN	MONA	MONICA
KAUR	JASLEEN	
KAWAKAMI	SAKURA	
KAWAMOTO	NATSUKO	
KEEFE	ANNA	LOUISE
KEENE	BRIAN	ANDREW
KEITZER	RAYMOND	ALEXAANDER
KELLER	LAURA	PATRIZIA
KELLY	ALEXANDRA	JESSICA LAURIE

Last name	First name	Middle name or initials
KELLY	HEATHER	COLLEEN
KELLY	JACK	WALTER
KELLY	MICHAEL	ANTHONY
KENNEDY	DANIEL	ALAN
KERSEY	NANCY	JOAN
KEVER	HONOR	ELIZABETH
KHALIQ	ANISA	LORRAINE
KHATTAR	KUNAL	
KHATTAR	SONALIKA	
KHAYSAVANG	CHANTILLY	
KIBLER-MELBY	CORT	NATHAN
KIDD	CHRISTOPHER	
KIERNAN	JOSEPH	EDWARD
KIM	HYUN	SOO
KIM	MYUNGA	
KIM	SOOJUNG	
KIM	YOON	HOO
KIM	YOUNG	A
KIM	YUN	MI
KINDLER	ANDREW	
KING	JESSICA	CATHERINE ELISABETH
KING	NOEMIE	ELEONORE DESIREE
KIRBY	MARIE	HELEN
KIRK	MICHELLE	
KIRKCONNELL	DANIEL	DAVID
KIRLEY	ADAM	JOHN
KISHIMOTO	YUKIKO	
KJALLSTROM	JAN	AKE
KLANDERMAN	MELINDA	JOYCE
KLASEN	JASMINE	NINA
KLINE	PHILIPPA	EVE BIRLEY
KLUGA	VALERIE	JEAN
KNIPPELMEYER	RAINER	
KNOOP	LARS	WILLEM
KNOWLES	ALEXANDRA	JENNIFER
KOBASA	DARWYN	L
KOBLINTZ	EDWARD	MICHAEL
KOESTER	STEFAN	
KOFFYBERG	AGNES	MARIAN JOAN
KOLBER	JONATHAN	
KOMOR	SACHA	CARINE MAURISE
KONRAD	GEOFFREY	LEONARD
KOSCHITZKY	ARIEL	
KOSCHITZKY	YADIN	MOSHE
KOSTUCHOWSKI	KEITH	ALAN
KOWALCHUK	MICHAEL	FREDERICK
KOZIOL	LAURA	MARIE
KRAUTLI	LUCAS	THEO
KRUPKA	SIMONE	SABINE
KRUPKA	STEPHAN	T
KUBIAK	MONIKA	ELISABETH
KUBOTA	TOSHINOBU	
KUEHNEL	FRIEDRICH	CHRISTIAN HEINRICH
KURDOV	VALENTIN	HRABAROV
KURZEN TOBLER	ANDREA	CATHLEEN
LACKEY	SARAH	MARIE
LAFAYE	MARJORIE	AMPARO
LAKER	ANDREW	JOHN MATHEW
LAKER	BRYAN	PATRICK
LAKHANI	ZULFIQAR	ALI
LAMBERT	JENNIFER	LYNNE
LAMBERT	NANA	
LANE	JULIA	HELEN
LANGLOIS	DANIEL	LOUIS
LANGLOIS	TRACEY	PATRICIA
LANGRIDGE	JOYCE	ELAINE
LAPENNA	VICTOR	HUGO
LAPPALA	TRACY	ERIN
LARKIN	SARAH	ELIZABETH
LARKIN	THOMAS	EDWARD
LARKMAN	MARY	ALISON
LAWRENCE-SMITH	HUGO	ALEXIS
LAWRENCE-SMITH	JOHN	JULIAN AUGUSTUS
LAWSON	ANDREW.	

Last name	First name	Middle name or initials
LAWSON	JAMES	STEPHEN
LAXTON	JEHANNE	YVETTE AILIE
LAYLAND	MARY	JOANNA
LE GRELLE	GEOFFREY	NATHANAEL JOHN
LE MAY	CHRISTOPHER	ROBERT
LEACH	LAURA	ELIZABETH
LEAHY	MICHAEL	
LEE	BENJAMIN	
LEE	SUNG	CHUL
LE-GRYS	CAROLA	BARCLAY
LEHAVI	REVITAL	
LEIBLER	YEHUDA	ARYEH
LEIMER	CHRISTINE	MARIA
LEON	ELSE	THERESE
LEONARD	JOHN	ROBERT
LEPOUTRE	ALEXI	EMMANUEL
LESSACK	FRANE	AMY
LESTER	CATHY	LYNN
LEWIS	AMY	CHRISTINE
LEWIS	IVY	GRACE
LI	CHENG	
LI	XIAO	
LI	YAN	
LI	YI	
LIANG	ATHENA	JING
LICUANAN	LAURIE	ANGELINA
LILJEDAL	KENNETH	HILDING
LIM	AUDREY	YAH-TSI
LI-MARCHETTI	ANNA	
LINCOLNE	FRANCES	CAROLINE
LIND	GERD	REBECCA
LINGARD	MEGHAN	FAIR
LIPARI	PIETRO	GIUSEPPE
LITTLER	NOEMI	
LIU	ANSON	
LIU	HAIYING	
LIU	MAN	
LIZERAY	SOPHIE	HSU MING
LOATES-TAYLOR	ELIZABETH	GEORGIA MAE
LOAYZA-LAUFFS	MARIANA	
LOCHER	HELEN	
LOERZEL	TERESA	
LONG	GINGI	ANN
LONGO	MARIA	LUISA
LOOSLI-BUSCHOR	ANDREA	BARBARA
LOPOUKHINE	ALEXANDRA	
LORENZO	AMANDA	
LORENZO	RICHARD	MATELA
LOSENSKY	ELIZA	
LOVE	ANDREW	NICHOLAS
LOW	RHEA	VICKIE
LUCAS	IAN	STUART
LUCAS	LACHLAN	TRENT
LUCAS	MADELEINE	GRACE
LUCMAN	JAMIL	SAEED
LUDWIG	GUY	WHITNEY
LUDWIG	JAMES	MICHAEL
LUND	GAROLD	LEWIS
LUSSI	RENE	MARKUS
LUSSIER	MICHEL	JOSEPH REGINALD PI
LUTCHENKO	OLGA	
LYFORD	DAVID	CABOT
MACADAM	MARGARET	ANN
MACCABE	KEVIN	PATRICK
MACDONALD	SOFIA	CRISTINA
MACHLUP LAGUNA	YARA	JENNIFER
MACINTYRE	JANE	SCOTT
MACINTYRE	MARGARET	ANN
MACK	JONAH	
MACK	LYNNE	
MACK	RICKY	
MACLEOD	TARA	M'DONALD
MADSEN	MARIE	PAULSEN
MAGNUSSON	GABRIELLA	FRANCESSCA

Last name	First name	Middle name or initials
MAHDAVY	MARIAM	
MAHER	SIMA	
MAHONEY	ALISON	MAY
MAHTANI	VINAY	BHAGWAN
MAICHEN	DELPHINE	MARION
MAIDEN	THOMAS	GRAFTON
MAIER	KLARA	VICTORIA
MAISEL	CAITLIN	ELIZABETH
MAISEL	CHRISTOPHER	THOMAS
MAISEL	RUTH	ANN
MALEEVA	KRISTINA	VESSELINOVA
MALEKI	BABAK	
MALLORIE	PHILIPPA	JOYCE
MALUHY	LUIS	FELIPE KLINKERT
MANDICH	GEORGE	HEATH
MANSELL	SHEN	
MANSOUR	MATTHEW	
MANSOUR	SHARON	JOY
MAR	VICTORIA	LYNN
MARFURT	MARKUS	
MARIN	SIMONA	ANCA
MARLOWE	IAN	JEFFRY
MARTELL	CATHERINE	CORLISS
MARTIN	ELIZABETH	ALICE
MARTINELLI	REBECCA	WARD
MASONE	GABRIELLE	TINA
MASSACCESI	MARIA	FERNANDA
MASTICO	ROBERT	ALLAN
MATHIESEN	ERIC	KNUT
MATHIESON	ALISTER	MARK
MATHISON	HEATHER	DAWN
MATSUMOTO	TAKASHI	
MATSUO	TAKEO	
MATSUSHIMA	KOJI	
MATTHEWS	LEE	
MAY	RACHEL	ELIZABETH
MAYR	HANNAH	
MAZZOLENI	PIETRO	
MCADAM	BRENDAN	FRANCIS
MCANENEY	CHARLOTTE	ANNE
MCCARTHY	CAROLE	ANNE
MCCREADY	DAVID	JAMES
MCDERMOTT	ADRIANE	AINSLEY
MCDONALD	PAUL	VICTOR RICHARD
MCGEE	SARAH	ANNE
MCGORRERY	PAUL	GORDON
MCGUINNESS	NIALL	AKASH
MCINTYRE	DEBRA	ANN
MCINTYRE	LINDA	GAIL
MCINTYRE	NICOLE	ANNETTE
MCKENNA	DANIEL	JOSEPH
MCKENNA	JOSEPH	ALEXANDER
MCLEAN	IAN	GARETH
MCLEAN	MAXIME	ANNICK
MCLEOD	MARY	ELIZABTH
MCMANUS	ROBERT	CHARLES
MCNEIL	JOHN	MATTHEW
MCPHAIL	MICHAEL	JAMES
MCWILLIAMS HUGHES	JOHN	
MEDEM	VIRIGINIA	SEGHERS
MEEKS	SHERRILL	KATHRYN
MEIK	KARINA	ANDREA
MELITZER	MATTHIAS	
MELLBERG	LISA	EVELINA
MERGENTHALER	PIA	
MERTES	JULIA	MEGAN
MESSAMORE	JOHN	BENJAMIN
METCALFE	DIANNE	CAROLYN
MEYER	KEVIN	STEVEN
MEYER	MANUELA	JOAN
MICHAUD	DENISE	MARIE
MICHELIN	BENOIT	DAMIEN MARIE PAUL
MIERZOWSKI	NINA	
MIFSUD	DEBORAH	JEAN

Last name	First name	Middle name or initials
MILLAR	DOUGLAS	JAMES
MILLER	DONALD	AL
MILLER	MIRJAM	NAOMI
MILLER	NOAH	JEBB
MILLS	JOHN	LIVINGSTONE
MINOLETTI	CRISTINA	RIA
MIRANDA	CHRISTOPHER	XAVIER
MISIRLYAN	HETOUM	FELIX
MITCHELL	STEPHANIE	AMANDA
MOISEEVA	JULIA	
MOLKENBOER	NICHOLAS	HERMAN
MONAGHAN	NIALL	MATTHEW
MONTGOMERY	SVEN	
MOO	AARON	GILBERT
MORALES	KEVIN	ANDREW
MORGAN	FRANCES	KAY
MORRIS	SCOTT	ROBERT
MORTON	ELIZABETH	HAMILTON
MOTWANI	ANIL	MURLI
MOUNET	CARINE	ODETTE
MOUYER	EFSTRATIOS	
MULLEN	LUCIA	ANNE
MULLER	PETER	KURT
MURAI	CHIE	
MURDIN	ALEXANDER	NICHOLAS
MURPHY	NICHOLAS	LEAHY
MURPHY	SORCHA	LEAHY
MUSGRAVE	KAREN	MICHELLE
MUSTERS	JOCELYN	ANTONIA JANET
MUSTILA	MARTTI	MIKAEL
NADEAU	ALEXIS	MARIELLE
NAFTEL	STEVEN	JAMES
NAJER	FELIX	HENRY
NAPIER	JESSICA	EMMA
NASIR	ADAM	
NASSER	MONA	
NASSER	TASLEEM	
NAVARRO	MARIA	ELISA
NAZER	TAN	LOAY
NEILSON	IAN	CHARLES
NEJAT	SARA	
NENNIGER	EMILY	LOUISE
NESHEIM	CATHERINE	MARGARET
NESPECA	CLAUDIA	
NETTLESHIP	TRACEY	JANE
NEU	JOHANNES	
NEVSTAD	DANIEL	HENRY
NEWTON	ROGER	STANZ
NGUYEN	HOAI	HUONG THI
NICHOLSON	DANIEL	ROBERT
NICKERSON	JACQUELINE	RUTH
NIGH	SEAN	PAUL
NIMURA	SANAE	NA
NISHII	TAKESHI	
NISHIMURA	TSUTOMU	PHILIP
NITZSCHE	BORIS	
NITZSCHE	KIRSTEN	
NOAH	RACHAEL	HELENE
NOBS	CHRISTIAN	SVEN
NODA	SHINJI	
NORMAN	PETER	
NORNESS	ROSE	SORREN
NORNESS JR	KENNETH	MCRIGHT
NOSKE	ANDREW	BRETT
NOZAWA	KOJI	
NUSSBAUM	DAN	ANTHONY
O'BRIEN PIERLOT	MAURA	ANN
ODFJELL	VICTORIA	
O'DONNELL	NICOLA	JANE
OFFMAN	LAUREL	JILL
OGILVIE	JENNIFER	KAREN
OHLA	ROBERT	GLEN
OLIVIER	DANIEL	BENEDICT ENDFIELD
OLONDRIZ	MARIE	GEORGETTE SUZARA

Last name	First name	Middle name or initials
OLSEN	ERICKA	
OLSON	JOHN	LEWIS
ONG	JONATHAN	LEK-KAI
OPENSHAW	GRAHAM	ANTHONY
O'REGAN	SUSAN	LEE
ORIKASA	RYOSUKE	ARNOLD
ORMSBEE	CAROLYN	ANNE
ORTIZ	MARTHA	LUCIA
OSIPOVA	MARINA	
OSSEIRAN	RAYAN	
O'SULLIVAN	MAUREEN	
O'SULLIVAN	RACHELLE	ANN
OSWALD	CAROLYN	CATRIONA
OSWALD	MARTIN	
OTANI	MIKA	
OTTE	ALBRECHT	CHRISTOPH
OTTO	ERIC	FRANZ
OUELLETTE	ANDREW	DAVID
OUTREQUIN	JASON	VICTOR
OXLEY III	DAVID	RICHARD
PAGE	MARCIA	ELIZABETH
PAGE	MARY	MACGREGOR
PAIK	YOUNG	CHUI
PALACIOS BAHENA	VICTORIA	
PANGBORN	MARVIN	CLARK
PANKAJ	THAMPIL	
PAREKH	MAYANK	PRAVIN
PARK	STEPHEN	ROBERT
PARKER	CHRISTOPHER	MATHIAS
PARKER	PATRICIA	ANNE
PARMLEY	JERRIE	ANN
PARROTT	MARTHA	MARY
PATEL	KAMALA	DEVI
PATERSON	AMANDA	JANE
PATERSON	RUBY	NELLE
PAY	SAMANTHA	LOUISE
PEACOCK	BENJAMIN	DAVID
PELLEGRINO	BRYAN	JAMES
PEMBLE	ADAM	MARTYN
PENNY	ERIN	TERESA
PENTNER	TIMO	
PERALA	SCOTT	FREDRICK
PERCIVAL	SUZANNE	ELIZABETH
PERELMAN	VADIM	
PERLINO	MATTEO	ALEXANDER
PETEL	JUDY	ROYCE
PETERSON	MARK	ERIC
PETERSON	OYDIS	DIKE
PETRUS	SHAUNA	LYNN
PHAN	JOHNSON	HUYNH
PHILLIPS	MARY	HILL
PHILLIPS	NATALIE	CLAIRE
PIAZZA	JUSTIN	ROLLAND
PIEL	JONATHAN	MICHAEL
PIERCEY	JENNIFER	JANE-ANNE
PIERLOT	AIDAN	CHARLES
PIERLOT	ERIN	GRACE
PIERLOT	LIAM	JOHN
PIJPERS	SUSAN	RAPIER
PINDER	FIONA	NICHOLE
PITMAN	SIMON	M
PLACHY	TOMAS	
PLATT	THOMAS	M
PLATTS	JOHN	BOYLE
PLUMMER	HANNAH	JANE
POINTON	LINDA	JANICE
POLITIS	ELLA	
POMPONIO	MICHELE	PAUL
PORA	ALEXANDER	RONALD TEARNAN
PRATSINIS	KATERINA	
PRATSINIS	MANOLIS	ALEXANDER
PRENN	FRANCES	CHAE
PRETOR-PINNEY	GAVIN	EDMUND
PROCOPIO	GRAZIA	

Last name	First name	Middle name or initials
PROTIVA	BRIAN	LEOPOLD
PROTIVA	TYLER	LUKE
PROUD	CLIVE	M
PRYOR	TIMOTHY	
PUGA	DAVID	EDUARDO
PUNDY	PETER	MICHAEL
PUTERFLAM	IVY	LEE
QURESHI	HAROON	
RAE	BAMBI	CHU
RAIRDAN	WENDY	LENOIR
RALPH	YUMI	
RAMANATHAN	PARASURAMAN	KODUVAYOOR
RAMASWAMY	MYTHILI	
RAMRUS	DANIEL	ADAM
RANDALL	CHLOE	JENNA
RANSOME	PHILIP	
RAPP	ERIC	ALAN
RAUSING	JEMIMA	CATHERINE
REBSTOCK	JOHN	MICHAEL
REDA	EMMA	YOSHIE
REDDY	MEGHANA	KADIRI
REDSTON	TAMZIN	ELLEN
REGE	KJELL.	
REGO JR	BENJAMIN	
REINER	ETHAN	KASS
REINKE	GREGORY	MATTHEW
REINOLD	HELEN	
REINSCH	KAREN	ELIZABETH
RENNERT-MAY	ELISSA	DANIELLE
RESTREPO	ANA	CRISTINA
RETALLACK	SEAN	MICHAEL
REVOY	JYOTI	SHOBHA NATAISHA
REYNOLDS	JOANNE	ELIZABETH
REZA	MARIAM	
RIBAUD	CHRISTOPHER	OLIVIER ANTHONY
RICE	ALEC	SEAN
RICHARDS	JANE	
RIETVELD	GIJSBERTUS	GERRIT
RILEY	JESSICA	MERIBETH
RINGNES	ANETTE	KRISTINE
RISK	ANDREA	CHRISTINE
RIXE	MAXWELL	ROGER
ROBERGE	TIM	BRIAN
ROBERTS	AMANDA	MICHELLE
ROBERTS	IAN	CHARLES
ROBERTS	MICHAEL	JAMES
ROBERTSON	SIMONE	ANNETTE
ROBINSON	ELIZABETH	MARIE
ROBINSON	IAIN	JAMES
ROBINSON	KATHY	
ROBINSON	MICHAEL	PLAYFAIR
ROBINSON	WENDY	ANNE
ROCKWELL	GLENDON	HUGH
RODGERS	CHARLES	DAVID SPENCER
ROGER	BRIAN	MITCHELL
ROLLS	COURTNEY	SPENCER
ROM	ANDERS	HOLEN
ROMERO	JOSE	ROBERTO
RONCO	FEDERICO	
ROOS	EVIE	IRENE MARIA
ROSBACH	AYKE	LEAN
ROSE	BRIAN	THOBURN
ROSE	GLENN	EDWARD
ROSE	STEVEN	LEE
ROSENBERG	DANIEL	MOISE
ROSS	VICTORIA	JANE
ROSSITER	KATHERINE	MARGARET
ROTHSCHILD	MILTON	DAVID
ROULSTON	CLIFFORD	K
ROXAS	ANGELO	SUMERA
ROZEE	CLARA	MARGARET PATTERSON
ROZEE	HONOR	MILDRED PATTERSON
ROZYCKA	ANNA	MAGDALENA
RUBERTO	LUKE	MICHAEL

Last name	First name	Middle name or initials
RUEST	ELIZABETH	MARY
RUGGIERI	MICHELE	
RUMBLE	RICHARD	ROY
RUSH	KELSEY	ELIZABETH
RUSS	JEAN	MARC
RUSSELL	CAROLINE	AMANDA
RYAN	MERRY	ELAINE
RYAN	ROBERT	JEFFERY
SAAB	EDDY	M
SADUN	BENIAMINO	
SAFIE	ROBERT	ALEXANDER
SAHLSTROM	MICHAEL	LOWELL
SAITO	HIDEAKI	
SAKAI	KUMIE	
SALLER	CHRISTOPHER	RALPH
SALT	ALEXANDER	GORDON FORDYCE
SALVAGNO	SILVIA	BEATRIZ
SAMBANJU	JASON	RODERICK
SAMJI	TAZMEEN	
SAMPSON	VICTORIA	SORAYA AFSHAR
SANFORD	JUDITH	ELLEN
SARANTIS	VALENTINO	CAESAR VIRIATO
SARKAR	PURBASHA	
SASDI	HELGA	
SAUER	ANNIKA	
SAUNDERS	MARY	MARGARET
SAUNDERS	PAUL	DAVID
SAWCZUK	JOEL	IVAN
SAWJANI-PALM	MITA	
SAYEGH	ZIAD	
SCHADDE	ERIK	
SCHAECHTLE	ROY	THOMAS
SCHAERER	LAURENE	
SCHAMUHN	KEVIN	JOHN
SCHANTZ	DARYL	IVAN
SCHANTZ	ROBYN	MAUREEN
SCHAUB	ANN	ELIZABETH
SCHEMBRI	PHILOMENA	JOSEPHINE
SCHIFFNER	MEGGAN	JANE
SCHJELDERUP	JOHN	HARALD
SCHLABSZ	SHAWN	ALEXANDER
SCHLATMANN	THOMAS	GEORGE
SCHMIEDT DA SILVA	PAUL	MARIA
SCHNEIDER	CYNTHIA	CLAIRE
SCHNUR	BARBARA	KATHARINA
SCHOENENBERGER	MIRIAM	JOHANNA
SCHOGGERS	BO	ELVIRA
SCHORDERET	FORREST	DENIS
SCHORDERET	LAKE	WILLIAM
SCHRIEBER	JARED	MORTON
SCHULER	COSIMA	
SCHULTENS	GARRETT	MICHAEL
SCHULZ	EVAN	JOHN
SCHULZ	GARY	PETER
SCHUSTER	CRISTINA	FRANCESCA
SCHWEIGER	MARINA	TERESA
SCHWEIZER	THOMAS	ROBERT
SCINTO	LORRAINE	ALYCIA
SCOTT	JACOB	LANDON
SCOTT	LOUISE	GAIL
SHAH	GAURANG	VIJAY
SHAHAN	DAMIEN	MATTHIAS
SHAHARYAR	RAHEEL	
SHAW	ROBIN	ANNE
SHEFTEL	ANDREW	LAWSON BAYLIES
SHEIKH	NABEELA	IFIKHAR
SHELLEY	ANNE	FRANCES
SHEN	GE	
SHEPPARD	NOEL	FRANCIS
SHEPPARD	PRUDENCE	RUTH
SHI	ZHONGJIAN	
SHIBAYAMA	NOBUKO	
SHINDLER	DAVID	STEPHEN
SHINOHARA	YOSHIKO	

Last name	First name	Middle name or initials
SHIPMAN	WILLIAM	JEFFREY
SHIUE	GRACE	H
SIEDE	JANINA	
SIEGRIST	MARIANNE	CHRISTINA
SILVIUS	THOMAS	R
SIMMONDS	SALLY	PATRICIA
SIMONETT	HELENA	BERNADETTE
SIMPSON	PAUL	DAVID
SINCLAIR	BERYL	ITA
SIVARAJ	SHANMUGANATHAN	
SKANDALAKIS	HARRIS	GEORGE
SKOLNICK	MARTIN	LINDHEIMER
SKORSTAD	ERLING	
SKOSS	ANN	RACHEL LOCKE
SKVORTSOV	SERGEI	VLADIMIROVICH
SMALL	MARK	JONAH
SMITH	TERESA	GAYLE
SNIECIKOWSKI	JACEK	JANUSZ
SNOW	JOHN	DOUGLAS
SOAR	CHRISTOPHER	JOHN
SOMER-MORAN	AYHAN	
SOMNOLET	KARINE	GHISLAINE DIANE MARTHE ELIANE
SONG	YUFEN	
SONMEZER	BILGE	
SORENSEN	KJARTAN	DEBOIS SAND
SOSKIN	BENJAMIN	DANIEL
SOSTMANN	MAREN	
SOUSTRA	FREDERIC	PIERRE ANDRE
SPARBY	ERIK	ANTON JOHANNES STYREFORS
SPENER	ARNO	GEORG
SPIGEL	ELISABETH	JANET
ST JOHN	MARGARETHA	ANN
STACHOWSKI	JOERG	ADOLF
STAEHLING	MARC	EDWARD
STAGG	RUSSELL	
STAGNELL	SAMI	
STALCUP	ERIKA	KAY RATANA
STALDER	BENEDICT	
STANNER	PAOLO	MIGEL
STEBNER	ELEANOR	JOYCE
STEINHAUER	JASON	CORY
STELLING	JENS	HENRIK
STEPHENS	BRENDA	
STEVENS	HEIDI	SABINA
STEVENSON	JOANNE	ROSALIE
STEWART	DOUGLAS	ALLEN
STIEBNER	NICOLE	ALESSANDRA
STRAEHLE	GREGOR	ERIC
STRAEHLE	OLIVER	SEBASTIAN
STRAHAN	STEPHANIE	MAE
STRAND	TIFFANY	ANN
STRANGWARD	LINDA	JEAN
STRINGER	HARRIET	KINMOND
STUART	DEBORAH	ANNE
STURGIS	BRIONY	JEAN
SU	HSAN	
SUGANUMA	SHINOBU	
SUGANUMA	YASUKO	
SUMMY	SIMON	GUILFORD
SUNDIN	HELGA	RAE
SUNDIN	TODD	CHRISTOPHER
SUPRUNENKO	ALINA	
SUTTER	SALOME	KARINA
SUTTON	LAURA	CAROLINA
SUWALSKI	MALLORY	
SVRCEK	JENNIFER	DAWN
SWEENEY-HAMPEL	LAUREN	ALLYNE
SWEESY	BETHANY	ELLEN
TABANCA	IDIL	
TABBARA	IBRAHIM	RAYAN
TABET	SYLVIO	SHARIF
TACK	ILSE	RITA
TAJIRI	KAZUYO	
TAKAHASHI	DOROTHY	YUMI

Last name	First name	Middle name or initials
TAKAHASHI	SAKURA	
TAKAHASHI	YOSHIKO	
TALLARIGO	ELEONORA	
TAM	ISABEL	CHUN YEE
TAN	MEI	LING
TANAKA	YASUO	
TANG	AMANDA	JENNIFER
TANG	ANDREW	JASON
TANI	MASAHIKO	
TANNER	CHERYLL	LAURA
TARABBIA	CHAD	GOUGH
TARABBIA	MADISON	MAY
TATE	LISA	MICHELLE
TAYLOR	CHAD	JAMES
TAYLOR	CHRISTINE	JESSICA
TAYLOR	ELIZABETH	CAROLINE
TAYLOR	KAREN	LENORE
TAYLOR	MATTHEW	WILLIAM LEONARD
TAYLOR	VENUS	BLIZZARD
TAYYARAH	HALA	
TEERLINK	MARC	
TEFFT	BRUCE	MILTON
TEGAN	SARGENT	CLUNY
TEWES	JOERG	
TEWES	SABINE	
THAYER	TANYA	
THEMIG	DANIEL	JON
THIHA	MIKA	
THOMAS	DAVID	CHRISTOPHER
THOMAS	EVAN	BRYNLEY
THOMAS	KIMBERLEY	ANN
THOMAS	SARA	JESSICA
THOMAS	SCOTT	MICHAEL
THOMPSON	JILL	
THOMPSON	MELISA	ANNE
THOMSON	ALEXA	MARGARET
THOMSON	DOUGLAS	CHARLES
THOMSON	MARK	ANDREW
THOR	HONG	CHUAN
THOREK	BENJAMIN	ROSS
THORP	JOHN	WATSON
THORVALDSSON	THOR	
THRESH	GARTH	ALEXANDER
THRESH	KARLA	LYNN
THRESH	URSULA	EMILY
TIMBLO	ANUJ	AUDUTH
TKACH	ALEKSANDER	
TKACH	JENNIFER	MICHELE
TOH	JIREH	JIA EN
TOIGO	ZACHARY	DAVID
TOLLMAN	JACK	SOMERSET
TORKELSON	SHARON	MARIE
TOULOUSE	MICHEL	JEAN LOUIS
TOURLIDES	CAMILLE	ALINE
TREGLOWN	KIMBERLEY	ANNE
TREIT	JASON	THOMAS
TRELEWICZ	ERIC	
TRIPODAKIS	PHILLIP	THOMAS
TROUGHTON	TONY	JAY
TROUSSE	EMMANUEL	LUCIEN
TSCHIRKY	JOSEF	VICTOR
TSENG	SAMUEL	CHIA-SHIUNG
TSUBAKI	MICHIKO	
TSUI	WAI	K
TUCK	MICHAEL	ROSS
TUET	WESLEY	KIN TAK
TUNSLEY	KATHLEEN	MAY
TUNSLEY	ROGER	ARTHUR
TURNER	KRISTOPHER	SCOTT
TUTUIAN	ELLA	ANDREA
TYLER	CHAD	PETERSON
TYSOR	CAROLYN	SUSANNAH
UCKERT	ANDRE	DANIEL
UHLEMANN	JANET	LEE

Last name	First name	Middle name or initials
UHLEMANN	MAX	REINHOLD
UNRUH	DOYLE	RADEAN
URATA	KAZUKO	
VAN BEERS	MAX	JOHANNES FLORIAN
VAN DAMME	HEIDI	MARIE
VAN DAMME	JOAN	MERINE
VAN DE VELDE	WIM	IGNACE MARC
VAN DER LINDEN	MARINUS	HENRICUS GM
VAN DIJK	JOHANNA	M
VAN FOSSEN	BRENDA	RAE
VAN OPDENBOSCH	DOMINIK	
VAN SPREWENBURG	MARC	CHRISTIAN
VAN SPRONSEN	IMOGEN	WETHERED
VAN WEEGHEL	JEROEN	
VARA	FRANCISCO	ALBERTO
VASILIU	IRINA	
VAUGHN-GEBAUER	HANS	THOMAS
VERBIN	JOEL	LESLIE
VERBIN	PHYLLIS	ANN
VERVILLE-PROVENCHER	LAURA	
VETTERLI	OLIVER	
VIEHBOCK	FRANZ	ARTUR
VIEHBOCK	VESNA	
VIEIRA	ANDREA	
VILLIERS	CRISTINA	HELEN
VINSON	CHRISTOPHER	ROBIN
VOHRA	AMEET	
VON ARX	PHILIPE	GEORGE
VON BEBENBURG	ANTON	WALTER
VON WEISEL FORBES	CAROLINE	
VRUBLEVSKYY	ANNE	CHRISTINE
WALDER	SARA	SIMONA
WALKER	HANNAH	FRANCES
WALLBRECHER	DAVID	MARIA
WALLBRECHER	SAMUEL	PETER
WALLIMANN	ISIDOR	JOSEF
WALLS	CRAIG	ALAN
WALSH	MICHAEL	PATRICK
WALTHER	DARLENE	KAY SCHULZ
WAMBERG	TAYLOR	SCOTT
WANG	CHENG	
WANG	DANIEL	HU
WANG	HANYU	
WANG	HUI	
WANG	QIANG	
WARD	CLAIRE	ELLEN
WARGNY	NANCY	JEAN
WARING	JENNIFER	MARY
WATERMAN	ELIZABETH	JANE
WATSON	HANNAH	ELIZABETH
WATTERS	WENDY	JOAN
WEAR	RICHARD	HOWARD
WEAVER	THOMAS	ANDREW
WEBB	JAMES	STANLEY
WEBSTER	LYNN	LENORE
WEHRSPANN	ANDREW	WILLIAM
WEILL	DANIEL	MARK
WEINSTEIN	RISA	BONNIE
WEIS	FRAUKE	
WEISS	BRYONY	TUTIN
WEISS	ZAMIRAH	DINA
WEISSER	KAREN	JILL
WELLS	OLIVER	TOBY
WERCKMEISTER	CHRISTINA	
WESENBERG	JUSTIN	MICHAEL
WESTMORELAND	CALI	GRACE
WETMORE	SEAN	DAVID
WHITAKER	RUPERT	EDWARD DAVID
WHITE	JANICE	WHITTEMORE
WHITWELL	PENELOPE	JANE
WILKINSON	JOHN	LAWTON
WILLEMSEN	FRANK	HENDRICUS
WILLIAMS	IVOR	CHARLES LLEWELYN
WILLIAMS	LACEY	LYNN

Last name	First name	Middle name or initials
WILMS	CHRISTIAN	DEREK JASON
WINKLEBY	DIANE	DAYE
WINTER	MICAELA	REGINA
WINTHROP	ANDREA	LYNN
WISHON	LOUISE	
WITHERS	SEBASTIAN	JOHN
WITTE	ANN	BARBARA
WOLF	ADAM	BENJAMIN
WOLF	CAROLINE	ELIZABETH
WOLF	KAREN	
WOLF	MARCUS	PASCAL
WOLF	ULJANA	
WOLFER	FRANZISCA	SARAH
WOLFF	DENIS	REDWINE
WOLLIN	MICHAEL	JOHN
WON	JUNGMYUNG	
WONG	CARMEN	
WONG	ILAN	
WONG	POOI	YI
WONG	SAU	WAI
WONG	STEPHEN	ZHOU
WOOD	KEITH	ALEXANDER
WOODING	DENISE	JILL
WOODWARD	ALEXANDER	JOHN
WOODWARD ALEXANDER	DEBORAH	
WOOLFOLK	MAKO	
WOOLLEY	ROBERT	WILLIAM
WORMSER	ASTRID	
WRIGHT	ELAINE	MARIE
WRIGHT	IAN	PAUL
WU	AILING	
WU	ANDREW	
WU	ANGELA	
WU	JULIANA	CATHERINE
WULF	SAMANTHA	RUTH ELIZABETH
WYLES	CHRISTOPHER	THOMAS
XU	HAN	
XU	HUADI	
YAKA	MASARU	
YAMAMOTO	SATOSHI	ANTHONY
YANG	KATIE	
YATES	PETER	WILSON
YENNY	CORINNE	EDITH
YEONG	SEOKYEE	JENNIFER
YI	MINGHUI	
YI	YULING	
YIN	GERALD	ZHEYAO
YOSHIDA	AMY	ELIZABETH
YOSHIHARA	MOTOKO	
YOUN	YOUNGHEE	
YOUNG	DONALD	ALLEN
YU	DAN	
YU	UNA	
YUAN	CHAOYUE	
YUILL	GEORGE	WALKER DEVON
YUILL	IAN	TUCKER IRVING
ZANEVA	MIRELA	VLADIMIROVA
ZAREM	ADRIENNE	ELIZABETH
ZARICK	RYAN	ANDREW
ZAUBEK	MELANEY	
ZEDAN	TAREK	FAREED
ZENGERLY	SHEILA	
ZHANG	JIEFAN	
ZHANG	YU	FENG
ZHOU	MINYAO	
ZHOU	NAIMING	
ZIMMERMAN	PAUL	CLAYTON TRASK
ZINSZER	KATHLEEN	ANN
ZOU	WENYU	
ZUPPINGER	NICOLE	SILVIE
ZURMUEHLE	MARCO	RENATO

Dated: 4/20/2026.

Kevin T. Hall,

Senior Revenue Agent, Team 1942, CSDC—Compliance Support, Development & Communications.

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Part II

Consumer Financial Protection Bureau

12 CFR Part 1002
Equal Credit Opportunity Act (Regulation B); Final Rule

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1002

[Docket No. CFPB–2025–0039]

RIN 3170–AB54

Equal Credit Opportunity Act (Regulation B)

AGENCY: Consumer Financial Protection Bureau.

ACTION: Final rule.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) is issuing a final rule that amends provisions related to disparate impact, discouragement of applicants or prospective applicants, and special purpose credit programs under Regulation B, the regulation implementing the Equal Credit Opportunity Act (ECOA or Act). The amendments facilitate compliance with ECOA by clarifying the obligations imposed by the statute.

DATES: This final rule is effective July 21, 2026.

FOR FURTHER INFORMATION CONTACT: Dave Gettler, Paralegal Specialist, Office of Regulations, at 202–435–7700 or *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary

Pursuant to its authority under ECOA, 15 U.S.C. 1691b(a), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), 12 U.S.C. 5512(b), the Bureau is amending provisions in Regulation B, 12 CFR part 1002, pertaining to: whether disparate impact is cognizable under the Act; under what circumstances a creditor may be deemed to be discouraging an applicant or prospective applicant; and under what conditions a creditor may offer special purpose credit programs (SPCPs).

In 2020, the Bureau issued a Request for Information on ECOA and Regulation B (RFI).[1] The RFI solicited information about disparate impact, prospective applicants, and SPCPs, among other topics. The Bureau reviewed the comments submitted in response to the RFI and obtained other information in the course of carrying out its statutory responsibilities. In November 2025, the Bureau issued a notice of proposed rulemaking amending Regulation B (proposal or proposed rule). The Bureau has considered the comments submitted in response to the proposed rule.[2]

The Bureau now finalizes the rule as proposed. The Bureau's final rule provides that ECOA does not authorize disparate-impact liability (effects test), further defines discouragement, and adds prohibitions and conditions for SPCPs.

II. Background

A. Introduction

Congress enacted ECOA in 1974 (1974 Act)[3] ''to insure that the various financial institutions and other firms engaged in the extensions of credit exercise their responsibility to make credit available with fairness, impartiality, and without discrimination on the basis of sex or marital status.'' To that end, section 701(a) of ECOA made it ''unlawful for any creditor to discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.'' The Board of Governors of the Federal Reserve System (Board) promulgated regulations implementing ECOA. In 1976, Congress reenacted ECOA in its entirety, amending ECOA to add additional categories of prohibited discrimination (1976 Act).[4] Since 1976, ECOA makes it unlawful for

> any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract); (2) because all or part of the applicant's income derives from any public assistance program; or (3) because the applicant has in good faith exercised any right under [the Consumer Credit Protection Act] (prohibited basis).[5]

The Board, which at the time had exclusive rulemaking authority under ECOA, promulgated regulations, after notice-and-comment, to implement the 1976 Act.

In 2011, the Dodd-Frank Act transferred responsibility for ECOA from the Board to the Bureau.[6] It granted primary authority to the Bureau to supervise and enforce compliance with ECOA and Regulation B for entities within the Bureau's jurisdiction and to issue regulations and guidance to implement and interpret ECOA.[7] On December 21, 2011, the Bureau established a new Regulation B, 12 CFR part 1002, that substantially duplicated the Board's Regulation B, 12 CFR part 202, making only certain non-substantive, technical, formatting, and stylistic changes.[8] Under the Dodd-Frank Act, it is the Bureau's responsibility to ensure that outdated, unnecessary, or unduly burdensome regulations over which the Bureau has authority are regularly identified and addressed,[9] and to correctly interpret ECOA.

In 2020, the Bureau published an RFI seeking comments and information to identify opportunities to prevent credit discrimination, encourage responsible innovation, promote fair, equitable, and non-discriminatory access to credit, address potential regulatory uncertainty, and develop viable solutions to regulatory compliance challenges under ECOA and Regulation B.[10] The RFI requested information related to disparate impact, prospective applicants, and SPCPs, among other issues. In response to the RFI, the Bureau received and reviewed over 35 comment letters. In addition, the Bureau has obtained pertinent information in the course of carrying out its supervisory and enforcement responsibilities.

In 2025, the President issued several Executive Orders (E.O.s) relevant to the Bureau's administration of ECOA. E.O. 14173, entitled ''Ending Illegal Discrimination and Restoring Merit-Based Opportunity,'' states in part that ''[t]he Federal Government is charged with enforcing our civil-rights laws. The purpose of this order is to ensure that it does so by ending illegal preferences and discrimination.''[11] E.O. 14281, entitled ''Restoring Equality of Opportunity and Meritocracy,'' states in part that ''[i]t is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.''[12]

On November 13, 2025, the Bureau issued a proposed rule that would amend Regulation B. The proposed rule:

[1] 85 FR 46600 (Aug. 3, 2020).

[2] 90 FR 50901 (Nov. 13, 2025). Corrections to the proposed amendatory text to conform with the public inspection copy were published at 91 FR 9191 (Feb. 25, 2026).

[3] Public Law 90–321, tit. VII, *as added by* Public Law 93–495, tit. V, sec. 502, 88 Stat. 1521 (15 U.S.C. 1691 *et seq.*).

[4] Equal Credit Opportunity Act Amendments of 1976, Public Law 94–239, 90 Stat. 251.

[5] 15 U.S.C. 1691(a).

[6] Public Law 111–203, 124 Stat. 1376 (2010).

[7] Dodd-Frank Act section 1029 generally excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

[8] 76 FR 79442 (Dec. 21, 2011).

[9] 12 U.S.C. 5511(b)(3).

[10] 85 FR 46600.

[11] 90 FR 8633 (Jan. 31, 2025).

[12] 90 FR 17537 (Apr. 28, 2025).

(1) provided that ECOA does not authorize disparate-impact claims; (2) proposed to amend the prohibition on discouraging applicants or prospective applicants to clarify that it prohibits statements of intent to discriminate in violation of ECOA and is not triggered merely by negative consumer impressions, and to clarify that encouraging statements by creditors directed at one group of consumers is not prohibited discouragement as to applicants or prospective applicants who were not the intended recipients of the statements; and (3) proposed to amend the standards for SPCPs offered or participated in by for-profit organizations to include new standards and related conditions.

The Bureau received approximately 64,500 comments on the proposed rule. A majority of those comments were from individual commenters, including consumers and individuals commenting from their personal and professional experience. The Bureau also received many comments from consumer advocate commenters, industry commenters, policy group commenters, State Attorneys General commenters, and Members of Congress. All comments are available on the public docket for this rulemaking.[13] Relevant information received via comment letters is discussed below in subsequent parts of this document, as applicable.

Consistent with the above discussed actions and after consideration of the comments, the Bureau is finalizing the rule as proposed. This final rule will take effect 90 days after publication in the **Federal Register**.

B. Disparate Impact

In *Griggs* v. *Duke Power Co.*[14] and subsequent cases, the Supreme Court held that certain provisions in antidiscrimination statutes may authorize disparate-impact claims. Under a disparate-impact claim, a plaintiff may challenge as unlawful discrimination facially neutral policies that have a disproportionate effect along prohibited basis lines. The Supreme Court has noted that ''[i]n contrast to a disparate-treatment case, . . . a plaintiff bringing a disparate-impact claim challenges practices that have a disproportionately adverse effect on minorities and are otherwise unjustified by a legitimate rationale.'' [15]

In *Griggs,* the Supreme Court held that disparate-impact claims are cognizable under section 703(a)(2) of title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment practices. In *Smith* v. *City of Jackson,*[16] a plurality of the Supreme Court held that the Age Discrimination in Employment Act (ADEA) authorizes disparate-impact claims. Most recently, in *Texas Department of Housing & Community Affairs* v. *Inclusive Communities Project, Inc.,*[17] the Supreme Court held that disparate-impact claims are cognizable under the Fair Housing Act (FHA). However, the Supreme Court has not held that disparate-impact claims are necessarily available under all antidiscrimination statutes. Instead, the Court has reviewed each statutory provision, when challenged, to determine whether it authorizes disparate-impact claims, whether disparate-impact claims are consonant with the intended operation of the statute, and in particular whether the statutory provisions have ''effects-based'' language that indicates that Congress intended for the statutory provision to permit disparate-impact claims.

The Supreme Court has not examined whether a disparate-impact claim is permitted under ECOA. As noted above, section 701(a) of ECOA, as enacted in 1974, made it ''unlawful for any creditor to discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.'' In the 1976 Act, ECOA makes it unlawful for ''any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract); (2) because all or part of the applicant's income derives from any public assistance program; or (3) because the applicant has in good faith exercised any right under [the Consumer Credit Protection Act].'' [18]

The text of ECOA does not state that disparate-impact claims are cognizable under ECOA, nor does it contain effects-based language of the type that has been found in other statutes to invoke disparate-impact liability. However, in promulgating Regulation B, the Board relied on legislative history to support authorizing disparate-impact liability. For example, the Senate Report accompanying the 1976 Act stated:

> In determining the existence of discrimination on these grounds, as well as on the other grounds discussed below, courts or agencies are free to look at the effects of a creditor's practices as well as the creditor's motives or conduct in individual transactions. Thus judicial constructions of anti-discrimination legislation in the employment field, in cases such as *Griggs* . . . and *Albemarle Paper Company* v. *Moody,* are intended to serve as guides in the application of this Act, especially with respect to the allocations of burdens of proof.[19]

A House Report similarly provides evidence that ECOA authorizes disparate-impact claims.[20]

The Board's regulations to implement the 1976 Act explicitly and solely relied on this legislative history to conclude that Congress intended for ECOA to permit an ''effects test concept,'' *i.e.,* disparate-impact proof of liability.[21] Although there have been minor amendments to the relevant language in Regulation B since 1977, Regulation B has continued to point to the legislative history of ECOA to support the conclusion that disparate-impact claims are cognizable under ECOA.[22]

Current Rule

Regulation B provides in § 1002.6 that the legislative history of ECOA indicates that the Congress intended an ''effects test'' concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs,* 401 U.S. 424, and *Albemarle Paper Co.,* 422 U.S. 405, to be applicable to a creditor's determination of creditworthiness. Current comment 6(a)–2 explains the ''effects test,'' cited to the legislative history of ECOA, and provides an example. Current comment 2(p)–4, which relates to the definition of ''empirically derived and other credit scoring systems,'' refers to the ''effects test,'' noting that neutral factors used in credit scoring systems could nonetheless be subject to challenge under the effects test and cross-referencing comment 6(a)–2.

Part III.B below discusses the ways in which this final rule changes the current rule regarding disparate impact.

[13] *See https://www.regulations.gov/docket/CFPB-2025-0039/comments.*

[14] 401 U.S. 424 (1971).

[15] *Texas Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.,* 576 U.S. 519, 524 (2015).

[16] 544 U.S. 228 (2005) (plurality op.).

[17] 576 U.S. 519.

[18] 15 U.S.C. 1691(a).

[19] S. Rep. No. 94–589, at 4–5 (1976).

[20] H. Rep. No. 94–210, at 5 (1975).

[21] 42 FR 1242, 1255 n.7 (Jan. 6, 1977) (''The legislative history of the Act indicates that the Congress intended an ''effects test'' concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs,* 401 U.S. 424, and *Albemarle Paper Co.,* 422 U.S. 405, to be applicable to a creditor's determination of creditworthiness.''). This footnote was later moved to the text of § 1002.6 when the Bureau republished Regulation B after responsibility for the rule was transferred from the Board to the Bureau. *See* 76 FR 79442.

[22] *See, e.g.,* 50 FR 48018, 48050 (Nov. 20, 1985) (adopting official staff commentary, including comment 6(a)-2, which explains that the ''effects test'' is a ''judicial doctrine'' that Congress intended to ''apply to the credit area'').

C. Discouragement

Regulation B § 1002.4(b) provides that, ''[a] creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.'' [23] The commentary to § 1002.4(b) provides additional details about conduct prohibited or permitted under the provision.

The Board adopted § 202.4(a), a precursor to current § 1002.4(b), in its 1975 final rule implementing the 1974 Act.[24] The 1974 Act did not specifically mention discouragement of applicants or prospective applicants. To adopt the provision, the Board thus relied on its authority under ECOA section 703(a)—authority that the Dodd-Frank Act subsequently transferred to the Bureau—to make adjustments in Regulation B that, in its judgment, were necessary or proper to effectuate ECOA's purposes.[25] Specifically, ECOA section 703(a) provides that the Bureau (previously the Board) ''shall prescribe regulations to carry out the purposes of [ECOA],'' and that such regulations:

> [M]ay contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of [ECOA], to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.[26]

In its rulemaking, the Board stated that it believed that a prohibition against discouragement was ''necessary to protect applicants against discriminatory acts occurring before an application is initiated.'' [27]

In 1975, ECOA prohibited discrimination based only on sex or marital status, and the discouragement prohibition as initially adopted was limited accordingly. In 1977, consistent with the 1976 Act that expanded ECOA to prohibit discrimination based on protected characteristics beyond sex or marital status, the Board revised the discouragement provision to its current phrasing, prohibiting discouragement ''on a prohibited basis.'' [28] The Board later added commentary providing examples of prohibited conduct.[29] In 1991, Congress amended ECOA to require enforcing regulatory agencies to refer to the Department of Justice (DOJ) cases that the agencies believed involved a pattern or practice of one or more creditors *discouraging* or denying applications for credit in violation of ECOA section 701(a).[30]

In 2011, the Bureau republished Regulation B's discouragement provision without material change in what is now § 1002.4(b) and the commentary thereto. In 2024, the U.S. Court of Appeals for the Seventh Circuit held that Regulation B's prohibition against discouragement is consistent with the plain text of the ECOA. In so holding, the court observed that the discouragement provision had been adopted pursuant to the Board's (now the Bureau's) broad authority to ''prescribe regulations to carry out the purposes of [ECOA],'' and to ''provide for such adjustments and exceptions'' that, in the Bureau's judgment, ''are necessary or proper to effectuate the purposes of [ECOA], to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.'' [31]

Part III.C below discusses the ways in which this final rule changes the current rule regarding discouragement.

D. Special Purpose Credit Programs

As noted above, ECOA prohibits a creditor from discriminating on a prohibited basis regarding any aspect of a credit transaction. At the same time, ECOA section 701(c)(3) (15 U.S.C. 1691(c)(3)) states that it does not constitute discrimination under the Act for a creditor ''to refuse to extend credit offered pursuant to . . . any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the [Bureau].'' [32]

The intent of ECOA section 701(c)(3), as reflected in the legislative history, is as follows:

> [I]n the case of special purpose credit programs offered by profit-making organizations, the Conferees approved the language common to both the House bill and the Senate amendment exempting such programs from the restrictions of the Act so long as they conform to Board regulations. The intent of this section of the statute is to authorize the Board to specify standards for the exemption of classes of transactions when it has been clearly demonstrated on the public record that without such exemption the consumers involved would effectively be denied credit.[33]

The Board promulgated regulations implementing the 1976 Act's SPCP provision in what was then § 202.8.[34] As noted above, the Dodd-Frank Act transferred ECOA rulemaking authority to the Bureau, which in 2011 republished Regulation B's SPCP provision without material change in what is now § 1002.8 and the commentary thereto. More recently, the Bureau in January 2021 issued an advisory opinion (AO) addressing SPCPs implemented by for-profit organizations to meet special social needs.[35] The AO clarified the content that a for-profit organization must include in a written plan that establishes and administers an SPCP under Regulation B.[36]

Current Rule

Under current Regulation B, a for-profit organization that offers or participates in an SPCP to meet special social needs is required to establish and administer the SPCP pursuant to a written plan that identifies the class of persons the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program.[37] In addition, the for-profit organization is required to establish and administer the SPCP to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.[38]

A for-profit organization's SPCP qualifies as such only if it was established and is administered so as not to discriminate against an applicant on any prohibited basis.[39] However, the

[23] Regulation B § 1002.2(z) defines ''prohibited basis'' as ''race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Bureau.''

[24] 40 FR 49298 (Oct. 22, 1975). In 1977, the Board moved this provision, with minimal changes, to § 202.5(a). *See* 42 FR 1242. In 2003, the Board moved this provision to § 202.4(b). *See* 68 FR 13144.

[25] 15 U.S.C. 1691b(a). For ease of reference, the Bureau refers to this authority herein as ''adjustment'' authority.

[26] 15 U.S.C. 1691b.

[27] 40 FR 49298 at 49299.

[28] 42 FR 1242.

[29] 50 FR 48018.

[30] 15 U.S.C. 1691e(g) (emphasis added).

[31] *Consumer Fin. Prot. Bureau* v. *Townstone Fin., Inc.,* 107 F.4th 768, 774, 777 (7th Cir. 2024).

[32] *See* Public Law 94–239, sec. 701(c)(3), 90 Stat. 251, 251 (1976).

[33] *Joint Explanatory Statement of the Committee of the Conference,* Cong. Rec. H5493 (daily ed. Mar. 4, 1976) (text appears in House and Senate Reports).

[34] *See* 42 FR 1242.

[35] 86 FR 3762 (Jan. 15, 2021).

[36] *Id.*

[37] 12 CFR 1002.8(a)(3)(i).

[38] 12 CFR 1002.8(a)(3)(ii).

[39] 12 CFR 1002.8(b)(2).

SPCP is permitted to require its participants to share one or more common characteristics that would otherwise be ECOA-prohibited bases so long as the program does not evade the requirements of ECOA or Regulation B.[40] If the SPCP does require its participants to share one or more common characteristics, and if the program otherwise complies with current Regulation B, a creditor is able to request and consider information regarding the common characteristic(s) in determining the applicant's eligibility for the program.[41]

The Bureau discusses the ways in which this final rule changes the current rule regarding SPCPs provided by for-profit organizations in part III.D below.

E. Consultation

The Bureau has consulted with the appropriate prudential regulators and other Federal agencies regarding consistency with any prudential, market, or systemic objectives administered by these agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act.

III. Discussion of the Final Rule

A. Overview of Bureau's Approach

As discussed in the background section above, in November 2025, the Bureau issued a proposed rule that (i) provided that ECOA does not authorize disparate-impact claims; (ii) proposed to amend the prohibition on discouraging applicants or prospective applicants to clarify that it prohibits statements of intent to discriminate in violation of ECOA and is not triggered merely by negative consumer impressions, and to clarify that encouraging statements by creditors directed at one group of consumers is not prohibited discouragement as to applicants or prospective applicants who were not the intended recipients of the statements; and (iii) proposed to amend the standards for SPCPs offered or participated in by for-profit organizations to include new standards and related conditions.[42]

The Bureau received approximately 64,500 comments in response to the proposed rule. A majority of those comments, including individual commenters, consumer advocate commenters, policy group commenters, State Attorneys General commenters, and Members of Congress, opposed the proposed rule. Several commenters stated that the proposed rule is deficient under the Administrative Procedure Act (APA). Some commenters argued that the proposed rule is arbitrary and capricious because after fifty years of the current rule, the Bureau did not provide the required explanation for the significant change in the current rule. Furthermore, the 30-day comment period over the Thanksgiving holiday did not provide a meaningful opportunity to comment on a rule of this significance, according to these commenters. These commenters also stated that the Bureau is exceeding its rulemaking authority with this rule, and that the proposed rule conflicts with ECOA. They also asserted that the proposed rule is inconsistent with ECOA's legislative history and case law.

Numerous commenters stated that the proposed rule ignores or dismisses that the current credit market continues to show structural barriers to credit access for certain protected class groups, and that the proposed rule would result in an increase in discrimination for these protected classes. These groups include women, Black, Hispanic, Asian, and American Indian consumers, those who receive income from public assistance programs such as disability income and social security income, and those who exercised their rights under the Consumer Credit Protection Act such as by asserting their rights against improper debt collection, wage garnishment, and credit reporting. Commenters also asserted that the proposed rule runs counter to the goals of growing the economy with small businesses and increasing homeownership as these small business owners and first-time homeowners are likely to be women, Black, or Hispanic consumers who apply for credit for their small business or to buy their first home. In addition, commenters had other comments such as requesting a public hearing on the proposed rule, questioning whether AI was used to draft the proposed rule, and whether the other agencies were in fact consulted on the proposed rule as required by law.

The commenters who supported the proposal, including many industry commenters and some policy group commenters agreed the proposed rule more closely aligns with the Constitution, ECOA's text and purpose, congressional intent, case law, and the policy goals of providing compliance clarity and relief while encouraging innovation and business in the credit markets. Some of these commenters also asked for further clarifications, modifications, exemptions, and safe harbors in the rule. They also requested interagency coordination such as with the prudential regulators on the Community Reinvestment Act of 1977 (CRA),[43] and the Board on rules for motor vehicle dealers.[44] Finally, one commenter noted an error with the proposed amendatory text.

In both the proposed rule and in this final rule, each of the discussions of disparate impact, discouragement, and SPCPs provides detailed explanations for the rule, satisfying the APA. The discussions include explanations about how the Bureau is acting within its rulemaking authority and how the rule is consistent with ECOA, legislative history, and case law. The sufficiency of the comment period is evidenced by the robust response the Bureau received. The Bureau received approximately 64,500 comment letters from a diverse range of stakeholders. Many of these comments were detailed and substantive. The number and depth of these comments demonstrate that interested parties had adequate time to review the proposal and formulate comprehensive views during the comment period. Thus, the Bureau concludes that the comment period provided a reasonable opportunity to participate in the rulemaking process.

With regard to comments related to policy, policy cannot override the law. As explained in the discussions below, these amendments to Regulation B are to ensure consistency with the letter and intent of ECOA. These amendments in the proposed rule clarify the obligations imposed by ECOA and facilitate compliance with ECOA. As for requests for a public hearing on the proposed rule, a hearing is not necessary to obtain additional information nor required by law. There has been ample exchange of analysis and information through the notice-and-comment process, including the delivery and review of the comment letters on the RFI, and the over 64,500 comment letters on the proposed rule. A public hearing on the proposed rule would not provide more insight or information than what had been collected through the notice-and-comment process required by law. With regard to the Bureau using AI with the proposed rule, that did not occur. Bureau attorneys, paralegals, economists, analysts, and other employees worked on the proposed rule and on this final rule, including its drafting and underlying research. As to whether other agencies were consulted prior to the issuance of the proposed

[40] *Id.*

[41] 12 CFR 1002.8(c).

[42] *See* 90 FR 50901.

[43] Public Law 95–128, tit. VIII, 91 Stat. 1147 (12 U.S.C. 2901 *et seq.*).

[44] As mentioned earlier, under Dodd-Frank Act section 1029, subject to certain exceptions, the Board retains ECOA rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

rule, the Bureau consulted or offered to consult with other agencies as required by the Dodd-Frank Act and ECOA, and considered the feedback the agencies provided. The Bureau is also available for consultations with the prudential regulators regarding their CRA rule and the Board regarding its rule for motor vehicle dealers. Other clarifications, modifications, exemptions, and safe harbors requested by commenters are addressed in detail further below. Finally, with regard to the inadvertent publication errors in the proposed amendatory text in the **Federal Register**, the commenter was correct. The errors were not present in the Public Inspection version of the **Federal Register** published on November 12, 2025.[45] The Office of the Federal Register published a correction on February 25, 2026.[46]

After consideration of the comments, the Bureau is finalizing the proposed Regulation B amendments addressing disparate impact, discouragement, and SPCPs as discussed in further detail below.

B. Disparate Impact

Proposed Rule

The Bureau proposed changes to § 1002.6(a) and its accompanying commentary. As the Bureau explained in the proposal, consistent with E.O. 14281 the Bureau examined Regulation B and considered whether disparate-impact claims may be cognizable under ECOA. The Bureau preliminarily determined that, under the best reading of the statute, disparate-impact claims are not cognizable under ECOA. As a result, the Bureau proposed to delete language in § 1002.6(a) and its accompanying commentary indicating that disparate-impact liability, which is referred to in the rule as the ''effects test,'' may be applicable under ECOA, and proposed to add language stating that the Act does not recognize the ''effects test.'' The Bureau also proposed deleting the language in comment 2(p)–4 referring to the ''effects test.'' In the proposal, the Bureau requested comment on these changes and on its preliminary determination that disparate-impact claims are not applicable under ECOA. For the reasons discussed below, the Bureau is adopting the changes as proposed.

In the proposal, the Bureau preliminarily determined that the interpretation in Regulation B that disparate-impact claims may be cognizable under ECOA is not the best interpretation of ECOA. The Bureau noted that the Board (and later the Bureau) relied solely on the legislative history of ECOA to support its conclusion and failed to consider whether ECOA's statutory language itself authorized disparate-impact liability. The Bureau preliminarily determined that ECOA's statutory language does not authorize disparate-impact liability and that the application of disparate-impact liability in the credit context may undermine ECOA's purposes.

The Bureau explained in the proposal that since *Griggs,* although it has not decided the question under ECOA, the Supreme Court has closely examined the relevant statutory language of other antidiscrimination laws to determine whether disparate-impact liability is authorized by those laws. In particular, the Bureau explained that the Supreme Court has examined whether those other statutes include language focused on the effects of the action rather than the motivation of the actor. The Bureau noted that in *Inclusive Communities,* the Supreme Court concluded that ''*Griggs* holds and the plurality in *Smith* instructs that antidiscrimination laws must be construed to encompass disparate-impact claims when their text refers to the consequences of actions and not just to the mindset of actors, and where that interpretation is consistent with statutory purpose.'' [47] The Bureau explained in the proposal that the relevant language of ECOA, in contrast, does not include similar effects-based language supporting disparate-impact liability. Section 701(a)(1) of ECOA makes it unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex or marital status, or age.[48]

In the proposal, the Bureau explained that section 701(a) of ECOA is a straightforward, plainly stated prohibition against discrimination on the basis of certain characteristics and that it therefore does not require additional consideration of the structure, history, and purpose to interpret its meaning. As a result, the Bureau preliminarily determined that section 701(a) does not authorize disparate-impact claims. As the Bureau explained in the proposal, its conclusion would not change even if it were necessary to resort to other considerations to interpret section 701(a). After balancing these factors, giving the most weight to the language of the statute, the Bureau preliminarily determined that the best interpretation of ECOA is that section 701(a) does not authorize disparate-impact claims.

The Bureau also preliminarily determined that when read together, the Supreme Court cases *Board of Education of City School District of New York* v. *Harris,* 444 U.S. 130 (1979), and *Inclusive Communities* suggest that a statutory provision without effects-based language may be ambiguous as to whether it authorizes disparate-impact liability when there is closely connected statutory language that provides for disparate-impact liability. The Bureau's proposal explained, however, that unlike the statutory provisions at issue in *Harris* and *Inclusive Communities* neither section 701(a) of ECOA nor any closely connected statutory provisions include any effects-based language supporting disparate-impact liability. In the absence of such closely connected effects-based language, the Bureau preliminarily determined that the best interpretation of the text of section 701(a) is that it does not provide for disparate-impact liability.

In the proposal, the Bureau also preliminarily determined that interpreting ECOA as not authorizing disparate-impact claims is consistent with the statutory purposes of ECOA. The Bureau, in exercising its expertise, explained that it was concerned that disparate-impact liability may lead some creditors to consider prohibited characteristics in developing policies and procedures, contrary to ECOA's purposes, in order to minimize potential liability. Moreover, the Bureau explained that it was concerned that creditors may be deterred from pursuing innovative or cost-reducing policies and procedures because they are uncertain about the impact on protected classes. In the proposal, the Bureau requested comment on its preliminary determination that interpreting ECOA as not authorizing disparate-impact liability is consistent with the statutory purpose.

The Bureau recognized in the proposal that Regulation B previously relied on the legislative history of ECOA for evidence of congressional intent that disparate-impact claims may be cognizable under ECOA. As the Bureau explained, if ECOA contained effects-based language or if the statutory language were ambiguous, then the legislative history would provide stronger evidence to support an interpretation that disparate-impact liability is permitted under ECOA. The Bureau explained, however, that consistent with Supreme Court precedent, the most important

[45] *See https://public-inspection.federalregister.gov/2025-19864.pdf.*

[46] 91 FR 9191.

[47] 576 U.S. 519, 533 (2015).

[48] 15 U.S.C. 1691(a)(1).

consideration is the statutory language. The Bureau preliminarily determined, therefore, that the evidence from the legislative history is insufficient to support an effects test given the statutory language and the absence of effects-based language in section 701 or anywhere else in ECOA. In the proposal, the Bureau requested comment on this preliminary determination.

In the proposal, the Bureau preliminarily concluded that any reliance interests in the existing regulatory interpretation permitting disparate-impact liability do not outweigh revising Regulation B to bring it into alignment with the statutory text. The Bureau requested comment on this preliminary determination.

In the proposal, the Bureau noted that notwithstanding *Griggs* and its progeny, there are serious concerns about the constitutionality of disparate-impact liability as to certain ECOA-protected classes. The Bureau made no conclusion as to these constitutional questions but noted that its preliminary finding that ECOA does not encompass disparate-impact liability appropriately avoids such constitutional concerns.

The Bureau's proposal noted that, alternatively, it could remove the provisions relating to disparate impact, given the statutory text and based on the fact that neither the Supreme Court nor any other court has made a specific holding with respect to this theory and ECOA. The Bureau noted that, as the Supreme Court made clear in *Loper Bright Enterprises* v. *Raimondo,*[49] courts are the ultimate arbiters of statutory meaning. In the proposal, the Bureau requested comment on this alternative rationale for removing the provisions related to disparate impact.

Based on its preliminary determination that disparate-impact claims are not cognizable under ECOA, the Bureau proposed deleting language in § 1002.6(a) and its accompanying commentary indicating that disparate-impact liability, which is referred to in the rule as the ''effects test,'' may be applicable under ECOA, and proposed adding language stating that the Act does not recognize the ''effects test.'' The Bureau also proposed deleting the language in comment 2(p)–4 referring to the ''effects test.''

Comments Received

Several commenters, including policy group, industry, and individual commenters, supported amending Regulation B to provide that ECOA does not authorize disparate-impact liability. One industry commenter explained that its members and lenders in general have every incentive to make loans to all creditworthy borrowers regardless of their protected characteristics and to identify any unnecessary policies that limit their ability to make prudent loans. Some commenters stated that ECOA's prohibition on disparate treatment provides consumers with appropriate protection against discrimination, including where a creditor intentionally uses a proxy for a prohibited basis to discriminate.

A number of commenters, including consumer advocate commenters, policy group commenters, the State Attorneys General commenters, Members of Congress, and individual commenters, opposed amending Regulation B to provide that ECOA does not authorize disparate-impact liability. Many of these commenters stated that the proposed rule's interpretation of ECOA to not authorize disparate-impact liability is inconsistent with the statutory text. Many of these commenters also maintained that the legislative history, statutory purpose, longstanding agency interpretations, and judicial interpretation all support the conclusion that disparate-impact liability is authorized by ECOA. Many of these commenters also stated that disparate-impact liability is an important tool for identifying and addressing discrimination, particularly with the growth of complex technologies and processes driven by artificial intelligence, and provided examples of circumstances in which they argued that disparate-impact liability was important for addressing discrimination. Several commenters also maintained that disparate-impact liability does not raise constitutional concerns. Some commenters also stated that disparate-impact liability does not stifle innovation or raise significant policy concerns that might undermine the purposes of ECOA.

Many commenters expressing support for the proposed rule agreed with the Bureau's preliminary determination that under the best reading of ECOA, disparate-impact claims are not cognizable under the Act. Commenters generally noted that the proposed rule, if adopted, will harmonize Regulation B with the actual statutory scheme Congress enacted. In addition, some commenters raised various concerns about the application of disparate-impact liability to creditors, including potential unintended consequences that may undermine the purpose of ECOA. A few commenters requested that the Bureau provide clarification on certain topics, including whether creditors may lawfully use statistical techniques, such as proxy analysis, to assess their compliance with ECOA.

Several commenters disagreed with the proposed rule's preliminary determination that ECOA did not include effects-based language and that the absence of this language should lead to the conclusion that ECOA does not authorize disparate-impact liability. As discussed in more detail below, several commenters stated that ECOA includes effects-based language supporting disparate-impact liability and maintained that the Supreme Court has found that other antidiscrimination statutes with similar language authorize disparate-impact liability. Some commenters also stated that Supreme Court precedent does not preclude recognizing disparate-impact liability in statutes that lack specific wording.

Several commenters agreed with the Bureau's preliminary analysis of the text of section 701(a) of ECOA. Commenters supporting the proposal to amend Regulation B were generally in favor of deleting language in the existing regulation referring to an ''effects test'' concept and replacing it with new language clarifying that disparate-impact claims are not cognizable under ECOA. One industry commenter supported deleting the language in the existing rule referring to an ''effects test'' concept but did not support adding new language to Regulation B clarifying that disparate impact is not cognizable under ECOA. This commenter noted that simply removing the existing ''effects test'' language without replacing it respects the Supreme Court's instruction, in *Loper Bright Enterprises* v. *Raimondo,*[50] that courts—not agencies—are the ultimate arbiter of statutory meaning, particularly when it comes to the availability of a particular cause of action under a statute.

Some commenters agreed with the Bureau's statement in the proposed rule that the Supreme Court has not determined whether a disparate-impact claim is permitted under ECOA. A few commenters supporting the proposed rule stated that the Supreme Court, in *Texas Department of Housing & Community Affairs* v. *Inclusive Communities Project, Inc.,*[51] provided the proper instruction for determining whether an antidiscrimination statute such as ECOA gives rise to disparate-impact liability. Commenters explained that in *Inclusive Communities* the Court instructed that disparate-impact claims may be authorized under an antidiscrimination statute where the

[49] 603 U.S. 369 (2024).

[50] 603 U.S. 369 (2024).

[51] 576 U.S. 519 (2015).

statute's text refers to the consequences of actions and not just to the mindset of actors, and where that interpretation is consistent with statutory purpose.

Most commenters supporting the proposed rule generally agreed with the Bureau's preliminary determination that under the best reading of the Act, the text of section 701(a) of ECOA does not authorize disparate-impact liability. One industry commenter, agreeing with the Bureau's statement that the Supreme Court has not determined whether disparate-impact claims are cognizable under the ECOA, took no position and offered no comment on whether the Bureau's preliminary determination is legally correct. Some commenters agreeing with the Bureau's preliminary determination specifically cited the text of section 701(a) of ECOA, which makes it ''unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction'' ''on the basis of'' race, sex, or any other prohibited characteristic. A few commenters noted that section 701(a) makes it unlawful for a creditor to ''discriminate''—language those commenters pointed out has been construed in other contexts as giving rise to disparate-treatment liability. Some commenters also noted section 701(a)'s use of ''on the basis of,'' which one industry commenter indicated directs attention to intentional conduct, not outcomes alone.

Numerous commenters noted the absence of any effects-based language in section 701(a), in contrast with language found in other statutes like title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA) and the Fair Housing Act (FHA), which the Supreme Court has held all authorize disparate-impact liability. One industry commenter noted that in *Inclusive Communities* the Court deemed the presence of such language to be ''of central importance'' to its analysis. Some commenters agreed with the Bureau's preliminary analysis that interpreting ECOA to conclude that there is no disparate-impact liability under the Act is consistent with the purpose of ECOA. Other commenters supporting the proposed rule stated that because the statutory text of ECOA does not contain any ''effects-based'' language whatsoever there is no need to analyze whether the Bureau's proposed interpretation is consistent with ECOA's purpose.

Several consumer advocate commenters stated that the text of ECOA shows that Congress intended to authorize disparate-impact liability. Several consumer advocate commenters argued that by prohibiting discrimination ''on the basis of'' certain protected classes in 15 U.S.C. 1691(a)(1), ECOA allows disparate-impact claims. These commenters asserted that the term ''on the basis of'' refers to the consequences of actions and not just the mindset of actors. These commenters stated that Congress was aware of the Supreme Court's precedents concerning disparate-impact liability and used the term ''on the basis of'' because the Supreme Court had used that language to describe disparate-impact liability under title VII in *Griggs* v. *Duke Power Co.* A consumer advocate commenter also stated that other antidiscrimination statutes also use ''on the basis of'' or similar language to characterize the scope of prohibited discrimination to include disparate-impact claims. The commenter noted that the Americans with Disabilities Act (ADA) and the Equal Pay Act (EPA) both use ''on the basis of'' language and that both of these statutes authorize disparate-impact claims.

A consumer advocate commenter also noted that in ECOA, Congress used ''on the basis of'' in section 701(a)(1) of ECOA but different language in section 701(a)(2) and (3), which prohibit discrimination ''because'' of certain characteristics or conduct. The commenter argued that the choice by Congress to use ''on the basis of'' in section 701(a)(1), but different language in section (a)(2) and (3), suggests Congress intended for section (a)(1) to reach broadly to include disparate-impact liability.

Another consumer advocate commenter stated that certain exceptions to ''discrimination'' support interpreting ECOA to authorize disparate-impact liability. That commenter noted that the exceptions in section 701(b)(1) and (2) provide that inquiries about an applicant's marital status, age, or income status can only be made for a specified purpose. The commenter argued that this provision forbids the collection of data for other purposes, including neutral purposes, and that the only reason an antidiscrimination provision would forbid data collection for neutral purposes is if such a neutral practice could lead to a discriminatory effect that could be actionable under a disparate-impact theory of liability.

However, a few commenters supporting the proposed rule expressed a different understanding of the interplay between section 701(a) and the exceptions in section 701(b). Those commenters noted that Congress carved out specific conduct from the reach of section 701(a) of ECOA and deemed such conduct not to constitute discrimination. One industry commenter, a trade association, noted that conduct deemed not to constitute discrimination under section 701(b) is conduct that, but for those carve outs, would constitute disparate treatment; the commenter stated that there are no exceptions for conduct that would otherwise constitute disparate impact. This commenter also noted that actions permissible under section 701(c) of ECOA include conduct that involves directly considering an applicant's prohibited basis status. The commenter contrasted these provisions with exceptions in the FHA that the *Inclusive Communities* majority had relied on in support of its holding, noting that those exceptions shielded covered persons from liability for conduct that would have otherwise resulted in disparate-impact liability.

Several consumer advocate commenters noted that ECOA provides that one factor considered by courts when imposing punitive damages is whether the violation was ''intentional.'' They argued that this provision assumes that some violations are not intentional, indicating that ECOA was intended to authorize disparate-impact claims. One consumer advocate commenter noted that in the debate over this language, some House members objected that limiting punitive damages to intentional violations would mean that punitive damages would not be available for disparate impact violations, indicating these House members believed that disparate-impact liability was authorized. The commenter stated that the Supreme Court has found that where a provision limits only the scope of disparate-impact claims, Congress must have assumed the existence of disparate-impact claims or the provision would be superfluous.

Several consumer advocate commenters stated that the Supreme Court has found that other antidiscrimination statutes authorize disparate-impact liability and has not held that the absence of effects-based language precludes a finding that a statute authorizes disparate-impact liability. Some commenters noted that in *Inclusive Communities,* the Supreme Court found that section 805(a) of the FHA authorizes disparate-impact liability even though that provision does not include effects-based language. Several commenters argued that the Supreme Court has made clear the importance of determining the purpose of the statute in determining whether it provides for disparate-impact liability.

Although several consumer advocate commenters stated that the text of ECOA supports disparate-impact liability,

some of these commenters noted that at the very least ECOA's language in 15 U.S.C. 1691(a)(1) that makes it unlawful for a creditor to ''discriminate'' against an applicant ''on the basis of'' certain prohibited characteristics is ambiguous as to whether it authorizes disparate-impact liability. These commenters stated that the Supreme Court has looked to other factors, including the statutory purpose and legislative history, to determine whether an ambiguous statute authorizes disparate-impact claims. These commenters maintained that these other factors, including the statutory purpose and the legislative history, support interpreting ECOA to authorize disparate-impact claims.

Several consumer advocate commenters stated that interpreting ECOA to permit disparate-impact claims is consistent with the statutory purpose. They noted that the Supreme Court considered the statutory purposes of title VII and the FHA to support finding that those statutes authorized disparate-impact liability. The commenters maintained that, similar to the broad remedial purposes of those other statutes, ECOA was intended to achieve the objective of addressing discrimination in obtaining credit. They stated that disparate-impact liability is similarly consistent with ECOA's goal of ensuring that creditors make credit available equally and impartially, without regard to protected classes. These commenters stated that interpreting ECOA to not permit disparate-impact liability would undermine the purpose of making credit equally available.

Commenters supporting the removal of the ''effects test'' language from Regulation B generally agreed with the Bureau that the evidence from the legislative history is insufficient to support an effects test concept under Regulation B given the statutory language and the absence of any effects-based language in section 701 or anywhere else in ECOA. Several commenters agreed with the Bureau's preliminary analysis that the Board, when it inserted the ''effects test'' language into Regulation B, relied solely on ECOA's legislative history. These commenters stated that the Board's—and later the Bureau's—reliance on ECOA's legislative history to the exclusion of ECOA's statutory text was flawed.

Some commenters noted that the Board's and the Bureau's reliance on legislative history in interpreting ECOA as authorizing disparate-impact liability conflicts with *Inclusive Communities'* instruction that statutory text controls when analyzing whether an antidiscrimination statute such as ECOA encompasses disparate impact. An industry commenter stated that *Inclusive Communities* instructs that the statutory text is paramount, with legislative history serving as a secondary consideration at most. Other commenters stated that resort to extrinsic materials like legislative history is generally inappropriate in the face of ECOA's authoritative text.

A few commenters also noted that the committee reports relied on by the Board postdated by two years the original enactment of the operative antidiscrimination language in ECOA. One industry commenter explained that the Board relied on committee reports tied to the 1976 Act, which among other things expanded the list of prohibited bases under ECOA. This commenter noted that although Congress in 1976 expanded the *scope* of ECOA's prohibition on discrimination, it did not speak to the *type* of conduct (*e.g.,* disparate treatment or disparate impact) Congress proscribed in 1974. One policy group commenter explained that the legislative history relied upon by the Board and later the Bureau is not sufficient support for disparate-impact liability because committee reports have not been passed by both houses of Congress and presented to the President for his signature. An industry commenter stated that even if legislative history should be consulted, there are other statements found in the legislative history that the commenter believed suggest Congress intended ECOA to reach only disparate treatment.

Several consumer advocate commenters stated that the legislative history of ECOA confirms that Congress intended to authorize disparate-impact liability. A consumer advocate commenter noted that during a hearing on legislation that eventually became the 1974 Act, a witness testified that revising the bill to define the term ''discriminate'' as ''to make any invidious distinction''—as Congress was then considering—could narrow the scope of prohibited discrimination. The commenter noted that the witness pointed to the broad standard for discrimination under *Griggs* and, stating that the term ''invidious'' does not appear in the Civil Rights Act of 1964, raised the concern that using the term ''invidious'' could indicate that some degree of intent is required. The commenter stated that the subcommittee removed the proposed definition of ''discriminate,'' leaving in place language that was generally understood to include disparate-impact liability.

Several consumer advocate commenters also stated that the legislative history of the 1976 Act, which added race, color, national origin, religion and age as prohibited bases, similarly supports interpreting ECOA to authorize disparate-impact liability. These commenters maintained that House and Senate reports supported interpreting ECOA to permit disparate-impact claims. For example, one consumer advocate commenter pointed to a Senate report stating that courts or agencies could ''look at the effects of a creditor's practices,'' consistent with cases such as *Griggs* and *Albemarle.* As noted above, several commenters also stated that some House members also raised concerns that punitive damages would only be available for intentional discrimination and would not be allowed for disparate-impact claims, supporting the assumption that disparate-impact liability is authorized.

Several consumer advocate commenters maintained that later congressional activity also supports interpreting ECOA to permit disparate-impact claims. One consumer advocate noted that Congress rejected bills in 1995 and 1997 that would have restricted ECOA liability to intentional discrimination. That commenter stated that Congress amended ECOA in 1996 to provide incentives for creditors to engage in self-testing and self-correction. The commenter argued that by declining to amend ECOA to eliminate disparate-impact liability, Congress indicated an intent to maintain the statute's liability for disparate-impact claims.

Several commenters noted that courts have consistently found that ECOA authorizes disparate-impact liability. One commenter noted that the Ninth Circuit has explicitly held that ECOA allows disparate-impact claims while the D.C. and the Sixth Circuits have assumed without deciding that disparate-impact claims are permissible under ECOA. One consumer advocate commenter stated that no courts have diverged from a consensus view that ECOA permits disparate-impact claims. Another consumer advocate commenter noted that numerous courts have rejected the argument that the absence of effects-based language in ECOA precludes disparate-impact liability.

Several consumer advocate commenters also stated that Federal agencies interpreting ECOA have uniformly found that ECOA permits disparate-impact claims. One consumer advocate commenter noted that shortly after ECOA was enacted, the Board interpreted ECOA as authorizing disparate-impact liability. The

commenter argued that, under *Loper Bright,* such a contemporaneous interpretation should be accorded great weight. Several commenters stated that the Board, and later the Bureau, have consistently confirmed in subsequent regulatory interpretations that ECOA authorizes disparate-impact liability and these interpretations have pointed to the legislative history to support those conclusions. Commenters also stated that other Federal regulators and the DOJ also have uniformly interpreted ECOA to permit disparate-impact claims.

One commenter supportive of the proposed rule noted that by the time the Supreme Court decided *Inclusive Communities,* all Courts of Appeals to have addressed the issue had concluded that the FHA permitted disparate-impact claims. This commenter noted that when the Board inserted the ''effects test'' language into Regulation B, there was no such consensus among appellate courts. Moreover, a few commenters noted that even today only some appellate courts have concluded that ECOA authorizes disparate-impact liability, with most merely assuming but not actually deciding the issue. A few commenters stated that only one appellate court has squarely determined that ECOA authorizes disparate-impact liability, and that court's analysis—like the Board's—almost exclusively relied on the legislative history of ECOA to reach that determination.

A few commenters supporting the proposal directly addressed the topic of reliance interests. One industry commenter explained that any reliance interests in the existing interpretation of Regulation B are outweighed by the need to amend the regulation to bring it into harmony with the statutory text of ECOA. This commenter, a trade association representing credit unions, explained that although credit unions have developed policies, procedures, and training to ensure their compliance with the existing interpretation of ECOA, the association would appreciate the greater flexibility offered by the proposed rule.

Several commenters stated that the proposed rule did not adequately consider the reliance interests in the current rule's interpretation that ECOA authorizes disparate-impact liability. One consumer advocate noted that creditors have developed compliance systems designed to ensure compliance with disparate-impact risks and that interpreting ECOA not to permit disparate-impact liability would create confusion and potential conflicting standards because creditors would still have to ensure compliance with the FHA and State antidiscrimination laws that recognize disparate-impact liability. State Attorneys General commenters stated that the proposed rule failed to consider the reliance interests of State and local governments in a strong Federal enforcement mechanism to address discrimination in the credit market.

Some commenters agreed with the Bureau's preliminary determination that consumers will still be protected from discrimination if the proposed rule is finalized. These commenters believed ECOA's prohibition on disparate treatment provides appropriate protection for consumers against discrimination. An industry commenter stated that disparate impact is unnecessary to prevent discriminatory lending practices; this commenter explained that a creditor will remain liable based on disparate treatment where the creditor makes a lending decision or adopts a credit policy with discriminatory intent, even if the lender characterizes its actions as facially neutral. Another industry commenter noted that some aspects of a disparate-impact claim could have evidentiary value in a disparate-treatment case; this commenter described situations where a creditor uses or adopts a neutral policy for a discriminatory reason or applies it inconsistently on a prohibited basis. The commenter noted that creditors in these situations would remain liable for disparate treatment.

Several commenters supporting the proposed rule raised concerns about the application of disparate-impact liability under ECOA. Some commenters agreed with the Bureau's preliminary determination that imposition of disparate-impact liability in the credit context may undermine the purpose of ECOA. According to one industry commenter, ECOA's purpose is to ensure that all creditworthy applicants receive fair and equal access to credit without regard to protected characteristics.

Many commenters, including consumer advocate commenters, the State Attorneys General commenters, Members of Congress, and individual commenters, stated that the proposed rule did not adequately consider the importance of disparate-impact liability in addressing discriminatory practices. They provided evidence and examples that, in their view, showed that discrimination in credit markets remains a significant problem. They maintained that disparate-treatment liability is insufficient to address discrimination where intentional discrimination is difficult to prove. They stated that disparate-impact liability is particularly important in addressing discrimination in certain circumstances, including automated credit models (specifically AI-driven models), indirect auto lending, mortgage lending, and small business lending. Several commenters provided examples of discrimination cases that relied on disparate-impact liability theories and raised concerns that proving discrimination would be impossible without being able to advance disparate-impact claims.

A policy group commenter shared the Bureau's concern that application of disparate-impact liability could lead some creditors to consider prohibited basis characteristics in developing policies and procedures, contrary to ECOA's purpose, to minimize potential liability. One individual commenter stated that disparate-impact liability discourages responsible lending and incentivizes overly conservative credit policies, which reduces credit access and increases costs to consumers. This commenter stated that Regulation B currently discourages nuanced decision-making in favor of rigid compliance standards and that this disproportionately burdens female borrowers. An anonymous commenter noted that there is no clear empirical evidence that disparate impact improves credit access or outcomes for specific protected class groups; this commenter marshaled evidence and data that, in the commenter's opinion, demonstrates that the application of disparate-impact liability has the opposite effect. Other commenters indicated that disparate-impact liability reduces innovation in credit markets.

One policy group commenter stated that disparate impact is incompatible with the Equal Protection Clause of the U.S. Constitution. This commenter noted that the Supreme Court has condemned racial balancing as unconstitutional but the threat of disparate-impact liability, according to the commenter, requires creditors to engage in that very conduct. An industry commenter stated that the proposed rule is warranted because the existing regulation, in the commenter's view, drives outcome balancing—raising reverse discrimination and equal protection concerns. Another policy group commenter stated that application of disparate-impact liability threatens fundamental freedoms, such as free speech and free exercise of religion, potentially chilling the speech and religious practices of businesses.

Several commenters opposed to the proposed rule stated that interpreting ECOA to permit disparate-impact liability does not raise constitutional

concerns. They argued that although the Bureau had raised concerns that creditors might consider prohibited characteristics in developing policies and procedures in order to avoid potential disparate-impact liability, the proposed rule did not provide any examples of this occurring. Commenters noted that the Supreme Court has allowed disparate-impact liability in other statutory contexts and noted that, properly applied, disparate-impact liability does not raise constitutional concerns. Some commenters claimed that, unlike with college admissions or employment, credit applications are not zero-sum situations in which applicants are competing for a limited number of opportunities and stated that disparate-impact liability under ECOA does not disadvantage certain credit applicants compared to other applicants or require creditors to achieve specific outcomes.

A few commenters raised concerns that application of disparate-impact liability had led to abusive enforcement efforts and examiner overreach. An industry commenter stated that disparate impact is prone to abuse by government agencies and private plaintiffs, pointing to the Bureau's allegations against indirect auto lenders as one example. Another industry commenter stated that the Bureau used disparate impact to impose a de facto national Community Reinvestment Act (CRA) requirement on independent mortgage banks (IMBs), by pressuring IMBs to do more lending to certain protected classes and to take actions such as opening new branch locations; the commenter noted that ECOA does not authorize or contemplate these remedies. This commenter further noted that ECOA is an antidiscrimination statute and not a vehicle to force IMBs to take affirmative actions to increase loans to certain classes of borrowers. The commenter stated that ECOA should not be allowed to morph into a backdoor Federal CRA requirement for IMBs. A different industry commenter stated that disparate impact has been measured and determined inconsistently by financial services regulators and examiners, and credit unions have endured unpredictable and shifting application and examination findings.

Commenters generally noted that the proposed rule, if finalized, would address these concerns. One industry commenter explained that the proposed rule will help avoid arbitrary ECOA enforcement in the future, allowing creditors to focus on maintaining effective ECOA compliance programs.

A few commenters responded to the Bureau's request for comment on the potential benefits of the proposal. One industry commenter agreed with the Bureau's observation in the proposed rule that the impact of the amendments to Regulation B will be substantially limited by the ongoing need to comply with other State and Federal fair lending laws, such as the FHA. An anonymous commenter offered comments on the anticipated practical consequences for the fair lending compliance programs of banks. This commenter indicated that amending Regulation B is unlikely to have any material impact on the organization or structure of fair lending compliance programs maintained by banks; according to the commenter, covered banks will remain subject to disparate-impact claims that might be asserted in State enforcement actions or by private parties in litigation, and therefore bank compliance programs must continue to appropriately identify and mitigate those risks. One industry commenter stated that ending disparate-impact enforcement and returning ECOA to its statutory standard of intent-based discrimination will promote clarity, reduce unintended barriers to credit, and ultimately improve access to capital for consumers and small businesses. This commenter noted that removing disparate-impact enforcement will result in more product offerings, more flexible lending standards and new market entrants, ultimately expanding access to credit.

Some commenters supporting the proposed changes to Regulation B requested that the Bureau provide clarification on certain discrete issues. A few commenters requested that the Bureau clarify that creditors may still use proxy analysis to assess the demographic makeup of their applicant pool to evaluate compliance with ECOA. An industry commenter explained that because creditors will remain subject to other Federal and State laws imposing disparate-impact liability, creditors will still be obligated to consider the impact of their facially neutral policies and procedures and make appropriate adjustments based on that evaluation. Another industry commenter explained that creditors' obligations under the CRA and their business objectives may include expanding access to credit or serving underserved communities. Because creditors may wish to continue to evaluate the demographic impact of their policies and procedures—both to help inform business and community reinvestment strategies, and because of other laws imposing disparate-impact liability—commenters requested that the Bureau's final rule specifically acknowledge that creditors would retain the flexibility to utilize such practices.

An individual commenter urged the Bureau to clarify that while ECOA does not give rise to a standalone disparate-impact cause of action, the Bureau may still prohibit practices that are intentionally designed or applied as proxies for prohibited characteristics. An industry commenter urged the Bureau to prevent circumventions of the regulation by clarifying that statistical imbalances alone are not a sufficient basis for establishing disparate treatment under ECOA. Similarly, an industry commenter requested that the Bureau clarify that statistical evidence that a creditor lags behind peers in applications or originations does not, standing alone, support a disparate-treatment claim.

Final Rule

The Bureau is making changes to § 1002.6(a) and its accompanying commentary. It is the Bureau's responsibility to correctly interpret ECOA. The Supreme Court in *Loper Bright Enterprises* v. *Raimondo* confirmed that ''statutes . . . have a single, best meaning'' that is '' 'fixed at the time of enactment.' '' [52] The Bureau has examined Regulation B, considered comments, and determined that, under the best reading of the statute, disparate-impact claims are not cognizable under ECOA. As a result, the Bureau is deleting language in § 1002.6(a) and its accompanying commentary indicating that disparate-impact liability, which is referred to in the rule as the ''effects test,'' may be applicable under ECOA, and adding language stating that the Act does not recognize the ''effects test.'' The Bureau is also deleting the language in comment 2(p)–4 referring to the ''effects test.''

The Bureau has determined that the Board's—and later the Bureau's—conclusion that disparate-impact claims may be cognizable under ECOA is not the best interpretation of ECOA. In particular, the Board (and later the Bureau) relied solely on the legislative history of ECOA to support its conclusion and failed to consider whether ECOA's statutory language authorized disparate-impact liability. The Bureau has determined that ECOA's statutory language does not authorize disparate-impact liability and that the application of disparate-impact liability in the credit context may undermine ECOA's purposes.

The Board's regulations to implement the 1976 Act relied solely on the

[52] 603 U.S. 369, 400 (2024) (quoting *Wis. Cent. Ltd.* v. *United States,* 585 U.S. 274, 284 (2018)).

legislative history to support its conclusion that Congress intended for ECOA to permit an ''effects test concept'' (*i.e.,* disparate-impact) proof of liability. Section 202.6(a), the precursor to § 1002.6(a), provided in a footnote that the legislative history of the Act indicates that the Congress intended an ''effects test'' concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs,* 401 U.S. 424, and *Albemarle Paper Co.,* 422 U.S. 405, to be applicable to a creditor's determination of creditworthiness.[53] Further discussion of the effects test was later added to the commentary to what is now § 1002.6(a).[54] Although there have been minor revisions to what is now § 1002.6(a), that provision has continued to provide, based solely on legislative history, that disparate-impact liability may apply to ECOA.

Although *Griggs* is the foundational case for disparate-impact theory, the Bureau recognizes that *Griggs* itself has been subject to significant and extensive criticism. Justice Thomas has described *Griggs* as ''poorly reasoned and vulnerable to the charge that it represented a significant leap away from the expectations of the enacting Congress,'' [55] observing that the true ''author of disparate-impact liability under Title VII was not Congress, but the Equal Employment Opportunity Commission (EEOC).'' [56] *Griggs* involved virtually no analysis of the actual text of title VII; rather, *Griggs* endorsed the EEOC's view mainly by deferring to the agency's view in light of title VII's purpose.[57] ''But statutory provisions—not purposes—go through the process of bicameralism and presentment mandated by our Constitution.'' [58] Indeed, members of the Court—including the author of the majority opinion in *Inclusive Communities*—have expressed reservations about allowing the logic of *Griggs* to extend into other areas of law.[59]

Since *Griggs,* the Supreme Court has closely examined the relevant statutory language of other antidiscrimination laws to determine whether disparate-impact liability is authorized by those laws (but it has not decided the question under ECOA). In particular, the Supreme Court has examined whether the statute in question includes language focused on the effects of the action rather than the motivation of the actor. For example, in *Smith* v. *City of Jackson,* the Supreme Court noted that section 4(a)(1) of the ADEA does not authorize disparate-impact liability.[60] Section 4(a)(1) of the ADEA, like section 701(a) of ECOA, is a straightforward prohibition on discrimination that does not include effects-based language.[61] However, a plurality of the Supreme Court found in *Smith* that section 4(a)(2) of the ADEA does authorize disparate-impact liability, emphasizing that section 4(a)(2) of the ADEA and section 703(a)(2) of title VII—which was found to authorize disparate-impact claims in *Griggs*—both contain language that ''prohibit[s] such actions that deprive any individual of employment opportunities or *otherwise adversely affect* his status as an employee, because of such individual's race or age.'' [62] In *Inclusive Communities,* the Supreme Court concluded that ''*Griggs* holds and the plurality in *Smith* instructs that antidiscrimination laws must be construed to encompass disparate-impact claims when their text refers to the consequences of actions and not just to the mindset of actors, and where that interpretation is consistent with statutory purpose.'' [63] The Supreme Court held in *Inclusive Communities* that the language ''otherwise make unavailable'' in section 804(a) of the FHA refers to the consequences of an action rather than the actor's intent and therefore supports recognizing disparate-impact claims.[64]

Several commenters disagreed with the proposed rule's preliminary determination that ECOA does not include similar effects-based language supporting disparate-impact liability. As noted above, section 701(a)(1) of ECOA makes it unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract).[65] Several commenters argued that the phrase ''on the basis of'' is effects-based language and that Congress intended for section 701(a) of ECOA to authorize disparate-impact liability. They maintained that the ''on the basis of'' language was used in *Griggs* to describe disparate-impact liability under title VII and that Congress—acting just a short time after *Griggs*—used the same language to demonstrate its intent to authorize disparate-impact liability under ECOA. Some commenters also stated that other statutes such as the ADA and the EPA have used ''on the basis of'' language, and that these statutes have been found to authorize disparate-impact liability. One consumer advocate commenter also noted that section 701(a) makes it unlawful to discriminate ''on the basis of'' certain protected classes, while section 701(b) and (c) makes it unlawful for a creditor to discriminate ''because'' of certain characteristics or conduct, and this commenter argued that this difference in language is significant and indicates that Congress intended for section 701(a) to authorize disparate-impact liability. However, a number of commenters disagreed, stating that ECOA should not be interpreted to authorize disparate-impact liability because it does not include effects-based language.

The Bureau has determined that the best reading of the statute is that section 701(a) of ECOA does not include effects-based language. The Bureau concludes that ''on the basis of'' does not refer to the effects of an action and notes that ECOA does not contain any language like ''otherwise make unavailable'' or ''otherwise adversely affect'' that refers to the effects of actions and thereby suggests that disparate-impact claims are cognizable.

Some commenters pointed to other statutes like the ADA and the EPA that use ''on the basis of'' or similar language and claimed that they have been interpreted to authorize disparate-impact liability. However, as discussed in more detail below, those statutes have significant differences and therefore are of limited value in interpreting ECOA's language.

Several commenters maintained that the ADA has similar language to ECOA and has been interpreted to authorize disparate-impact liability, which they claimed supports construing ECOA to

[53] 42 FR 1242 at 1255 n.7. This footnote was later moved to the text of § 1002.6(a) when the Bureau republished Regulation B after responsibility for the rule was transferred from the Board to the Bureau. *See* 76 FR 79442.

[54] *See* 50 FR 48018.

[55] *Inclusive Communities,* 576 U.S. at 550 n.3 (Thomas, J., dissenting) (internal quotation marks omitted).

[56] *Id.* at 547.

[57] *See id.* at 552–53; *see also id.* at 577–78 (Alito, J., dissenting) (''The only reference [in *Griggs*] to § 703(a)(2) of the 1964 Civil Rights Act appears in a single footnote that reproduces the statutory text but makes no effort to explain how it encompasses a disparate-impact claim.'').

[58] *Id.* at 553.

[59] *See id.* at 556.

[60] 544 U.S. 228, 235 n.6, 249 (2005) (plurality and dissent agreeing that section 4(a)(1) of the ADEA does not authorize disparate-impact liability).

[61] Section 4(a)(1) of the ADEA provides that it is unlawful to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age. 29 U.S.C. 623(a)(1).

[62] 544 U.S. 228, 235 (2005) (citation omitted).

[63] 576 U.S. 519, 533 (2015).

[64] *Id.* at 534. Section 804(a) provides that it shall be unlawful ''[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.'' 42 U.S.C. 3604(a).

[65] 15 U.S.C. 1691(a)(1).

authorize disparate-impact liability. Two commenters noted that both title I and title III of the ADA, which apply to employment and public accommodations, respectively, prohibit discrimination ''on the basis of'' a disability and have been interpreted to authorize disparate-impact liability. However, as those commenters acknowledged, both title I and title III include effects-based language. For example, title I provides that ''discriminat[ing] against a qualified individual on the basis of disability'' includes utilizing standards ''that have the effect of discrimination on the basis of disability.'' [66] Among other things, title III prohibits utilizing standards or criteria or methods of administration ''that have the effect of discriminating on the basis of disability.'' [67] By contrast, ECOA does not have any effects-based language.

Several commenters claimed that title II of the ADA, which covers public services, uses similar language to ECOA and has been interpreted to authorize disparate-impact liability. Title II provides that ''no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.'' [68] The commenters noted that title II specifies that the remedies, procedures, and rights set forth in the Rehabilitation Act of 1973 are the remedies, procedures, and rights for any person alleging discrimination ''on the basis of disability'' in violation of title II of the ADA.[69] The commenters claimed that the Rehabilitation Act has been interpreted to authorize disparate-impact liability and that title II therefore should also be construed to authorize disparate-impact liability. They maintain that, because title II, like ECOA, uses ''on the basis of'' language, ECOA should likewise be interpreted to authorize disparate-impact liability. However, this argument suffers from significant weaknesses. The Supreme Court has never held that the Rehabilitation Act authorizes disparate-impact liability. Rather, the Supreme Court ''assume[d] without deciding'' that the Rehabilitation Act ''reaches at least some conduct that has an unjustifiable impact upon the handicapped.'' [70] Later Supreme Court cases have raised serious doubts about whether the Rehabilitation Act does in fact authorize disparate-impact liability. The Rehabilitation Act was patterned after title VI of the Civil Rights Act of 1964, which prohibits exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs ''on ground of'' race, color, or national origin.[71] In *Alexander* v. *Sandoval,* the Supreme Court held that title VI does not authorize disparate-impact liability, which raises serious questions about whether the Rehabilitation Act—and title II of the ADA—should be construed to authorize disparate-impact liability.[72] Moreover, even if the Rehabilitation Act, and by extension, title II of the ADA, were construed to authorize disparate-impact liability, title II of the ADA specifically provides in its statutory text that its remedies, procedures, and rights are the same as those of the Rehabilitation Act.[73] By contrast, the statutory text of ECOA does not provide that it should be construed similarly to another statute (like title VII of the Civil Rights Act of 1964) that authorizes disparate-impact liability. Finally, as noted above, the ADA features multiple examples of effects-based language in other provisions, while ECOA does not have any such language.

Claims that the EPA supports finding that ECOA authorizes disparate-impact liability are similarly unpersuasive. The EPA has a very different statutory structure from ECOA. The EPA specifies precisely what it means under the statute to discriminate ''on the basis of sex,'' *i.e.,* paying wages at a rate less than those paid to employees of the opposite sex for equal work on jobs which require equal skill, effort and responsibility, and which are performed under similar working conditions, unless one of the specific exceptions applies.[74]

The Bureau also concludes that the difference in language between section 701(a)(1) and 701(a)(2) and (3) (''on the basis of'' compared to ''because'') does not support interpreting section 701(a) to authorize disparate-impact liability. While differences in statutory language may suggest congressional intent that those provisions have different meanings, the use of ''on the basis of'' as opposed to ''because'' in section 701 appears more likely to be based on grammatical reasons rather than an intent to convey different meanings about the scope of liability under ECOA.[75] Moreover, in *Griggs,* which preceded ECOA's drafting, the Supreme Court found that language prohibiting discrimination ''because of'' certain characteristics authorized disparate impact, using the phrases ''on the basis of'' and ''because of'' without apparent distinction. Thus, the argument that section 701(a)(1) of ECOA should be interpreted to authorize disparate-impact liability because it uses ''on the basis of'' rather than ''because'' (as in section 701(a)(2) and (3)) is not persuasive. As discussed above, the Bureau concludes that the key consideration, emphasized by the Supreme Court, is whether the statute includes effects-based language. The Bureau concludes that, in the absence of effects-based language, ECOA's prohibition on discrimination on the basis of protected classes does not authorize disparate-impact liability.

Some commenters stated that the absence of effects-based language in section 701(a) is not dispositive and maintained that ECOA should be interpreted to reach disparate impact. Conversely, one industry commenter noted that certain statutes containing language like that found in section 701(a) have been construed by courts as reaching only disparate treatment.

As the Bureau recognized in the proposed rule, the Supreme Court in *Inclusive Communities* held that, like section 804(a), section 805(a) of the FHA also authorizes disparate-impact claims, even though section 805(a) itself does not include any effects-based language.[76] In the proposed rule, the Bureau noted that the Supreme Court provided limited explanation for concluding that section 805(a) authorizes disparate-impact claims, noting only that it has construed statutory language like section 805(a) to include disparate-impact liability, citing

[66] *See* 42 U.S.C. 12112(b)(3)(A).

[67] *See* 42 U.S.C. 12182(b)(1)(D).

[68] 42 U.S.C. 12132.

[69] 42 U.S.C. 12133.

[70] *Alexander* v. *Choate,* 469 U.S. 287, 299 (1985).

[71] 42 U.S.C. 2000d.

[72] 532 U.S. 275, 280–81 (2001). Lower courts have reached different conclusions about what *Sandoval* means for disparate-impact liability under the Rehabilitation Act and title II of the ADA. *Compare Doe* v. *BlueCross BlueShield of Tenn., Inc.,* 926 F.3d 235, 241–242 (6th Cir. 2019) (holding that section 504 of Rehabilitation Act does not authorize disparate-impact liability), *with Payan* v. *L.A. Cmty. Coll. Dist.,* 11 F.4th 729, 738 (9th Cir. 2021) (holding that title II of the ADA authorizes disparate-impact liability).

[73] *See* 42 U.S.C. 12133.

[74] *See* 29 U.S.C. 206(d)(1).

[75] In particular, it would be awkward grammatically to use ''on the basis of'' in section 701(a)(2) and (a)(3) to describe discrimination arising because the applicant's income derives from any public assistance program or because the applicant has in good faith exercised rights under ECOA.

[76] Section 805(a) provides that it is unlawful ''for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.'' 42 U.S.C. 3605(a).

Board of Education of City School District of New York v. *Harris,* 444 U.S. 130 (1979). The Bureau explained that because the Court provided no meaningful analysis of the statutory language of section 805(a) in *Inclusive Communities,* the case provides little insight into how that holding should apply to ECOA, if at all. The Bureau therefore determined that in the absence of such guidance it was necessary to rely on the analysis in *Harris* to inform the Bureau's interpretation of ECOA, consistent with the Court's approach in *Inclusive Communities.*

The statute in *Harris,* section 706(d)(1) of the Emergency School Aid Act (ESAA), made an agency ineligible for assistance if it ''had in effect any practice, policy or procedure which results in the disproportionate demotion or dismissal of instructional or other personnel from minority groups in conjunction with desegregation . . . or otherwise engaged in discrimination based upon race, color, or national origin in the hiring, promotion, or assignment of employees.'' [77] The Supreme Court noted that the first portion of the statute ''clearly speaks in term of effect or impact'' but that the second portion (otherwise engaged in discrimination) ''might be said to possess an overtone of intent.'' [78] The Court noted, however, that the use of the word ''otherwise'' in the second portion suggests that the disparate-impact standard should also apply to that provision. The Court noted that absent a good reason, ''one would expect that for such closely connected statutory phrases, a similar standard'' would apply. The Supreme Court noted that ESAA's language ''suffers from imprecision of expression and less than careful draftsmanship'' and therefore found it necessary to consider other factors to interpret the statutory language.[79] The Court looked to the structure, context, and legislative history of the statute to conclude that disparate-impact liability also applied to the second portion of the provision.

As the Bureau explained in the proposed rule, in contrast to the statute at issue in *Harris,* section 701(a) of ECOA does not suffer from ESAA's less than careful draftsmanship that would render it similarly ambiguous and therefore require additional consideration of the Act's structure, history, and purpose to interpret its meaning. ECOA does not include any effects-based language supporting disparate-impact liability, nor any ''otherwise'' language, as in ESAA, that may cloud the directness of its prohibition. ECOA section 701(a) is a straightforward, plainly stated prohibition against discrimination based on certain characteristics. As a result, the Bureau has determined that section 701(a) does not authorize disparate-impact claims.

The Bureau explained in the proposed rule that even if it were necessary to resort to other considerations to interpret section 701(a), the wording (discussed above), structure, and context all differ from the statutory provisions at issue in *Harris* and *Inclusive Communities* in ways that counsel reaching a different conclusion. (As discussed below, the Bureau does not find the legislative history to be a sufficient basis to override the conclusions drawn from the other factors.) After balancing these factors, giving the most weight to the language of the statute, the Bureau preliminarily determined that the best interpretation of ECOA is that section 701(a) does not authorize disparate-impact claims. In terms of its structure, ECOA differs from both ESAA and FHA. As noted above, the Supreme Court in *Inclusive Communities* carefully analyzed the statutory language of section 804(a), along with other factors, to determine that section 804(a) authorized disparate-impact liability; however, the Supreme Court provided no meaningful analysis of the statutory language of section 805(a) and cited to *Harris* to support the principle that the Court had found similar language to support disparate-impact liability.'' The Bureau preliminarily determined that when read together, *Harris* and *Inclusive Communities* suggest that a statutory provision without effects-based language may be ambiguous as to whether it authorizes disparate-impact liability when there is closely connected statutory language that provides for such liability.

A policy group commenter opposed to the proposed rule stated that the Bureau's preliminary conclusion rests on a misreading of *Harris* and that the case is inapposite for interpreting ECOA. The Bureau does not agree with this commenter for the reasons explained above, and more generally does not agree with commenters who argued that because the Court in *Inclusive Communities* held that FHA section 805(a) gives rise to disparate-impact claims, it follows that ECOA section 701(a) must as well. The Supreme Court has carefully evaluated whether antidiscrimination laws encompass disparate-impact liability on a case-by-case basis; the Court has never pronounced that every antidiscrimination statute containing certain terminology authorizes disparate-impact liability. While some commenters asserted that section 701(a) of ECOA and section 805(a) of the FHA feature similar language, the Court in *Inclusive Communities* noted only that it has previously construed (in *Harris*) statutory language like that found in section 805(a) to include disparate-impact liability. The Court in *Harris,* of course, did not analyze ESAA in a vacuum; after finding the language ambiguous, it evaluated additional factors such as structure and context to inform its analysis of the pertinent language. And the Bureau has determined that section 805, like ESAA, also contains closely connected language suggesting disparate-impact liability lies under that section—and this type of language is wholly absent from ECOA.

When analyzing the relevance of exemptions to liability under the FHA, the Court in *Inclusive Communities* noted a specific exemption for real-estate appraisers—section 805(c) of the FHA. Earlier, in *Smith* v. *City of Jackson,* a plurality of the Supreme Court had determined that section 4(a)(2) of the ADEA [80] also authorized disparate-impact claims based in part on the presence of the ADEA's reasonable-factor-other-than-age (RFOA) provision—section 4(f)(1) of the ADEA—which the plurality explained ''plays its principal role by precluding liability if the adverse impact was attributable to a nonage factor that was 'reasonable.' '' [81] *Inclusive Communities* noted that in *Smith* ''the RFOA provision would be simply unnecessary to avoid liability under the ADEA if liability were limited to disparate-treatment claims,'' [82] and explained that ''[a] similar logic applies [to section 805]. If a real-estate appraiser took into account a neighborhood's schools, one could not say the appraiser acted because of race. And by embedding [805](c)'s exemption in the statutory text, Congress ensured that disparate-impact liability would not be allowed either.'' [83] As the Court explained, ''the exemption from liability for real-estate appraisers is *in the same section* as

[77] Emergency School Aid Act, Pub. L. 89–10, sec. 706(d)(1)(B), 86 Stat. 354, 358 (1972) (emphasis added) (original version at 20 U.S.C. 1606(d)(1)(B) (1976)), *repealed by and reenacted* by Pub. L. 95–561, tit. VI, sec. 601(b)(2), Nov. 1, 1978, 92 Stat. 2268 (1978); *see also Bd. of Educ. of City Sch. Dist. of New York* v. *Harris,* 444 U.S. 130, 130 (1979).

[78] Harris, 444 U.S. at 138–39.

[79] *Id.* at 138.

[80] 29 U.S.C. 623(a)(2).

[81] 544 U.S. 228, 239 (2005).

[82] 576 U.S. 519, 539 (2015) (internal quotation marks omitted).

[83] Id.

§ 805(a)'s prohibition of discriminatory practices in real-estate transactions, thus indicating Congress' recognition that disparate-impact liability arose *under § 805(a).*'' [84]

As explained above and as several commenters noted, section 701(a) of ECOA lacks any effects-based language. In *Inclusive Communities* the Court explained that the presence of this kind of language in the FHA was of ''central importance'' to its analysis of that statute.[85] Although section 805(a) of the FHA lacks such effects-based language, the Court determined that both *Harris* and the presence of section 805(c) suggested that disparate impact should nevertheless apply under section 805(a). Unlike the FHA, ECOA does not contain any effects-based language nor any exemptions from liability for conduct that would otherwise constitute disparate impact. Absent effects-based language or any textual signal in section 701 suggesting that Congress contemplated disparate-impact liability under ECOA, the Bureau has determined that the reasons for the Court's construction of section 805(a) of the FHA as authorizing disparate-impact liability are wholly absent here.

To be sure, section 701 contains several exemptions from liability. But none of these exemptions, unlike the exemption in section 805 of the FHA, support interpreting ECOA to authorize disparate-impact liability. Section 701(b)'s exemptions protect a creditor from liability for conduct that would otherwise constitute disparate treatment (or, at most, possible evidence of disparate treatment). And section 701(c)'s exemptions have been interpreted by the relevant agencies in a manner consistent with a construction of ECOA that prohibits only disparate treatment.

Section 701(b) of ECOA provides that it ''shall not constitute discrimination'' for a creditor to engage in certain specified acts. Section 701(b)(3), for instance, permits creditors ''to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound . . . .'' [86] Age is a prohibited basis under ECOA, so if a creditor refuses to extend credit based on an applicant's age, then there is disparate-treatment liability (provided the applicant has the capacity to contract). Other provisions permit creditors to make certain inquiries about an applicant's prohibited basis characteristics without running afoul of ECOA. For instance, section 701(b)(1) allows a creditor ''to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of credit-worthiness.'' [87] Marital status is also a prohibited basis under ECOA, so if a creditor discriminates against an applicant based on the applicant's marital status then there is disparate-treatment liability.

The exceptions in section 701(b) of ECOA shield creditors from liability for intentional discrimination. Section 701(b) of ECOA is thus unlike section 805(c) of the FHA, which provides that it is not a violation of the FHA if a person engaged in the business of furnishing appraisals of real property takes into consideration factors *other than* race, color, religion, national origin, sex, handicap, or familial status. If such a person were to take into consideration anything other than a prohibited basis under the FHA, that could lead to liability only if the statute allowed disparate-impact claims in the first place.[88] Thus, section 805(c) shields persons from liability for conduct that could otherwise give rise to disparate-impact liability under the FHA. If disparate-impact claims were not cognizable under the FHA, section 805(c) would be meaningless. Section 701(b) of ECOA is different. Section 701(b) provides, essentially, that a creditor may consider or inquire about a prohibited basis under limited circumstances. Without section 701(b), such conduct could give rise to disparate-treatment liability only—not disparate impact. Even under an interpretation of section 701(a) that provides for disparate-treatment liability only, section 701(b) still plays a meaningful role.

One policy group commenter argued that section 701(b)(1) and (2) of ECOA are only consistent with an interpretation of section 701(a) that allows for cognizability of both disparate-treatment and disparate-impact claims. The commenter noted these provisions allow a creditor to inquire about an applicant's marital status, age, or income, but only for a specified purpose, without violating section 701(a). This commenter stated that the provision forbids collecting this information for any non-specified but ''neutral purposes'' and that the only reason section 701(b) forbids such an inquiry is because it may result in a discriminatory effect. This argument appears to rest on a misunderstanding of how the exemptions in section 701(b) relate to evidence of disparate treatment and evidence of disparate impact. A policy or practice is considered facially neutral for purposes of disparate-impact analysis because it does *not* involve treating applicants differently on a prohibited basis—*e.g.,* age—but it nevertheless results in a disproportionately adverse impact on a prohibited basis group (like the elderly). But if a creditor makes an inquiry about an applicant's marital status, age, or income—even for a non-specified purpose—then that is direct evidence the creditor may have considered a prohibited basis.[89] Typically, direct consideration of a prohibited basis as part of evaluating a credit application would violate section 701(a) as disparate treatment. Inquiring about and considering marital status, age, or the receipt of public assistance income is not facially neutral as to prohibited bases. But as section 701(b)(1) and (2) makes clear, there may be legitimate, non-discriminatory reasons for creditors to collect and consider such information. Thus, in order to ensure that creditors remain able to gather and use certain information that directly implicates prohibited bases, section 701(b)(1) and (2) expressly shields creditors from disparate-treatment liability for doing so.

Section 701(c) provides that a creditor does not violate ECOA by refusing to extend credit pursuant to certain kinds of credit programs. For instance, section 701(c)(1) provides that ''[i]t is not a violation of [section 701] for a creditor to refuse to extend credit offered pursuant to'' ''any credit assistance program expressly authorized by law for an economically disadvantaged class of persons.'' [90] Section 701(c)(2) provides that ''[i]t is not a violation of [section 701] for a creditor to refuse to extend credit offered pursuant to'' ''any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons.'' [91] And section 701(c)(3) provides that ''[i]t is not a violation of [section 701] for a creditor to refuse to

[84] Id. at 538 (emphases added).

[85] *Id.* at 534.

[86] 15 U.S.C. 1691(b)(3).

[87] 15 U.S.C. 1691(b)(1).

[88] To be sure, the exemption was added well after Congress originally enacted section 805.

[89] *Cf. Venters* v. *City of Delphi*, 123 F.3d 956, 973 (7th Cir. 1997) (''[R]emarks and other evidence that reflect a propensity by the decisionmaker to evaluate employees based on illegal criteria will suffice as direct evidence of discrimination even if the evidence stops short of a virtual admission of illegality. Proof of this nature supports the inference that a statutorily proscribed factor—race, sex, age, or in this case, religion—was at least a motivating factor in the adverse employment action at issue.'') (citations omitted).

[90] 15 U.S.C. 1691(c)(1).

[91] 15 U.S.C. 1691(c)(2).

extend credit offered pursuant to'' ''any special purpose credit program offered by a profit-making organization to meet special social needs . . . .'' [92]

While the provisions in section 701(c) do not use prohibited basis language themselves, both the Board and the Bureau have interpreted this language in a manner consistent with disparate treatment. From the start, the Board interpreted section 701(c) as ''allow[ing] a creditor offering certain special credit assistance programs to refuse to extend credit *on a prohibited basis* without violating'' ECOA.[93] Refusing to extend credit on a prohibited basis would, absent section 701(c), be disparate treatment. The Bureau's rules under Regulation B have long reflected this, expressly stating that ''program participants may be required to share one or more common characteristics'' that are otherwise prohibited bases under 701(a).[94] Programs along those lines would, absent an exemption, result in disparate-treatment liability. Accordingly, section 701(c) is entirely consistent with interpreting ECOA as authorizing only disparate-treatment claims and not disparate-impact claims.

None of the exceptions in section 701(b) or (c) play any role in shielding creditors from disparate-impact liability, so they do not suggest that ECOA authorizes such liability in the first place. Given that none of the exemptions in section 701 signal that disparate impact should be available under the Act, the Bureau has determined that *Inclusive Communities* and *Harris* do not suggest that ECOA must be interpreted to reach disparate impact.

One commenter noted that section 701(a) of ECOA makes it unlawful for a creditor to discriminate against any applicant on a prohibited basis; this commenter stated that because similar language has been found by the Supreme Court to give rise to disparate-impact liability, the Bureau must conclude section 701(a) does as well. A policy group commenter stated that the term ''discriminate'' is broad enough to be understood as being compatible with both disparate treatment as well as disparate impact. If the mere presence of the term ''discriminate'' in an antidiscrimination statute, without more, suffices to authorize disparate-impact claims, then virtually every antidiscrimination statute would authorize disparate-impact liability and would not require individualized review by the courts to determine whether disparate impact is cognizable under a particular antidiscrimination law. This would transform the legal landscape from one where Congress deliberately and cautiously—using specific language—authorizes disparate-impact liability under certain statutory regimes, to one where disparate impact lies under virtually all antidiscrimination statutes. *Inclusive Communities* demonstrates that, at least in some contexts, an antidiscrimination statute lacking effects-based language may be susceptible to a more capacious interpretation, such as where either textual signals or closely related effects-based language indicates the provision should be construed in such a fashion, and where that construction is consistent with statutory purpose. But the Bureau has determined that with respect to ECOA—which lacks any such signals or closely related language—the best reading is that the Act does not permit a disparate-impact claim. This interpretation, as explained below, is also consistent with ECOA's purpose.

Some commenters noted that section 706(b) of ECOA specifically provides that one factor in calculating punitive damages under the Act is ''the extent to which the creditor's failure of compliance was intentional.'' [95] Commenters stated that this language could be read as contemplating scenarios in which a creditor's noncompliance with ECOA is unintentional. One commenter stated that if ECOA is interpreted as reaching only disparate treatment then section 706(b) would be superfluous. The Bureau does not agree with the commenters who stated that section 706(b) requires interpreting ECOA to permit disparate-impact liability. This language is entirely consistent with an interpretation of ECOA that encompasses only a disparate-treatment cause of action. The ''extent to which the creditor's failure of compliance was intentional'' might simply cover varying degrees of intentional conduct (*e.g.,* purposeful, knowing). Indeed, courts have interpreted section 706(b) as allowing for punitive damages ''if the creditor's conduct is adjudged wanton, malicious or oppressive, or if it is deemed to have acted in reckless disregard of the applicable law.'' [96] But even reckless disregard for the law is a form of intentional behavior.[97] The Bureau has determined that the best interpretation of ECOA is that it does not authorize disparate-impact claims, and the Bureau now determines that this interpretation is entirely consonant with the Act's punitive damages provision.

As noted above, several commenters stated that even if ECOA does not contain effects-based language, other factors, including the statutory purpose, the legislative history, and longstanding judicial and agency interpretations all support the conclusion that ECOA authorizes disparate-impact liability. Some commenters maintained that the Supreme Court has never held that effects-based language is necessary to authorize disparate-impact liability and that the Supreme Court has considered other factors, including the statutory purpose and legislative history, to determine that antidiscrimination statutes authorize disparate-impact liability. Other commenters, however, argued that the Bureau need not consider the statutory purpose or legislative history because ECOA does not contain effects-based language and therefore does not authorize disparate-impact liability.

The Bureau concludes that the text is crucial for interpreting the statute and, in the absence of effects-based language or other textual signals indicating that disparate-impact liability is cognizable, the Bureau determines that the best reading is that ECOA does not authorize disparate-impact liability. As the Supreme Court found in *Inclusive Communities,* effects-based language like ''otherwise make available'' in the FHA, is of ''central importance'' in analyzing whether disparate-impact liability is authorized under a particular antidiscrimination statute.[98] ECOA does not contain any such language.

Although the Bureau has determined that, in light of the statutory language, it is not necessary to consider other factors, including the statutory purpose of ECOA, the Bureau also concludes that interpreting ECOA as not authorizing disparate-impact claims is consistent with the statutory purposes of ECOA. As noted above in part II.A, ECOA was adopted to ensure that various financial institutions and other firms engaged in the extension of credit exercise their responsibility to make credit available with fairness, impartiality, and without discrimination on the basis of prohibited characteristics. One

[92] 15 U.S.C. 1691(c)(3). The Bureau is finalizing as proposed changes to the Regulation B provisions implementing section 701(c)(3). *See* part III.D.

[93] 41 FR 29870, 29875 (July 20, 1976) (emphasis added).

[94] 12 CFR 1002.8(b)(2).

[95] 15 U.S.C. 1691e(b).

[96] *Fischl* v. *Gen. Motors Acceptance Corp.*, 708 F.2d 143, 148 (5th Cir. 1983).

[97] Disregard, *Black's Law Dictionary* (9th ed. 2009) (''Conscious indifference to the consequences of an act.'').

[98] 576 U.S. at 534.

commenter stated that this language indicates that Congress was concerned with the effects of creditors' actions. Several commenters maintained that the Supreme Court relied in part on the broad remedial purposes of title VII and the FHA to find that those statutes authorized disparate-impact liability, and they argued that ECOA has a similarly broad remedial purpose that supports the conclusion that ECOA authorizes disparate-impact liability. Other commenters, however, argued that disparate-impact liability is not consistent with the purposes of ECOA, maintaining that disparate-impact liability incentivizes overly conservative credit policies and may cause some creditors to consider prohibited basis characteristics in developing policies and procedures in order to avoid potential disparate-impact liability. The Bureau, in exercising its expertise, is concerned that disparate-impact liability may lead some creditors to consider how potential policies and procedures could affect protected classes and avoid adopting certain policies and procedures, even if they may generally expand access to credit because of prohibited characteristics, because of concerns about potential disparate-impact liability. Indeed, several commenters indicated that Regulation B's current framework, which based on legislative history concludes that ECOA authorizes disparate-impact liability, may deter creditors from developing innovative policies because of concerns about how those policies may affect protected classes.

As noted above, several commenters stated that the legislative history of ECOA provides strong evidence that Congress intended ECOA to authorize disparate-impact liability. The Board, when initially promulgating Regulation B, solely relied on the legislative history of ECOA for evidence of congressional intent that disparate-impact claims may be cognizable under ECOA. As the Bureau noted in the proposed rule, if ECOA contained effects-based language or if the statutory language were ambiguous—as with the FHA and the since-repealed ESAA—then the legislative history would provide stronger evidence to support an interpretation that disparate-impact liability is permitted under ECOA. However, consistent with Supreme Court precedent, the most important consideration is the statutory language.[99] The Bureau determines, therefore, that the evidence from the legislative history is insufficient to support interpreting ECOA to authorize disparate-impact liability, given the statutory language and the absence of effects-based language in section 701 or anywhere else in ECOA.

Several commenters also stated that the Board, the Bureau, other Federal agencies, and lower Federal courts have long interpreted ECOA to authorize disparate-impact liability and that these longstanding interpretations support construing ECOA as authorizing disparate-impact claims. As noted above, the interpretations of the agencies with primary authority to administer ECOA are based solely on the legislative history of ECOA. The Supreme Court has never determined that an anti-discrimination statute authorizes disparate-impact liability based solely on the legislative history. Two Courts of Appeals have assumed without deciding that ECOA authorizes disparate-impact liability;[100] two others have found that ECOA authorizes disparate-impact liability, but the decisions provide only limited discussion and do not analyze the statutory text.[101] To the extent they include any analysis, the district court decisions finding that ECOA authorizes disparate-impact liability do not closely analyze the text of the statute and do not fully consider Supreme Court decisions emphasizing the importance of the presence or absence in the statute of effects-based language or other textual signals indicating that disparate-impact liability is authorized.[102] In light of the statutory language of ECOA, the Bureau concludes that these interpretations are not sufficient to support construing ECOA as authorizing disparate-impact liability, given the statutory language and the absence of effects-based language in ECOA or other textual signals indicating that ECOA authorizes disparate-impact liability.

Several commenters also claimed that Congress was aware of judicial interpretations that ECOA authorized disparate-impact liability when it later amended ECOA and that, by electing not to amend ECOA to alter that understanding, Congress effectively ratified judicial interpretations that ECOA authorizes disparate-impact liability. In *Inclusive Communities,* the Supreme Court noted that the existence of disparate-impact liability under the FHA is supported by the fact that, at the time the FHA was amended, all nine Courts of Appeals to have addressed the question had concluded that the FHA authorized disparate-impact liability.[103] However, as noted above, with respect to ECOA, fewer Courts of Appeals have addressed the issue and those that have either assumed without deciding that ECOA authorized disparate-impact liability or provided only limited analysis. Moreover, subsequent amendments to ECOA provide little, if any, evidence that Congress's failure to amend ECOA to include a provision specifically stating that it does not authorize disparate-impact liability means that Congress approves of lower courts' statutory interpretation.[104] The Bureau concludes that the statutory language should be the primary basis for interpreting the statute. Arguments about how a later Congress may have viewed the statutory meaning in light of lower court decisions are insufficient to overcome the best reading of the statutory language.

The Bureau concludes that any reliance interests in the existing regulatory interpretation permitting disparate-impact liability do not outweigh revising Regulation B to bring it into alignment with the statutory text. Several commenters argued that the

[99] *See Bostock* v. *Clayton Cnty., Georgia,* 590 U.S. 644, 673–74 (2020) (''This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration.''). Some are critical of using legislative history to interpret statutory language. ''The greatest defect of legislative history is its illegitimacy. We are governed by laws, not by the intentions of legislators. As the Court said in 1844: 'The law as it passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself.' '' *Conroy* v. *Aniskoff,* 507 U.S. 511, 519 (1993) (Scalia, J., concurring) (quoting *Aldridge* v. *Williams,* 44 U.S. (3 How.) 9, 24 (1844)); *see also* Frank H. Easterbrook, *Text, History, and Structure in Statutory Interpretation,* 17 Harv. J. L. & Pub. Pol'y 61, 68 (1994) (''Intent is elusive for a natural person, fictive for a collective body.'').

[100] *See Garcia* v. *Johanns,* 444 F.3d 625, 633 n.9 (D.C. Cir. 2006); *Midkiff* v. *Adams Cnty. Reg'l Water Dist.,* 409 F.3d 758, 771–72 (6th Cir. 2005). Notably, the D.C. Circuit underscored the absence of effects-based language in ECOA. *See Garcia,* 444 F.3d at 633 n.9. The Sixth Circuit noted that it was not attempting to ''resolve complex statutory questions'' presented by construing whether ECOA authorized disparate-impact liability. *See Midkiff,* 409 F.3d at 772.

[101] *See Bhandari* v. *First Nat'l Bank of Com.,* 808 F.2d 1082, 1101 (5th Cir. 1987), *vacated and remanded on other grounds,* 492 U.S. 901 (1989); *Miller* v. *Am. Express Co.,* 688 F.2d 1235, 1239–40 (9th Cir. 1982).

[102] *See, e.g., Ramirez* v. *GreenPoint Mortg. Funding, Inc.,* 633 F.Supp.2d 922, 926–27 (N.D. Cal. 2008) (finding that *Smith* does not itself bar disparate impact claims under ECOA).

[103] 576 U.S. at 536–37.

[104] *See AMG Cap. Mgmt.* v. *Fed. Trade Comm'n,* 593 U.S. 67, 81 (2021) (noting that ''when Congress has not comprehensively revised a statutory scheme but has made only isolated amendments, it is impossible to assert with any degree of assurance that congressional failure to act represents affirmative congressional approval of a court's statutory interpretation'') (citation and internal quotation marks omitted).

Bureau did not adequately consider the reliance interests in Regulation B's current interpretation authorizing disparate-impact claims. They maintained that consumers have reliance interests in a regime that deters facially neutral policies that have disparate effects and that creditors have reliance interests in their compliance systems and policies and procedures, which have been adopted consistent with longstanding regulatory interpretations. State Attorneys General commenters also stated that State and local governments have reliance interests in a strong Federal enforcement mechanism to address discrimination in credit markets. Another commenter, however, stated that any reliance interests in the existing interpretation of Regulation B are outweighed by the need to revise the rule to make it consistent with the statutory text of ECOA. The Bureau concludes that the need to align Regulation B with ECOA's statutory language is paramount and that any reliance interests in the Regulation B interpretation of ECOA—-impact claims are insufficient compared with the importance of conforming Regulation B to the statutory language. Consumers will remain protected under ECOA from disparate treatment, including facially neutral policies and procedures that creditors adopt as proxies for intentional discrimination. State and local governments will continue to be able to rely on ECOA's disparate treatment protections and other antidiscrimination protections. Although creditors may have to revise their policies and procedures, they will have greater flexibility to adopt facially neutral policies and procedures.

Several commenters maintained that disparate-impact liability under ECOA is crucial for addressing discrimination in the credit markets. They stated that disparate-impact is particularly important in addressing discrimination in certain circumstances where establishing intentional discrimination is especially challenging, including for automated credit models (specifically AI-driven models), indirect auto lending, and mortgage lending. The Bureau notes that ECOA will continue to provide important protections against discrimination in the credit markets and that, under disparate-treatment claims, facially neutral policies may still violate the law if they are proxies or pretexts for discrimination on a prohibited basis. In addition, the Bureau notes that disparate-impact liability may have the effect of increasing the burdens on AI developers and users, which could impair the use of AI-driven models to expand credit access. Nevertheless, to the extent that the best reading of the statutory language means that ECOA does not authorize disparate-impact liability, the fact that neutral policies and procedures resulting in a disparate impact on a prohibited basis will not give rise to liability under the Act is a choice of Congress and a necessary result of aligning Regulation B with the language of the statute.

In the proposed rule, the Bureau noted concerns about the constitutionality of disparate-impact liability as to certain ECOA-protected classes. Several consumer advocate commenters and State Attorneys General commenters stated that interpreting ECOA to authorize disparate-impact liability does not raise constitutional concerns. These commenters noted that the Supreme Court has found that several antidiscrimination statutes authorize disparate-impact liability and do not present constitutional issues. Some of these commenters noted that the case cited by the Bureau, *Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard College,* 600 U.S. 181 (2023), involves race-based university admissions and does not address disparate-impact liability. Some of these commenters stated that credit application is not a zero-sum situation and that disparate-impact liability does not require creditors to prefer certain members of protected classes over other applicants. However, other commenters, including some policy group and industry commenters, maintained that disparate-impact liability pressures creditors to consider race and other factors in their decision-making. They maintained that concerns about disparate-impact liability incentivize creditors to engage in balancing of race and other factors to minimize disparities, raising equal protection concerns.

The Bureau remains concerned that disparate-impact liability raises constitutional concerns to the extent it requires creditors to engage in balancing of race and other constitutionally suspect factors in order to minimize the risk of disparate-impact liability. As a general matter, members of the Supreme Court, as well as other commentators, have identified serious infirmities in the very assumptions upon which disparate-impact theory rests.[105] The Supreme Court recently emphasized that ''the Equal Protection Clause . . . applies without regard to any differences of race, of color, or of nationality—it is universal in its application'' and the ''guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to [another].'' [106] But where a facially neutral, even-handedly applied policy ''would have a disparate impact, a decision-maker is often compelled to act intentionally on the basis of [protected class status] to avoid the disparate impact, thus disparate impact regulations require decision makers 'to evaluate the [ ] outcomes of their policies, and to make decisions based on (because of) those [ ] outcomes.' '' [107] With respect to ECOA, creditors looking to avoid the risk of disparate-impact liability are compelled to conduct fair lending analyses with respect to their policies, underwriting, pricing, and marketing to consider an applicant's protected class status and potentially change unintended disparate outcomes. Disparate-impact liability encourages and, in some cases, may require covered entities to engage in the intentional use of balancing to eliminate disparate outcomes by treating individuals based on constitutionally implicated characteristics (such as race, national origin, or sex) differently from others similarly situated—the exact conduct the Equal Protection Clause forbids.[108] The Bureau's finding that the statutory language of ECOA does not encompass disparate-impact liability appropriately avoids such constitutional concerns.

The Bureau is finalizing as proposed changes to Regulation B reflecting its determination that, pursuant to the best reading of section 701(a) of ECOA, disparate-impact claims are not cognizable under the Act. Several commenters supported the proposed rule but requested that the Bureau provide clarification on certain issues. A few commenters requested that the Bureau, if it finalized the proposed

[105] *E.g., Ricci* v. *DeStefano,* 557 U.S. 557, 594–96 (2009) (Scalia, J., concurring) (''Title VII's disparate-impact provisions place a racial thumb on the scales, often requiring employers to evaluate the racial outcomes of their policies, and to make decisions based on (because of) those racial outcomes.''); *Inclusive Communities,* 576 U.S. at 554 (Thomas, J., dissenting) (''We should not automatically presume that any institution with a neutral practice that happens to produce a racial disparity is guilty of discrimination until proved innocent.''); Alison Somin, *Disparate Impact as a Non-Delegation Violation and Major Question,* 2024 Harvard J. Pub. Pol'y Per Curium 18.

[106] *Students for Fair Admissions, Inc.,* 600 U.S. at 206 (internal quotation marks omitted) (first quoting *Yick Wo* v. *Hopkins,* 118 U.S. 356, 369 (1886); and then quoting *Regents of the Univ. of Cal.* v. *Bakke,* 438 U.S. 265, 289–90 (1978) (Powell, J.)).

[107] *Louisiana* v. *EPA,* 712 F. Supp. 3d 820, 843 (W.D. La. 2024) (quoting *Ricci,* 557 U.S. at 595–96 (Scalia, J., concurring)) (citation omitted).

[108] *Students for Fair Admissions, Inc.,* 600 U.S. at 206.

rule's changes to Regulation B regarding disparate impact, also clarify that creditors may continue to use proxy analysis to assess the demographic makeup of their applicant pool to evaluate their compliance with ECOA. Other commenters requested that the Bureau, if it finalized the proposed rule, clarify that creditors will retain flexibility to evaluate the demographic impact of their policies and procedures, both to help inform business and community reinvestment strategies and because of other Federal and State laws that impose disparate-impact liability.

The Bureau has determined that the commenters' requests for clarification do not warrant making modifications to the proposed rule's amendments to Regulation B. First, several of the requests for clarification speak to creditors' processes and procedures for ensuring compliance with either ECOA or other Federal and State laws imposing disparate-impact liability. The Bureau has determined that, with respect to addressing concerns related to ECOA compliance, the level of guidance that would be required to respond to these concerns would likely be too nuanced and detailed to be appropriate for inclusion in a regulation. In any event, the Bureau has primary authority for administering ECOA, but not other Federal or State laws that include a disparate-impact component. Thus, the Bureau has neither the authority nor expertise to instruct regulated entities on how to comply with those other laws.

An industry commenter urged the Bureau, if it finalized the proposed rule, to prevent circumventions of the regulation by clarifying that statistical imbalances alone are not a sufficient basis for establishing disparate treatment under ECOA. Similarly, an industry commenter requested that the Bureau, if it finalized the proposed rule, clarify that statistical evidence that a creditor lags peers in applications or originations does not, standing alone, support a disparate-treatment claim. Finally, an individual commenter urged the Bureau, if it finalized the proposed rule, to clarify that while ECOA does not give rise to a standalone disparate-impact cause of action, the Bureau may still prohibit practices that are intentionally designed or applied as proxies for prohibited characteristics.

With respect to these commenters' requests, the Bureau has determined that it is not necessary to modify the proposed rule's amendments to Regulation B. These commenters are essentially requesting that the Bureau opine on the legal sufficiency of a prima facie case of discrimination under ECOA. Courts are best positioned to render an opinion on whether certain evidence suffices to establish a prima facie case of discrimination. Finally, changes to the commentary that the Bureau is finalizing will make clear that practices that are intentionally designed or applied as proxies for prohibited characteristics will remain subject to disparate-treatment liability. The Bureau has determined that the commenters' various requests for clarification do not require modifying the proposed amendments to Regulation B, which the Bureau is now finalizing in this rule.

Finally, one commenter that supported deleting the ''effects test'' language from the existing regulation argued that the Bureau should not replace it with new text clarifying that section 701(a) does not support an interpretation of ECOA allowing for disparate-impact liability. The Bureau disagrees with this commenter with respect to the need to add new text to Regulation B clarifying that ECOA does not permit recovery under a disparate-impact theory. While courts are the ultimate arbiters of statutory interpretation, particularly as to whether a statute like ECOA authorizes disparate-impact claims, the Bureau has been charged by Congress with responsibility for prescribing regulations to carry out the purposes of the Act. Moreover, because Regulation B contained a contrary interpretation, the Bureau believes that it is necessary and appropriate to now clarify in Regulation B that under the best reading of ECOA disparate-impact claims are not available.

The specific changes to the rule with respect to disparate-impact liability are discussed below.

Section 1002.6(a)—General Rule Concerning Use of Information

Current § 1002.6(a) provides in the first sentence that, except as otherwise provided in the Act and this part, a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis. The second sentence provides that the legislative history of the Act indicates that the Congress intended an ''effects test'' (disparate impact) to apply to a creditor's determination of creditworthiness. For the reasons explained above, the Bureau is deleting the second sentence and adding a new sentence stating that the Act does not provide that the ''effects test'' applies for determining whether there is discrimination in violation of the Act.

Current comment 6(a)–2 explains the effects test and states that the Act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. The comment also provides an example. The Bureau is deleting the current text of comment 6(a)–2 for the reasons explained above and adding a new title ''Disparate treatment'' and new language providing as follows: The Act prohibits practices that discriminate on a prohibited basis regarding any aspect of a credit transaction. The Act does not provide for the prohibition of practices that are facially neutral as to prohibited bases, except to the extent that facially neutral criteria function as proxies for protected characteristics designed or applied with the intention of advantaging or disadvantaging individuals based on protected characteristics.

Section 1002.2(p)—Definition of Empirically Derived and Other Credit Scoring Systems

Current comment 2(p)–4 to the definition of empirically derived and other credit scoring system is entitled ''Effects test and disparate treatment.'' The comment states that neutral factors used in credit scoring systems could nonetheless be subject to challenge under the effects test and refers to comment 6(a)–2 for a discussion of the effects test. For the reasons discussed above, the Bureau is deleting ''effects test'' from the title and deleting the sentence discussing the effects test and the reference to comment 6(a)–2.

C. Discouragement

Proposed Rule

The Bureau proposed changes to § 1002.4(b) and its accompanying commentary. These Regulation B provisions proposed to prohibit creditors from making oral or written statements to applicants or prospective applicants that would discourage a reasonable person from applying for credit. As noted in part II, the Board first adopted a precursor to current § 1002.4(b) in its 1975 final rule implementing ECOA, as an exercise of its adjustment authority under ECOA section 703(a).

In its 1975 final rule, the Board determined that prohibiting discouragement was ''necessary to

protect applicants against discriminatory acts occurring before an application is initiated.'' [109] Indeed, ECOA section 701(a) prohibits creditors from discriminating on a prohibited basis against applicants for credit,[110] a term the statute defines as a ''person who *applies* to a creditor'' for credit.[111] In the absence of a discouragement provision, creditors could sidestep this prohibition entirely by discouraging prospective applicants from applying for credit in the first place. For example, in the absence of a discouragement provision, a creditor could post a sign outside its office stating, ''Credit available only to applicants under age 65,'' arguably without violating ECOA as to individuals who choose not to apply for credit because of the sign. A well-tailored discouragement provision that prohibits such practices protects ECOA's purpose of making credit available on a non-discriminatory basis.

However, as explained in the proposal, the Bureau preliminarily determined in its expertise that, in the years since the Board first adopted the discouragement provision, the provision has been interpreted to prohibit conduct that is not necessary or proper to prohibit in order to prevent the circumvention or evasion of ECOA's purposes. The Bureau is concerned that this, in turn, has had an unnecessarily chilling effect on creditors' business practices and exercise of their rights to speak about matters of public interest. Pursuant to its authority under ECOA section 703(a), and in consideration of what it finds is necessary and proper given the purposes of ECOA and facilitating compliance therewith, the Bureau proposed to revise § 1002.4(b) and its commentary as described below.[112]

Furthermore, and independent of the above, the Bureau was concerned that the overbroad coverage of the regulation and its potential interpretations may constrain free speech and commercial activity in ways that are unwarranted. The Bureau also preliminarily determined that, given this potential impact, and in consideration of its expertise as a regulator in the marketplace, the revisions would continue to prohibit illegal discouragement of potential applicants without exceeding that purpose in ways that would impose unnecessary constraints in the marketplace.

The Bureau's proposal addressed several different aspects of § 1002.4(b): (1) what constitutes an oral or written statement, (2) what constitutes a statement to an applicant or prospective applicant, and (3) the standard for showing prohibited discouragement. The Bureau requested comment on the merits of an alternative approach, such as revising only one or two of these three aspects of § 1002.4(b).

Oral or Written Statement

Section 1002.4(b) prohibits creditors from making ''any oral or written statement'' to applicants or prospective applicants that would discourage a reasonable person from making or pursuing an application for credit. The regulation text itself does not define ''oral or written statement.'' Current comment 4(b)–1, the substance of which the Board added to Regulation B in 1985 as comment 5(a)–1 without substantive explanation,[113] states, in part, that the discouragement prohibition covers ''acts or practices'' by creditors that could discourage on a prohibited basis a reasonable person from applying for credit.

The Bureau proposed to clarify, in § 1002.4(b), that ''oral or written statement'' means spoken or written words, or visual images such as symbols, photographs, or videos. That would include any visual images used in advertising or marketing campaigns. The Bureau also proposed to align the text of comment 4(b)–1 with the text of current § 1002.4(b) by replacing current references in the comment to ''acts or practices'' or ''practices'' with references to ''oral or written statements'' or ''statements,'' respectively. As a result, certain business practices, such as business decisions about where to locate branch offices, where to advertise, or where to engage with the community through open houses or similar events, would not constitute prohibited discouragement even if they had some communicative effect that some consumers could arguably find discouraging. The Bureau requested comment on the proposed revisions.

Statement to Applicants or Prospective Applicants

Section 1002.4(b) currently prohibits creditors from making any oral or written statement to applicants or prospective applicants that would discourage a reasonable person from making or pursuing an application for credit. Section 1002.4(b) has been interpreted to prohibit the selective encouragement of certain applicants or prospective applicants (for example, geographically targeted advertising) on the basis that such encouragement could discourage applicants or prospective applicants who did not receive it.

The Bureau proposed to revise § 1002.4(b) to provide that prohibited discouragement occurs when a creditor makes any oral or written statement ''directed at'' applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from applying for credit. The Bureau proposed to revise comment 4(b)–1 to provide that encouraging statements directed at one group of consumers cannot discourage applicants or prospective applicants who were not the intended recipients of the statements. In addition, the example in current comment 4(b)–1.ii (which the Bureau proposed to redesignate as comment 4(b)–1.i.B) [114] would be narrowed to provide an example of a statement that would constitute prohibited discouragement under the limitation. As proposed, the revised example provided that prohibited discouragement includes statements directed at the public that express a discriminatory preference or policy of exclusion against consumers based on one or more prohibited basis characteristics.

The Bureau also proposed to add new comment 4(b)–1.ii.A to provide an example of a statement that would *not* constitute prohibited discouragement. The proposed example provided that statements directed at a particular group of consumers, encouraging that group of consumers to apply for credit, do not constitute prohibited discouragement.

Standard for Discouragement

The prohibition against discouragement was adopted to prevent creditors from circumventing ECOA's prohibition against discrimination by deterring prospective applicants from even applying for credit. While this is an appropriate goal, the Bureau preliminarily determined in the proposal that § 1002.4(b) had been

[109] 40 FR 49298 at 49299.

[110] 15 U.S.C. 1691(a).

[111] 15 U.S.C. 1691a(b) (emphasis added).

[112] In addition to the revisions discussed below, the Bureau proposed to make two non-substantive changes to comment 4(b)–1. The Bureau proposed to revise the heading of comment 4(b)–1 from ''prospective applicants'' to ''discouragement'' to conform with the current heading of § 1002.4(b) and to reflect the fact that the text of current comment 4(b)–1 refers to both applicants and prospective applicants. Similarly, the Bureau proposed to revise the introductory text of comment 4(b)–1 to provide that prohibited discouraging statements are those that ''would'' discourage (rather than ''could'' discourage) a reasonable person, on a prohibited basis, from applying for credit. Again, this change would conform commentary text to current text of § 1002.4(b).

[113] 50 FR 48018 at 48050.

[114] The Bureau also proposed to redesignate the other two examples in current comment 4(b)–1 as comments 4(b)–1.i.A and 4(b)–1.i.C, without substantive change.

interpreted to apply to scenarios that should not be characterized as prohibited discouragement under ECOA. These were scenarios that—though they may involve potentially controversial statements by creditors—do not involve statements that an objective creditor would know, or should know, would cause a reasonable person to believe that the creditor would deny them credit or offer them credit on less favorable terms than other borrowers. The Bureau drew a distinction between a statement by a creditor that an applicant or potential applicant may not like or may disagree with, and a statement that would cause a reasonable person to be discouraged from applying for credit with that creditor.

The Bureau proposed to revise § 1002.4(b) and its accompanying commentary to provide that a statement is prohibited discouragement only if a creditor ''knows or should know'' that the statement would cause a reasonable person to be discouraged.

The Bureau also proposed to revise § 1002.4(b) and its accompanying commentary to clarify that the standard is not whether a creditor's statement ''would discourage on a prohibited basis a reasonable person,'' as provided in existing § 1002.4(b), but rather that discouragement occurs only if the creditor's statement ''would cause a reasonable person to believe that the creditor would deny, or would grant on less favorable terms, a credit application by the applicant or prospective applicant because of the applicant or prospective applicant's prohibited basis characteristic(s).'' Under this proposed revision, prohibited discouragement would occur only when the creditor's statement was the proximate cause of the applicant's or prospective applicant's belief about their ability to obtain credit on non-discriminatory terms. The proposed revision thus would narrow the prohibition to cover only statements that *themselves* would cause a reasonable person to believe that the creditor would make a different decision about credit terms or availability based on the applicant or prospective applicant's prohibited basis characteristic(s).

Consistent with that proposed revision, the Bureau also proposed to narrow current comment 4(b)–1.ii (proposed comment 4(b)–1.i.B) [115] to refer only to statements that express a discriminatory preference or policy of exclusion.[116]

To facilitate compliance, the Bureau also proposed to add three examples to the commentary, in new comments 4(b)–1.ii.B through D, of the types of statements that a creditor would not (or should not) know would cause a reasonable person to believe that the creditor would deny (or would grant on less favorable terms) credit to an applicant or prospective applicant based on their prohibited basis characteristic(s). These were illustrative examples of non-prohibited statements that a creditor may make, directed at an applicant or prospective applicant: (1) in support of local law enforcement; (2) recommending that, before buying a home in a particular neighborhood, consumers investigate, for example, the neighborhood's schools, its proximity to grocery stores, and its crime statistics; and (3) encouraging consumers to seek out resources to develop their financial literacy. The Bureau requested comment on the revisions, including on whether additional or different examples would be helpful in clarifying the types of statements that would be permissible under the final rule.

Comment 4(b)–2

Comment 4(b)–2 provides that creditors may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor. The Bureau proposed to strike this comment as unnecessary; no substantive change was intended. The Bureau requested comment on the revision.

Technical Revision Related to Prospective Applicants

Consistent with ECOA section 704A, § 1002.15 sets forth incentives for creditors to self-test for compliance with ECOA and Regulation B and to correct any issues found.[117] Section 1002.15(d)(1)(ii) currently states that the report or results of a privileged self-test may not be obtained or used ''[b]y a government agency or an applicant (including a prospective applicant who alleges a violation of § 1002.4(b)) in any proceeding or civil action in which a violation of the Act or this part is alleged.'' The Bureau proposed to strike from § 1002.15(d)(1)(ii) the previous reference to prospective applicants. This proposed revision would conform the language of § 1002.15(d)(1)(ii) with the statutory language of ECOA sections 704A(a)(2) and 706.[118] No substantive change was intended. The Bureau requested comment on the revision.

Comments Received

Generally. Many comments that addressed the proposed revisions to the definition of discouragement in § 1002.4(b) and its accompanying commentary, particularly from consumer advocates and Members of Congress, stated that the proposed revisions would permit discriminatory lender conduct. Commenters identified populations that may be most impacted by the amendments to the definition of discouragement, including minorities, low-income consumers, women, consumers with disabilities, small business owners, rural consumers, older adults, and so-called justice-involved individuals. Some commenters noted that the amendments will cause individuals to self-select out of applying for credit. Many comments raised concerns that the proposed revisions will remove tools to prevent and redress discrimination in particular industries, including mortgage lending, small business lending, credit cards, small dollar loans, and other forms of small dollar lending.

One commenter noted an interaction between the discouragement prohibition and the Home Mortgage Disclosure Act of 1975 (HMDA),[119] explaining that creditors who want to discriminate illegally will be incentivized to keep certain types of consumers from applying for credit because under HMDA, if individuals never apply for credit, the creditor is not required to report the individual as being denied credit. State Attorneys General commenters also asserted that the proposed changes would limit the power of States, which, under the Dodd-Frank Act, have authority to enforce ECOA and Regulation B.

As discussed in the proposal, the Bureau preliminarily determined in its expertise that, in the years since the Board first adopted the discouragement prohibition, the prohibition has been interpreted to prohibit conduct that it is not necessary or proper to prohibit in order to prevent the circumvention or evasion of ECOA's purposes.[120] The Bureau expressed concern that this, in turn, has had an unnecessarily chilling effect on creditors' business practices and exercise of their rights to speak

[115] The Bureau mistakenly referred to this as proposed comment 4(b)–1.i.A in the proposal. *See* 90 FR 50901 at 50908.

[116] The Bureau discusses other proposed changes to the text of current comment 4(b)–1.ii above in part III.C, *Statement to applicants or prospective applicants.*

[117] 15 U.S.C. 1691c–1 (Incentives for self-testing and self-correction).

[118] 15 U.S.C. 1691c–1(a)(2), 1691e.

[119] Public Law 94–200, tit. III, 89 Stat. 1125 (12 U.S.C. 2801 *et seq.*).

[120] 90 FR 50901 at 50907.

about matters of public interest.[121] The Bureau was also concerned that the overbroad coverage of the regulation and its potential interpretations may constrain free speech and commercial activity in ways that are unwarranted.[122]

Industry commenters agreed that the existing discouragement regulations are overbroad and have had a chilling effect on lawful expression by creditors. The comments supported the proposed revisions, stating that the amendments will achieve the statutory purposes without prohibiting lawful, non-discriminatory conduct. One commenter noted that the Bureau's proposed amendments substantially reduce the potential for the rule to violate creditors' First Amendment rights.

Consumer advocate and State Attorneys General commenters disagreed, stating that the Bureau's concern that the overly broad and improper application of the discouragement provision has had a chilling effect on creditors and may constrain free speech and commercial activity is unjustified.

Consumer advocate and State Attorneys General commenters stated that the proposed changes to the discouragement regulations are inconsistent with the text and purposes of ECOA, and contrary to congressional intent. One commenter stated that if creditors could discourage prospective applicants from applying, they could frustrate the statutory purpose of requiring that financial institutions and other firms engaged in the extension of credit make that credit equally available to all creditworthy consumers without regard to prohibited characteristics. Some commenters pointed to the 1991 amendment of ECOA and its legislative history as evidence that Congress intended to prohibit the discouragement of applicants on a prohibited basis and advertising which implies a discriminatory preference.[123] The 1991 amendment requires agencies to refer matters to the Attorney General whenever the agencies have reason to believe that one or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of 15 U.S.C. 1691(a).[124]

Individuals and consumer advocate commenters also asserted that the proposed revisions to § 1002.4(b) would not facilitate compliance with ECOA. Commenters stated that the changes would render ECOA unworkable and make it unreasonably difficult for anyone to pursue a claim of discouragement. Consumer advocate and State Attorneys General commenters claimed that the Bureau did not provide a reasoned analysis to justify the changes. They stated that the Bureau's preliminary determination in the proposal that the discouragement provision has been interpreted to prohibit conduct that it is not necessary or proper to prohibit is not supported by data, case law, statutory text, or other legal or factual evidence. One consumer advocate commenter claimed that the Bureau's use of rulemaking authority limited consumer rights under ECOA, exceeding the Bureau's statutory rulemaking authority. Some commenters claimed that the proposed rule was inconsistent with the Bureau's consumer protection mandate.

Consumer advocate and State Attorneys General commenters also stated that the proposed changes to the discouragement regulations are inconsistent with decades of precedent and enforcement history and cited to cases that found discouragement. Most discussed was the 2024 decision from the U.S. Court of Appeals for the Seventh Circuit in which the court held that Regulation B's prohibition against discouragement is consistent with the plain text of the ECOA.[125] One commenter referenced dozens of court-approved settlements to resolve allegations of redlining that relied in part on Regulation B's definition of discouragement. Some commenters claimed that the proposed changes to the discouragement provision would explicitly permit statements similar to those that were at issue in that case.

An individual commenter asked the Bureau to define ''prospective applicant'' and suggested the term should mean either a person who has made a substantive pre-application inquiry to the creditor or a person who is an intended recipient of a targeted communication based on the creditor's distribution or targeting settings.

Oral or written statements. Several industry commenters supported the Bureau's proposal to clarify that certain acts or practices do not reflect the circumvention or evasion of ECOA's prohibition against discrimination. Industry commenters agreed that the proposal would tailor an overbroad reading of the statute. An industry trade commenter stated that banks have existing obligations under the CRA, and ECOA was not intended to impose similar obligations.

Many commenters, including consumer advocate and State Attorneys General commenters, stated that the Bureau failed to provide sufficient legal or factual data to support the proposed elimination of references to ''acts or practices'' in comment 4(b)–1. A few commenters stated that the proposal did not provide evidence that clarifying the Bureau's interpretation of discouragement would alleviate any purported chilling effect on creditors. Commenters also stated that the change is inconsistent with ECOA's remedial purpose and congressional intent to prevent discrimination before it occurs. In addition, many commenters stated that the proposed narrow definition of discouragement would create enforcement gaps.

Several consumer advocate commenters asserted that limiting discouragement to oral or written statements would permit pre-application discouragement conduct. Commenters were concerned that the proposal would allow creditors to deter protected groups from applying without making an explicitly discouraging statement. The commenters noted that the proposed changes focus only on explicit statements which they claim largely ignores how discrimination functions. Many consumer advocate commenters stated that the proposed amendments would allow geographic targeting. Commenters explained that, as a result of the amendments, financial institutions may locate or advertise in certain communities and avoid other communities. Commenters noted that pre-application interactions, marketing practices, and informal guidance influence whether a consumer applies for credit. These commenters stated that the proposal would allow creditors to comply formally with the rule while continuing to discourage applications through nonverbal, design or other practices.

Members of Congress, consumer advocate commenters, and policy group commenters raised concerns that the proposal would curtail efforts to address redlining. Some commenters stated that lender decisions, such as decisions on branch locations and communities to target for business, can demonstrate discouragement. Commenters noted the recent reliance by the DOJ, the Bureau, and other Federal financial regulators on the definition of discouragement in Regulation B to challenge redlining across the country. One commenter stated that the Bureau, through its exam manual, has adopted the Federal

[121] *Id.*

[122] *Id.*

[123] S. Rep. No. 102–167, at 86 (1991).

[124] FDIC Improvement Act of 1991, Public Law 102–242, sec.223, 105 Stat. 2236, 2306 (1991) (codified at 15 U.S.C. 1691e(g)).

[125] *Consumer Fin. Prot. Bureau* v. *Townstone Fin., Inc.,* 107 F.4th 768, 774, 777 (7th Cir. 2024).

Financial Institutions Examination Council (FFIEC) agencies' indicators of discriminatory redlining risk.

Industry commenters disagreed and stated that routine business decisions, including those about where to locate branch offices, where to advertise, or where to engage with the community through open houses or similar events, have been incorrectly construed to constitute discouragement. The commenters stated that these practices are routine business decisions. A credit union stated that branch location and outreach strategies are already constrained by statutory and charter requirements and that treating those location decisions as ''statements'' has generated substantial uncertainty and litigation risk without improving protection for consumers.

Statements to applicants or prospective applicants. Several industry commenters supported the proposal's approach to clarify that affirmatively encouraging one particular group of consumers to apply for credit does not constitute prohibited discouragement of another group. These commenters agreed that encouraging statements directed at one group do not discourage other consumer applicants, particularly where the other consumers are not the intended recipients. Industry commenters also supported the proposal's approach to targeted marketing, including geographic targeting, and asserted that targeted marketing is not intended to discourage non-targeted consumers. Commenters stated that using different marketing methods to reach different sets of audiences is not intended to discourage other consumers. One industry commenter explained that its members' efforts to encourage applications from traditionally underserved communities or use of targeted marketing to prospective applicants are routine lender practices to generate applications from creditworthy individuals or businesses.

Several consumer advocates and policy group commenters expressed concern that the proposal does not account for discouragement in current credit markets. These commenters asserted that discouragement in today's credit markets occurs through digital channels and that the proposal risks legitimizing digital redlining and algorithmic risk. The commenters were concerned that treating affirmative encouragement as non-discouragement overlooks how targeted marketing can exclude creditworthy prospective applicants. For example, the commenters claimed that tools for targeted marketing are largely exclusionary. The commenters also claimed that encouraging certain consumers to apply for credit, while excluding others, can be discouragement because it exposes certain consumers to credit opportunities while excluding others from awareness and therefore access. One commenter stated that the proposal would establish a safe harbor for creditors sending credit offers to a particular group of consumers, even if the creditor seeks to discriminatorily exclude others from such credit offers.

Consumer advocate commenters and State Attorneys General commenters stated that the proposal would create enforcement gaps by shielding exclusionary conduct framed as discouragement. These commenters noted that limiting discouragement to conduct directed at ''intended recipients'' would allow creditors to avoid liability by defining the audience narrowly. For example, commenters claimed that creditors could avoid discouragement liability by hanging signs such as ''Whites encouraged to apply,'' or ''We Love White People, Come Apply for a Mortgage!'' to communicate to prospective applicants who are not members of those groups that their business is not wanted. State Attorneys General commenters also stated that the Bureau did not provide a definition of ''intended recipients'' in the proposed regulation text or commentary itself and according to the commenters the narrative definition in the rule's preamble would arguably not cabin the proposed rule.

Several commenters, including several consumer advocates, rejected the idea that encouragement directed at one group can be evaluated separately from its effect to exclude another group. These commenters stated that encouraging certain commenters while excluding others is functionally the same as discouragement. A commenter noted that the proposal would eliminate pre-application comparative treatment because discouragement often involves a comparison of whether one group of prospective applicants receives better pre-application treatment than another based on their protected characteristics.

A few commenters, including consumer advocates and a trade group, asserted that the proposed amendments do not reflect the limitations applied to the rest of the housing market through the FHA. Commenters asserted that the proposed amendments would create inconsistencies regarding pre-application conduct. The trade group commenter stated that both the FHA and the commenter's code of ethics prohibit any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations, or discrimination. The commenter also stated that the best way to expand housing opportunities is to indicate in all statements related to buying property that no one is unwelcome. Another commenter asserted that the Bureau did not acknowledge or explain why it is creating a split between the FHA and ECOA considering the overlap between the FHA and ECOA regarding mortgage lending. The commenter noted that the Bureau's position on selective encouragement is at odds with HUD's regulations concerning discriminatory statements under the FHA.

Standard for discouragement. Several commenters, including State Attorneys General and consumer advocates, expressed concern that the Bureau's proposal would raise the standard to prove discouragement such that it would be unreasonably difficult to pursue a claim. These commenters also asserted that even applicants with legitimate discouragement claims would likely be deterred from pursuing them. A consumer advocate commenter stated that the standard is inconsistent with the standard of proof courts apply to similar claims and has not been applied by any court considering an ECOA discouragement claim. This commenter recommended that the Bureau adopt, similar to the FHA, a reasonable person test that would determine whether a reasonable person would perceive that a protected group would be disfavored in an application. A consumer advocate commenter stated that the Bureau did not explain why the new standard is needed or how to prove it.

Consumer advocate commenters and State Attorneys General commenters opposing the rule stated that the proposed reasonable person standard would allow creditors to make harmful statements that could discourage applicants. The State Attorneys General commenters stated that the rule would allow creditors to make statements mocking or mistreating prospective applicants based on a prohibited basis characteristic, or indicate that mistreatment would occur if the applicant applied as long as the statements did not specifically concern the credit decision or credit terms. A consumer advocate commenter stated that, in the housing context, courts have historically recognized that discriminatory preferences, rather than explicit bans, can form the basis for a discriminatory statement's violation. According to the commenter, a discriminatory statement only needs to indicate that a prospective applicant

would be disfavored on a prohibited basis.

Consumer advocate commenters stated that pre-application discouragement protections are necessary given the increased use of digital advertising and marketing. Commenters asserted that digital advertising and marketing, including algorithmic targeting, can allow lenders to target or steer certain groups towards specific products or discourage applications from protected classes. One consumer advocate commenter stated that discouragement occurs through selective steering, coded language, or marketing practices that systematically dissuade certain groups from applying.

A few industry commenters recommended that the Bureau eliminate any potential liability for statements that the creditor does not know would discourage an applicant or prospective applicant from applying for credit. These commenters recommended that the Bureau limit § 1002.4(b) to statements made with actual knowledge that would communicate discriminatory outcomes on a prohibited basis by deleting the proposed ''or should know'' language. The commenters asserted that the proposal would reach innocent conduct that is not undertaken on the basis of or because of a protected characteristic. An industry commenter was concerned that creditors would face unnecessary litigation based on disputes about whether a creditor should know how an innocent statement is interpreted by a prospective applicant. The commenter stated that the Bureau cannot reliably predict which statements made today without discriminatory intent, could later support that the creditor ''should know'' would discourage applications. Another commenter asserted extending Regulation B's discouragement prohibition to cover statements that a creditor did not intend to discourage applicants would exceed the Bureau's rulemaking authority under ECOA section 703(a).

Many consumer advocate commenters claimed that the proposed revision to narrow current comment 4(b)–1.ii (proposed comment 4(b)–1.i.B) to refer only to statements that ''express'' a discriminatory preference or policy of exclusion would limit discouragement liability to the most overt discriminatory statements. Commenters asserted that discouragement often occurs though implication or suggestion and therefore context is relevant in determining whether a statement is discouraging. A commenter stated that the Bureau failed to explain how the standard is consistent with the legislative history, which notes that ''advertising which implies a discriminatory preference [is] also prohibited'' under ECOA.[126]

Industry commenters expressed support for the Bureau's proposal to clarify the standard for discouragement claims. Commenters were supportive of the proposal to narrow comment 4(b)–1.ii to refer only to statements that express a discriminatory preference or policy of exclusion. Commenters stated that the proposed standard correctly prohibits only those statements that themselves would cause a reasonable person to believe that the creditor would make a different decision about credit terms or availability based on the applicant or prospective applicant's prohibited basis characteristic(s). These commenters indicated that discouragement has been interpreted to capture speech that is not based on any explicit exclusionary message, but on how certain listeners might respond. One commenter stated that the language is undefined and has been used in ways that do not align with the intent and purpose of ECOA. Another commenter recommended that the Bureau also update examination and enforcement guidance to reflect that evidence of discriminatory purpose is required for discouragement liability.

Industry commenters stated that the proposal would reduce unnecessary compliance burdens and ultimately mortgage costs and fees for borrowers. An industry commenter supported a bright line interpretation of the prohibition.

Some commenters supported the Bureau's proposal to add examples of statements that would not constitute prohibited discouragement under the rule. An industry commenter stated that examples were helpful towards providing creditors regulatory certainty. Another commenter encouraged the Bureau to include illustrative examples confirming that statements of moral or religious belief do not violate ECOA. Other commenters expressed concern with the Bureau's proposal to add examples of statements that would not constitute prohibited discouragement under the proposed rule. An industry commenter stated that examples of permitted speech were unnecessary and may confuse rather than elucidate the test. The commenter also recommended that if the Bureau proceeds with the examples, the Bureau should make it clear that the examples are not the complete list of permissible statements and note the statements may raise risks under other antidiscrimination laws. Another commenter stated that the Bureau should not adopt examples because context matters and even messages framed as encouragement can in some circumstances convey exclusionary messaging or discourage borrowers.

A nonprofit consumer advocate recommended that the Bureau not adopt its proposed examples of practices that would not constitute discouragement. The commenter expressed that a statement supporting law enforcement, combined with a ''police lives matter'' flag, displayed in a town that had recently experienced extreme police violence against a community member of color, or where there was an ongoing dispute about such violence, could convey exclusion or discouragement to a potential credit applicant of color. Another commenter stated that references to certain language in the proposed rule's examples of non-discriminatory statements may, depending on the facts, provide evidence of discrimination.

A few commenters noted that the categories of ''non-prohibited statements'' under the proposed rule closely track the statements made by a mortgage lender that were ultimately cited in an ECOA enforcement action. These commenters stated that the proposal explicitly contradicts circuit court precedent arising out of that enforcement action. Another commenter noted that the Bureau's proposal does not explain why, instead of taking measures to prevent evasions as affirmed by the Seventh Circuit, it proposes to restrict ECOA's coverage.

Comment 4(b)–2. Several commenters, including consumer advocates and trade organizations, supported retaining the existing comment 4(b)–2, which provides that creditors may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit. Commenters stated that comment 4(b)–2 clarifies targeted outreach to certain communities is permissible; will not be flagged as discouragement; and allows creditors to expand their applicant pools. Some commenters asserted that retaining the comment would encourage creditors to purposefully expand their outreach to communities they may not have previously reached. A credit union trade group stated that the comment is important for credit unions that serve military communities. According to the commenter, credit unions often engage in outreach to populations that may be reluctant to seek credit. State Attorneys General commenters expressed concern that, read together with the Bureau's proposal to permit encouraging statements, the proposal to delete

[126] *See* S. Rep. No. 102–167, at 86 (1991).

comment 4(b)–2 would allow discriminatory practices and harm consumers and creditors.

Commenters also stated that comment 4(b)–2 provides regulatory clarity. These commenters asserted that removing the comment without providing a replacement would introduce regulatory uncertainty and increase compliance costs to creditors seeking to expand their applicant pools. For example, one industry commenter expressed concern that without comment 4(b)–2 creditors could face significant regulatory risks if they expressly consider prohibited-basis related information or proxies in developing and deploying marketing strategies. This commenter requested that if the Bureau moved forward with the proposal, the Bureau also provide guidance explaining when such affirmative marketing might become prohibited disparate treatment based on protected characteristics. Another commenter requested that the comment be retained as an example of a statement that the Bureau would not consider discouragement of a potential applicant.

Technical revision related to prospective applicants. A few commenters opposed the technical correction to strike from § 1002.15(d)(1)(ii) the current reference to prospective applicants. In the proposal, the Bureau explained that this revision would conform the language of § 1002.15(d)(1)(ii) with the statutory language of ECOA sections 704A(a)(2) and 706,[127] and no substantive change was intended. State Attorneys General commenters stated that the revision would disincentivize creditors from self-testing for Regulation B violations against prospective applicants, as creditors would know that the results of such a test now could be used against them. The commenters also said that the proposal does not explain why this change is needed.

An industry trade commenter expressed concern that eliminating the existing reference to prospective applicants could be interpreted as a change in the regulation. The commenter was concerned that the proposed revision could trigger private litigants to make requests for protected self-tests in ECOA lawsuits and the resulting discovery disputes over production would needlessly increase the costs of defense.

Alternatives. The Bureau requested comment on the merits of an alternative approach in which the Bureau would revise only one or two aspects of § 1002.4(b), instead of the proposed three, and, if such an approach were adopted, which aspects of § 1002.4(b) should be revised.[128] Commenters did not appear to directly address this request. Yet at least one commenter claimed the Bureau has not considered alternatives to accomplish ECOA's objectives.

An industry commenter recommended expanding the discouragement amendments to include lender fraud prevention efforts. The commenter requested that the Bureau allow lenders to identify and target geographical regions that warrant increased due diligence requirements for loan applicants and protect these lenders from discrimination claims when engaging in legitimate fraud protection efforts. The commenter also requested that the Bureau review related vulnerabilities with respect to the Fair Credit Reporting Act (FCRA) to ensure that financial institutions are provided clear regulatory protection to implement fraud prevention programs that may result in increased scrutiny of applications from certain geographic regions.

An academic research organization recommended the creation of a Federal agency, the U.S. Department of Valuation, to ensure administrative conformity across valuation activities, considering the proposed narrowing of the protections provided by the discouragement prohibition.

Final Rule

The Bureau is finalizing, as proposed, the amendments to § 1002.4(b) and its accompanying commentary. ECOA section 703(a) authorizes the Bureau to make adjustments in Regulation B that, in its judgment, are necessary or proper to effectuate ECOA's purposes.[129] Specifically, ECOA section 703(a) provides that the Bureau ''shall prescribe regulations to carry out the purposes of [ECOA],'' and that such regulations:

> [M]ay contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of [ECOA], to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.[130]

When the discouragement provision was promulgated in 1975, the Board, using its adjustment authority under ECOA section 703(a), determined in its judgment that prohibiting discouragement was ''necessary to protect applicants against discriminatory acts occurring before an application is initiated.'' [131] The U.S. Court of Appeals for the Seventh Circuit, in 2024, affirmed the Bureau's broad, discretionary authority over the discouragement prohibition. The court observed that the discouragement provision had been adopted pursuant to the Board's (now the Bureau's) broad authority to ''prescribe regulations to carry out the purposes of [ECOA],'' and to ''provide for such adjustments and exceptions'' that, ''in the judgment of the Bureau are necessary or proper to effectuate the purposes of [ECOA], to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.'' [132]

Pursuant to its adjustment authority under ECOA section 703(a),[133] and in consideration of what the Bureau, using its expertise and experience as a regulator in the marketplace, finds necessary and proper given the purposes of ECOA and facilitating compliance therewith, the Bureau has reconsidered various aspects of the discouragement provision. The finalized revisions address several different aspects of § 1002.4(b): (1) what constitutes an oral or written statement, (2) what constitutes a statement to an applicant or prospective applicant, and (3) the standard for showing prohibited discouragement. These revisions continue to prohibit illegal discouragement of applicants and prospective applicants but no longer exceed that purpose in ways that may impose unnecessary constraints in the marketplace.

In the 50 years since the discouragement prohibition was first implemented at the Board's discretion, the provision has been interpreted to prohibit conduct that, in the Bureau's judgment, is not necessary or proper to prohibit or to prevent the circumvention or evasion of ECOA's purposes. For example, the inclusion of the phrase ''acts or practices'' in current comment 4(b)–1 has resulted in § 1002.4(b) being interpreted overly broadly to apply to business practices that, though they may have some communicative effect, do not reflect the circumvention or evasion of ECOA's prohibition against discrimination that the discouragement provision was designed to address. Such practices include, for example, business decisions about where to locate branch offices, where to advertise, or where to

[127] 15 U.S.C. 1691c–1(a)(2), 1691e.

[128] 90 FR 50901 at 50907.

[129] 15 U.S.C. 1691b(a).

[130] *Id.*

[131] 40 FR 49298 at 49299.

[132] *Consumer Fin. Prot. Bureau* v. *Townstone Fin., Inc.,* 107 F.4th 768, 774, 777 (7th Cir. 2024).

[133] 15 U.S.C. 1691b(a).

engage with the community through open houses or similar events. In the Bureau's view, such practices do not constitute ''oral or written statements'' to applicants or prospective applicants within the meaning of § 1002.4(b) and do not, in and of themselves, demonstrate prohibited discouragement.

In addition, current § 1002.4(b) has been interpreted to prohibit the selective encouragement of certain applicants or prospective applicants (for example, geographically targeted advertising) on the basis that such encouragement could discourage applicants or prospective applicants who did not receive it. This interpretation, too, is overbroad relative to the intended purposes of the discouragement prohibition. The purpose of ECOA is to make credit available to all applicants on a non-discriminatory basis, and § 1002.4(b) helps to achieve that purpose by prohibiting creditors from *discouraging* applicants or prospective applicants. Encouraging statements are not intended to (or even likely to) discourage *other* applicants or prospective applicants, who did not receive the statements and might, in fact, have been entirely unaware of them, from applying for credit. Such conduct is not typically an evasion of ECOA's prohibitions, nor is prohibiting it necessary or proper to achieve the purposes of ECOA.

Current § 1002.4(b) has also been interpreted to apply to scenarios that should not be characterized as prohibited discouragement under ECOA. These are scenarios that—though they may involve potentially controversial statements by creditors—do not involve statements that an objective creditor would know, or should know, would cause a reasonable person to believe that the creditor would deny them credit or offer them credit on less favorable terms than other borrowers. There is a difference between a statement by a creditor that an applicant or potential applicant may not like or may disagree with, and a statement that would cause a reasonable person to be discouraged from applying for credit with that creditor.

Constraints on these types of business practices and statements, as currently exist, harm the marketplace by unnecessarily regulating business practices and limiting expression. Industry commenters confirmed that their ability to make important business decisions and speak freely has been constrained by broad interpretations of the existing discouragement provision. The Bureau concludes that § 1002.4(b), as amended, will not infringe on anyone's First Amendment rights.

The revisions to the discouragement prohibition, as finalized, are not inconsistent with the Bureau's consumer protection mandate, as alleged by at least one commenter. The Bureau is an agency that implements and enforces consumer financial law and ensures that markets for consumer financial products are transparent, fair, and competitive.[134] The current discouragement provision has been interpreted to prohibit conduct that it is not necessary or proper to prohibit in order to prevent the circumvention or evasion of ECOA's purposes. This, in turn, has had an unnecessarily chilling effect on creditors' business practices and exercise of their rights to speak about matters of public interest. The finalized revisions are intended to ensure that the Bureau implements and enforces consumer financial law without imposing additional, unnecessary constraints on the marketplace.

The APA permits the Bureau to amend its regulations, including those related to discouragement, through the notice and comment process, regardless of how long the prior policy has been in place.[135] Under that standard, it is not arbitrary and capricious for an agency to change its position if, among other things, the agency acknowledges the change and provides good reasons supporting that change.[136] Federal agencies amend policies for myriad reasons, including in response to observing how its policies operate in practice, changes in circumstance, and shifting priorities. The finalized amendments will be applied prospectively, taking effect 90 days after publication in the **Federal Register**, and will not affect statements or actions that have already occurred, or cases that have already been decided.

The Bureau acknowledges that the revisions, as finalized, may impact certain groups of consumers more than others. As discussed in the proposal, the amendments to the definition of discouragement may result in consumers not applying for credit and facing greater barriers to accessing credit than they otherwise would have under the existing rule. Certain groups of consumers may be excluded from advertising campaigns or lenders may choose to engage less with certain groups of consumers. As a result, some consumers may not be aware of credit products from all available lenders. Moreover, some consumers may lose convenient access to financial services if lenders alter their branch location decisions. In particular, elderly, minority, and low-income consumers are more likely to rely on brick-and-mortar branch services instead of online or mobile banking. If lenders alter their branch location decisions, then these customers may no longer be able to easily access financial services and products. However, narrowing the overbroad interpretation of the discouragement provision also benefits these very consumers, and may mitigate such impacts, by explicitly permitting lenders to make encouraging statements directed at any group of consumers. As finalized, § 1002.4(b) will no longer be interpreted to prohibit the selective encouragement of certain applicants or prospective applicants on the basis that such encouragement could discourage applicants or prospective applicants who did not receive it, thus enabling access to credit for all consumers.

While it is also true that the revisions, as finalized, will reduce legal liability for lenders under ECOA from what it is today, the revisions restore the proper scope of prohibited discouragement behavior. States are not prohibited from enforcing the anti-discouragement provisions of Regulation B, as amended. In addition, other statutes, including HMDA and State laws, remain unchanged.

Finally, the Bureau determines it is unnecessary to provide a definition of ''prospective applicant'' in the regulatory text as requested by at least one commenter. The term ''applicant'' is already defined in current § 1002.2(e). An applicant generally is any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. The term ''prospective'' is an adjective commonly understood to mean ''relating to or effective in the future.'' [137] Thus, a prospective applicant has generally been understood to be any person who may, in the future, request or receive an extension of credit from a creditor. The Bureau is not altering its meaning in this rulemaking.

For these reasons, and for the reasons stated below, the Bureau has, in its

[134] 12 U.S.C. 5511.

[135] The APA defines ''rule making'' as the ''agency process for formulating, amending, or repealing a rule.'' 5 U.S.C. 551(5). The APA ''makes no distinction . . . between initial agency action and subsequent agency action undoing or revising that action.'' *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).

[136] *Id.* at 515–16.

[137] *Prospective, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/prospective* (last visited Mar. 13, 2026).

discretion and using its expertise and experience as a regulator in the marketplace, reevaluated various aspects of the discouragement prohibition in light how those provisions have been so broadly interpreted over the course of the last 50 years. The specific amendments are discussed below, as are more fulsome justifications for finalizing the amendments as proposed.

Oral or Written Statement

For the reasons discussed above and stated herein, the Bureau is finalizing § 1002.4(b) as proposed. Specifically, the Bureau is finalizing language added to § 1002.4(b) clarifying that ''oral or written statement'' means spoken or written words, or visual images such as symbols, photographs, or videos. This includes any visual images used in advertising or marketing campaigns. The Bureau is also aligning the text of comment 4(b)–1 with the text of current § 1002.4(b), as proposed, by replacing current references in the comment to ''acts or practices'' or ''practices'' with references to ''oral or written statements'' or ''statements,'' respectively.

Final § 1002.4(b) provides clear guidelines on the conduct that constitutes discouragement. The revisions are not inconsistent with congressional intent to prevent discrimination and the circumvention of ECOA's purposes, as alleged by some consumer advocates. The Bureau has determined that the inclusion of the phrase ''acts or practices'' in comment 4(b)–1 has resulted in § 1002.4(b) being interpreted overly broadly to apply to business practices that, though they may have some communicative effect, do not reflect the circumvention or evasion of ECOA's prohibition against discrimination that the discouragement provision was designed to address. Such practices include, for example, business decisions about where to locate branch offices, where to advertise, or where to engage with the community through open houses or similar events. In the Bureau's view, such practices do not constitute ''oral or written statements'' to applicants or prospective applicants within the meaning of § 1002.4(b) and do not, in and of themselves, demonstrate prohibited discouragement. As finalized, the business practices noted above would not constitute prohibited discouragement even if they had some communicative effect that some consumers could arguably find discouraging.

Regarding consumer advocate comments on redlining, § 1002.4(b), as finalized, does not permit redlining. ECOA and Regulation B prohibit a creditor from denying an application or providing an applicant less advantageous credit terms because of a prohibited basis characteristic. The Bureau is not eliminating the prohibition against discouragement of applicants and prospective applicants. Preapplication discrimination remains addressable under Regulation B and other discriminatory conduct remains addressable under ECOA's antidiscrimination mandate.

Consumer advocate commenters alleged that comment 4(b)–1, as proposed, would contradict circuit court precedent. This is not the case. As previously discussed above, the Seventh Circuit recognized that the Bureau has the broad authority to prohibit the discouragement of prospective applicants in order to prevent circumvention or evasion of ECOA. Proposed comment 4(b)–1 does not contradict that finding and, indeed, relies on that authority to accomplish that very task. The Bureau has determined, however, that the existing prohibition against discouragement sweeps in substantially more speech and conduct than is necessary, in its judgment, to accomplish those goals. Because the Bureau has broad authority to ''provide for such adjustments and exceptions'' that, ''in the judgment of the Bureau are necessary or proper to effectuate the purposes of [ECOA], to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith,'' [138] the Bureau is exercising its adjustment authority to align more closely the discouragement provision with those purposes.

Regarding comments that the Bureau failed to provide sufficient legal or factual data to support the proposed elimination of references to ''acts or practices'' in comment 4(b)–1, the Bureau explained that it has observed how references to acts or practices have expanded the discouragement provision beyond its original scope. In 1985, the Board added comment 5(a)–1 (precursor to the Bureau's comment 4(b)–1), which states, in part, that § 202.5(a) (precursor to the Bureau's § 1002.4(b)) covers ''acts or practices'' by creditors that could discourage on a prohibited basis a reasonable person from applying for credit; the Board added this to Regulation B without explaining the reasoning for expanding the scope.[139] Comment 5(a)–1 stated that ''[i]n keeping with the purpose of the act—to promote the availability of credit on a nondiscriminatory basis § 202.5(a) covers acts or practices directed at potential applicants.'' [140] The comment provided three examples of prohibited practices, including ''[t]he use of words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the Act.'' [141] In the Bureau's view, ''acts or practices'' do not constitute ''oral or written statements'' to applicants or prospective applicants within the meaning of § 1002.4(b) and do not, in and of themselves, demonstrate prohibited discouragement. As finalized, the discouragement provision only covers actual oral or written statements by creditors to applicants or prospective applicants. The Bureau has determined that clarifying the discouragement provision as described would facilitate compliance with ECOA and Regulation B and result in more targeted and effective enforcement of the prohibition against discouragement to prevent conduct designed to circumvent the statute's prohibition against discrimination.

With respect to commenters' assertion that limiting discouragement to oral or written statements would permit pre-application discouragement conduct, final comment 4(b)–1 does not eliminate protections against pre-application discrimination. Final comment 4(b)–1 provides creditors with clear guidance about the types of communications that are permitted. Creditors can engage in routine business decisions without fear that these business practices will be treated as discouragement. As explained by one commenter, branch location and outreach strategies have generated substantial uncertainty and litigation risk without improving protection for consumers. Along those same lines, industry commenters agree that the current discouragement regulations are overbroad and have had a chilling effect on lawful expression by creditors. Creditors have responded to the overbroad interpretation of ''acts or practices'' by limiting communications to avoid liability, thus chilling lawful speech. One credit union trade group noted the decision to define oral or written statement as the most important aspect of the proposal.

[138] 15 U.S.C. 1691b(a).

[139] 50 FR 48018 at 48021. The Board later renumbered comment 5(a)–1 as comment 4(b)–1 and made minor revisions. *See* 68 FR 13144 (Mar. 18, 2003).

[140] 50 FR 48018 at 48050.

[141] *Id.*

Statement to Applicants or Prospective Applicants

As noted, § 1002.4(b) currently prohibits creditors from making any oral or written statement to applicants or prospective applicants that would discourage a reasonable person from making or pursuing an application for credit. Section 1002.4(b) has been interpreted to prohibit the selective encouragement of certain applicants or prospective applicants (for example, geographically targeted advertising) on the basis that such encouragement could discourage applicants or prospective applicants who did not receive it. For the reasons discussed above and stated herein, the Bureau has determined that this interpretation is overbroad relative to the intended purposes of the discouragement prohibition and the Bureau is finalizing as proposed § 1002.4(b) and its accompanying commentary.

Some commenters raised concerns that the rule does not reflect the limitations applied to the rest of the housing market through the FHA. However, the FHA and ECOA are distinct statutes that Congress intended to be implemented and enforced by different agencies. The purpose of ECOA is to make credit available to all applicants on a non-discriminatory basis, and § 1002.4(b) helps to achieve that purpose by prohibiting creditors from *discouraging* applicants or prospective applicants. This final rule states that, when a creditor directs *encouraging* statements to certain applicants or prospective applicants, this is not an action intended to (or even likely to) discourage *other* applicants or prospective applicants, who did not receive the statements and might, in fact, have been entirely unaware of them, from applying for credit.

In response to the proposed amendments to permit creditors to make encouraging statements to certain applicants or prospective applicants, some commenters concocted hypothetical examples of signs they purport the proposed amendments to allow. Although final comment 4(b)–1 states that encouraging statements directed at one group of consumers cannot discourage other consumers who were not the intended recipients of the statements, final § 1002.4(b) and its commentary do not permit a lender to hang signs that express a discriminatory preference or policy of exclusion. Final comment 4(b)–1.i.B provides that prohibited discouragement includes statements directed at the public that express a discriminatory preference or policy of exclusion against consumers based on one or more prohibited basis characteristics. Statements that express a discriminatory policy or preference include spoken or written words, or visual images such as symbols, photographs, or videos that indicate a bias that excludes individuals based on one or more protected basis characteristics. Statements made in contexts in which a creditor knows or should know would cause a reasonable person to believe that the creditor would deny their credit application, or would grant it on less favorable terms, because of their prohibited basis characteristic(s), are prohibited by § 1002.4(b). As such, the final rule will allow for targeted outreach and business communications without chilling free speech or expanding discouragement liability but will not allow creditors to disguise statements that indicate a discriminatory preference or policy as permissible encouraging statements.

As stated in the proposal, an intended recipient includes any person whom a creditor could reasonably expect to receive a particular statement. Factors that could help determine a statement's intended recipients include the method or mechanism used to communicate it. For example, the intended recipients of a directly mailed advertisement would be the addressed recipients of that mailer, whereas a statement made by a creditor on a public television or radio broadcast, or posted on a window sign, would presumably be to the general public. As to a commenter's assertion that a definition of ''intended recipient'' does not appear in the proposed regulation text or commentary, ''intended recipient'' is objective and the Bureau provides examples in the rule's preamble that sufficiently allow a creditor to understand the term.

Together, final § 1002.4(b) and comment 4(b)–1 clarify that affirmatively encouraging one group of consumers to apply for credit does not discourage others who were not the intended recipients of the message. Targeted advertising and outreach to underserved populations can improve access to credit and advance the purpose of ECOA by generating applications from qualified consumers who otherwise would not have known about the product or service being offered. An industry trade commenter expressed this viewpoint noting that its members' efforts to encourage applications from traditionally underserved communities or use of targeted marketing to prospective applicants, are routine creditor practices to generate applications from creditworthy individuals or businesses. Further, evaluating encouragement based on any asserted effect on other potential audiences would broaden discouragement beyond what is necessary or proper to achieve the purposes of ECOA. Current § 1002.4(b) created an overly broad restriction on speech causing creditors to limit communications.

Affirmative encouragement directed at one group of consumers does not automatically convey that other consumers will be treated unfavorably or are disfavored from applying, as asserted by opponents of the proposal. For example, while a creditor may affirmatively encourage one group of consumers to apply for credit, a creditor may not make statements that it knows or should know would cause a reasonable person to believe that the creditor would deny their credit application, or would grant it on less favorable terms, because of their prohibited basis characteristic(s).

As such, the Bureau determines that encouraging statements by creditors directed at one group of consumers is not prohibited discouragement as to applicants or prospective applicants who were not the intended recipients of the statements, and statements directed at one group of consumers, encouraging that group of consumers to apply for credit, are generally not prohibited by § 1002.4(b). Such conduct is not typically an evasion of ECOA's prohibitions, nor is prohibiting it necessary or proper to achieve the purposes of ECOA. Applying limiting principles to the reach of Regulation B will help render the scope of the regulation more consistent with Congress' stated intent in ECOA's framework and will also permit creditors to have clear rules and guidelines they can follow to comply with the law.

Standard for Discouragement

For the reasons discussed above and stated herein, the Bureau is finalizing as proposed § 1002.4(b) and its accompanying commentary with respect to the standard for discouragement. As noted, the prohibition against discouragement was adopted to prevent creditors from circumventing ECOA's prohibition against discrimination by deterring prospective applicants from even applying for credit. While this is an appropriate goal, the Bureau concludes that § 1002.4(b) has been interpreted to apply to scenarios that should not be characterized as prohibited discouragement under ECOA. These are scenarios that—though they may involve potentially controversial statements by creditors—do not involve statements that an

objective creditor would know, or should know, would cause a reasonable person to believe that the creditor would deny them credit or offer them credit on less favorable terms than other borrowers.

The Bureau does not believe that the ''knows or should know'' standard would be unreasonably difficult to prove as asserted by consumer advocates. The ''knows or should know'' standard sets an appropriate standard for discouragement claims. It provides a workable test that results in more targeted enforcement. Additionally, it is an appropriate exercise of the Bureau's rulemaking authority that permits the Bureau to adopt regulations necessary or appropriate to prevent circumvention or evasion of ECOA's purposes. In response to comments asserting that the Bureau has not demonstrated how to prove the knows or should know standard, the Bureau has considered these comments but does not find it necessary to provide additional clarification. The term ''knows or should know'' is a common term and the Bureau uses the term consistent with its ordinary meaning, which it believes creditors can readily understand. Ultimately, whether a creditor knows or should know that its statement would cause a reasonable person to believe that the creditor would deny them credit or offer them credit on less favorable terms on a prohibited basis is a situationally specific question of fact, and any dispute would be appropriately resolved by a fact finder.

Some commenters asserted that under the proposal, lenders may circumvent ECOA's protections via targeted digital advertising, steering, and other pre-application conduct. While digital advertising and marketing technologies that allow lenders to target consumers may present new risks for consumers, the ''knows or should know'' standard sufficiently addresses the risk.

The Bureau declines to modify the standard provided in § 1002.4(b) to include only statements made with actual knowledge, as requested by some industry commenters. A statement is prohibited discouragement only if a creditor ''knows or should know'' that the statement would cause a reasonable person to believe that the creditor would deny their credit application, or would grant it on less favorable terms, because of their prohibited basis characteristic(s). A creditor should have known that its statement would cause a reasonable person to believe that the creditor would discriminate against them in their application for credit and the creditor cannot feign ignorance of the statement's effect. This standard does not exceed the Bureau's rulemaking authority as asserted by an industry commenter. As previously stated, the Bureau maintains authority under ECOA section 703(a) to make adjustments in Regulation B that, in its judgement, are necessary or proper to effectuate ECOA's purposes. The adjustments provided in final § 1002.4(b) are consistent with ECOA section 701(a), which makes it ''unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract); (2) because all or part of the applicant's income derives from any public assistance program; or (3) because the applicant has in good faith exercised any right under [the Consumer Credit Protection Act].'' [142] The standard does not exceed ECOA's purpose as asserted by an industry commenter. Instead, it furthers ECOA's purpose of prohibiting credit discrimination by preventing evasion or circumvention of the statute.

While a creditor may be permitted to make a statement that an applicant or potential applicant may not like or may disagree with, a creditor is not permitted to make a statement that it knows or should know would cause a reasonable person to believe that the creditor would deny their credit application, or would grant it on less favorable terms, because of their prohibited basis characteristic(s). The Bureau believes that there is a difference between a statement by a creditor that an applicant or potential applicant may not like or may disagree with, and a statement that would cause a reasonable person to believe that the creditor will discriminate against them in the credit transaction. As noted in the proposal, the Bureau believes that difference should be better reflected in Regulation B. Applying the limiting principle would more closely align the regulation with the task of preventing circumvention or evasion of Congress' intent in ECOA. Statements that are controversial or unpopular are not the type of statements that Congress intended to be prohibited under ECOA. Instead, the discouragement prohibition prevents statements that would discourage prospective applicants from even applying for credit.

Final § 1002.4(b) and accompanying commentary do not limit discouragement liability only to the most overtly discriminatory statements as suggested by commenters. It narrows discouragement liability to statements that themselves would cause a reasonable person to believe that the creditor would make a different decision about credit terms or availability based on the consumer's prohibited basis characteristic. In the Bureau's view, these are statements that *themselves* would cause a reasonable person to believe that the creditor would make a different decision about credit terms or availability based on the applicant or prospective applicant's prohibited basis characteristic(s).

Section 1002.4(b) and accompanying commentary do not authorize creditors to make statements mocking or mistreating prospective applicants on a prohibited basis as long as the statements did not specifically concern the credit decision or credit terms, as suggested by one commenter. As discussed above, final comment 4(b)–1.i.B provides that prohibited discouraging statements include statements directed at the general public that express a discriminatory preference or policy of exclusion in violation of ECOA. The focus on what a creditor expresses is consistent with ECOA's purpose of prohibiting credit discrimination. The Bureau believes it is appropriate to focus the discouragement analysis on whether a reasonable person would believe they would be denied or treated less favorably because of a prohibited basis characteristic.

Thus, the revision would narrow prohibited discouragement to cover only statements that *themselves* would cause a reasonable person to believe that the creditor would make a different decision about credit terms or availability based on the applicant or prospective applicant's prohibited basis characteristic(s). Prohibited discouragement does not include every statement a creditor makes. As indicated by a commenter, discouragement has been interpreted in the past to capture generalized public-facing speech that is not based on any explicit exclusionary message, but on how certain listeners might react. Focusing on the connection between the credit transaction and the applicant's prohibited basis characteristic provides a clear workable standard.

In addition, final § 1002.4(b) and accompanying commentary reflect a valid policy judgment made within the Bureau's delegated adjustment authority under ECOA section 703(a). Under ECOA section 703(a), the Bureau has authority to make adjustments in Regulation B that, in its judgment, are necessary or proper to effectuate

[142] 15 U.S.C. 1691(a).

ECOA's purposes. The Bureau is prioritizing a narrower interpretation of discouragement, rather than an overbroad policy that unnecessarily constrains speech and prohibits behavior that is not a circumvention or evasion of ECOA's purposes. Final § 1002.4(b) and accompanying commentary modify the framework used to determine whether conduct is discouraging without eliminating the underlying prohibition and will provide lenders with clear rules and guidelines to comply with. An industry commenter affirmed this, stating that the proposed changes to § 1002.4(b) and the commentary would decrease the regulatory burden for credit unions because the revised provisions are less ambiguous and more straightforward for compliance and examination purposes.

In comments 4(b)–1.ii.B through D, which the Bureau is finalizing, the Bureau provided examples of the types of statements that a creditor would not (or should not) know would cause a reasonable person to believe that the creditor would deny (or would grant on less favorable terms) credit to an applicant or prospective applicant based on their prohibited basis characteristic(s). Some commenters expressed concerns that these examples do not account for the context in which the statements are made. One commenter provided a fact pattern that the commenter believed should be prohibited but would fall within the examples of non-prohibited statements listed in comment 4(b)–1.ii. The Bureau has concluded that the examples of statements in comment 4(b)–1.ii are not, themselves, statements that a creditor would (or should) know would cause a reasonable person to believe that the creditor would deny their credit application, or would grant it on less favorable terms, because of their prohibited basis characteristic(s), and are therefore not prohibited by § 1002.4(b). However, creditors should be mindful of what influences how a reasonable person would understand a statement, and that the context in which oral or written statements are made may illustrate the creditor's intended meaning of the statement. Section 1002.4(b) prohibits statements directed at applicants or prospective applicants that the creditor knows or should know would cause a reasonable person to believe that the creditor would deny their credit application, or would grant it on less favorable terms, because of their prohibited basis characteristic(s). Creditors also remain subject to other obligations under applicable State and Federal laws.

Comment 4(b)–2

For the reasons discussed above and stated herein, the Bureau is finalizing its proposed removal of comment 4(b)–2. Currently, comment 4(b)–2 provides that creditors may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor. As discussed in the proposal, removing current comment 4(b)–2 does not represent a substantive change. The Bureau is merely removing the comment because it is unnecessary. Creditors' Regulation B compliance requirements remain unchanged. Further, final comment 4(b)–1 provides that affirmatively encouraging one particular group of customers to apply for credit does not constitute prohibited discouragement of another group. The final rule addresses the duplicative nature of current comment 4(b)–2 and final comment 4(b)–1 by removing current comment 4(b)–2.

In response to commenters' request that the Bureau also provide guidance explaining when affirmative marketing might become prohibited disparate treatment based on protected characteristics, removing the comment does not change the underlying discrimination standard. Because no substantive change is intended, additional guidance is unnecessary.

In response to commenters' assertion that the deletion will hinder creditors' outreach to underserved communities, expanding outreach to communities that creditors may have avoided or not have previously reached is consistent with and supports Regulation B's objective of ''promot[ing] the availability of credit to all creditworthy applicants without regard'' to prohibited basis characteristics.[143] Additionally, final comment 4(b)–1 makes clear that creditors are permitted to engage in targeted advertising. Specifically, it provides that selective encouragement directed at one audience would not be treated as discouraging to other audiences who were not the intended recipients of the message. Additionally, final comment 4(b)–1.ii.A provides that statements directed at one group of consumers, encouraging that group of consumers to apply for credit, are not prohibited by § 1002.4(b). Final comments 4(b)–1 and 4(b)–1.ii.A are clear that lawful outreach is permitted. Removing comment 4(b)–2 should not introduce regulatory uncertainty nor increase creditors' compliance costs, as asserted by some commenters.

The Bureau therefore strikes comment 4(b)–2 as unnecessary; no substantive change is intended.

Technical Revision Related to Prospective Applicants

For the reasons discussed above and stated herein, the Bureau is finalizing the technical revision related to prospective applicants in § 1002.15(d)(1)(ii) as proposed. Current § 1002.15(d)(1)(ii) states that the report or results of a privileged self-test may not be obtained or used ''[b]y a government agency or an applicant (including a prospective applicant who alleges a violation of § 1002.4(b)) in any proceeding or civil action in which a violation of the Act or this part is alleged.'' The final rule strikes from § 1002.15(d)(1)(ii) the reference to prospective applicants.

Some commenters expressed concern with the proposed amendment and requested that the Bureau maintain current § 1002.15(d)(1)(ii). As discussed in the proposal, this is a technical correction, and no substantive change is intended. Only an ''aggrieved applicant'' has standing under ECOA to bring a private cause of action.[144] To the extent a prospective applicant qualifies as an ''aggrieved applicant'' for the purposes of section 706(a), that plaintiff would similarly be an ''applicant'' for the purposes of § 1002.15(d)(1)(ii). A person who is not an aggrieved applicant under 706(a) would not have a private cause of action, and, thus, there would be no civil action to which § 1002.15(d)(1)(ii) could apply. The revision merely conforms the language of § 1002.15(d)(1)(ii) with the statutory language of ECOA sections 704A(a)(2) and 706.[145] Any government agency or applicant who currently can allege a violation of ECOA or Regulation B in a civil action will still be able to do so, and the privilege protections of § 1002.15(d)(1)(ii) would apply just as they currently do.

Alternatives

The Bureau considered, but is not adopting, alternatives to proposed § 1002.4(b). The Bureau requested comment on the merits of an alternative approach in which the Bureau would revise only one or two aspects of § 1002.4(b), instead of the proposed three, and, if such an approach were adopted, which aspects of § 1002.4(b) should be revised,[146] but commenters

[143] *See* § 1002.1(b).

[144] 15 U.S.C. 1691e.

[145] 15 U.S.C. 1691c–1(a)(2), 1691e.

[146] 90 FR 50901 at 50907.

did not appear to directly address this request.

With respect to the request to address lender fraud protection efforts, the Bureau does not believe amendments to Regulation B specific to lender fraud prevention efforts are necessary in this rulemaking. The proposed amendments, as finalized, do not prohibit creditors from engaging in non-discriminatory fraud prevention activities. Additionally, amendments to Regulation V, implementing the FCRA, are beyond the scope of this rulemaking. The Bureau is also unable to establish a new Federal agency, as requested by a commenter.

D. Special Purpose Credit Programs

Proposed Rule

The Bureau proposed prohibiting an SPCP offered or participated in by a for-profit organization from using the prohibited basis of race, color, national origin, or sex, or any combination thereof, of the applicant, as the common characteristic in determining eligibility for the SPCP. *See* proposed § 1002.8(b)(3). In addition, the Bureau also proposed in § 1002.8(a) and (b) several new conditions (discussed in more detail below) on such an SPCP that uses any permissible common characteristic that would otherwise be a prohibited basis as eligibility criteria. Under the proposal, an SPCP offered or participated in by a for-profit organization would be subject to (1) *prohibitions* on using race, color, national origin, or sex as eligibility criteria and (2) *conditions,* as discussed below, in using religion, marital status, age, or income derived from a public assistance program as eligibility criteria. The Bureau proposed the conditions independently of and in addition to the prohibitions. That is, under the proposal, if the Bureau's prohibitions were to become inoperative, the proposed conditions would then be operative with respect to an SPCP offered or participated in by a for-profit organization that uses race, color, national origin, or sex as eligibility criteria, and would continue to be operative with respect to such an SPCP that uses religion, marital status, age, or income derived from a public assistance program as eligibility criteria.

Under current § 1002.8(a)(3)(i), a for-profit organization must establish and administer an SPCP pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program. The Bureau proposed separating this provision into § 1002.8(a)(3)(i)(A) and (B), such that § 1002.8(a)(3)(i)(A) would retain the current requirement that the written plan identify the class of persons that the program is designed to benefit and § 1002.8(a)(3)(i)(B) would retain the current requirement that the written plan set forth the procedures and standards for extending credit pursuant to the program. The Bureau proposed new § 1002.8(a)(3)(i)(C) to require the SPCP's written plan to provide evidence of the need for the SPCP. The Bureau proposed new § 1002.8(a)(3)(i)(D) to require the SPCP's written plan to explain why, under the for-profit organization's standards of creditworthiness, the class of persons would not receive such credit in the absence of the program. The Bureau proposed new § 1002.8(a)(3)(i)(E) to apply, in addition to § 1002.8(a)(3)(i)(A), (B), (C), and (D), to SPCPs that require the persons in the class served by the program to share one or more common characteristics that would otherwise be a prohibited basis. The Bureau proposed the provision's new conditions to require the written plan of such an SPCP to explain why meeting the special social needs addressed by the program necessitates that its participants share the specific common characteristic that would otherwise be a prohibited basis and cannot be accomplished through a program that does not use otherwise prohibited bases as participant eligibility criteria.

Current § 1002.8(a)(3)(ii) requires that a for-profit organization offering an SPCP establish and administer the program to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit. This current provision applies irrespective of whether the SPCP requires its participants to share a common characteristic that would otherwise be a prohibited basis. The Bureau proposed that a for-profit organization offering an SPCP must establish and administer the program to extend credit to a class of persons who would otherwise not receive the type and amount of credit, as opposed to those who would receive it on less favorable terms. The Bureau also proposed that a for-profit organization offering an SPCP must establish and administer the program to extend credit to a class of persons who *actually* (in lieu of ''probably'') would not receive such credit under the organization's *actual* (in lieu of ''customary'') credit standards. The Bureau preliminarily determined that each of the conditions, and the conditions in combination, more closely align the regulatory standards for an SPCP offered by a for-profit organization with ECOA's purposes and with the congressional intent expressed in the legislative history: that without the SPCP ''the consumers involved would effectively be denied credit.'' [147]

Current comment 8(a)–5 addresses SPCPs offered by for-profit organizations. The Bureau proposed that the comment would continue to clarify that a for-profit organization's determination of the need for an SPCP ''can be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies.'' [148] The Bureau proposed changes to comment 8(a)–5 to conform the comment's text to the changes to the regulatory text of § 1002.8(a)(3).

Current § 1002.8(b)(2) provides that a credit program qualifies as an SPCP only if the program was established and administered so as not to discriminate against an applicant on any prohibited basis. It also provides that all program participants may be required to share one or more common characteristics (for example, race, national origin, or sex) so long as the program is not established and is not administered with the purpose of evading the requirements of ECOA or Regulation B. The Bureau proposed amending § 1002.8(b)(2) to make it subordinate to the new proposed prohibitions and conditions in § 1002.8(b)(3) and (4). For clarity, the Bureau also proposed to strike the parenthetical in § 1002.8(b)(2)—''(for example, race, national origin, or sex)''—and replace it with the text ''that would otherwise be a prohibited basis.'' The Bureau proposed new comment 8(b)–2 to clarify that § 1002.8(b)(2)—subject to the prohibitions and conditions in § 1002.8(b)(3) and (4), as well as the other requirements of 12 CFR part 1002—permits a creditor to determine eligibility for an SPCP using one or more common characteristics that would otherwise be a prohibited basis and, once the characteristics of the program's class of participants are established, the creditor is prohibited from discriminating among potential participants on a prohibited basis.

The Bureau proposed new § 1002.8(b)(3) to prohibit an SPCP

[147] Joint Explanatory Statement of the Committee of the Conference, Cong. Rec. H5493 (daily ed. Mar. 4, 1976).

[148] Regulation B comment 8(a)–5.

offered or participated in by a for-profit organization from using the common characteristic of race, color, national origin, or sex, or any combination thereof, as a factor in determining eligibility for the program. For characteristics not prohibited under new § 1002.8(b)(3), the Bureau proposed new § 1002.8(b)(4) to apply when an SPCP offered or participated in by a for-profit organization requires its participants to share one or more common characteristics that would otherwise be a prohibited basis and to require the organization to provide evidence for each participant who receives credit through the program that, in the absence of the program, the participant would not receive such credit as a result of those specific characteristics. In § 1002.8(c) and the commentary thereto, the Bureau proposed nonsubstantive changes for clarity.

For the reasons discussed below, the Bureau is adopting the amendments related to SPCPs as proposed.

Comments Received

The Bureau received approximately 90 unique comments specifically addressing SPCPs. Several policy group commenters supported the proposed rule's limiting of SPCPs to meet demonstrable credit needs rather than creating programs that give preferential treatment that risks discriminating against applicants outside of the preferred class. These commenters stressed the importance of well-written plans for SPCPs to ensure they are financially justified. They also asked for clear guidance on when SPCPs were justified to reduce regulatory fragmentation. One commenter asserted that the proposal would increase confidence among lenders seeking to design programs that meet actual market needs, while also increasing accountability for programs that involve elevated underwriting risks. This commenter stated that SPCPs should remain optional compliance tools rather than implied mandates.

Several industry and policy group commenters supported curtailing SPCPs. One commenter called SPCPs pernicious, asserting that they discriminate against millions of Americans every day. This commenter stated that this rule will address this problem, while also requesting that the Bureau withdraw all SPCP advisory opinions and guidance documents that exist on Federal websites. Another commenter asserted that ECOA's purpose is to ensure equal access to credit, not to authorize credit discrimination in reverse. This commenter further stated that the new rule will both curtail harmful SPCPs while aligning Regulation B with the Supreme Court's recent rejection of race-conscious decision-making in other contexts. Another commenter commended the Bureau for writing a rule that provides clarity while maintaining flexibility to meet special needs and ensuring Regulation B does not run afoul of constitutional guarantees of equal protection.

A policy group commenter asserted that, while ECOA bars all discrimination in any aspect of a credit transaction, in practice the current regulation results in the denial of equally favorable terms to those outside of the special program's covered demography. The commenter underscored that no agency has the administrative authority to overturn statutory provisions while asserting that the current regulation has not properly implemented the statute. Furthermore, the commenter stated that the proposed rule correctly reflects the strict-scrutiny requirements that a governmental agency's consideration of race must be narrowly tailored to a compelling governmental interest.

Several consumer advocate commenters opposing the proposed rule asserted that ECOA expressly established the protected groups that benefit from SPCPs and that the Bureau has no authority to contradict the statute by proposing § 1002.8(b)(3) to prohibit SPCPs from using race, color, national origin, or sex as eligibility criteria. A commenter stated that Congress understood that prohibiting discrimination was not sufficient to expand meaningful access to credit and, thus, Congress expressly permitted SPCPs to consider race, color, national origin, and sex. Another consumer advocate commenter asserted that a decision whether SPCPs are no longer needed is Congress' alone to make. An individual commenter stated that the Bureau should not strike the parenthetical in § 1002.8(b)(2)—''(for example, race, national origin, or sex)''—and replace it with the text ''that would otherwise be a prohibited basis'' because prohibited basis is a vague concept and the current text provides clear protection for consumers effectively denied credit because of their race, national origin, or sex.

An industry commenter stated that the Bureau should not adopt the proposed prohibition on race, color, national origin, and sex as SPCP eligibility criteria and asserted that the proposed amendments, taken together, would fundamentally undermine ECOA's purpose by shifting from a proactive duty to include historically excluded populations to a purely reactive prohibition on overt statements of exclusion. The commenter listed the following alternatives to consider if the Bureau is concerned about abuse of SPCPs: (i) require documentation at program design, not per applicant, that the target population experiences barriers to credit access; (ii) require that once eligibility criteria are established, creditors do not discriminate among eligible applicants on prohibited bases; (iii) require periodic review every three years of SPCPs' continued necessity and demonstration that the program is effectively serving its intended population; (iv) require that lenders report SPCP originations and outcomes data by race, color, national origin, and sex to show the program is not being used as a pretext for discrimination; and (v) adopt safe harbor language explicitly permitting race, color, national origin, and sex-conscious programs designed to remedy documented disparities in credit access.

Several commenters, including consumer advocate commenters, industry commenters, and Members of Congress, asserted that the proposed SPCP conditions in § 1002.8(a) and (b) are so burdensome that they would result in the elimination of these SPCPs, contrary to ECOA's intent and purpose. For example, consumer advocate commenters asserted that, as a condition of establishing an SPCP, the Bureau's proposal would require a creditor to attest that—outside of the SPCP—the creditor would violate ECOA by denying every SPCP applicant credit due to the applicant's protected group membership. The commenters stated that no creditor would make such an attestation of violating ECOA. An industry commenter similarly stated its concern that, as a condition of establishing an SPCP, the Bureau's proposal effectively requires the creditor to determine that the participant was the subject of discriminatory treatment. The commenter further asserted that requiring a creditor to provide evidence for each participant imposes a significant burden of proof and obligations that can functionally nullify the ability to provide an SPCP due to the substantial regulatory burdens. An individual commenter stated that the Bureau should clarify and give examples of the evidentiary standards and should limit data collection and retention for SPCPs. An industry commenter asserted that the conditions proposed would substantially limit SPCPs and stated its concern that, contrary to E.O. 14219, the proposal

would impose significant burden and costs upon private parties that are not outweighed by public benefits.

Consumer advocate commenters stated that the linchpin of the Bureau's proposed conditions is a fundamentally flawed assertion that SPCPs should only be available if consumers otherwise would ''effectively be denied credit'' due to their membership in a protected group. The commenters stated that the Bureau appears to attribute to the same Congress that took the trouble of enacting ECOA's for-profit organization SPCP provision the intention of creating such a stringent standard that these SPCPs could not actually be created, either then or now. The commenters asserted that the Bureau's deployment of the phrase ''effectively be denied credit'' is internally inconsistent, incoherent, and based on a misreading of ECOA's historical background. The commenters stated that, consistent with legislators' awareness of instances of discrimination against racial minorities and the strong probability of race discrimination in mortgage credit, the phrase ''effectively be denied credit'' should instead be used to justify the continuation of SPCPs and not the Bureau's proposed elimination. Another consumer advocate commenter stated that the phrase ''effectively be denied credit'' is effects language demonstrating that Congress did not intend SPCPs to be limited to only remediating disparate treatment.

An industry commenter stated that there is no basis for the Bureau's entirely novel ''effectively denied credit'' standard and that the Bureau does not try to define that standard or explain how it could be established. The commenter asserted that the Bureau's citations to legislative history do not support the Bureau's proposed standard, in that the legislative history does not demonstrate that certain communities were not receiving any credit, but rather identified obstacles, including neutral policies that had a disparate impact on communities of color. The commenter further stated that the Bureau's citations to legislative history are internally contradictory given the Bureau's dismissal of the importance of legislative history earlier in the proposed rule with respect to disparate impact.

Several consumer advocate commenters asserted that ECOA's legislative history directly undermines the proposed changes. Commenters stated that the sections of both congressional reports from which the Bureau quotes are entitled Affirmative Action Programs and that the Senate Report broadly acknowledged the utility and desirability of affirmative action type credit programs, whether offered under governmental auspices or by private credit grantors. Another commenter pointed to the proposal's citation of Congressman Wylie's statements supporting an SPCP serving minority enterprises.

Several consumer advocate commenters and Members of Congress highlighted facts, reports, and studies that they asserted are ample evidence of persistent credit discrimination supporting the continued need for SPCPs. An industry commenter stated that while ECOA and subsequent reforms in the legal landscape and credit market have contributed to increased homeownership rates among all racial groups, significant gaps in homeownership rates persist between these groups and, thus, the special social needs SPCPs are meant to address remain. Several consumer advocate commenters and Members of Congress asserted that the Bureau's proposal fails to provide any factual basis for its conclusion that SPCPs no longer serve the particular social needs envisioned in the 1976 Act or that the prevalence of SPCPs is low.

Several commenters, including consumer advocate, industry, and individual commenters, as well as Members of Congress, stated that SPCPs are meant to serve as a corrective mechanism for addressing broader market failures and persistent wealth disparities that are a legacy of historical discrimination and are unaddressed by facially neutral policies. A consumer advocate commenter stated that Black consumers were for decades denied home-ownership and wealth-building opportunities because of racially restrictive deed covenants and being excluded from government-sponsored loan programs. The commenter asserted that Black families have never been able to catch up with the descendants of White families who benefitted from government-insured loans, were able to freely choose among homes in any neighborhood they could afford, and whose homes have multiplied in value many times over. An individual commenter stated that, beginning in the 1930s, the Federal Home Owners' Loan Corporation and Federal Housing Administration discriminated against Black consumers. The commenter stated that only 2 percent of $120 billion in new housing subsidized by the Federal government between 1934 and 1962 went to non-White Americans and that only 0.7 percent of the 1.3 million Black Americans who served in World War II successfully obtained home loans under the GI Bill. The commenter asserted that these policies created a $10.4 trillion racial wealth gap that persists today and that typical White families hold approximately $300,000 in median net worth compared to $45,000 for Black families. A consumer advocate commenter stated that while the special social needs that Congress intended SPCPs to address persist, until recently, few for-profit SPCPs existed in large part because Federal regulators failed to clearly communicate the scope of ECOA and the ability of lenders to lawfully establish such programs. The commenter asserted that programs designed to increase Black homeownership are most effective when they directly target the populations facing structural barriers to credit access. An industry commenter similarly asserted that the Bureau should continue to allow SPCPs to identify communities that are persistently underserved, including Black and female small business owners, and serve those communities efficiently by targeting them directly. Several commenters, including consumer advocate, industry, and individual commenters, stated that SPCPs allow lenders to provide more credit and that the proposed SPCP changes will create a chilling effect, stopping private market participants from innovating to offer the broadest possible services.

Several consumer advocate commenters stated that SPCPs do not raise constitutional concerns. Commenters asserted that the for-profit organization SPCPs expressly permitted by ECOA do not concern government action and that constitutional equal protection erects no shield against merely private conduct. The commenters stated that ECOA and Regulation B merely specify the circumstances in which creditors can consider protected class status without running afoul of ECOA and that both the statute and the regulation do not identify any particular racial group that should be benefited by non-governmental programs. Another consumer advocate commenter asserted that the Bureau's proposal seems to be motivated in part by an incorrect reading of the Supreme Court's decision in *Students for Fair Admission, Inc.* v. *President & Fellows of Harvard College,*[149] but that nothing in the decision indicates that it was meant to apply beyond the context of college admissions. The commenter stated that SPCPs are completely different than college admissions criteria because SPCPs' impact can be easily measured

[149] 600 U.S. 181 (2023).

by charting the rise in the number of applicants in specific prohibited-basis groups who receive credit and SPCPs do not use negative stereotypes against credit applicants. The commenter asserted that while the proposal also cites the Supreme Court's decision *in Ames* v. *Ohio Department of Youth Services,*[150] the decision is inapposite because the Bureau has not established how SPCPs discriminate against a majority group.

Consumer advocate commenters asserted that neither the Bureau's adjustment nor its exception authority supports the effective elimination of for-profit organization SPCPs because the plain meaning of neither term would allow the Bureau to alter fundamental features of the statute and the Bureau has failed to provide any justification to contravene the plain text of the statute. The commenters further asserted that the Bureau's authority to prescribe standards for profit-making organization SPCPs does not include license to eliminate these programs by imposing standards that no profit-making organization could meet and the proposal does not allow commenters to examine the Bureau's reasoning regarding which authority the Bureau relies on for each of its proposed changes.

An industry commenter asserted that the proposed SPCP amendments implicate fair lending and CRA examination and enforcement actions undertaken by other Federal agencies. The commenter stated that the Bureau should carefully consider ECOA's role within this broader framework and provide the necessary information to clearly articulate regulated parties' obligations under those related frameworks. Another industry commenter stated that community banks use SPCPs to be more responsive to the needs of their communities, which will likely have a positive impact on community banks' fair lending and CRA performance, and urged the Bureau to exempt community banks from any proposed limitations concerning SPCPs.

Several industry commenters requested clarification that the proposed rule would continue to permit programs targeting specific geographies, such as majority-minority and low-to-moderate income census tract designations that numerous Federal agencies use, so long as the programs are available to applicants of every race, color, national origin, or sex in that geographic area. A commenter similarly urged the Bureau to expressly permit programs that are designed to serve specific geographies or income levels, even if those geographies or income bands disproportionately consist of members of a protected class. Another commenter stated that programs focused on geography or income levels can support rural or persistently underserved communities and can be an effective alternative to the compliance uncertainty and legal risk associated with an SPCP that requires its participants to share a common characteristic that would otherwise be a prohibited basis.

Several consumer advocate commenters asserted that the only SPCP example the Bureau proposes as passing muster under the proposed rule is of an energy conservation program to assist the elderly, for which the creditor must consider the applicant's age. The commenters questioned why an SPCP would be necessary in this example given that ECOA separately allows a creditor to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant. Industry commenters similarly noted that both ECOA and Regulation B already permit the favorable treatment of elderly applicants; they specifically pointed to § 1002.6(b)(2)(iv), which provides that in any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is used to favor the elderly applicant in extending credit. The commenters requested confirmation that credit products which favorably consider age, such as reverse mortgage programs or forward mortgages designed to help borrowers in retirement, need not comply with the current or proposed SPCP requirements of § 1002.8. An industry commenter stated that reverse mortgages are intrinsically linked to the applicant's age and allow older homeowners to access the equity in their homes to supplement their retirement income without being forced to make monthly mortgage payments. A consumer advocate commenter asserted that older adults require targeted support because, as people age, financial circumstances change, incomes become fixed, debt may rise to cover urgent needs, and medical or caregiving expenses increase. The commenter stated that these factors can block older adults, even those with strong financial histories, from affordable credit.

[150] 605 U.S. 303 (2025).

Final Rule

Pursuant to its authority under ECOA sections 701(c)(3) and 703(a),[151] the Bureau is adopting as proposed changes to the Regulation B provisions governing SPCPs offered by for-profit organizations. As noted above, the statute permits ''any special purpose credit program offered by a profit-making organization to meet special social needs *which meets standards prescribed in regulations by the Bureau.*'' [152] Further, as noted above, ECOA authorizes the Bureau to write regulations to carry out ECOA's purposes and also provides the Bureau with adjustment authority to effectuate those purposes.[153] ECOA's express purpose is ''to require that financial institutions and other firms engaged in the extension of credit make that credit equally available to all credit-worthy customers without regard to [prohibited bases].'' [154] In sum, just as ECOA authorized the Board's initial regulatory promulgation setting the standards for permissible SPCPs offered or participated in by for-profit organizations, the Bureau has determined that it also authorizes the revision of those standards to carry out and more closely align them with the statutory purpose, including appropriate, necessary, or proper additional prohibitions and conditions in the standards for such SPCPs to prevent unlawful discrimination. The Bureau is now adopting revised standards consistent with that authority.

Overview of SPCP Prohibitions

For the reasons discussed below, the Bureau is adopting § 1002.8(b)(3) as proposed. With respect to commenters stating that the Bureau should not adopt the proposed prohibition on race, color, national origin, and sex as SPCP eligibility criteria, the Bureau has concluded that an SPCP offered or participated in by a for-profit organization that uses race, color, national origin, or sex as eligibility criteria is beyond what is presently necessary to meet the expressly limited congressional intent for such SPCPs. As discussed below, because an SPCP that bases eligibility on protected class membership inherently discriminates against ineligible individuals, the Bureau has determined that it is inconsistent with ECOA's purpose (preventing discrimination) for an SPCP to use an otherwise prohibited basis

[151] 15 U.S.C. 1691(c)(3) and 1691b(a).

[152] 15 U.S.C. 1691(c)(3) (emphasis added).

[153] 15 U.S.C. 1691b(a).

[154] Public Law 93–495, tit. V, sec. 502, 88 Stat. 1521 (1974).

(and thereby discriminate against ineligible individuals) unless the SPCP's use of the otherwise prohibited basis is necessary to overcome an inability to access credit that is specifically based on those same characteristics. The Bureau finds that race, color, national origin, or sex—whether alone or in combination—are not a permissible basis for denying credit under ECOA. The Bureau finds there is no evidence (submitted by commenters or otherwise) that, in the absence of an SPCP, ECOA would allow a program participant to not receive credit as a result of the program participant's race, color, national origin, or sex, or any combination thereof. An SPCP offered or participated in by a for-profit organization that uses race, color, national origin, or sex as eligibility criteria is beyond what is necessary to meet the expressly limited congressional intent for such SPCPs.

With respect to commenters stating that ECOA contradicts the § 1002.8(b)(3) prohibition on using race, color, national origin, or sex as eligibility criteria, such assertions are not supported by ECOA. The final rule is consistent with ECOA's provision for SPCPs and the Bureau's statutory authority under ECOA sections 701(c)(3) and 703(a).[155]

SPCPs offered or participated in by for-profit organizations are addressed in ECOA section 701(c)(3), which states that it is not a violation of ECOA section 701 for a creditor to refuse to extend credit offered pursuant to any SPCP offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the Bureau. ECOA section 701(c)(3) does not expressly list race, color, national origin, or sex. Rather, ECOA section 701(c)(3) references ''this section,'' *i.e.,* ECOA section 701, which consists of various subsections. The first subsection, ECOA section 701(a), states that it shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract); (2) because all or part of the applicant's income derives from any public assistance program; or (3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.[156] As noted above, section 701(c)(3) permits ''any special purpose credit program offered by a profit-making organization to meet special social needs *which meets standards prescribed in regulations by the Bureau.*'' (emphasis added). Thus, ECOA section 701(c)(3) authorizes the Bureau to prescribe these SPCP standards, including standards regarding which of the prohibited bases in ECOA section 701(a) (*e.g.,* religion, marital status, age, or income derived from a public assistance program) may be used as eligibility criteria for these SPCPs. The Bureau is prescribing standards that permit these SPCPs' use of religion, marital status, age, or income derived from a public assistance program as eligibility criteria (subject to the requirements of § 1002.8(b)(4) as discussed below)—but the standards prohibit these SPCPs' use of race, color, national origin, or sex as eligibility criteria. The Bureau has concluded that such use of race, color, national origin, or sex as eligibility criteria is beyond what is necessary to meet the expressly limited congressional intent for such SPCPs.

Regarding the commenter's assertion that the proposed SPCP amendments implicate remedial agreements pertaining to fair lending and CRA examination and enforcement actions, the Bureau notes that ECOA section 701(c)(1) states that it is not a violation of ECOA section 701 for a creditor to refuse to extend credit offered pursuant to any credit assistance program expressly authorized by law for an economically disadvantaged class of persons.[157] Regulation B comment 8(a)–3 provides that credit programs authorized by Federal or State law include programs offered pursuant to Federal, State, or local statute, regulation or ordinance, or pursuant to judicial or administrative order.

With respect to commenters requesting clarification that the proposed rule would continue to permit programs targeting specific geographies or income levels for CRA or other purposes—such as majority-minority and low-to-moderate income census tract designations that numerous Federal agencies use—even if such programs lead to a disparate impact along prohibited bases, the Bureau is finalizing proposed changes to Regulation B to clarify that ECOA does not authorize disparate-impact liability (as discussed above). The Bureau confirms that programs do not require the protection from liability that compliance with § 1002.8 SPCP requirements provides, when the programs are available to applicants without regard to prohibited basis characteristics (including race, color, national origin, or sex) and the eligibility criteria are not proxies or pretexts for a prohibited basis. Moreover, as noted above, it is not a violation of ECOA section 701 for a creditor to refuse to extend credit offered pursuant to any credit assistance program expressly authorized by law for an economically disadvantaged class of persons.[158]

While the Bureau declines in this final rule to reach a conclusion about whether ECOA's SPCP provision permitting discrimination in favor of groups with special social needs is unconstitutional, the Bureau is mindful of recent Supreme Court decisions highlighting the legal infirmity, under the Fifth and Fourteenth Amendments to the Constitution, of laws that enable such discrimination.[159] The constitutional guarantee of equal protection generally prohibits the government from discriminatory treatment on the bases of race, color, national origin, or sex; where those categories are implicated, it requires a thorough examination of the purported need for such discrimination and whether it is appropriately limited. Consistent with that precedent and the purposes of ECOA, and pursuant to its authority provided by ECOA section 701(c)(3) to set standards for SPCPs offered or participated in by for-profit organizations to meet special social needs,[160] the Bureau has reexamined the provisions of Regulation B that allow such SPCPs to use a prohibited basis—including but not limited to race, color, national origin, or sex—as common characteristics.

The Bureau finds that there have been significant changes in the legal landscape and in credit markets since the 1976 Act. When Congress enacted ECOA, the legal framework and the market environment as to credit discrimination were rapidly evolving. The FHA was enacted in 1968. The Home Mortgage Disclosure Act (HMDA) was enacted in 1975 to enable data collection on mortgage lending in order to address then-current concerns about redlining and credit shortages in certain neighborhoods. The CRA had not yet

[155] 15 U.S.C. 1691(c)(3) and 1691b(a).

[156] 15 U.S.C. 1691(a).

[157] 15 U.S.C. 1691(c)(1).

[158] *Id.*

[159] *See, e.g., Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard Coll.,* 600 U.S. 181 (2023). *Cf. Ames* v. *Ohio Dep't of Youth Servs.,* 605 U.S. 303 (2025) (affirming that there is no exception to civil rights laws (*e.g.,* title VII) that allows for discrimination against majority groups). *See also Nuziard* v. *Minority Bus. Dev. Agency,* 721 F. Supp. 3d 431, 465 (N.D. Tex. 2024), *appeal dismissed,* No. 24–10603, 2024 WL 5279784 (5th Cir. July 22, 2024); *Strickland* v. *United States Dep't of Agric.,* 736 F. Supp. 3d 469, 480 (N.D. Tex. 2024).

[160] 15 U.S.C. 1691(c)(3).

been enacted, but it was enacted in 1977 to promote the availability of financial services in areas that had been underserved. State laws addressing credit discrimination, for the limited number of states that had enacted them, were typically only a few years old.[161] In general, the legal framework was in the course of transforming from one in which credit discrimination was overlooked, and was sometimes official policy, to one in which it was—and remains—prohibited.

Robust data regarding the nature and extent of credit discrimination at the time of ECOA's passage are sparse. HMDA data were not yet available. Assessing the prevalence and effect of credit discrimination was typically done through individual academic, government, or nonprofit research projects, or personal narratives, all with limited scope. Nonetheless, it is clear that, at that time, market-wide intentional credit discrimination was a fact of the then-recent past and a matter of ongoing concern.[162]

Further, the congressional record accompanying ECOA's adoption reflects the problems Congress sought to address. A National Commission's report on credit availability that informed ECOA's drafting found widespread sex discrimination in credit.[163] The Senate Committee Report accompanying the 1976 Act noted that the legislative record included ''instances of discrimination against racial minorities'' and that ''studies conducted by federal agencies have indicated the strong probability of race discrimination in mortgage credit.'' [164] Another report at the time recounts the experiences of Black businessmen being effectively shut out from small business lending.[165] ECOA's purpose was to prevent and prohibit such discrimination.

But also at that time, some organizations sought to fill the gap by making credit available especially to individuals who had been otherwise excluded from the credit marketplace.[166] Through ECOA's provision for SPCPs in section 701(c),[167] Congress sought to enable these programs that served then-extant special social needs to continue.[168] To accomplish this objective, at the same time that Congress broadly prohibited credit discrimination, Congress added provisions allowing the continued operation of credit assistance programs ''expressly authorized by law for an economically disadvantaged class of persons'' [169] or ''administered by a nonprofit organization for its members or an economically disadvantaged class of persons.'' [170] Congress additionally ''authorize[d] the Board to prescribe standards [by which] profit-making organizations (commercial creditors)'' could offer programs, with the expectation that they be ''designed to increase access to the credit market by persons previously foreclosed from it'' [171] and that, ''without such exemption the consumers involved would effectively be denied credit.'' [172]

In its reexamination of the use of race, color, national origin, and sex as participant eligibility criteria for SPCPs offered or participated in by for-profit organizations, the Bureau has determined that, to the extent the current Regulation B standards for such SPCPs authorize credit programs beyond what is presently necessary to meet the expressly limited congressional intent for such SPCPs, the standards are working counter to ECOA's purpose of preventing discrimination and are potentially inconsistent with constitutional guarantees of equal protection. The Bureau finds that 50 years of legal prohibitions against credit discrimination—at the Federal and State level and across multiple laws working in concert—have substantially reshaped credit markets relative to what Congress, the Board, and consumers would have encountered in 1976. Regardless of whether instances of credit discrimination continue to occur in the marketplace, the Bureau finds there is no evidence (submitted by commenters or otherwise) of any credit markets in which consumers ''would effectively be denied credit'' because of their race, color, national origin, or sex in the absence of SPCPs offered or participated in by for-profit organizations.

As discussed below, the Bureau finds that the consumers involved would *effectively* be denied credit if in the absence of the SPCP they would not receive such or similar credit, irrespective of whether the consumers had actually applied for such credit or actually been denied such credit by a creditor. With respect to commenters highlighting facts, reports, and studies that they asserted are ample evidence of persistent credit discrimination, the Bureau finds that race, color, national origin, or sex—whether alone or in combination—are no longer permissible bases for denying credit under ECOA. Notwithstanding instances of unlawful credit discrimination by some creditors, the Bureau finds there is no evidence (submitted by commenters or otherwise) of any credit markets in which consumers could not receive credit because of their race, color, national origin, or sex in the absence of SPCPs offered or participated in by for-profit organizations. Moreover, while consumers might effectively be denied credit because of considerations other than race, color, national origin, or sex, an SPCP's use of those prohibited characteristics as eligibility criteria is, in such circumstances, not necessary to address the consumers' inability to access to the credit market. As discussed above, the Bureau has concluded that an SPCP offered or participated in by a for-profit organization that uses race, color, national origin, or sex as eligibility

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[161] *See Credit Discrimination: Hearing on H.R. 14856 and H.R. 14908 Before the H. Subcomm. on Consumer Affairs of the H. Comm. on Banking and Currency,* 93d Cong. at 509 (reprinting Sylva L. Beckey, *Woman and Credit: Available Legal Remedies Against Discriminatory Practices,* Cong. Rsch. Serv. (Mar. 13, 1974)) (surveying State credit antidiscrimination laws). The report, included in the congressional record, finds that 14 states and the District of Columbia had statutes prohibiting credit discrimination against women (and, in some cases, on other bases). Of those 15 laws, 12 are identified as having been enacted in 1973, and six appear to have provisions covering race, color, or national origin.

[162] *See, e.g.,* Linda Charlton, *2-to-1 Turndown of Minorities For Mortgage Loans is Found,* N.Y. Times (July 26, 1975) (describing the results of a government survey of 185 lenders across six metropolitan areas in 1974).

[163] *See, e.g.,* Senate Comm. on Banking, Housing and Urban Affairs, Truth in Lending Act Amendments, S. Rep. No. 93–278, at 16–18 (1973) (citing the National Commission on Consumer Finance's 1972 report, which found widespread barriers to credit access for women).

[164] S. Rep. No. 94–589, at 3 (1976). *See also* Credit Discrimination: Hearing on H.R. 14856 and H.R. 14908 Before the H. Subcomm. on Consumer Affairs of the H. Comm. on Banking and Currency, 93d Cong. 5, 63 (1974) (describing a lending institution that assigned point values for race and national origin).

[165] Credit Discrimination: Hearing on H.R. 14856 and H.R. 14908 Before the H. Subcomm. on Consumer Affairs of the H. Comm. on Banking and Currency, 93d Cong., at 150–51 (reprinting Obstacles to Financing Minority Enterprises, D.C. Advisory Committee to the U.S. Comm'n on Civil Rights, Feb. 1974).

[166] Among other examples, this included municipal programs for minority business lending, *see* 121 Cong. Rec. 16743 (1975) (statements of Congressman Wylie) (describing a City of Columbus program for minority business lending), banks establishing minority-focused urban affairs lending divisions, *see* U.S. Comm'n on Civil Rights, *Greater Baltimore Commitment: A Study of Urban Minority Economic Development,* at 31 (Apr. 1983), as well as the establishment of Feminist Federal Credit Unions, *see* Michael Knight, *Feminists Open Own Credit Union,* N.Y. Times (Aug. 27, 1974); Anne Sinila, *Feminist Federal: Economic Self-Help,* Ann Arbor Sun (July 15, 1976).

[167] 15 U.S.C. 1691(c).

[168] H. Rep. No. 94–879, at 8 (1976). *See also* 121 Cong. Rec. 16743 (1975) (statements of Congressman Wylie).

[169] 15 U.S.C. 1691(c)(1).

[170] 15 U.S.C. 1691(c)(2).

[171] S. Rep. No. 94–589, at 7 (1976).

[172] H. Rep. No. 94–879, at 8 (1976).

criteria is beyond what is necessary to meet the expressly limited congressional intent for such SPCPs. As discussed below, because an SPCP that bases eligibility on protected class membership inherently discriminates against ineligible individuals, the Bureau has determined that it is inconsistent with ECOA's purpose (preventing discrimination) for an SPCP to use an otherwise prohibited basis (and thereby discriminate against ineligible individuals) unless the SPCP's use of the otherwise prohibited basis is necessary to overcome an inability to access credit that is specifically based on those same characteristics. ECOA section 701(a)(1) provides, in part, that it shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction on the basis of race, color, national origin, or sex,[173] and the Bureau finds there is no evidence that, in the absence of an SPCP, ECOA would allow a program participant to not receive credit as a result of the program participant's race, color, national origin, or sex, or any combination thereof. An SPCP offered or participated in by a for-profit organization that uses race, color, national origin, or sex as eligibility criteria is no longer necessary to meet the expressly limited congressional intent for such SPCPs. Prohibiting the use of race, color, national origin, or sex as eligibility criteria will appropriately bring the regulation into closer alignment with ECOA's purpose of preventing discrimination and with congressional intent by appropriately increasing the likelihood that such SPCPs provide credit to consumers who would otherwise be denied the credit.

For these reasons, the Bureau has determined that it is no longer appropriate (in light of ECOA's purpose of preventing discrimination) or necessary or proper (in light of changed circumstances and ECOA's purposes) for the SPCP standards in Regulation B to permit such SPCPs to use the common characteristics of race, color, national origin, or sex as eligibility criteria. Accordingly, pursuant to the Bureau's authority provided by ECOA, including its authority to set standards,[174] and as applicable its adjustment and exception authority,[175] the Bureau is prohibiting such SPCPs from doing so. As noted, the Bureau sets forth these prohibitions in new § 1002.8(b)(3), which prohibits an SPCP offered or participated in by a for-profit organization from using the common characteristic of race, color, national origin, or sex, or any combination thereof, as a factor in determining eligibility for the program.

Overview of SPCP Conditions

For the reasons discussed below, the Bureau is adopting the conditions in § 1002.8(a) and (b) as proposed. With respect to commenters asserting that the proposed conditions are too burdensome and the commenter's request to exempt community banks, the Bureau has determined that because an SPCP that bases eligibility on protected class membership inherently discriminates against ineligible individuals, it is inconsistent with ECOA's purpose (preventing discrimination) for an SPCP to use an otherwise prohibited basis (and thereby discriminate against ineligible individuals) unless the SPCP's use of the otherwise prohibited basis is necessary to overcome an inability to access credit that is specifically based on those same characteristics. Subject to § 1002.8(b)(3), the Bureau is adopting the proposed conditions on when an SPCP offered or participated in by a for-profit organization requires its participants to share one or more common characteristics that would otherwise be a prohibited basis. The conditions require such an organization to provide evidence for each participant who receives credit through the program that, in the absence of the program, the participant would not receive such credit as a result of those specific characteristics. An SPCP offered or participated in by a for-profit organization that requires its participants to share one or more common characteristics that would otherwise be a prohibited basis is beyond what is presently necessary to meet the expressly limited congressional intent for such SPCPs if the participant would nonetheless receive such credit in the absence of the program. Exempting community banks from the SPCP standards applicable to other for-profit organizations would create inequalities and be counter to ECOA's purpose of making credit equally available.

With respect to commenters asserting that no profit-making organization could comply with the proposed SPCP conditions and asserting that the proposal does not explain how they could comply, the Bureau notes that an SPCP could comply if there is evidence that each participant who receives credit through the program would not, in the absence of the program, receive such credit as a result of the specific common characteristics. In response to commenters asserting that the rule requires creditors to attest that, in the absence of the SPCP, they would essentially intend to violate ECOA by denying applicants credit because of their prohibited basis characteristics, the Bureau notes the SPCP provision provides the ability for creditors to engage in practices that would otherwise be within ECOA's central prohibition. Given ECOA's clear purpose to eliminate such discrimination and for the reasons discussed elsewhere, the Bureau has determined that the best reading of ECOA is that it generally prohibits discrimination on a prohibited basis, with limited statutory exceptions where truly necessary to ensure credit access. The Bureau therefore thinks it fully appropriate to require any creditor that wishes to circumvent ECOA's central prohibition to explain why the applicant's prohibited basis characteristics would make credit otherwise unavailable, including from that creditor, and therefore why it would be necessary for those characteristics to form the basis of an SPCP. To the extent factors other than the applicant's prohibited characteristics have caused credit to be unavailable, the Bureau encourages creditors to base programs on those non-prohibited factors, consistent with the purpose of ECOA.

Regarding commenters questioning why comment 8(c)–2 lists a program assisting the elderly as an example of a permissible SPCP given that both ECOA and Regulation B already permit the favorable treatment of elderly applicants,[176] the Bureau notes that the Board adopted that example in comment 8(c)–2 as part of the Board's 1985 final rule, which did not elaborate on why the example was included.[177] ECOA and Regulation B already permit the favorable treatment of elderly applicants; nonetheless the Bureau is not deleting the example of a program assisting the elderly from comment 8(c)–2 because doing so is unnecessary and could introduce confusion.

The Bureau confirms that credit products such as reverse mortgages that favorably consider the age of an elderly applicant need not comply with § 1002.8 SPCP requirements. ECOA section 701(b)(4) states that it shall not constitute discrimination for purposes of ECOA (*i.e.,* title VII of the Consumer Credit Protection Act) for a creditor to make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the

[173] 15 U.S.C. 1691(a).

[174] 15 U.S.C. 1691(c)(3).

[175] 15 U.S.C. 1691b(a).

[176] 15 U.S.C. 1691(b)(4); 12 CFR 1002.6(b)(2)(iv).

[177] 50 FR 48018.

creditor in the extension of credit in favor of such applicant.[178] Regulation B § 1002.6(b)(2)(iv) states that in any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is used to favor the elderly applicant in extending credit.[179] Comment 6(b)(2)–4 provides that a reverse mortgage program that requires borrowers to be age 62 or older is permissible under § 1002.6(b)(2)(iv). Comment 6(b)(2)–4 further provides that, under § 1002.6(b)(2)(iii), a creditor may consider a borrower's age to evaluate a pertinent element of creditworthiness, such as the amount of the credit or monthly payments that the borrower will receive, or the estimated repayment date.

Independent of and in addition to the above-described prohibitions in proposed § 1002.8(b)(3), the Bureau also has determined that additional conditions in § 1002.8(a) and (b) for SPCPs offered or participated in by for-profit organizations are necessary and appropriate; these conditions are also discussed in the section-by-section analysis below. As part of its basis for the conditions, the Bureau incorporates by reference here the justifications set forth above in this part III.D, including but not limited to the Bureau's concerns regarding recent Supreme Court decisions highlighting the constitutional infirmity of laws that enable discrimination and, independently, the Bureau's finding that 50 years of legal prohibitions against credit discrimination have reshaped credit markets relative to 1976.

More specifically, the Bureau determines as a matter of its policy discretion provided by ECOA section 703(a) [180] to adopt regulations proper to effectuate the purposes of ECOA that the additional conditions—independent of the prohibitions described above—appropriately bring the regulation's standards for such SPCPs—as expressly authorized by ECOA section 701(c)(3) [181]—into closer alignment with congressional intent, as indicated in the legislative history discussed above. That is, the Bureau determines that the additional conditions will appropriately increase the likelihood that such SPCPs provide credit to consumers who would otherwise be denied the credit and that the for-profit organizations that offer or participate in such SPCPs will have and provide evidence that supports the need for the SPCPs. The Bureau also determines that this increase in likelihood appropriately helps ensure that such SPCPs are not inconsistent with ECOA's purpose of preventing credit discrimination.

In light of changed market circumstances (discussed in more detail above), the Bureau finds that the current Regulation B SPCP standards applicable to for-profit organizations have become inappropriately permissive. The current standards permitted for-profit organizations to offer or participate in SPCPs even when there had been no showing that discrimination based on protected class membership was causing program participants to be unable to obtain credit. That is, the regulation's SPCP standards may have been appropriate when the Board promulgated them, given societal circumstances at that time. But in light of changed circumstances, and because an SPCP that bases eligibility on protected class membership inherently discriminates against excluded individuals, the Bureau has determined that the regulation's standards should be amended to require any such SPCP to be predicated on formal (and regulatorily required) evidence and documentation by the creditor that it is the fact of protected class membership that is causing program participants to be unable to obtain credit. If considerations *other* than that fact are what is causing the inability to obtain credit, then an SPCP based on protected class membership is not necessary to address the inability. Further, the Bureau finds that in such cases it also is not appropriate to use an SPCP to address the inability and doing so would be counter to the purposes of ECOA. Any protected-class SPCP that is not necessary—and which unavoidably discriminates against ineligible individuals—is inconsistent with ECOA's purpose of making credit equally available to all without regard to prohibited bases.

The following section-by-section analysis discusses in more detail the Bureau's prohibitions and conditions in the Regulation B standards for SPCPs in § 1002.8.[182]

Section 1002.8(a)(3)—Special Purpose Credit Programs Offered by For-Profit Organizations

Section 1002.8(a)(3) governs any SPCP offered by a for-profit organization, or in which such an organization participates, to meet special social needs.[183] The Bureau observes, as an initial matter, that the provisions of § 1002.8(a)—*i.e.,* the provisions discussed immediately below—are subordinate to the provisions of § 1002.8(b) (discussed farther below).[184] As noted, the prohibitions described above are set forth in new § 1002.8(b)(3). Thus, all of the following conditions in § 1002.8(a)(3) are subordinate to the prohibitions in § 1002.8(b)(3).

SPCPs Offered by For-Profit Organizations, Written Plan (§ 1002.8(a)(3)(i))

Under current § 1002.8(a)(3)(i), a for-profit organization must establish and administer an SPCP pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program.[185] The Bureau is separating this provision into § 1002.8(a)(3)(i)(A) and (B). Section 1002.8(a)(3)(i)(A) will retain the current requirement that the written plan identify the class of persons that the program is designed to benefit; § 1002.8(a)(3)(i)(B) will retain the current requirement that the written plan set forth the procedures and standards for extending credit pursuant to the program. The Bureau also adopts new requirements for the written plan in § 1002.8(a)(3)(i)(C), (D), and (E) as follows.

New § 1002.8(a)(3)(i)(C) requires the SPCP's written plan to provide evidence of the need for the SPCP. The Bureau has determined that this new condition will more closely align the regulation's written-plan standard with ECOA's purposes and the congressional intent expressed in the legislative history. As noted above in part III.B regarding disparate impact, legislative history is limited in its value when statutory text, context, and purpose provide sufficient meaning and the Bureau has determined that ECOA's statutory language does not authorize disparate-impact liability. However, the statutory language of the SPCP provision in ECOA as to for-profit entities is open-ended, referring to ''special social needs'' and expressly grants the Bureau discretion to set relevant standards. The Bureau

[178] 15 U.S.C. 1691(b)(4).

[179] 12 CFR 1002.6(b)(2)(iv).

[180] 15 U.S.C. 1691b(a).

[181] 15 U.S.C. 1691(c)(3).

[182] A few Regulation B provisions outside § 1002.8 refer to the SPCP provisions in § 1002.8. The Bureau has determined that no changes are necessary to these cross references. *See* § 1002.11(b)(1)(v) and comments 5(a)(2)–3, 6(b)(1)–1, 6(b)(2)–1, and 11(a)–1 and (a)–2.

[183] 12 CFR 1002.8(a)(3).

[184] *See* § 1002.8(a) introductory text (emphasis added): ''(a) Standards for programs. *Subject to the provisions of paragraph (b) of this section,* the Act and this part permit a creditor to extend special purpose credit to applicants who meet eligibility requirements under the following types of credit programs:'').

[185] 12 CFR 1002.8(a)(3)(i).

therefore finds it appropriate to look to Congress' stated goals, as a means of ensuring that this exercise of discretion is appropriately cabined and directionally consistent with the statute. In enacting the SPCP provision, Congress indicated its expectation that the exemption for SPCPs by for-profit organizations would allow for lending where ''it has been clearly demonstrated on the public record that without such exemption the consumers involved would effectively be denied credit.'' [186] The Bureau interprets *effectively* in the legislative history to mean ''in effect.'' [187] Pursuant to that interpretation, the Bureau finds that the consumers involved would *effectively* be denied credit if in the absence of the SPCP they ''would not receive'' such or similar credit, irrespective of whether the consumers had actually applied for such credit or actually been denied such credit by a creditor.

New § 1002.8(a)(3)(i)(D) requires the SPCP's written plan to explain why, under the for-profit organization's standards of creditworthiness, the class of persons would not receive such credit in the absence of the program. As with § 1002.8(a)(3)(i)(C), this new condition for the written plan will apply irrespective of whether the SPCP requires its participants to share a common characteristic that would otherwise be a prohibited basis. The Bureau has determined that this new condition will more closely align the regulation's written-plan standard with ECOA's purposes and the congressional intent expressed in the legislative history.

New § 1002.8(a)(3)(i)(E) applies, in addition to § 1002.8(a)(3)(i)(A), (B), (C), and (D), to SPCPs that require the persons in the class served by the program to share one or more common characteristics that would otherwise be a prohibited basis. The provision's new conditions require the written plan of such an SPCP to explain why meeting the special social needs addressed by the program necessitates that its participants share the specific common characteristic that would otherwise be a prohibited basis and cannot be accomplished through a program that does not use otherwise prohibited bases as participant eligibility criteria. As is discussed in more detail above, the Bureau has determined that these new conditions in the standards for SPCPs would more closely align the regulation with the statutory purpose of ''mak[ing] . . . credit equally available to all credit-worthy customers without regard to [prohibited bases].'' Specifically, the Bureau has determined that it is inconsistent with ECOA's purpose—preventing discrimination—for an SPCP that uses an otherwise prohibited basis to discriminate against ineligible individuals, unless the SPCP's use of the otherwise prohibited basis is necessary to overcome an inability to access credit that is specifically based on those same characteristics.

SPCPs Offered by For-Profit Organizations, Class of Persons (§ 1002.8(a)(3)(ii))

Current § 1002.8(a)(3)(ii) requires that a for-profit organization offering an SPCP establish and administer the program to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit. This provision applies irrespective of whether the SPCP requires its participants to share a common characteristic that would otherwise be a prohibited basis. The Bureau adopts three changes to this standard, as follows.

First, the Bureau strikes the clause that begins with ''or would receive it on less favorable terms . . . .'' SPCPs offered by a for-profit organization must be established and administered to extend credit to a class of persons who would otherwise not receive the type and amount of credit, as opposed to those who would receive it on less favorable terms. Second, the Bureau strikes the term ''customary;'' and, third, the Bureau strikes the term ''probably.'' SPCPs offered by a for-profit organization must be established and administered to extend credit to a class of persons who *actually* (in lieu of ''probably'') would not receive such credit under the organization's *actual* (in lieu of ''customary'') credit standards. In sum, a for-profit organization offering an SPCP must establish and administer the program to extend credit to a class of persons to whom, under the organization's actual credit standards, the organization would actually deny credit in the absence of the SPCP.[188]

The Bureau has determined that each of the three conditions, and the three conditions in combination, more closely align the regulatory standards for an SPCP offered by a for-profit organization with ECOA's purposes and with the congressional intent expressed in the legislative history: that without the SPCP ''the consumers involved would effectively be denied credit.'' [189] Furthermore these conditions are appropriate, necessary, and proper to carry out the purposes of ECOA, for the reasons above.

SPCPs Offered by For-Profit Organizations, Determining Need (Comment 8(a)–5)

Current comment 8(a)–5 addresses SPCPs offered by for-profit organizations. Under the Bureau's final rule, the comment continues to clarify that a for-profit organization's determination of the need for an SPCP ''can be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies.'' [190]

For the reasons set forth above, the Bureau adopts changes to comment 8(a)–5 to conform the comment's text to the changes to the regulatory text of § 1002.8(a)(3), as follows. For precision, and because the comment addresses only SPCPs provided by for-profit organizations, the Bureau changes the comment's citation to the regulatory text from ''§ 1002.8(a)'' to ''§ 1002.8(a)(3),'' which is the paragraph that addresses such SPCPs. The Bureau also strikes the phrase ''or would receive it [credit] on less favorable terms,'' for the same reasons that the Bureau is striking the corresponding phrase from the regulatory text of § 1002.8(a)(3)(ii), discussed above.

The third and fourth sentences of comment 8(a)–5 set forth two examples of the types of research or data that a for-profit organization may use for the analysis on which it bases its determination of the need for the SPCP. The Bureau adopts edits to the examples' text to conform to the regulatory changes discussed above. The edits neither intend nor effect any change to the types of research or data that a for-profit organization may use.

[186] Joint Explanatory Statement of the Committee of the Conference, Cong. Rec. H5493 (daily ed. Mar. 4, 1976).

[187] Effectively, *Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/effectively* (defining ''effectively'' as ''in effect: virtually'' ''by withholding further funds they effectively killed the project.'') (last visited Aug. 19, 2025).

[188] In combination, textually, the three changes revise § 1002.8(a)(3)(ii) to require that a for-profit organization offering an SPCP establish and administer the program to extend credit to a class of persons who, under the organization's standards of creditworthiness, would not receive such credit.

[189] Joint Explanatory Statement of the Committee of the Conference, Cong. Rec. H5493 (daily ed. Mar. 4, 1976).

[190] Regulation B comment 8(a)–5.

Section 1002.8(b)(2)—Common Characteristics

Current § 1002.8(b)(2) provides that a credit program qualifies as an SPCP only if the program was established and administered so as not to discriminate against an applicant on any prohibited basis. It also provides that all program participants may be required to share one or more common characteristics (for example, race, national origin, or sex) so long as the program is not established and is not administered with the purpose of evading the requirements of ECOA or Regulation B. The Bureau is amending the section to make it subordinate to the new prohibitions and conditions in § 1002.8(b)(3) and (4), which are discussed below.

For clarity, the Bureau strikes the parenthetical in § 1002.8(b)(2)—''(for example, race, national origin, or sex)''—and replaces it with the text ''that would otherwise be a prohibited basis.'' The Bureau neither intends nor effects any change in substance with this change, because § 1002.2(z) defines ''prohibited basis'' to include race, national origin, and sex. Also for clarity, the Bureau adopts new comment 8(b)–2 to explain the § 1002.8(b)(2) regulatory text. In 1977, when the Board promulgated what was then § 202.8(b)(2) to implement the 1976 Act, the Board's section-by-section analysis of the regulatory text stated:

> Section 202.8(b)(2) provides that a creditor may determine eligibility for a special purpose credit program using one or more of the prohibited bases; but, once the characteristics of the class of beneficiaries are established, a creditor may not discriminate among potential beneficiaries on a prohibited basis. For example, a creditor might establish a credit program for impoverished American Indians. If the program met the requirements of § 202.8(a), the creditor could refuse credit to non-Indians but could not discriminate among Indian applicants on the basis of sex or marital status.[191]

The Bureau adopts the substance of the Board's section-by-section analysis in new comment 8(b)–2. Specifically, the comment clarifies that § 1002.8(b)(2)—subject to the prohibitions and conditions in § 1002.8(b)(3) and (4), as well as the other requirements of 12 CFR part 1002—permits a creditor to determine eligibility for an SPCP using one or more common characteristics that would otherwise be a prohibited basis. The comment also clarifies that under § 1002.8(b)(2), once the characteristics of the program's class of participants are established, the creditor is prohibited from discriminating among potential participants on a prohibited basis.

New § 1002.8(b)(3)—Prohibited Common Characteristics

The Bureau adopts new § 1002.8(b)(3), which prohibits an SPCP offered or participated in by a for-profit organization from using the common characteristic of race, color, national origin, or sex, or any combination thereof, as a factor in determining eligibility for the program. For the reasons discussed above, the Bureau has determined that it is no longer necessary (in light of changed circumstances) or appropriate (in light of ECOA's purpose of preventing discrimination) for the SPCP standards in Regulation B to permit such SPCPs to use the common characteristics of race, color, national origin, or sex as eligibility criteria.

New § 1002.8(b)(4)—Otherwise Prohibited Bases in For-Profit Programs

The Bureau adopts new § 1002.8(b)(4), which, for characteristics not prohibited under new § 1002.8(b)(3), applies when an SPCP offered or participated in by a for-profit organization requires its participants to share one or more common characteristics that would otherwise be a prohibited basis. The new section (subject to § 1002.8(b)(3)) requires the organization to provide evidence for each participant who receives credit through the program that, in the absence of the program, the participant would not receive such credit as a result of those specific characteristics.

As is discussed in more detail above, the Bureau has determined that these new conditions in the standards for SPCPs more closely align the regulation with the statutory purpose of ''mak[ing] . . . credit equally available to all credit-worthy customers without regard to [prohibited bases].'' Specifically, because an SPCP that bases eligibility on protected class membership inherently discriminates against ineligible individuals, the Bureau has determined that it is inconsistent with ECOA's purpose (preventing discrimination) for an SPCP to use an otherwise prohibited basis (and thereby discriminate against ineligible individuals) unless the SPCP's use of the otherwise prohibited basis is necessary to overcome an inability to access credit that is specifically based on those same characteristics.

Section 1002.8(c)—Special Rule Concerning Requests and Use of Information

In § 1002.8(c) and the commentary thereto, the Bureau adopts nonsubstantive changes for clarity. The Bureau strikes the section's parenthetical—''(for example, race, national origin, or sex)''—and replaces it with the text ''that would otherwise be a prohibited basis.'' This change neither intends nor effects any change in substance, because § 1002.2(z) defines ''prohibited basis'' to include race, national origin, and sex. The Bureau is also making explicit that § 1002.8(c) is subordinate to § 1002.8(b), including its newly adopted prohibitions and conditions, discussed above. This change neither intends nor effects any change in substance because current § 1002.8(c) is expressly subordinate to § 1002.8(a) and current § 1002.8(a) is expressly subordinate to § 1002.8(b); thus, § 1002.8(c) is subordinate to § 1002.8(b). Finally, the Bureau is deleting one of the examples from comment 8(c)–2 regarding programs under a Minority Enterprise Small Business Investment Corporation to avoid confusion. This deletion neither intends nor effects any change in substance because § 1002.8(c) is subordinate to § 1002.8(b).

IV. Effective Date

The Bureau proposed an effective date of 90 days after publication in the **Federal Register**. This effective date was proposed to provide creditors sufficient time to evaluate existing SPCPs to ensure compliance with the final rule for extensions of credit on or after the effective date. Where creditors have already extended credit prior to the effective date under existing SPCPs, those credit extensions would be grandfathered and their programs must qualify as SPCPs under the rule in effect at the time of the credit extensions. Not much time, if any, would be needed for creditors to comply with the final rule relating to disparate impact and discouragement.

Some industry commenters requested a longer effective date, especially as it relates to the proposed rule for SPCPs. One commenter requested an effective date of at least four months after publication in the **Federal Register** while several other commenters requested an effective date of at least 12 months after publication in the **Federal Register**. Industry commenters also asked for a safe harbor for SPCPs created before the effective date, or a safe harbor for SPCP loans where the loan applications are received before the effective date. The commenters explained that this length of time and expanded safe harbor provide the time and clarity needed by for-profit institutions with SPCPs to wind down existing programs that no longer

[191] 42 FR 1242 at 1248.

conform to Regulation B. In some cases, these are SPCPs that are part of fair lending or CRA compliance plans or in fair lending remediations or settlements. The commenters stated that the wind-down includes clearing the pipeline of prospective borrowers who will have received advertising for products that will no longer be available if they are unexpectedly pulled from the market, which could raise other compliance risks, and clearing the pipeline based on rate lock dates and rate lock extensions otherwise permitted under standard guidelines. The commenters asserted that, for SPCPs that are permitted under the final rule, this longer length of time is needed to complete legal analyses of the new requirements for documents and implementing SPCPs, revise existing processes, and discuss with prudential regulators how the new SPCPs will be evaluated under CRA.

After consideration of the comments, the Bureau has determined that the effective date for the final rule is 90 days after publication in the **Federal Register**. As discussed in the sections above, the final rule more closely aligns with ECOA, including preventing unlawful discrimination in the offering of SPCPs. This effective date will ensure that creditors quickly align with ECOA and not engage in unlawful discrimination. Not much time, if any, would be needed for creditors to comply with the final rule relating to disparate impact and discouragement. For SPCPs, as this is a prospective rule, SPCP credit extended on or after the effective date must comply with this final rule while SPCP credit extended before the effective date must comply with the SPCP rule in place at the time the SPCP was established and SPCP credit was extended. As discussed above in part III.D, if SPCPs implicate remedial agreements pertaining to fair lending and CRA examination and enforcement actions, the Bureau notes that ECOA section 701(c)(1) states that it is not a violation of ECOA section 701 for a creditor to refuse to extend credit offered pursuant to any credit assistance program expressly authorized by law for an economically disadvantaged class of persons.[192] Regulation B comment 8(a)–3 provides that credit programs authorized by Federal or State law include programs offered pursuant to Federal, State, or local statute, regulation or ordinance, or pursuant to judicial or administrative order. For these reasons, the effective date of the final rule is 90 days after publication in the **Federal Register**.

[192] 15 U.S.C. 1691(c)(1).

V. CFPA Section 1022(b) Analysis

A. Overview

The Bureau has considered the potential benefits, costs, and impacts of the final rule.[193] As discussed in greater detail elsewhere in this final rule, the Bureau is amending provisions related to disparate impact, discouragement, and SPCPs under Regulation B, which implements ECOA.

The Bureau believes that the amendment to the provisions related to disparate impact and discouragement are largely deregulatory in nature and therefore are expected to reduce burden for the covered persons. The Bureau also has reason to believe that the current number of SPCPs is small and therefore changes to SPCPs as part of this final rule will have limited impacts. The discussion below further considers the benefits, costs, and impacts of the provisions to consumers and covered persons in detail.

B. Statement of Purpose

The purpose of Regulation B is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.[194] The Bureau is amending the regulation as follows: (1) provide that ECOA does not authorize disparate-impact claims; (2) amend the prohibition on discouraging applicants or prospective applications to clarify that it prohibits statements of intent to discriminate in violation of ECOA and is not triggered merely by negative consumer impressions, and to clarify that encouraging statements by creditors directed at one group of consumers is not prohibited discouragement as to applicants or prospective applicants who were not the intended recipients of the statements; and (3) amend the standards for SPCPs offered or participated in by for-profit organizations to include new standards and related conditions.

[193] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[194] *See* § 1002.1(b).

C. Baseline for Consideration of Analysis

The Bureau has discretion in any rulemaking to choose an appropriate scope of consideration with respect to potential benefits and costs and an appropriate baseline. Accordingly, this analysis considers the benefits, costs, and impacts of the provisions against Regulation B prior to its amendment as a baseline, *i.e.,* the current state of the world before the Bureau's provisions are implemented. Under this baseline, the Bureau assumes that institutions are complying with regulations that they are currently subject to. The Bureau believes that such a baseline will provide the public with better information about the benefits and costs of the amendment.

D. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion below relies on data that the Bureau has obtained from publicly available sources. However, limitations on what data are available restrict the Bureau's ability to quantify the potential costs, benefits, and impacts of the final rule. Therefore, the discussion below generally provides a qualitative consideration of the benefits, costs, and impacts of the final rule. General economic principles, together with the limited data available, provide insights into these benefits, costs, and impacts. Where possible, the Bureau has made quantitative estimates based on these principles and the available data.

Benefits to Covered Persons

As discussed further below, most provisions will benefit covered persons. Quantifying and monetizing the benefits to covered institutions requires identifying costs of compliance under the baseline and quantifying the magnitude of the covered persons' cost savings arising from the provisions. For example, the Bureau believes that the provisions on disparate impact and discouragement are deregulatory in nature and hence will benefit covered persons in the long run by reducing compliance burden. The Bureau anticipates these cost savings will vary with the covered person's size and the complexity of operations. However, the Bureau is unaware of any data that enable reliable quantitative estimation of these benefits.

Costs to Covered Persons

Certain costs to covered persons are difficult to quantify. For example, the Bureau anticipates that covered persons will incur costs associated with implementing changes to their internal processes that result from the

provisions. The Bureau categorizes costs required to comply with the provision into ''one-time'' and ''ongoing'' costs. ''One-time'' costs refer to expenses that the covered persons incur only once to implement operational changes arising from the final rule. On the other hand, ''ongoing'' costs refer to expenses incurred as a result of the ongoing compliance with the rule. The Bureau also expects both of these types of costs to vary with a covered person's size and complexity of operations.

Benefits to Consumers

Covered persons can potentially pass on the saved compliance costs to consumers by offering lower prices or better products. However, the Bureau is unable to quantify these potential benefits because it lacks relevant data.

Costs to Consumers

According to economic theory, in a perfectly competitive market where covered persons are profit maximizers, increases in the marginal cost of operation are passed on to consumers, and firms absorb one-time fixed costs of compliance. However, covered persons' response likely varies with supply, demand, and competitive conditions.[195] Moreover, in addition to any costs that covered persons pass onto consumers, the provisions may potentially limit legal protections for consumers and affect some consumers' access to credit.

The Dodd-Frank Act defines the term ''consumer'' as an individual or someone acting on behalf of an individual. It defines a ''covered person'' as one who engages in offering or providing a ''consumer financial product or service,'' which means a financial product or service that is provided to consumers primarily for ''personal, family, or household purposes.'' Several commenters pointed out the potential impact on small businesses as consumers of credit. For example, female-, Hispanic-, and minority-owned small businesses seeking business loans or mortgages may be affected by the rule. However, the Bureau has elected not to separately assess small business applicants as ''consumers'' because (1) it is not required under section 1022, and (2) the Bureau does not believe that specific analysis would be especially helpful in understanding the effects of the rule since the analysis for consumers would apply similarly to the small business applicants.

E. Potential Benefits and Costs of the Final Rule to Consumers and Covered Persons

Covered Persons Under the Rule

The three categories of changes to Regulation B will apply to all covered persons that meet the definition of creditor under Regulation B. To estimate the total number of persons covered by the changes, the Bureau relies on the total number of entities subject to Regulation B as estimated in the approved Paperwork Reduction Act supporting statement (OMB Control Number 3170–0013) last updated in 2024.[196] The Bureau estimates that there are about 12,000 depository institutions and 482,000 non-depository institutions that are subject to Regulation B.

Provisions Concerning Disparate Impact

Benefits to Covered Persons

The provisions will likely allow covered persons to save on ongoing compliance costs. For example, covered persons may save time and resources presently spent on creating, testing, validating, and auditing models for potential disparate-impact risks in their lending strategy or portfolio. Resources dedicated to statistical testing, documenting business necessities of policies, and evaluating alternative lending strategies may be saved or redirected to other uses. Covered persons may also save costs by reducing spending associated with fair lending exams and training loan officers, compliance staff, contractors, and modelers of disparate-impact risks. Lastly, the change will likely reduce the litigation risks to the extent lenders will have otherwise had to defend against lawsuits under a disparate-impact theory of discrimination. Fewer enforcement actions and private claims premised on disparate-impact theories as a result of the provisions will reduce defense burden and any financial costs related to remediation. The compliance cost saving from the provisions likely varies by the size and complexity of the operational structure of the institutions.

Covered persons' profitability could increase as a result of the provisions by improving operational flexibility and spurring innovation in the credit application process. For example, covered persons can experiment more with risk-based pricing and automated underwriting with reduced risk of facially neutral policies with disproportionate effects triggering liability without intent. The provisions may result in an adoption of new modeling techniques that use additional data sources. These benefits, however, are bounded by the ongoing need to comply with other State and Federal fair lending laws.

Costs to Covered Persons

Covered persons likely will incur one-time adjustment costs resulting from these provisions. These one-time costs include updating policies, practices, procedures, and control systems; verifying, updating, and reviewing compliance; and training staff and third parties. In addition, covered persons already incur ongoing compliance costs associated with the current Regulation B. Therefore, the Bureau expects the one-time cost and any ongoing costs that arise from the provisions to be small.

The Bureau does not have the data to provide quantitative estimates of the one-time costs that covered persons will incur but provides a rough estimate based on one-time costs estimated for other rules. For example, the Bureau recently estimated a one-time cost of each covered small non-depository entity for implementing the Automated Valuation Models (AVM) Rule to be $23,000 in the first year: $7,000 for drafting and developing policies, practices, procedures, and control systems, $10,000 for verifying compliance, and $6,000 for training.[197] Furthermore, the Bureau estimated the ongoing annual costs to be one-third of the one-time first-year costs (*i.e.,* $7,667). Since the provisions involve updating existing policies rather than implementing new policies, the Bureau expects the cost of the provisions to be closer to the AVM Rule's total ongoing cost of $7,667.

The one-time costs of updating policies and procedures and training personnel likely vary with the size and the type of covered person. For example, the Bureau recently estimated in the Small Business Lending (1071) Rule that the one-time cost of developing policies and procedures to range between $2,500 and $4,300 while the cost of training staff and third parties to range between $3,100 and $5,300 depending on the size and the type of institutions.[198] Given that these estimates are for implementing a new rule, whereas these provisions only update an existing rule, the Bureau expects the total one-time cost associated with the provisions to be

[195] For example, there are situations where firms might optimally include fixed costs in their pricing strategies as demonstrated in Korok Ray & Jacob Gramlich, *Reconciling Full-Cost and Marginal-Cost Pricing,* 28 J. Mgmt. Acct. Res. 27 (2016), *https://publications.aaahq.org/jmar/article-abstract/28/1/27/607/Reconciling-Full-Cost-and-Marginal-Cost-Pricing.*

[196] *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202402-3170-001.*

[197] 89 FR 64538, 64569 (Aug. 7, 2024).

[198] 88 FR 35150, 35507–10 (May 31, 2023).

smaller than the estimated one-time costs for implementing the 1071 Rule. In other words, the Bureau expects the upper bound of the one-time cost to vary between $5,600 and $9,600, which is consistent with what was estimated in the AVM Rule.

Some policy group, consumer advocate, and individual commenters have pointed out that the covered persons' legal risk may increase because of uncertainty rising from conflicting legal landscapes. Commenters stated that the covered persons either comply with the rule but risk lawsuits by private parties and states or comply with the law and risk lawsuits by Federal agencies. Furthermore, a commenter argued that risk aversion driven by regulatory uncertainty and complexity can result in a reduction in lending and lower revenue, especially for rural and small community banks.

The Bureau included a discussion on the conflicting and uncertain legal landscape resulting from the rule in the proposal. More specifically, the Bureau noted that the rule may have limited impact on covered persons since they are still subject to other antidiscrimination statutes such as the FHA and State laws similar to ECOA. The Bureau also agrees that the rule may have a greater impact on smaller lenders who have fewer resources for legal and compliance risk.

A policy group commenter argued that there are materially new or expanded compliance obligations for covered creditors including changes to adverse action notices, recordkeeping and retention for application data, systems changes to underwriting and compliance controls, and reporting or disclosure refinement. Another commenter stated that the compliance burdens associated with the rule, such as additional reporting, data collection, and documentation requirements increase operational costs and may lead to increased denial rates.

The Bureau disagrees that there will be new or expanded compliance obligations since the rule is deregulatory in nature and will most likely reduce the compliance burden of lenders especially related to reporting, data collection, and documentation requirements. Further, lenders are not required to make changes as a result of the disparate-impact provision in the final rule. However, the Bureau acknowledges that there will likely be a one-time adjustment cost for covered persons who choose to make changes which the Bureau documented in the proposal.

Several consumer advocate commenters argued that disparate-impact analysis is beneficial to covered persons and removing disparate-impact protections increases the costs to covered persons. They claimed that disparate-impact analysis benefits covered persons by (1) allowing lenders to identify opportunities to expand product markets and obtain data to increase lending volume and (2) potentially saving liability and compliance costs by preventing unintentional discrimination.

The Bureau believes that the existence of disparate-impact liability under ECOA and Regulation B is not necessary to achieve these goals and that covered persons will continue to evaluate their lending policies and practices in order to identify profitable opportunities for expansion and to facilitate compliance with ECOA and other fair lending laws. As stated above, the Bureau expects that its changes to the disparate-impact provision will reduce Regulation B compliance costs overall.

Benefits to Consumers

Consumers will benefit from lower compliance costs to the extent that covered persons pass on compliance cost savings to consumers. According to standard economic theory, the degree to which consumers will benefit from lower prices depends on competitive market conditions and the shapes of market demand and supply, as well as firm characteristics. In addition, some consumers may experience a faster credit application process and greater product variety as some covered persons reallocate cost savings arising from the provisions to improving operational efficiency and developing new products and services.

Costs to Consumers

To the extent that legal liability discourages covered persons from implementing facially neutral policies that lead to disparate impact, removing such liability may have a negative impact on some consumers. Some consumers who are adversely affected by neutral policies will lose legal options and opportunities for redress. They may be more likely to be denied credit or to pay higher prices without effects-based legal protection. However, such costs to consumers may be severely limited; covered persons are still liable under other antidiscrimination statutes such as the FHA and State laws similar to ECOA, so the incentives for covered persons to implement policies or engage in practices that lead to disparate impact may be restricted.

The Bureau has also considered the possibility of one-time costs that covered persons incur because of the rule being passed on to consumers in the form of higher prices. The Bureau believes that this is unlikely to occur since economic theory generally views changes in fixed costs as unrelated, all other things equal, to changes in prices.

A consumer advocate commenter argued that the Bureau's assertion that the rule may not lead to changes in lender practices because of other laws in place is inconsistent with the discussion of the benefits to covered persons. The Bureau disagrees that the discussion on the benefits to covered persons is inconsistent. As noted in the proposal, the Bureau argued that the rule would allow lenders to save on costs, but the rule may not necessarily result in cost savings because lenders are still subject to other laws and may not make any changes. Additionally, covered persons likely accrue some of the benefits, such as reduced exam costs, regardless of whether they are subject to other laws.

Provisions Concerning Discouragement

Benefits to Covered Persons

The provisions will limit legal liability for covered persons and likely will reduce compliance burden as a result. For example, covered persons may reduce spending related to limiting liability as to prospective applicants by decreasing the amount of time and resources spent monitoring marketing strategies and materials, and by adjusting marketing to focus on areas where they expect the greatest return on investment. In addition, covered persons may spend less on training loan officers, compliance staff, contractors, and other employees on legal and compliance risks related to prospective applicants. Lastly, the change will limit potential litigation risks from enforcement actions based on allegations of discouragement of prospective applicants. The change will reduce legal exposure to the extent lenders have had to defend against lawsuits under broader legal liability in the baseline. As a result, covered persons may save costs related to legal counsel.

The provisions likely will increase covered persons' profitability by allowing additional operational flexibility. For example, lenders who under the baseline choose not to focus on offering certain products to certain groups of consumers will be able to potentially increase their revenues by offering products that are better tailored to the demands of different groups of consumers. In other words, under this provision, some covered persons will be able to conduct more targeted

advertising campaigns and offer certain products to subsets of consumers (when they otherwise could not under the baseline). Covered persons may choose to relocate branch locations that are less profitable and reallocate resources that were previously spent on oversight of marketing materials and interactions with prospective applicants at call centers and branches to other uses. On the other hand, requirements to serve community credit needs under the CRA will still be in effect for banks and thrifts and could continue to deter such business decisions for some lenders. The benefits to covered persons that arise as a result of these provisions likely vary with the size and type of each covered person.

A policy group commenter suggested that the Bureau failed to consider the effects on expanded commercial speech. The Bureau acknowledges that covered persons may enjoy the benefits of expanded free speech with reduced legal risk. For example, as noted above, covered persons may have more freedom in their advertising and marketing efforts. On the other hand, because covered persons are still subject to other laws and regulations, it is unclear the extent to which the rule will impact lenders' behavior. As the commenter also noted, the benefits and costs of expanded free speech are difficult to quantify.

Costs to Covered Persons

Covered persons may incur adjustment costs associated with the change in liability for discrimination against prospective applicants. Covered persons may need to update their policies, procedures, and systems to accommodate changes resulting from the provisions. However, these adjustment costs will be incurred only once and will not have a significant long-term impact on covered entities. The one-time costs associated with these provisions will be similar in scope to the one-time costs associated with the change to the disparate-impact provisions above.

Consumer advocate commenters stated that the Bureau has not adequately considered the loss of potential benefits to covered persons from preventing and addressing redlining and other discouragement, including expansion of their market opportunities, enhancement of their reputation, and increased community trust.

The Bureau does not agree that this provision will result in a cost to covered persons from not being able to expand market opportunities because the Bureau believes that covered persons will continue to seek out profitable opportunities for expansion. The Bureau also notes that it only needs to consider the costs and benefits caused by the rule, and there is no loss of potential benefits to covered persons from avoiding discouragement as a result of this rule. That is, this rule does not require lenders to engage in discouragement, so the rule does not cause covered persons to lose benefits from no longer avoiding discouragement.

Benefits to Consumers

The provisions on discouragement limits result in ongoing cost savings for covered entities, which could be passed on to consumers through lower prices. The rate of pass through generally varies with demand and supply conditions, as well as firm characteristics. Moreover, consumers may benefit from decreased limits on marketing. For example, some consumers may learn about certain products that they may not otherwise have been aware of.

Costs to Consumers

The provisions may result in some consumers not applying for credit and facing greater barriers to accessing credit than they otherwise have under the existing rule. For example, some covered persons may exclude certain groups of consumers from advertising campaigns or may choose to engage less with them. As a result, some consumers may not be aware of certain credit products from some available covered persons. Moreover, some consumers may lose convenient access to financial services if covered persons alter their branch location decisions as a result of these provisions. In particular, some elderly, minority, and low-income consumers rely on brick-and-mortar branch services instead of online or mobile banking. If covered persons alter their branch location decisions, then these customers may no longer be able to access financial services and products in their preferred way. As before, though, requirements to serve community credit needs under the CRA may mitigate such impacts for banks and thrifts consumers.

The Bureau received several comments about potential data sources and information that can be used for an analysis on potential bank branch closures. A policy group commenter suggested using the FDIC BankFind data and Census demographic data to analyze ''a plausible range of likely branch closures and affected customers.'' While the Bureau acknowledges that these data sources provide information on the location of banks and whether they are located in majority-minority neighborhoods, they do not provide sufficient information to conduct an informative quantitative analysis because (1) the FDIC BankFind data only provide information on the locations of the banks that are FDIC-insured and there is not comparable location information for many non-depository institutions; and (2) the Bureau does not have enough information into the profit margin of each branch location or how lenders decide which branch locations to close. Furthermore, as the Bureau mentioned in the proposal, there is uncertainty in how lenders will respond to the rule since lenders are still subject to other laws and regulations, including those that affect branch location decisions like the CRA.

Consumers may have less protection against permissible but potentially deterring conduct at a pre-application stage under the provisions compared to the baseline, in which more discouraging conduct was impermissible. Under a narrower standard of liability, lenders are permitted to engage in more conduct that could deter or informally reject certain consumers, among other things, before credit is formally sought, which constitutes a cost to these consumers.[199]

While the provisions limit covered persons' liability on discouragement, it does not eliminate it. Covered persons will remain prohibited by the discouragement prohibition from expressing to applicants or prospective applicants an intention to discriminate against them on a prohibited basis. Moreover, covered persons will still be subject to other statutes such as the FHA and State laws similar to ECOA. While the provisions reduce legal liability for covered persons under ECOA, the legal risk under other statutes remains unchanged, and therefore the incentives for covered persons to significantly change their policies as a result of the provisions are limited. Thus, the costs to consumers are correspondingly limited.

Comments on Provisions Concerning Disparate Impact and Discouragement

Some consumer advocate and individual commenters argued that consumers will likely suffer from increased discrimination and unequal access to credit which eventually leads

[199] *See, e.g.,* Andrew Hanson et al., *Discrimination in mortgage lending: Evidence from a correspondence experiment,* 92 J. Urban Econ. 48–65 (2016); Neil Bhutta et al., *How much does racial bias affect mortgage lending? Evidence from human and algorithmic credit decisions,* 80(3) J. Fin. 1463–96 (2025).

to systematic inequality, inefficiency in credit markets, and overall adverse impact on the economy as a result of the provisions. For example, ending the disparate-impact doctrine and narrowing the prohibition on discouragement may increase taste-based or intentional discrimination [200] by allowing covered persons to target advertising only to certain groups thereby creating unequal access to credit. A consumer advocate commenter additionally stated that disparate impact worked as an important backstop in preventing some lenders from engaging in taste-based discrimination. The commenter also noted that provisions will allow statistical discrimination and pricing disparities based on price elasticities that may adversely affect consumers on the basis of certain protected characteristics.[201] As a result, members of protected classes may experience increased interest rates, denials of credit, and fewer product options with fewer legal options for redress.

As the Bureau acknowledged in the proposal, some consumers may be more likely to be denied credit or to pay higher prices without the effects-based legal protection provided for under the previous version of Regulation B. However, as also noted in the proposal, the extent to which this happens is difficult to estimate because (1) there are other laws and regulations in place which will limit the potential changes in lenders' behaviors, and (2) the Bureau lacks relevant data.

A consumer advocate commenter also pointed out that any adverse impact on consumers likely differs across consumer lending products. For example, the disparate impact and discouragement provisions likely have differing effects in the credit card and student lending markets where most of the lending decisions are automated compared to the auto loan market where many interactions occur in person.

As noted in the proposal, the Bureau acknowledges that the impact of the rule likely varies by the size, complexity, and competitiveness of firms which vary across product markets. The Bureau's analysis considers the effect of the rule across the overall consumer financial market, and potentially varying effects of the rule across product markets does not alter the analysis.

A policy group commenter also suggested using Bureau and other regulatory agencies' supervisory and enforcement data to estimate the effect of the disparate impact and discouragement provisions on covered persons and consumers. The commenter suggested using the number of exams and information on remedial actions taken to estimate the costs to covered persons. The Bureau does not agree that this information can be used to calculate on-going compliance cost savings because compliance costs are exam-specific and may also depend on the institution's size, complexity, and risk profile.

The commenter also suggested using the information on settlements and supervisory actions to estimate the rule's impact on consumers. The Bureau does not believe such analysis would be useful because the settlement amounts represent an unknown share of total possible cases, and, as a result, the Bureau cannot characterize the total impact on consumers. Furthermore, prior Bureau public enforcement actions that resolved allegations of violations of ECOA and Regulation B through settlement reflect only the agreement of the parties. Alleged creditors may neither confirm nor deny a statutory violation took place and there may not have been a finding of any harmed individual consumers. In addition, supervisory activity that found violations of ECOA and Regulation B may not have been agreed to by the company or validated by the company's independent compliance audit. Therefore, the Bureau does not believe that the information on settlements and supervisory actions can be used to estimate the impact on consumers.

Provisions Concerning Special Purpose Credit Programs

The Bureau also adopts changes to Regulation B's provisions regarding SPCPs. The changes can be grouped into two categories for the purposes of discussing their potential impacts. First, the Bureau prohibits an SPCP offered or participated in by a for-profit organization from using a common characteristic of race, color, national origin, or sex, or any combination thereof, as a factor in determining eligibility for the SPCP. Second, the Bureau also adopts several new conditions on such SPCPs that use *any* prohibited basis common characteristic as eligibility criteria. Among these new conditions are additional requirements that a for-profit organization establish the fact that applicants with common characteristics that will otherwise be a prohibited basis will not receive credit under the organization's current standards due to the common characteristic and that providing credit of the type and amount sought cannot be accomplished through a program that does not use an otherwise prohibited basis as eligibility criteria.

Compared to the baseline, the overall effect of these two categories of changes is to place additional conditions on the design of lenders' existing SPCPs and the development of new SPCPs. The Bureau considers the costs and benefits of these conditions below.

Benefits to Covered Persons

At baseline, Regulation B permits creditors to create SPCPs and prescribes the procedures for doing so but does not require any creditor to create an SPCP. The Bureau, consistent with standard economic theory, assumes that creditors only decide to create SPCPs if the incremental benefits from doing so outweigh the incremental costs from creating and administering the SPCP. Since the changes to Regulation B make it more difficult or costly to create an SPCP, the Bureau does not expect the changes to the SPCP provisions to generate benefits to covered persons from credit provided or not provided under the revised SPCP provisions.

Costs to Covered Persons

At baseline, Regulation B permits creditors to create SPCPs and prescribes the procedures for doing so but does not require any creditor to create an SPCP. Under standard economic theory, a creditor will only create an SPCP if the expected benefit of doing so is greater than the costs of creating and administering the program. Creditors may benefit, for example, from the public relations value that such a program provides. Owners of a for-profit credit provider may also derive some non-monetary benefit from the creation of an SPCP, such as addressing alleged racial gaps in lending. Setting up and operating an SPCP also involves costs, including the administrative costs to design the program and ensure that it is consistent with Regulation B. Many existing SPCPs also involve the creditor taking on additional risk because they involve providing credit to applicants the creditor would have otherwise denied or providing credit at terms that would have otherwise been more favorable to the creditor. The Bureau assumes that, if a creditor implements an SPCP, they do so because the public

[200] G.S. Becker, *The Economics of Discrimination,* U. Chi. Press (1957), *https://ia601403.us.archive.org/14/items/in.ernet.dli.2015.118727/2015.118727.The-Economics-Of-Discrimination_text.pdf.*

[201] *Nat'l Fair Hous. All.* v. *Facebook,* No. 1:18-cv-02689 (S.D.N.Y. 2018); *United States* v. *Meta Platforms Inc.,* No. 1:22 Civ. 5187 (S.D.N.Y. 2022); Edmund S. Phelps, *The statistical theory of racism and sexism,* 62:4 a.m. Econ. Review, at 659–61 (1972); Kenneth J. Arrow, *What has economics to say about racial discrimination?,* 12:2 J. Econ. Perspectives, at 91–100 (1998).

relations or other benefits outweigh the costs.

The effects of the Regulation B provisions affecting SPCPs are to impose conditions on creditors' ability to create an SPCP and, therefore, reduce the expected net benefit of the programs relative to the baseline. In some cases, the changes will prohibit some types of SPCPs. For example, an SPCP that currently uses race as a common characteristic is prohibited under the changes. In other cases, the changes will impose additional costs on creditors who attempt to develop an SPCP. Such is the case when a creditor must establish the fact that members of a particular protected-class group otherwise are unable to receive credit in the absence of an SPCP. Imposing such conditions could make it difficult to achieve the intended effect of an SPCP or otherwise reduce the net benefit of doing so. This change imposes a cost on affected creditors who either have an SPCP or would have otherwise created an SPCP in the absence of the changes to Regulation B. As a result, it is likely that fewer SPCPs will exist under the final rule relative to the baseline.

However, such costs are mitigated to the extent that creditors redesign programs to use criteria that are not prohibited under the adopted changes to Regulation B. For example, if a creditor has an existing SPCP that uses race as a common characteristic determining eligibility to reach a certain segment of socioeconomically disadvantaged borrowers, it may be able to preserve much of its program in a form that is open to such socioeconomically disadvantaged borrowers without regard to prohibited basis characteristics. In this case, the creditor will incur both the one-time cost of the program redesign and any costs arising if the redesigned program is unable to achieve the intended results as effectively.

While the Bureau is unaware of data that can be used to comprehensively measure the scale of existing SPCPs, the Bureau does have reason to believe that the overall market effect of these changes is likely to be small. Historically, few SPCPs existed prior to the Bureau's advisory opinion in January 2021, when the Bureau last assessed the market.[202] In August 2020, the Bureau issued a Request for Information on the Equal Credit Opportunity Act and Regulation B.[203] Multiple commenters noted that, despite a long history of being allowed under Regulation B, most lenders have not used SPCPs.[204] In 2021, the U.S. Department of Housing and Urban Development noted in its statement on SPCPs that ''very few of these Programs have been established to create homeownership opportunities for affected communities.'' [205]

Since 2021, there has been growth in the number of SPCPs, with prominent examples from large banks, large non-depository institutions, and several nonprofit organizations.[206] However, available information suggests that the use of SPCPs is likely still limited. The Federal Housing Finance Agency (FHFA) released a report in 2024 showing that government-sponsored enterprises (GSEs) acquired approximately 15,000 mortgages originated through SPCPs in 2023, or 0.8 percent of the total mortgages GSEs acquired that year.[207] With respect to small business lending, the American Bankers Association (ABA), as of 2025, also notes that few lenders have implemented SPCPs for small business lending.[208]

The Bureau also expects that SPCPs are even less likely to be provided by small lenders, compared to larger ones. In a 2022 comment letter, J.P. Morgan Chase Bank described that launching an SPCP required ''significant effort'' because they ''often necessitate modifications to existing processes, close monitoring of execution and results, engagement with community leaders, adjustments to the program over time, updates to documentation, and consistent engagement with the relevant supervisory agency.'' [209]

While certain government agencies have sought to encourage SPCPs in recent years, the information available to the Bureau indicates that the actual prevalence of SPCPs is quite low. Therefore, while the Bureau cannot quantify with any precision the number of potentially affected lenders, it has documented reasons to believe that the number is small.

The Bureau also does not have detailed information on the amount of lending that SPCPs represent as a fraction of a creditor's portfolio. However, some individual lenders have made available information on their existing SPCPs. As one case study stated, ''Wells Fargo [in the spring of 2022] set aside $150 million to lower interest rates on mortgages for Black customers'' [210] under SPCPs. However, this amount only constituted a small percentage of Wells Fargo's overall lending business.[211] Large lenders such as Wells Fargo (one of the largest in the country) are best positioned to create and benefit from SPCPs. Given research showing that net interest margins increase with bank size and the fixed administrative costs and credit risks of operating an SPCP, it seems likely that SPCP lending will represent an even smaller fraction of lending for smaller lenders.[212]

Based on the limited information available, few lenders appear to have developed SPCPs, and SPCP lending seems to represent a small fraction of existing lending for individual lenders. As a result, the Bureau expects the total cost to covered persons by the SPCP changes to Regulation B will be small relative to the total dollar amount of lending.

Multiple consumer advocate, industry group, and individual commenters argued that the proposed prohibition on the use of certain common characteristics as well as the requirements to provide per applicant

[202] 86 FR 3762.

[203] Request for Information on the Equal Credit Opportunity Act and Regulation B, *https://www.federalregister.gov/d/2020-16722.*

[204] *See* comment from Nat'l Fair Hous. All., *https://www.regulations.gov/comment/CFPB-2020-0026-0133,* and Mortg. Banker's Ass'n, *https://www.regulations.gov/comment/CFPB-2020-0026-0115.*

[205] Memorandum from Demetria L. McCain, Principal Deputy Assistant Secretary for Fair Housing & Equal Opportunity, U.S. Dep't of Hous. & Urban Dev., to Office of Fair Housing and Equal Opportunity (Dec. 7, 2021), *FHEO's Statement by HUD's Office of Fair Housing and Equal Opportunity on Special Purpose Credit Programs as a Remedy for Disparities in Access to Homeownership, https://web.archive.org/web/20241024180840/https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO_Statement_on_Fair_Housing_and_Special_Purpose_Programs_FINAL.pdf.*

[206] U.S. Dep't of Hous. & Urb. Dev., *Market examples of SPCPs—SPCP Toolkit for Mortgage Lenders, https://spcptoolkit.com/market-examples-of-spcps/* (last visited Sept. 9, 2025).

[207] Inside Mortg. Fin., *Special Purpose Credit Program Mortgages a Fraction of GSE Business* (Oct. 19, 2023), *https://www.insidemortgagefinance.com/articles/230785-special-purpose-credit-program-mortgages-a-fraction-of-gse-business;* Fed. Hous. Fin. Agency, *Mission Report 2023* (2024), *https://www.fhfa.gov/reports/mission-report/2023.*

[208] Am. Banker's Ass'n, *Special Purpose Credit Programs, https://www.aba.com/banking-topics/commercial-banking/small-business/special-purpose-credit-programs* (last visited Sept. 9, 2025).

[209] *https://www.regulations.gov/comment/OCC-2022-0002-0252.*

[210] Orla McCaffrey, *JPMorgan Chase takes special-purpose credit program national* (Nov. 18, 2022), Am. Banker, *https://www.americanbanker.com/news/jpmorgan-chase-takes-special-purpose-credit-program-national.*

[211] According to 2024 Home Mortgage Disclosure Act data, Wells Fargo originated $38 billion in total mortgage volume. *See https://ffiec.cfpb.gov/data-publication/modified-lar/2024* (last visited Sept. 9, 2025).

[212] W. Blake Marsh & Taisiya Goryacheva, *Do Net Interest Margins for Small and Large Banks Vary Differently with Interest Rates?,* Fed. Rsrv. Bank of Kan. City (Feb. 10, 2022), *https://www.kansascityfed.org/research/economic-review/do-net-interest-margins-for-small-and-large-banks-vary-differently-with-interest-rates/.*

proof of discrimination made it significantly burdensome to operate an SPCP. Many of these commenters suggested that the result of this burden would be that many, if not all SPCPs, would cease to exist if the Bureau finalized these provisions. Additionally, several commenters noted how the Bureau's proposed changes to SPCPs amounted to a regulatory increase, in contrast to the deregulatory impacts of the other provisions.

Several commenters also suggested that SPCPs were more prevalent than the Bureau's characterization in the proposal. One commenter noted that a number of banks in their area operated SPCPs. Another commenter, arguing in favor of the Bureau's SPCP proposals, characterized SPCPs as ''ubiquitous.'' A consumer advocate commenter noted that between 2022 and 2024, GSEs purchased approximately 57,282 SPCP loans and paid approximately $81.9 million in subsidies via lender credits and argued that this was evidence of significant participation in SPCPs. One policy group commenter also disagreed with the Bureau's characterizing Wells Fargo's SPCP program based on dollar share of overall lending and argued that much of the $150 million was spread across multiple consumer's loans, resulting in a larger number of customers affected than the volume share would suggest.

In its analysis, the Bureau acknowledged that the new conditions on SPCPs would make implementation of the programs more costly, and that it expected fewer SPCPs to exist, relative to the baseline, as a result. The proposal's language is consistent with the characterization of commenters who argued that the new requirements would make it more burdensome to run SPCPs, although commenters generally suggested a more substantial impact than the Bureau's characterization in the proposal.

Despite a lack of comprehensive data on the number of SPCPs and the loans provided under them, the Bureau offered several references to Federal agency comments about the existence of SPCPs, publicly available information on SPCP purchases by GSEs, and the size of individual lenders' SPCP commitments in its proposal. Information provided by the commenters also showed that lending under SPCPs is a very small fraction of consumer lending in the United States.

The Bureau continues to acknowledge that the SPCP provisions finalized in this rule are likely to lead to a reduction in SPCPs, but the overall impact is likely to be small relative to overall lending, since SPCPs affect a very small proportion of consumer lending.

Benefits to Consumers

Some consumers will likely benefit from the changes in the form of additional credit availability. Designing and operating SPCPs involves meaningful administrative costs as well as, in many cases, accepting higher levels of risk from program participants. It is possible that creditors decide to provide fewer loans outside of the SPCP in response to these costs. Thus, consumers who do not qualify for an existing SPCP may see additional credit availability if the changes cause creditors to discontinue their SPCPs and make those funds available to borrowers at large, or else to broaden the eligibility criteria for existing SPCPs previously limited to certain prohibited basis groups. For reasons explained above, the Bureau has reason to believe that SPCPs currently account for an insignificant portion of consumer lending. The Bureau therefore believes that the extent to which consumers will benefit from additional credit availability as a result of this regulatory change is likely small.

A consumer advocate commenter stated that there are no benefits from the proposed SPCP changes, and the only potential benefit suggested by the Bureau is a hypothetical possibility that people who are not members of the specific protected class groups previously benefited by SPCPs might enjoy greater access to credit due to creditors no longer offering SPCPs. The commenter asserted that any impact from such possibility would be undetectable given the low number of SPCPs to date.

The Bureau believes this comment is consistent with its analysis from the proposal. It is possible for consumers to benefit economically from additional credit availability, but this benefit is likely small.

An individual commenter stated that SPCPs expand the overall market by serving populations previously excluded. The Bureau notes that this is not necessarily the case because an SPCP does involve some costs to the lender. These costs include the resources devoted to creating and administering the program as well as additional risks if, for instance, the lender relaxes credit standards for SPCP eligible applicants. Since administering an SPCP takes up lenders' resources, some lenders may redirect these newly available resources to non-SPCP applicants under the provision and the total effect on the overall market is ambiguous.

Costs to Consumers

Consumers who benefit from an SPCP under the baseline will likely see this benefit reduced or removed under the changes. This includes consumers who receive credit from an SPCP when they otherwise would not have, as well as consumers who receive more favorable credit terms under an SPCP than they otherwise would have in the absence of the SPCP. To the extent that the changes cause lenders to remove SPCPs or redesign programs such that these consumers no longer benefit, customers will incur a cost.

The Bureau lacks the necessary data to estimate the total cost of the changes to consumers. However, as described in the previous part, the Bureau has reason to believe that the prevalence of SPCPs is quite low, and, at a market level, the total number of consumers receiving benefits under SPCPs likely represents a small portion of total credit. Therefore, the Bureau expects the costs to consumers to be small from the changes to Regulation B related to SPCPs.

Multiple commenters argued that the Bureau's changes to SPCPs will harm borrowers, particularly women and minority borrowers. Several argued that SPCPs were important tools to address disparities in credit access. Multiple commenters provided citations for evidence on the existence of gaps in credit access by race, ethnicity, and sex. Commenters argued that the Bureau failed to take the effect of SPCPs on credit access gaps into consideration as part of its analysis. An individual commenter stated that SPCPs expand the overall market by serving populations previously excluded.

In part V.F of the proposal, the Bureau acknowledged that there are consumers who benefit from SPCPs, and such consumers would incur a cost if the Bureau's SPCP provisions affect a lender's willingness or ability to offer an SPCP. This includes situations where an SPCP offers consumers credit when they otherwise might not have, more favorable credit terms than they otherwise might have, or financial assistance towards fees or downpayment. However, as stated above, the Bureau's review of the size of existing SPCPs, while lacking comprehensive data, nevertheless suggests that the prevalence of SPCPs is low relative to the overall size of consumer lending. Thus, the Bureau continues to believe that potential negative effects to consumers from the SPCP provisions it is finalizing will not have a significant negative effect on consumers.

One policy group commenter noted that the Bureau did not seek out other sources of data which could be used to quantify the costs to consumers from the proposed SPCP provisions. The commenter noted that the Bureau did not review SPCP documents provided by lenders to the Bureau or solicit documentation on SPCPs from lenders. The commenter also noted that the Bureau did not seek loan-level data on loan purchases by GSEs from FHFA which document the amount of SPCP-related loan purchases by GSEs. Lastly, the commenter argued that the Bureau must have data on SPCPs via its supervision or enforcement authorities and possibly have mandated their use as part of a remedy for a violation.

In its proposal, the Bureau qualitatively described the potential cost to consumers from a reduction in the number and size of SPCPs but stated that it lacked comprehensive information on the full scale of lending under SPCPs. The Bureau does not believe that a review of SPCP plans would provide meaningful information on the quantitative scale of the potential cost to consumers. The SPCP plans, generally, can describe the structure of a program and sometimes describe the amount or expected size of the program for an individual lender. The limited information the Bureau might have or could obtain from such plans would not meaningfully affect its ability to quantify the total effect of the changes to SPCPs. The Bureau principally lacks comprehensive information on the scale of lending under SPCPs, rather than what SPCPs offer for beneficiaries of the programs.

To the extent the Bureau is aware, data from FHFA would be most useful towards understanding the potential amount of lending under SPCPs. To this end the Bureau used public sources to describe the extent of SPCP loan purchases by GSEs in the proposal. The Bureau does not believe that additional data from FHFA about GSE purchases would have provided additional useful information to quantify the costs to consumers of the proposed SPCP provisions beyond the publicly available information on overall purchases.

The Bureau may review a lenders' SPCP plans upon request. However, the Bureau's Office of Supervision does not mandate the use of SPCPs nor generally collect data on the administration of SPCPs as part of its authority. Any information regarding SPCPs from individual financial institutions under its supervisory authority would not provide sufficient information to estimate the potential cost to consumers from the proposed changes.

F. Potential Impacts of the Final Rule on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

The Bureau believes that nearly all depository institutions and credit unions with $10 billion or less in total assets are subject to Regulation B and therefore subject to the changes described above. To estimate the number of covered depository institutions with $10 billion or less in total assets, the Bureau uses data collected by the Federal Financial Institutions Examination Council's (FFIEC's) Reports of Condition and Income (Call Reports). To estimate the number of credit unions with $10 billion or less in total assets, the Bureau uses data collected by the National Credit Union Administration's (NCUA) Call Reports. Based on the 2024Q4 FFIEC Call Reports, there are 4,328 banks with $10 billion or less in total assets. Based on 2025Q2 NCUA Call Report data, there are 4,348 credit unions with $10 billion or less in total assets.

The Bureau expects that the impacts of the rule on depository institutions and credit unions with $10 billion or less are likely similar to the impacts on covered institutions more broadly. These institutions are likely to benefit from the compliance cost savings produced by the disparate impact and discouragement provisions, while possibly incurring a one-time adjustment cost of changing systems and procedures to comply with this final rule. For more discussion, see part V.E above. The Bureau also expects that the amount of lending under SPCPs is likely to be low among depository institutions and credit unions with $10 billion or less, similar to covered entities, more broadly. Therefore, the Bureau expects that the impact of the SPCP provisions on these entities will, likewise, be small.

G. Potential Impacts on Consumers in Rural Areas, as Described in Section 1026

This part assesses the potential impact of the amendments to Regulation B on rural consumers. The Bureau evaluates the provisions jointly given their overall implications on fair lending protections and credit access for rural consumers.

Consumers in rural areas may experience greater impact from fewer protections against disparate impact because of the changes to Regulation B. Without disparate-impact liability, covered persons may curtail their efforts in reviewing and mitigating neutral policies that could disproportionately exclude some rural borrowers. One potential reason for this exclusion is that the loan application process in rural areas often involves consideration of informal or soft information, given the small-dollar or agricultural nature typical of such rural loans. On the other hand, other rural borrowers may experience increased credit availability.

The Bureau expects that rural consumers will face many of the same costs and benefits from the changes to discouragement provisions as described above in part V.E. It is possible that rural consumers of prohibited basis groups will be excluded from advertising about products from which they would have benefitted, relative to the baseline. They also may experience fewer protections from discouraging behavior by lenders made at the pre-application stage, relative to the baseline. On the other hand, other rural consumers may experience more advertisements and an increased number of product choices because lenders can conduct more targeted advertising campaigns and offer certain products to subsets of consumers when they otherwise could not under the baseline. As described in the previous section, the overall impact to rural consumers is ambiguous because covered persons are still liable under other antidiscrimination statutes such as FHA and State laws similar to ECOA, so the incentives for covered persons to implement policies or engage in practices that lead to disparate impact or discouragement may be restricted.

Conditions on SPCP eligibility criteria will curtail programs designed to increase lending to consumers of prohibited basis groups in rural areas. Consumers who benefit from targeted mortgages and small business SPCPs could face higher barriers to credit access and fewer opportunities for entrepreneurship. However, as described in the previous section, the Bureau believes that the prevalence of SPCPs is quite low and the total number of consumers receiving benefits under SPCPs represent a small portion of any credit market. Therefore, the changes to SPCPs will likely have a small impact on rural consumers.

VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units,

and small not-for-profit organizations.[213] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[214] Potentially affected small entities include depository and non-depository providers of credit.

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[215] The Bureau also is subject to certain additional procedures under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[216] which amended the RFA by requiring the convening of a panel to consult with small business representatives, commonly called a SBREFA panel, in addition to publishing a report, prior to proposing a rule for which an IRFA is required.[217]

The RFA does not require an initial or final regulatory flexibility analysis in a rulemaking when the rule will not have a significant economic impact on a substantial number of small entities. Similarly, convening a SBREFA panel and report are not required when the rule will not have a significant economic impact on a substantial number of small entities. The Bureau does not expect the rule to impose significant economic impacts on small entities relative to the baseline. Any effects, including one-time costs, are expected to be small for each entity. That is, the Bureau does not expect any entity to have a significant cost as a result of this final rule. In part V.E, the Bureau described how the size of SPCPs as a share of a lender's overall portfolio is expected to be small based on existing evidence. In part V.E, the Bureau also described how the prevalence of SPCPs is low and the Bureau expects this is true of (and especially for) small entities. Therefore, the Bureau does not expect the SPCP provisions to affect a substantial number of small entities.

Accordingly, the Acting Director certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Several commenters, including policy group and consumer advocate commenters, argued that the Bureau needs to complete both an IRFA and FRFA and convene a SBREFA panel. A policy group commenter also noted that the Bureau did not provide a persuasive rationale why convening a SBREFA panel was unnecessary. That commenter also claimed that the Bureau's certification of no significant economic impact on a substantial number of small entities lacks an adequate factual basis. By certifying that the final rule will not have a significant economic impact on a substantial number of small entities, the Bureau does not have to complete an initial/final RFA or convene a SBREFA panel and report.

Several commenters, including policy group and consumer advocate commenters, noted several studies, including a 2024 Bureau published report ''Matched-Pair Testing in Small Business Lending Markets,'' that show that discrimination and/or discouragement occur within the small business credit market even under the prior Regulation B regime. A consumer advocate commenter argued that a rollback of these requirements will affect the lending and borrowing activities of small and medium-sized creditors, and consequently, the Bureau should have convened a SBREFA panel. Similarly, another consumer advocate commenter stated that the Bureau neglected to consider the effects of the entire proposed rule as a whole, and, if the Bureau had made those considerations, it would have needed to complete an initial/final RFA and the SBREFA process. Finally, a policy group commenter claimed that the Bureau neglected to consider or analyze the impacts on small lenders.

In response to the comments about the 2024 Bureau report, in the Executive Summary of that report, the Bureau wrote at the time that ''[g]iven the design and scope of this pilot research, these findings should not be generalized to the broader small business lending market or to specific financial institutions.'' [218]

The Bureau previously considered and analyzed the impacts on small lenders and concluded that there was no significant economic impact on a substantial number of small entities. As part of the process of reaching this conclusion, the Bureau typically assesses the effect on small businesses directly covered by the proposed rule. In this instance, that would be small businesses operating as creditors who would be bound by the requirements of the proposed rule. However, in preparing the proposal, the Bureau nonetheless assessed whether the consideration of small businesses as credit applicants was likely to change its conclusion and determined that it was not.

Both a policy group commenter and a consumer advocate commenter argued that, for the Bureau to certify that the proposal would not have a significant economic impact on a substantial number of small entities, the Bureau needed to use more robust data and consider the benefits of the proposal. Similarly, these commenters also argued that the Bureau needed to use more data and take additional analytical, statistical, quantitative, and methodological steps to satisfy the RFA.

For determining whether a proposal would have a significant economic impact on a substantial number of small entities, the Bureau does not need to consider the benefits of the rule for small entities. Additionally, the Bureau believes it has used the best data available and has taken the necessary steps to reasonably and fully consider relevant costs to small entities. Commenters did not provide or suggest any additional data or analyses that would improve or change the Bureau's analysis. Once the Bureau determines that a proposal would not have a significant economic impact on a substantial number of small entities, then the Bureau does not need to complete an initial/final RFA.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek the Office of Management and Budget (OMB)'s approval for information collection requirements prior to implementation. The collections of information related to Regulation B have been previously reviewed and approved by OMB and assigned OMB Control Number 3170–0013 (Regulation B). Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau received one comment related to the PRA, stating that the Bureau underestimates the rule's

[213] 5 U.S.C. 601 *et seq.* The Bureau is not aware of any small governmental units or not-for-profit organizations to which this final rule would apply.

[214] 5 U.S.C. 601(3) (the Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment).

[215] 5 U.S.C. 603 through 605.

[216] Public Law 104–121, tit. II, 110 Stat. 857 (5 U.S.C. 601 note).

[217] 5 U.S.C. 609.

[218] Consumer Fin. Protection Bureau, *Matched-Pair Testing in Small Business Lending Markets* (Nov. 2024), *https://www.consumerfinance.gov/data-research/research-reports/matched-pair-testing-in-small-business-lending-markets/.*

burden. The Bureau acknowledges this comment, but the Bureau has determined that this final rule will not impose any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA.

VIII. Severability

The Bureau intends that the provisions of the final rule are separate and severable from one another. If any provision of the final rule, or any application of a provision, is stayed or determined to be invalid, the remaining provisions or applications are severable and shall continue to be in effect. The Bureau has designed each provision to operate independently so that the effect of each provision will continue regardless of whether one or another provision is not effectuated. Therefore, provisions related to disparate impact, discouragement, and special purpose credit programs are intended to be separate and severable. Moreover, aspects of these provisions are also intended to be severable, if any portion is not effectuated, including the changes to the discouragement provision and the prohibitions and conditions for special purpose credit programs.

IX. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the final rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this final rule as a ''major rule'' as defined by 5 U.S.C. 804(2).

X. Executive Order 12866

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts). Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President's priorities. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) has determined that this action is an economically significant regulatory action under section 3(f)(1) of E.O. 12866, as amended. Accordingly, OMB has reviewed this action. This rule is considered a deregulatory action under E.O. 14192.

List of Subjects in 12 CFR Part 1002

Banks, banking, Civil rights, Consumer protection, Credit, Credit unions, Marital status discrimination, National banks, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation B, 12 CFR part 1002, as set forth below:

PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1691b. Subpart B is also issued under 15 U.S.C. 1691c–2.

Subpart A—General

■ 2. Amend § 1002.4 by revising paragraph (b) to read as follows:

§ 1002.4 General rules.

* * * * *

(b) *Discouragement.* A creditor shall not make any oral or written statement, in advertising or otherwise, directed at applicants or prospective applicants that the creditor knows or should know would cause a reasonable person to believe that the creditor would deny, or would grant on less favorable terms, a credit application by the applicant or prospective applicant because of the applicant or prospective applicant's prohibited basis characteristic(s). For purposes of this paragraph (b), oral or written statements are spoken or written words, or visual images such as symbols, photographs, or videos.

* * * * *

■ 3. Amend § 1002.6 by revising paragraph (a) to read as follows:

§ 1002.6 Rules concerning evaluation of applications.

(a) *General rule concerning use of information.* Except as otherwise provided in the Act and this part, a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis. The Act does not provide that the ''effects test'' applies for determining whether there is discrimination in violation of the Act.

* * * * *

■ 4. In § 1002.8:

■ a. Revise paragraphs (a)(3)(i) and (ii), the heading of paragraph (b), and paragraph (b)(2).

■ b. Add paragraphs (b)(3) and (4).

■ c. Revise paragraph (c).

The revisions and additions read as follows:

§ 1002.8 Special purpose credit programs.

(a) * * *

(3) * * *

(i) The program is established and administered pursuant to a written plan that:

(A) Identifies the class of persons that the program is designed to benefit;

(B) Sets forth the procedures and standards for extending credit pursuant to the program;

(C) Provides evidence of the need for the program;

(D) Explains why, under the organization's standards of creditworthiness, the class of persons would not receive such credit in the absence of the program; and

(E) When the persons in the class are required to share one or more common characteristics that would otherwise be a prohibited basis, explains why meeting the special social needs addressed by the program:

(*1*) Necessitates that its participants share the specific common characteristics that would otherwise be a prohibited basis; and

(*2*) Cannot be accomplished through a program that does not use otherwise prohibited bases as participant eligibility criteria; and

(ii) The program is established and administered to extend credit to a class of persons who, under the organization's standards of creditworthiness, would not receive such credit.

(b) *Controlling provisions*—

* * * * *

(2) *Common characteristics.* A program described in paragraph (a)(2) or (3) of this section qualifies as a special purpose credit program only if it was

established and is administered so as not to discriminate against an applicant on any prohibited basis; however, except as provided in paragraphs (b)(3) and (4) of this section, all program participants may be required to share one or more common characteristics that would otherwise be a prohibited basis so long as the program was not established and is not administered with the purpose of evading the requirements of the Act or this part.

(3) *Prohibited common characteristics.* A special purpose credit program described in paragraph (a)(3) of this section shall not use the race, color, national origin, or sex, or any combination thereof, of the applicant, as a common characteristic or factor in determining eligibility for the program.

(4) *Otherwise prohibited bases in for-profit programs.* Subject to paragraph (b)(3) of this section, a special purpose credit program described in paragraph (a)(3) of this section may require its participants to share one or more common characteristics that would otherwise be a prohibited basis only if the for-profit organization provides evidence for each participant who receives credit through the program that in the absence of the program the participant would not receive such credit as a result of those specific characteristics.

(c) *Special rule concerning requests and use of information.* If participants in a special purpose credit program described in paragraph (a) of this section are required to possess one or more common characteristics that would otherwise be a prohibited basis and if the program otherwise satisfies the requirements of paragraphs (a) and (b) of this section, a creditor may request and consider information regarding the common characteristic(s) in determining the applicant's eligibility for the program.

* * * * *

■ 5. Amend § 1002.15 by revising paragraph (d)(1)(ii) to read as follows:

§ 1002.15 Incentives for self-testing and self-correction.

(d) * * *

(1) * * *

(ii) By a government agency or an applicant in any proceeding or civil action in which a violation of the Act or this part is alleged.

* * * * *

■ 6. In supplement I to part 1002:

■ a. Under *Section 1002.2—Definitions,* revise *2(p)—Empirically derived and other credit scoring systems.*

■ b. Under *Section 1002.4—General Rules,* revise *Paragraph 4(b).*

■ c. Under *Section 1002.6—Rules Concerning Evaluation of Applications,* revise *6(a)—General rule concerning use of information.*

■ d. Under *Section 1002.8—Special Purpose Credit Programs,* revise *8(a), 8(b),* and *8(c).*

The revisions read as follows:

Supplement I to Part 1002—Official Interpretations

* * * * *

Section 1002.2—Definitions

* * * * *

2(p) Empirically Derived and Other Credit Scoring Systems

1. *Purpose of definition.* The definition under § 1002.2(p)(1)(i) through (iv) sets the criteria that a credit system must meet in order to use age as a predictive factor. Credit systems that do not meet these criteria are judgmental systems and may consider age only for the purpose of determining a ''pertinent element of creditworthiness.'' (Both types of systems may favor an elderly applicant. See § 1002.6(b)(2).)

2. *Periodic revalidation.* The regulation does not specify how often credit scoring systems must be revalidated. The credit scoring system must be revalidated frequently enough to ensure that it continues to meet recognized professional statistical standards for statistical soundness. To ensure that predictive ability is being maintained, the creditor must periodically review the performance of the system. This could be done, for example, by analyzing the loan portfolio to determine the delinquency rate for each score interval, or by analyzing population stability over time to detect deviations of recent applications from the applicant population used to validate the system. If this analysis indicates that the system no longer predicts risk with statistical soundness, the system must be adjusted as necessary to reestablish its predictive ability. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data.

3. *Pooled data scoring systems.* A scoring system or the data from which to develop such a system may be obtained from either a single credit grantor or multiple credit grantors. The resulting system will qualify as an empirically derived, demonstrably and statistically sound, credit scoring system provided the criteria set forth in § 1002.2(p)(1)(i) through (iv) are met. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data when it becomes available.

4. *Disparate treatment.* An empirically derived, demonstrably and statistically sound, credit scoring system may include age as a predictive factor (provided that the age of an elderly applicant is not assigned a negative factor or value). Besides age, no other prohibited basis may be used as a variable. Generally, credit scoring systems treat all applicants objectively and thus avoid problems of disparate treatment. In cases where a credit scoring system is used in conjunction with individual discretion, disparate treatment could conceivably occur in the evaluation process.

* * * * *

Section 1002.4—General Rules

* * * * *

Paragraph 4(b)

1. *Discouragement.* Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the Act—to promote the availability of credit on a nondiscriminatory basis—§ 1002.4(b) prohibits creditors from making oral or written statements directed at applicants or prospective applicants that the creditor knows or should know would cause a reasonable person to believe that the creditor would deny their credit application, or would grant it on less favorable terms, because of their prohibited basis characteristic(s). For purposes of § 1002.4(b), encouraging statements directed at one group of consumers cannot discourage other consumers who were not the intended recipients of the statements.

i. Statements prohibited by § 1002.4(b) include:

A. A statement that the applicant should not bother to apply, after the applicant states that he is retired.

B. Statements directed at the general public that express a discriminatory preference or a policy of exclusion against consumers based on one or more prohibited basis characteristics in violation of the Act.

C. The use of interview scripts that discourage applications on a prohibited basis.

ii. Statements not prohibited by § 1002.4(b) include:

A. Statements directed at one group of consumers, encouraging that group of consumers to apply for credit.

B. Statements in support of local law enforcement.

C. Statements recommending that, before buying a home in a particular neighborhood, consumers investigate,

for example, the neighborhood's schools, its proximity to grocery stores, and its crime statistics.

D. Statements encouraging consumers to seek out resources to develop their financial literacy.

* * * * *

Section 1002.6—Rules Concerning Evaluation of Applications

6(a) General Rule Concerning Use of Information

1. *General.* When evaluating an application for credit, a creditor generally may consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by § 1002.5 from obtaining or from using for any purpose other than to conduct a self-test under § 1002.15.

2. *Disparate treatment.* The Act prohibits practices that discriminate on a prohibited basis regarding any aspect of a credit transaction. The Act does not provide for the prohibition of practices that are facially neutral as to prohibited bases, except to the extent that facially neutral criteria function as proxies for protected characteristics designed or applied with the intention of advantaging or disadvantaging individuals based on protected characteristics.

* * * * *

Section 1002.8—Special Purpose Credit Programs

8(a) Standards for Programs

1. *Determining qualified programs.* The Bureau does not determine whether individual programs qualify for special purpose credit status, or whether a particular program benefits an ''economically disadvantaged class of persons.'' The agency or creditor administering or offering the loan program must make these decisions regarding the status of its program.

2. *Compliance with a program authorized by Federal or State law.* A creditor does not violate Regulation B when it complies in good faith with a regulation promulgated by a government agency implementing a special purpose credit program under § 1002.8(a)(1). It is the agency's responsibility to promulgate a regulation that is consistent with Federal and State law.

3. *Expressly authorized.* Credit programs authorized by Federal or State law include programs offered pursuant to Federal, State, or local statute, regulation or ordinance, or pursuant to judicial or administrative order.

4. *Creditor liability.* A refusal to grant credit to an applicant is not a violation of the Act or regulation if the applicant does not meet the eligibility requirements under a special purpose credit program.

5. *Determining need.* In designing a special purpose credit program under § 1002.8(a)(3), a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit. This determination can be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies. For example, a creditor might design new products to reach consumers who would not meet its traditional standards of creditworthiness due to such factors as credit inexperience or the use of credit sources that may not report to consumer reporting agencies. Or, a bank could review Home Mortgage Disclosure Act data along with demographic data for its assessment area.

6. *Elements of the program.* The written plan must contain information that supports the need for the particular program. The plan also must either state a specific period of time for which the program will last, or contain a statement regarding when the program will be reevaluated to determine if there is a continuing need for it.

8(b) Controlling Provisions

1. *Applicability of rules.* A creditor that rejects an application because the applicant does not meet the eligibility requirements (common characteristic or financial need, for example) must nevertheless notify the applicant of action taken as required by § 1002.9.

2. *Use of common characteristics.* Section 1002.8(b)(2) permits a creditor to determine eligibility for a special purpose credit program using one or more common characteristics that would otherwise be a prohibited basis only so long as that section's requirements, the requirements of § 1002.8(b)(3) and (4), and the other requirements of this part are satisfied. Under § 1002.8(b)(2), once the characteristics of the program's class of participants are established, the creditor is prohibited from discriminating among potential participants on a prohibited basis.

8(c) Special Rule Concerning Requests and Use of Information

1. *Request of prohibited basis information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§ 1002.5 and 1002.6 to determine an applicant's eligibility for a particular program.

2. *Example.* An example of a program under which the creditor can ask for and consider information about a prohibited basis is an energy conservation program to assist the elderly, for which the creditor must consider the applicant's age.

* * * * *

Russell Vought,

Acting Director, Consumer Financial Protection Bureau.

[FR Doc. 2026–07804 Filed 4–21–26; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2025–1348; FRL–5732–02–OAR]

RIN 2060–AS13

National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing an action related to the National Emission Standards for Hazardous Air Pollutants (NESHAP) from Crude Oil and Natural Gas Production Facilities and from Natural Gas Transmission and Storage Facilities (Oil and Gas NESHAP) in connection with a technology review pursuant to Clean Air Act (CAA) section 112. Based on the EPA's review the Agency is not proposing any revision to the current standards in the NESHAP. With respect to unregulated pollutants, the EPA is proposing standards for methanol from regulated emission points at crude oil and natural gas production facilities that will result in no additional control requirements. The EPA is further proposing two alternative approaches to emission points not currently regulated in these NESHAP. Under the first approach, we are proposing that the Agency does not have an obligation to regulate previously unregulated emission points when conducting a CAA section 112(d)(6) review and to defer action on that basis. Under the second approach, we are proposing new control standards for previously unregulated emission points, which include: acid gas removal units, transport vessel loading operations, and storage vessels without flash emissions at crude oil and natural gas production facilities, as well as storage vessels, transport vessel loading and natural gas-driven process controllers and pumps at natural gas transmission and storage facilities. The EPA is also concurrently proposing changes to the definition of ''associated equipment'' with respect to a major source to align with the CAA that, if finalized, would reduce burdens on industry. Finally, the EPA is proposing minor technical corrections to the existing regulations.

DATES: Comments must be received on or before June 22, 2026. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and (OMB) receives a copy of your comments on or before May 22, 2026.

Public hearing: If anyone contacts us requesting a public hearing on or before April 27, 2026, we will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2025–1348, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2025–1348 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2025–1348.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2025–1348, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal holidays).

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

FOR FURTHER INFORMATION CONTACT: For information about this proposed rulemaking, contact U.S. EPA, Attn: Matthew Witosky, Mail Drop: E143–05, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, North Carolina 27711; telephone number: (919) 541–2865 and email address: *witosky.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. To request a virtual public hearing, contact the public hearing team at (888) 372–8699 or by email at *NRDpublichearing@epa.gov.* If requested, the hearing will be held via virtual platform on May 12, 2026. The EPA will announce further details, at *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-operations/actions-and-notices-about-oil-and-0.* The EPA will begin pre-registering speakers for the hearing no later than one business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-operations/actions-and-notices-about-oil-and-0* or contact the public hearing team at (888) 372–8699 or by email at *NRDpublichearing@epa.gov.* The last day to pre-register to speak at the hearing will be May 4, 2026. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers at: *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-operations/actions-and-notices-about-oil-and-0.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers.

Each commenter will have four minutes to provide oral testimony. The EPA encourages commenters to submit a copy of their oral testimony as written comments electronically to the rulemaking docket.

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

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-operations/actions-and-notices-about-oil-and-0.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372–8699 or by email at *NRDpublichearing@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require special accommodations such as audio

description, please pre-register for the hearing with the public hearing team and describe your needs by April 29, 2026. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2025–1348. All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only as Portable Document Format (PDF) versions that can only be accessed on the EPA computers in the docket office reading room. Certain databases and physical items cannot be downloaded from the docket but may be requested by contacting the docket office at 202–566–1744. The docket office has up to 10 business days to respond to these requests. With the exception of such material, publicly available docket materials are available electronically at *https://www.regulations.gov.*

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2025–1348. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to *https://www.regulations.gov/* any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

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

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

The EPA is soliciting comments on numerous aspects of this proposed rulemaking. The EPA has indexed each comment solicitation with an identifier (*e.g.,* Question 1, Question 2.) to provide a consistent framework for effective and efficient provision of comments. Accordingly, we ask that commenters include the corresponding identifier when providing comments relevant to that comment solicitation. We ask that commenters include the identifier in either a heading, or within the text of each comment (*e.g.,* In response to Question 1, . . .) to make clear which comment solicitation is being addressed. We emphasize that we are not limiting comments to these identified areas and encourage provision of any other comments relevant to this proposal.

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

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OCAP CBI Office at the email address *oaqps_cbi@epa.gov*, and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqps_cbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OCAP Document Control Officer (C404–02), OCAP, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2025–1348. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

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

AGRUs acid gas removal units
AWP alternative work practice
BACT Best Available Control Technology
BID Background Information Document
BTEX benzene, toluene, ethylbenzene, and xylenes
°C degrees Centigrade
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
COS carbonyl sulfide
CS_2 carbon disulfide
CO_2 carbon dioxide
DEG diethylene glycol
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
EAV equivalent annualized value
°F degrees Fahrenheit
FR Federal Register

FTP File Transfer Protocol
GACT generally available control technology
Gr grain
HAP hazardous air pollutant(s)
H_2S hydrogen sulfide
ICR Information Collection Request
IR infrared
LAER Lowest Achievable Emission Rate
LDAR leak detection and repair
LEAN Louisiana Environmental Action Network
MACT maximum achievable control technology
Mg/yr megagrams per year
MMscf million standard cubic feet
MMscf million standard cubic feet per day
NAICS North American Industry Classification System
NEI National Emissions Inventory
NESHAP national emission standards for hazardous air pollutants
NGL natural gas liquids
NO_X nitrogen oxide
NSPS New Source Performance Standards
OCAP Office of Clean Air Programs
OGI optical gas imaging
OMB Office of Management and Budget
PFE potential for flash emissions
PM particulate matter
ppm parts per million
ppmv parts per million by volume
psig pounds per square inch gauge
PV present value
RACT Reasonably Available Control Technology
RBLC RACT/BACT/LAER Clearinghouse
RTR Risk and Technology Review
SBA Small Business Administration
scf standard cubic feet
scfh standard cubic feet per hour
SO_2 sulfur dioxide
TEG triethylene glycol
TOC total organic compound
tpy tons per year
UPL Upper Prediction Limit
U.S.C. United States Code
VCS voluntary consensus standards
VOC volatile organic compounds
VRU vapor recovery unit

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I. General Information

A. Executive Summary

In 1999, the EPA promulgated the Oil and Gas NESHAP to regulate HAP emissions from crude oil and natural gas production facilities and from natural gas transmission and storage facilities under 40 CFR part 63, subparts HH and HHH, respectively (1999 Final Rule).[1] Section 112 of the CAA required the EPA to review the standards within eight years to identify and address any residual risk to human health and the environment and, separately, to revise the standards as ''necessary'' in light of developments in practices, processes, and control technologies every eight years. The EPA finalized the residual risk and initial technology review for the two major source oil and natural gas categories in 2012 (2012 Final Rule).[2]

Environmental and industry representatives petitioned the EPA to reconsider and amend the residual risk review, the technology review, and certain provisions of the 2012 Final Rule. In 2017, the Agency agreed to reconsider two issues raised in industry and environmental groups' administrative petition: the small dehydrator standards and the establishment of standards that accounted for variability using an upper prediction limit (UPL) of 99 percent. The Agency subsequently entered into a consent decree to respond to the remaining issues in the petition that are under reconsideration and to complete the second technology review required by CAA section 112(d)(6).[3]

In this proposed rulemaking, the EPA is proposing amendments to certain aspects of the Oil and Gas NESHAP in response to the petition for reconsideration and the technology review under CAA section 112(d)(6). The proposal also includes corrections to technical errors in the current NESHAP subparts HH and HHH. The treatment of standards within this proposal can be divided into the following categories: (1) already regulated emission points of currently regulated HAP; (2) unregulated emission points; and (3) regulated emission points of HAP not currently regulated. Additionally, the EPA is specifically soliciting comment on several aspects of this proposed rule. See table 3 in section IV of the preamble for a complete list of the solicitation of comments in this proposed rulemaking.

1. Already Regulated Emission Points of Currently Regulated HAP

The EPA proposes no revisions to the current standards in NESHAP subparts HH and HHH are necessary pursuant to the CAA section 112(d)(6) technology review. The current NESHAP subpart HH contains major source standards for HAP emissions from glycol dehydration process vents, storage vessels with potential for flash emissions, and natural gas processing plant equipment leaks and area source standards for glycol dehydrators, while subpart HHH contains major source standards for glycol dehydration process vents. As explained below, we have not identified cost-effective developments that, considering all relevant factors, render it ''necessary'' to propose revisions to the existing standards within these categories.

2. Unregulated Emission Points

With respect to emission points unregulated under these NESHAP, the EPA proposes that we are not obligated to promulgate standards for additional emission points at this time as part of the CAA section 112(d)(6) technology review. Under this approach, we would defer action on expanding these NESHAP to include currently unregulated emission points to better conform this action to the obligation conferred under CAA section 112(d)(6) and consider at a later time whether and

[1] 64 FR 32610 (June 17, 1999).
[2] 77 FR 49490 (August 16, 2012).
[3] *Cal. Cmtys. Against Toxics, et al.* v. *Regan*, No. 1:22–cv–10120–CRC (D.D.C.).

how such HAP emissions from such emission points should be addressed.

In the alternative, the EPA is performing the analyses for a MACT floor under CAA section 112(d)(3) and combining the beyond-the-floor analysis of CAA section 112(d)(2) with the technology review analysis of CAA section 112(d)(6). These analyses and the resulting proposed standards from this alternative approach are presented in section III.B.4 of this preamble. These proposed alternatives in NESHAP subpart HH include standards for the following previously unregulated emission points: acid gas removal units (AGRU), storage vessels without the potential for flash emissions (PFE), and transport vessel loading operations. The proposed alternatives in NESHAP subpart HHH include standards for the following previously unregulated emission points: storage vessels, transport vessel loading operations, controllers, and pumps.

3. Regulated Emission Points of Previously Unregulated HAP

The EPA also proposes in this document new standards for a previously unregulated HAP, methanol, from already regulated emission points at crude oil and natural gas production facilities (NESHAP subpart HH). Our proposal to regulate methanol does not include sources at transmission and storage facilities (NESHAP subpart HHH); while industry reported HAP emissions, including methanol, in response to the 2023 ICR questionnaire, there were no reported methanol emissions from transportation and storage facilities. Lastly, we propose revising the major source definition for production facilities along with several technical corrections.

4. Impacts of Proposal

Under the proposed approach, which limits the scope of this rulemaking to only those regulatory activities required by Congress in CAA section 112(d)(6), the EPA anticipates that this proposed rulemaking will not result in additional compliance costs or emissions reductions for the proposed option. For the alternative proposed option in which the EPA proposes new standards for previously unregulated emission points, the Agency anticipates minimal costs (due to increased recordkeeping and reporting requirements) and no emissions impacts since the relevant facilities would already be able to achieve the alternative proposed standards.

The EPA proposes to amend the definition of ''associated equipment'' by removing ''except glycol dehydrators and storage vessels.'' The EPA is proposing this change because glycol dehydrators and storage vessels are clearly equipment associated with production wells, and we do not see any language in CAA section 112(n)(4) allowing aggregation of emissions from any associated equipment in determining whether any such equipment is a major source. The EPA expects that this proposed amendment will have deregulatory impacts (cost savings), though the Agency lacks the information needed to make a quantitative assessment at this time.

B. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source categories that are the subject of this proposal. Table 1 is not intended to be exhaustive but rather provides a guide for readers regarding the entities that this proposed rulemaking is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, State, local, and Tribal government entities would not be affected by this proposed rulemaking. As defined in the Initial List of Categories of Sources Under Clean Air Act Amendments of 1990 Section 112(c)(1) (*see* 57 FR 31576, July 16, 1992) and Documentation for Developing the Initial Source Category List, Final Report (*see* EPA–450/3–91–030, July 1992), the crude oil and natural gas production category source category is any facility engaged in crude oil and natural gas production. The natural gas transmission and storage category is any facility engaged in natural gas transmission and storage. This source category includes, but is not limited to, glycol dehydration units, storage vessel emissions, and equipment leaks from compressors and ancillary equipment at natural gas processing plants. Subsequently, in the Final Area Source Rule on January 3, 2007,[4] we added this category to the list of area source categories for regulation under a **Federal Register** publication for the Integrated Urban Air Toxics Strategy.[5] Oil and natural gas production is identified in the Urban Air Toxics Strategy as an area source category for regulation under CAA section 112(c)(3) because of benzene emissions from triethylene glycol (TEG) dehydration units located at such facilities. The Oil and Gas Production area source category covers glycol dehydration units.

The source categories that are the subject of this proposal are Crude Oil and Natural Gas Production and Natural Gas Transmission and Storage regulated under 40 CFR part 63, subparts HH and HHH, respectively. The EPA set maximum achievable control technology (MACT) standards for the Crude Oil and Natural Gas Production major source category in 1999 and conducted the residual risk and technology review in 2012 (NESHAP subpart HH). The EPA set MACT standards for the Natural Gas Transmission and Storage major source category in 1999 and conducted the residual risk and technology review in 2012 (NESHAP subpart HHH). The sources affected by the major source NESHAP for the Crude Oil and Natural Gas Production source category (NESHAP subpart HH) are oil and natural gas production and processing facilities. The EPA set generally available control technology (GACT) standards for the Crude Oil and Natural Gas area source category in the 2007 Final Area Source Rule (NESHAP subpart HH). The sources affected by the area source NESHAP for the Crude Oil and Natural Gas Production source category are glycol dehydrators at oil and gas production and processing facilities that are not major sources.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NESHAP	NAICS code [1]
Crude Oil and Natural Gas Production	40 CFR part 63, subpart HH	211111 211112
Natural Gas Transmission and Storage	40 CFR part 63, subpart HHH	221210 486111 486210

[1] North American Industry Classification System (NAICS).

[4] 72 FR 26 (January 3, 2007).

[5] 64 FR 38706 (July 19, 1999).

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

In addition to being available in the docket, an electronic copy of this rulemaking is available on the internet. In accordance with 5 U.S.C. 553(b)(4), a brief summary of this rulemaking may be found at *www.regulations.gov,* Docket ID No. EPA–HQ–OAR–2025–1348. Following signature by the EPA Administrator, the Agency will post a copy of this proposed rulemaking at *https://www.epa.gov/stationary-sources-air-pollution/oil-and-natural-gas-production-facilities-national-emission.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

A memorandum showing the rulemaking edits that would be necessary to incorporate the changes to NESHAP subparts HH and HHH proposed in this action is available in the docket (Docket ID No. EPA–HQ–OAR–2025–1348). Following signature by the EPA Administrator, the EPA also will post a copy of this document to *https://www.epa.gov/stationary-sources-air-pollution/oil-and-natural-gas-production-facilities-national-emission.*

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by CAA section 112, as amended (42 U.S.C. 7412). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of HAP from stationary sources. Generally, the first stage involves establishing technology-based standards that reflect MACT or an appropriate alternative.[6] The second stage involves evaluating those standards within eight years to determine whether additional standards are needed to address any remaining risk associated with HAP emissions.[7] This second stage is commonly referred to as the ''residual risk review.'' In addition to the residual risk review, CAA section 112 also requires the EPA to review the standards every eight years and ''revise as necessary'' taking into account ''developments in practices, processes, or control technologies.'' [8] This review is commonly referred to as the ''technology review,'' and is the subject of this proposal unless otherwise indicated. The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements.

In the first stage of CAA section 112 standard-setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. ''Major sources'' are those that emit or have the potential to emit 10 tpy or more of a single HAP or 25 tpy or more of any combination of HAP.[9] All other sources are ''area sources.'' [10] For major sources, CAA section 112(d)(2) provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT ''floor,'' based on emission controls achieved in practice by the best performing sources. In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards in lieu of numerical emission standards. The EPA also considers control options that are more stringent than the floor.[11] Standards more stringent than the floor are commonly referred to as ''beyond-the-floor'' standards. For area sources, CAA section 112(d)(5) allows the EPA to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards. For categories of major sources and any area source categories subject to MACT standards, the second stage focuses on identifying and addressing any remaining (*i.e.,* ''residual'') risk within eight years pursuant to CAA section 112(f) and concurrently conducting a technology review pursuant to CAA section 112(d)(6). For categories of area sources subject to GACT standards, there is no requirement to address residual risk, but, similar to the major source categories, the technology review is required every eight years.[12]

Section 112(d)(6) of the CAA requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less often than every eight years. In conducting this review, which we call the ''technology review,'' the EPA is not required to recalculate the MACT floors that were established in earlier rulemakings.[13] The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6).[14]

B. What are the source categories and how does the current NESHAP regulate its HAP emissions?

This section of the preamble generally describes: the structure of the oil and natural gas industry, the source categories regulated under CAA section 112, how the current NESHAP regulates its HAP emissions, and the type of HAP emissions from these source categories.

The EPA characterizes the oil and natural gas industry's operations as being generally composed of four segments: (1) extraction and production of crude oil and natural gas (''oil and natural gas production''), (2) natural gas processing, (3) natural gas transmission and storage, and (4) natural gas distribution.[15]

The oil and natural gas production segment includes the wells and all related processes used in the extraction, production, recovery, lifting, stabilization, and separation or treatment of oil and/or natural gas (including condensate). Although many wells produce a combination of oil and natural gas, wells can generally be grouped into two categories: oil wells and natural gas wells. There are two types of oil wells, oil wells that produce crude oil only and oil wells that produce both crude oil and natural gas (commonly referred to as ''associated'' gas). Production equipment and components located on the well pad may include, but are not limited to: wells and related casing heads; tubing heads; ''Christmas tree'' piping, pumps, and compressors; heater treaters; separators; storage vessels; process controllers; pumps; and dehydrators. Production operations include well drilling, completion, and recompletion processes, including all the portable non-self-propelled apparatuses associated with those operations.

[6] 42 U.S.C. 7412(d)(1)–(4).

[7] *Id.* 7412(f)(2).

[8] *Id.* 7412(d)(6).

[9] *Id.* 7412(a)(1).

[10] *Id.* 7412(a)(2).

[11] *Id.* 7412(d)(2).

[12] *Id.* 7412(d)(6).

[13] *Ass'n of Battery Recyclers, Inc.* v. *EPA*, 716 F.3d 667 (D.C. Cir. 2013); *Nat. Res. Def. Council (NRDC)* v. *EPA*, 529 F.3d 1077, 1084 (D.C. Cir. 2008).

[14] 42 U.S.C. 7412(d)(2), (d)(6); *Ass'n of Battery Recyclers*, 716 F.3d at 673–74.

[15] The EPA regulates oil refineries as a separate source category.

Other sites that are part of the production segment include ''centralized tank batteries,'' stand-alone sites where oil, condensate, produced water, and natural gas from several wells may be separated, stored, or treated. The production segment also includes gathering pipelines, gathering and boosting compressor stations, and related components that collect and transport the oil, natural gas, and other materials and wastes from the wells to the refineries or natural gas processing plants.

Crude oil and natural gas undergo successive, separate processing. The process separates crude oil from water and other impurities and transported to a refinery via truck, railcar, or pipeline. The EPA treats oil refineries as a separate source category; accordingly, for present purposes, the oil component of the production segment ends at the point of custody transfer at the refinery.[16]

Industry commonly refers to separated, unprocessed natural gas as field gas. Field gas contains methane, natural gas liquids (NGL), and other impurities such as water vapor, hydrogen sulfide (H_2S), carbon dioxide (CO_2), helium, and nitrogen. Ethane, propane, butane, isobutane, and pentane are all considered NGL and often are sold separately for a variety of different uses. Natural gas with high methane content is referred to as ''dry gas,'' while natural gas with significant amounts of ethane, propane, or butane is referred to as ''wet gas.'' Natural gas is typically sent to gas processing plants to separate NGLs for use as feedstock for petrochemical plants, fuel for space heating and cooking, or a component for blending into vehicle fuel.

The natural gas processing segment consists of separating certain hydrocarbons (HC) and fluids from the natural gas to produce ''pipeline quality'' dry natural gas. The degree and location of processing is dependent on factors such as the type of natural gas (*e.g.,* wet or dry gas), market conditions, and company contract specifications. Typically, processing of natural gas begins in the field and continues as the gas is moved from the field through gathering and boosting compressor stations to natural gas processing plants, where the complete processing of natural gas takes place. Natural gas processing operations separate and recover NGL or other non-methane gases and liquids from field gas through one or more of the following processes: oil and condensate separation, water removal, separation of NGL, sulfur and CO_2 removal, fractionation of NGL, and other processes, such as the capture of CO_2 separated from natural gas streams for delivery outside the facility.

After processing, natural gas exits the natural gas processing plant and enters the transmission and storage segment. From there, the system transports the gas for storage and/or distribution to the end user. Pipelines in the natural gas transmission and storage segment can be interstate pipelines, which carry natural gas across State boundaries, or intrastate pipelines, which transport the gas within a single state. Basic components of the two types of pipelines are the same, though interstate pipelines may be of a larger diameter and operated at a higher pressure. To ensure that the natural gas continues to flow through the pipeline, the natural gas must periodically be compressed, thereby increasing its pressure. Compressor stations perform this function and are usually placed at 40- to 100-mile intervals along the pipeline. At a compressor station, reciprocating or centrifugal compressors compress the natural gas entering the station as it moves through the pipelines.

Another part of the transmission and storage segments are aboveground and underground natural gas storage facilities. Storage facilities hold natural gas for use during peak seasons. Unlike underground sites, aboveground storage utilizes manufactured vessels rather than earthen containment. Underground storage of natural gas typically occurs in depleted natural gas or oil reservoirs and salt dome caverns. One purpose of this storage site is for load balancing (equalizing the receipt and delivery of natural gas). At an underground storage site, typically other processes occur, including compression, dehydration, and flow measurement.

The distribution segment provides the final step in delivering natural gas to customers.[17] The natural gas enters the distribution segment from delivery points located along interstate and intrastate transmission pipelines to business and household customers. The delivery point where the natural gas leaves the transmission and storage segment and enters the distribution segment is a local distribution company's custody transfer station, commonly referred to as the ''city-gate.'' Natural gas distribution systems consist of over two million miles of piping, including mains and service pipelines to the customers. Large distribution networks require compressor stations to maintain flow. However, these stations are typically smaller than transmission compressor stations. Distribution systems include metering stations and regulating stations that allow distribution companies to monitor natural gas flow.

The Crude Oil and Natural Gas Production Source Category NESHAP (NESHAP subpart HH) covers the production and processing segments of the industry and applies to facilities that meet the specified applicability criteria. For the purposes of NESHAP subpart HH, natural gas enters the natural gas transmission and storage source category after the natural gas processing plant, when present. If no natural gas processing plant is present, natural gas enters the transmission and storage source category after the point of custody transfer. Examples of facilities in the oil and natural gas production source category include, but are not limited to: well sites; satellite tank batteries; central tank batteries; a compressor station that transports natural gas to a natural gas processing plant; and natural gas processing plants. The Crude Oil and Natural Gas Production Source Category NESHAP (NESHAP subpart HH) contain standards for HAP emissions from glycol dehydration process vents, storage vessels and natural gas processing plant equipment leaks. In addition to this NESHAP for major sources, the NESHAP for the Crude Oil and Natural Gas Production, NESHAP subpart HH also contains area source standards for glycol dehydrators, which are based on GACT.

The Natural Gas Transmission and Storage Category NESHAP (NESHAP subpart HHH) covers the transmission and storage segment of the industry and applies to facilities that meet the specified applicability criteria and transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user (if there is no local distribution company). A compressor station does not belong to the transmission and storage segment if it transports natural gas before the custody transfer point or to a processing plant. Facilities in this source category include an underground natural gas storage operation; or a natural gas compressor station that receives natural gas via pipeline, from an underground natural gas storage operation, or from a natural gas processing plant. Additionally, NESHAP subpart HHH contains major source standards for HAP from glycol dehydration process vents.

[16] *See* 40 CFR part 60, subparts J and Ja, and 40 CFR part 63, subparts CC and UUU.

[17] The distribution segment is not included in the Crude Oil and Natural Gas Production or Natural Gas Transmission and Storage Source Categories in NESHAP subparts HH or HHH.

Emissions can occur from a variety of processes and points throughout the oil and natural gas industry sector. Emissions from the oil and natural gas industry sector include organic HAP, volatile organic compounds (VOCs), sulfur dioxide (SO_2), nitrogen oxide (NO_X), H_2S, carbon disulfide (CS_2), and carbonyl sulfide (COS) are emitted in varying concentrations and amounts.[18] The most common organic HAP are n-hexane and BTEX (benzene, toluene, ethylbenzene and xylenes) compounds. Broadly, HAP emissions cause or are suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. Exposure to HAP emissions at sufficient concentrations and durations may increase the risk of developing cancer or experiencing other serious health effects. These health effects can include damage to the immune system, as well as neurological, reproductive (*e.g.,* reduced fertility), developmental, respiratory and other health problems. In addition to exposure from breathing air toxics, some toxic air pollutants can deposit onto soils or surface waters, where they are absorbed by plants and ingested by animals and are eventually magnified up through the food chain. Like humans, animals may experience health problems if exposed to sufficient quantities of HAP emissions over time.

The Crude Oil and Natural Gas Production Category NESHAP (NESHAP subpart HH) contain standards for HAP emissions from glycol dehydration process vents, storage vessels, and natural gas processing plant equipment leaks. The Natural Gas Transmission and Storage Category NESHAP (NESHAP subpart HHH) contain standards for glycol dehydration process vents.

In addition to these NESHAP for major sources, the NESHAP for the Crude Oil and Natural Gas Production, NESHAP subpart HH also contains area source standards for glycol dehydrators, which are based on GACT.

C. What data collection activities were conducted to support this action?

The EPA used several data sources to support this rulemaking. In February 2023, the EPA issued an Information Collection Request (ICR) pursuant to CAA section 114 to gather information to inform the technology review and other considerations related to NESHAP subparts HH and HHH (2023 ICR). The EPA sent ICRs to 18 entities/respondents (nine production and processing companies and nine transmission and storage companies). The EPA asked respondents to complete a separate survey for each company-operated facility, choosing up to 25 per owner that represented various geographical regions, operation types, and sizes.

The EPA received responses from 231 production and processing facilities and 57 transmission and storage facilities. The information collected from respondents in Phase I included facility descriptions, HAP emissions per unit type, control technologies and emissions reduction work practices utilized at subject facilities. The EPA asked respondents to identify whether the facility is a major or area source, as defined by 40 CFR part 63. The 231 production and processing facilities included eight major source facilities, 221 area source facilities and two that did not self-identify. The 57 transmission and storage facilities included 39 major source facilities and 18 area source facilities.

Following the 2023 ICR effort, in July 2024, the EPA issued a follow up ICR (2024 Phase II ICR) to the same nine production and processing companies and nine transmission and storage companies. The EPA requested glycol dehydrators and acid gas removal units testing, and additional process controllers and pumps information. The EPA requested an analysis to quantify the presence of metals that could be transferred from the raw natural gas to the rich glycol during dehydration or the rich amine solution from acid gas removal units during acid gas removal. The EPA requested an inventory and description of process controllers and pumps at transmission and storage facilities. All the responses received on both the 2023 ICR and the 2024 Phase II ICR, with the exception of information claimed confidential, are in the docket for this rulemaking (Docket ID No. EPA–HQ–OAR–2025–1348).

The EPA collected data on units that emit HAP to help inform the Agency in its review of the Oil and Gas NESHAP pursuant to CAA section 112(d)(6), as well as its evaluation of the issues raised in administrative petitions for reconsideration of the prior 2012 Final Rule amendments to these NESHAP.

The EPA used several data sources to determine the facilities that are subject to the Oil and Gas Production and Natural Gas Transmission and Storage NESHAP. We identified facilities in the 2017 National Emissions Inventory (NEI) and the Toxics Release Inventory system having a primary facility NAICS code beginning with 4247, Petroleum and Petroleum Products Merchant Wholesalers.[19] We also used information from the original oil and gas NESHAP, the Office of Enforcement and Compliance Assurance's Enforcement and Compliance History Online tool, and the Energy Information Administration.[20] [21] To inform our reviews for these emission points, we reviewed the EPA's Reasonably Available Control Technology (RACT)/Best Available Control Technology (BACT)/Lowest Achievable Emission Rate (LAER) Clearinghouse (RBLC) and regulatory development efforts for similar sources.[22] [23] The EPA also reviewed air permits to determine facilities subject to the NESHAP subpart HH (Production) and NESHAP subpart HHH (Transmission and Storage).

We met with industry representatives from the American Petroleum Institute, Gas Processors Association, and held a series of virtual meetings with producers.[24]

D. What other relevant background information and data are available?

In addition, we relied on certain technical reports and memoranda that the EPA developed for glycol dehydrators and their control devices in the 2012 Crude Oil and Natural Gas Production and the Natural Gas Transmission and Storage residual risk and technology review.[25] The Risk and Technology Review (RTR) docket is at Docket ID No. EPA–HQ–OAR–2010–0505. For completeness of this rulemaking and for ease of reference in finding these items in the publicly available rulemaking docket, we are including the most relevant technical support documents in the docket for this proposed rulemaking (Docket ID No. EPA–HQ–OAR–2025–1348).

[18] In addition, there are emissions associated with the reciprocating internal combustion engines and combustion turbines that power compressors throughout the oil and natural gas industry sector. However, emissions from internal combustion engines and combustion turbines are covered by regulations specific to engines and turbines and, thus, are not addressed in this proposed rulemaking.

[19] At the time the technology review was initiated, the 2017 NEI was the most recent complete inventory available.

[20] *https://echo.epa.gov.*

[21] *https://www.eia.gov.*

[22] *https://www.epa.gov/catc/ractbactlaer-clearinghouse-rblc-basic-information.*

[23] The EPA reviewed standards for Gasoline Distribution regulated under 40 CFR part 63, subparts R and BBBBBB, and Bulk Gasoline Terminals regulated under 40 CFR part 60, subparts XX and XXa.

[24] *See* memorandum documenting meeting in the Public Docket at *https://www.regulations.gov/* Docket ID No. EPA–HQ–OAR–2025–1348.

[25] *See* memorandum documenting meeting in the Public Docket at *https://www.regulations.gov/* Docket ID No. EPA–HQ–OAR–2025–1348.

E. How does the EPA perform the technology review?

Our technology review primarily focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identify such developments, we analyze their technical feasibility, estimated costs, energy implications, and non-air environmental impacts.[26] We also consider the emission reductions associated with the potential application of each development. This analysis informs our decision whether it is ''necessary'' to revise the emissions standards.[27] In addition, we consider the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a ''development'': [28]

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we last updated the NESHAP, we reviewed a variety of data sources in our investigation of potential practices, processes, or controls to consider. Pursuant to the D.C. Circuit's decision in *Louisiana Environmental Action Network (LEAN)* v. *EPA*, 955 F.3d 1088 (D.C. Cir. 2020), we also reviewed available data to determine if there are unregulated HAP within the source category and evaluate these data for use in developing new emission standards.

III. Analytical Results and Proposed Decisions

In this rulemaking, the EPA is proposing decisions and regulatory amendments in response to statutory requirements, court decisions, petitioner issues, and technical corrections. Table 2 summaries these decisions and actions. The description column in table 2 notes that the proposal items include the technology review of existing standards, the addition of methanol as a regulated HAP, the surrogacy analysis for small dehydrators, the technical correction to the equation in the small dehydrator standards, and the addition of additional software for compliance analyses.

In addition, the EPA is proposing that when conducting a CAA section 112(d)(6) technology review, the Agency is not obligated to expand the NESHAP to previously unregulated emission points. In the past, the Agency has previously suggested that the D.C. Circuit's decision in *LEAN* mandates that the EPA expand the NESHAP to include additional emission points as part of the technology review under CAA section 112(d)(6). However, the Agency now proposes that *LEAN* does not mandate such action pursuant to CAA section 112(d)(6), which instructs the EPA to revise existing standards for regulated emission points ''as necessary,'' considering developments since the last rulemaking. On this basis, the EPA proposes to defer action on such a potential expansion of the NESHAP to future action that looks at the problem holistically, including consideration whether such emission points belong within one or both of these NESHAP and what controls may or may not be appropriate and consistent with the statute.

Although we maintain that CAA section 112(d)(6) review does not require the EPA to expand the NESHAP to previously unregulated emission points, we are including a tentative proposal about what standards could be if we were not to finalize the proposed understanding as described above. We include both approaches to ensure that the public has an adequate opportunity to comment. The alternative proposed standards are for the following unregulated emission points: acid gas removal units, storage vessels without potential for flash emissions, and transport vessel loading operations in the production and processing source category under NESHAP subpart HH, and storage vessels, transport vessel loading operations, process controllers, and pumps in the transmission and storage source category under NEHAP subpart HHH.

Table 2 of this preamble presents a summary of the EPA's proposed decisions and actions. Specifically, the table shows the proposed change to each emission point, corrections being proposed in this rulemaking, and the reasoning for the corrections.

TABLE 2—SUMMARY OF PROPOSED DECISION AND ACTIONS

Emission point	Reason	Description of decision/action	Applicable NESHAP subpart
Technology Review of Already Regulated Emission Points of Currently Regulated HAP			
Dehydrators (major and area sources).	CAA section 112(d)(6) Technology Review.	Control technique identified but revision not necessary—No revision proposed.	HH, HHH.
Storage Vessels with the PFE	CAA section 112(d)(6) Technology Review.	No developments in practices, processes and control techniques identified—No action proposed.	HH.
Leak Detection and Repair at Natural Gas Processing Plants.	CAA section 112(d)(6) Technology Review.	Use of OGI to detect leaks identified as development. However, not cost effective for HAP—No action proposed.	HH.

[26] 42 U.S.C. 7412(d)(2).

[27] *Id.* 7412(d)(6).

[28] 76 FR 29032, 29047and 29048 (May 19, 2011); *see also Nat'l Ass'n for Surface Finishing* v. *EPA*, 795 F.3d 1, 11 (D.C. Cir. 2015) (upholding the EPA's interpretation of what is considered ''developments'' under CAA section 112(d)(6) and affording persuasive weight to the EPA's methodology and balancing decisions for a technology review).

TABLE 2—SUMMARY OF PROPOSED DECISION AND ACTIONS—Continued

Emission point	Reason	Description of decision/action	Applicable NESHAP subpart
Definition of Associated Equipment			
Large and small dehydrators and storage vessels with PFE.	CAA section 112(n)(4) (Prohibits aggregating emissions from wells and associated equipment when determining major source status).	Propose revising the ''associated equipment'' definition to remove the exclusion of dehydrators and storage vessels thereby clarify that they are associated equipment.	HH.
Standards for Unregulated HAP (Methanol)			
Regulated emission points—small and large dehydrators and storage vessels with PFE.	*LEAN* Court Decision	Proposing standards for methanol from small dehydrators.	HH.
Unregulated emission points—AGRU, transport vessel loading operations, storage vessels without PFE.	*LEAN* Court Decision	Proposing not required to address under section 112(d)(6). Alternative proposal to adopt standards for unregulated emission points.	HH.
Unregulated Emission Points of Already Regulated HAP (Proposing Not Required To Address Under Section 112(d)(6))			
Storage Vessels without the PFE	*LEAN* Court Decision	Alternative proposal to adopt standards for unregulated emission points.	HH.
All Storage Vessels	*LEAN* Court Decision	Alternative proposal to adopt standards for unregulated emission points.	HHH.
Transport Vessel Loading Operations.	*LEAN* Court Decision	Alternative proposal to adopt standards for unregulated emission points at processing plants and natural gas transmission and storage facilities.	HH, HHH.
Natural Gas-Driven Process Controllers.	*LEAN* Court Decision	Alternative proposal to adopt standards for unregulated emission points at natural gas transmission and storage facilities.	HHH.
Natural Gas-Driven Pumps	*LEAN* Court Decision	Alternative proposal to adopt standards for unregulated emission points at natural gas transmission and storage facilities.	HHH.
Regulated Emission Points of Unregulated HAP (Methanol and Other HAP Except BTEX)			
Small Dehydrators	*LEAN* Court Decision	Determined that BTEX is adequate surrogate for all HAP except methanol; proposing methanol standard.	HH, HHH.
Technical Corrections			
Small Dehydrator Equations	Petitioner Issue/Technical Correction.	Equations in rule are not reasonable for small dehydrators with very low BTEX inlet concentrations—Proposing alternative equations for these situations.	HH, HHH.
Dehydrators	Technical Correction	Add ProMax™ as allowed methodology to calculate dehydrator emissions.	HH, HHH.

A. What are the results and proposed decisions based on our technology review for emission points and HAP currently regulated in NESHAP Subpart HH and NESHAP Subpart HHH, and what is the rationale for those decisions?

In technology reviews under CAA section 112(d)(6), the EPA reviews the standards that are already established to determine whether revisions are ''necessary,'' considering developments in technology, processes, and practices. In this rulemaking, the EPA reviewed the existing NESHAP standards, set under NESHAP subpart HH, which are major source requirements for storage vessels with potential flash emissions, large and small glycol dehydration units, and equipment leaks from ancillary equipment and compressors at natural gas processing plants. For subpart HH area sources, the EPA reviewed standards for glycol dehydrators. For NESHAP subpart HHH, we examined standards for large and small glycol dehydration units at major sources.

As discussed in section II.E of this preamble, the technology review process involves identification of development of practices, processes, and control technologies since the MACT standards were promulgated, and the following situations represent a ''development.''

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;

• Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and

• Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

Below is a summary of the technology review for dehydrators, storage vessels with the PFE, and equipment leaks at natural gas processing plants. For the complete technology review please see Volume II of the Technical Support Document (TSD) prepared for this proposal.[29] The TSD can be found in the Oil and Natural Gas NESHAP Docket for this action, Docket ID No. EPA–HQ–OAR–2025–1348.

As noted above, the EPA evaluates developments in practices, processes, and control technologies for sources and HAP currently regulated under NESHAP subparts HH and HHH. Section III.B of this preamble discusses proposed actions to amend NESHAP subparts HH and NESHAP HHH. These include a proposed modification to the major source definition in NESHAP subpart HH for operations located prior to the point of custody transfer to the natural gas processing plant (section III.B.1 of this preamble), the proposed addition of methanol to the list of regulated HAP for both NESHAP (section III.B.2 of this preamble), the proposed decision regarding the surrogacy of BTEX for all HAP (except methanol) emitted from small dehydrators (section III.B.2 of this preamble), proposed standards for several unregulated emission points (section III.B.3 preamble), and proposed alternatives to the equations that establish unit-specific BTEX limits for small dehydrators (section III.B.4 of this preamble).

1. Glycol Dehydrators

Glycol dehydration units remove water and other condensates in natural gas from an individual well or several wells. These units also operate as part of various processing units at condensate tank batteries, natural gas processing plants, and offshore production platforms. Dehydration prevents water vapor from forming hydrates, which corrode and plug equipment lines. Of the dehydration units subject to NESHAP subparts HH and HHH, TEG units comprise the majority, while diethylene glycol (DEG), and solid desiccant units make up the remainder.

Large dehydrators at major sources subject to NESHAP subparts HH and HHH, and at areas sources located in urban areas subject to NESHAP subpart HH are currently required to route emissions through a closed vent system to a control device(s) designed and operated in accordance with the requirements of 40 CFR 63.771(d) (NESHAP subpart HH) or 40 CFR 63.1281(d) (NESHAP subpart HHH).[30] These control device provisions include the option of using an enclosed combustion device that either reduces the mass content of either total organic compound (TOC) or total HAP by 95 percent or greater, reduces the concentration of either TOC or total HAP in the exhaust gases at the outlet to the device to a 20 ppmv or less, or operates at a minimum temperature of 760 degrees Centigrade (°C). If a boiler or process heater is used as the control device, then the requirement is that the vent stream be introduced into the flame zone of the boiler or process heater. Another option is to use a vapor recovery device designed and operated to reduce the mass content of either TOC or total HAP by 95 percent or greater. The final option is to use a flare that meets the requirements in 40 CFR 63.11(b). The EPA also notes that large dehydrators may also comply by reducing benzene emissions to 0.9 megagrams per year (Mg/yr) or less.

Small dehydrators at major sources subject to NESHAP subparts HH and HHH are currently required to reduce BTEX emissions to a unit-specific BTEX emission limit determined in accordance with the applicable equation in the rule. Compliance with these limits can be achieved by utilizing a control device (discussed above) or via a process modification.[31]

During the development of the original 1999 NESHAP and the 2012 technology review for NESHAP subparts HH and HHH, the EPA evaluated various practices, processes, and control technologies for dehydrators. This evaluation included add-on controls—such as condensers, vapor recovery units, carbon bed adsorbers, and combustion devices such as flares and incinerators—as well as pollution prevention and process modifications. Ultimately, the EPA found no improvements in these add-on techniques that could result in additional emission reductions or significant changes in the cost of applying them.

Pollution prevention practices and process modifications to reduce emissions from dehydrators are highly specific to many conditions unique to a site, such as the composition of the gas and oil extracted, the climate of the site, and the other operations at the site. One universally applicable pollution prevention measure that was evaluated previously and is required in NESHAP HH for large dehydrators at area sources not located in urban areas, is optimizing glycol circulation rates. The EPA identified no other widely applicable practices or processes that would result in additional emission reductions.

The EPA identified two technologies not evaluated in either of the original 1999 NESHAP development or the previous technology review and thus, represent ''developments.'' These include replacing glycol dehydration units with methanol injections and desiccant dehydrators. The following sections detail our decision on each technology.

In the field, operators sometimes inject methanol to inhibit hydrate formation in high-pressure gas gathering systems. This is especially useful when solid desiccant or glycol dehydration cannot achieve the desired dew point to inhibit hydrate formation. Under frigid conditions operators may use methanol over glycol because it lowers the freezing point at which hydrates form. However, the high volume of methanol required for hydrate inhibition may make replacing large glycol dehydration units impracticable in many situations. Specifically, with increasing gas flow rates, the volume of methanol required to be injected to treat larger gas volumes for the required temperature suppression to prevent hydrate formation can make this option

[29] U.S. Environmental Protection Agency. (Last updated February 2026). DRAFT Background Technical Support Document for the National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities—Technology Review and Reconsideration. NESHAP subparts HH and HHH. Proposed Rules.

[30] Large units under HH have annual average benzene emissions equal to or greater than 0.90 Mg/yr and gas throughput equal to or greater than 85,000 cubic meters per day. Large units under HHH have annual average benzene emissions equal to or greater than 0.90 Mg/yr and equal to or great than 283,000 cubic meters per day. See 40 CFR 63.761 and 63.1271 for the complete definitions.

[31] In NESHAP HH (40 CFR 63.761), a small dehydrator is defined as a glycol dehydration unit, located at a major source, with an actual annual average natural gas flowrate less than 85 thousand standard cubic meters per day or actual annual average benzene emissions less than 0.90 Mg/yr. In NESHAP HHH (40 CFR 63.1271), a small dehydrator is defined as a glycol dehydration unit, located at a major source, with an actual annual average natural gas flowrate less than 283.0 thousand standard cubic meters per day or actual annual average benzene emissions less than 0.90 Mg/yr.

impracticable for those applications. Since this is not practicable in all cases, the EPA did not perform a cost analysis for this option. On this basis, the EPA is not proposing to adopt a standard for methanol injection under the CAA section 112(d)(6) technology review for glycol dehydration units.

Under certain operating conditions, desiccant dehydration units are used to reduce HAP emissions and can achieve a reduction of 99 percent. Ideal operating conditions to utilize desiccant dehydrators are when the wellhead gas temperature is low (less than 70 degrees Fahrenheit (° F) and the pressure is high (greater than 100 pounds per square inch gauge [psig]) and the volume of gas to be dried is 5 million standard cubic feet (MMscf)/day or less. Additionally, the desiccant is batch loaded. Our information indicates that batch loading is frequently performed at a higher gas flow rate. Since many of these sources are in remote areas and may not be visited by personnel for weeks at a time, the EPA proposes to conclude that desiccant dehydrators are infeasible for these sources.

Based on the above reasons, the EPA proposes to conclude that, although applicable in certain situations, the desiccant dehydrator technology is technically infeasible for broad implementation for the glycol dehydration units that are subject to NESHAP subparts HH and HHH. Due to this infeasibility, a cost analysis was not performed. Therefore, the EPA proposes it is not necessary to revise the standards for glycol dehydration units to require the use of this technology under the CAA section 112(d)(6).

2. Storage Vessels With the Potential for Flash Emissions (PFE)

In both NESHAP subpart HH and NESHAP subpart HHH, a storage vessel is defined as ''a tank or other vessel that is designed to contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, and that is constructed primarily of non-earthen materials (*e.g.,* wood, concrete, steel, plastic) that provide structural support.'' [32]

Flash emissions from storage vessels occur when a hydrocarbon liquid with high vapor pressure flows from a pressurized vessel into a vessel with a lower pressure. This typically happens when operators transfer hydrocarbon liquids, such as condensate, from a production separator to a storage vessel. The reduced pressure from the separator to the storage vessel with PFE allows dissolved vapors in the liquid to move to vapor phase in the headspace above the liquid and then move out of the storage vessel through the cover into the closed vent system.

The current standards in NESHAP subpart HH for storage vessels with the PFE require sources to route emissions through a closed vent system to a control device(s).[33] Enclosed combustion devices are required to achieve a reduction in the mass content of either total organic compound (TOC) or total HAP by 95 percent or greater, reduce the concentration of either TOC or total HAP in the exhaust gases at the outlet to the device to a 20 ppmv or less, or operate at a minimum temperature of 760 degrees °C. If a boiler or process heater is used as the control device, then the requirement is that the vent stream be introduced into the flame zone of the boiler or process heater. Another option is to use a vapor recovery device designed and operated to reduce the mass content of either TOC or total HAP by 95 percent or greater. The final option is to use a flare that meets the requirements in 40 CFR 63.11(b). Subpart HHH does not include standards for storage vessels with the PFE.

This section presents the technology review for storage vessels with PFE for the production (NESHAP subpart HH) category.[34] The EPA analyzed and made regulatory decisions for unregulated storage vessels, which are storage vessels without PFE at production sites (NESHAP subpart HH), and all storage vessels at natural gas transmission and storage sites (NESHAP subpart HHH), (see section III.B.4 of this preamble).[35]

The practices, processes, and control technologies considered and evaluated for storage vessels with the PFE as part of the development of the original 1999 NESHAP or the 2012 technology review and amendments for NESHAP subpart HH included add-on controls (condensers/vapor recovery units; combustion devices, including catalytic incinerators, thermal incinerators, and flares; and carbon bed adsorbers). In the development of the original 1999 NESHAP or the 2012 technology review and amendments for NESHAP subpart HH, the EPA did not find improvements in any of these add-on techniques that could result in additional emission reductions or significant changes in the cost of applying them.

Operators sometimes use internal floating roof tanks to reduce emissions from storage vessels. In the previous evaluations, internal floating roof tanks were not considered effective for storage vessels with the PFE because internal friction between the floating roof and the interior sides of tanks typical for the source category would prevent proper operation of the floating roof. In addition, the small quantities of liquid stored in these types of tanks typically do not provide sufficient buoyancy to support floating roofs. While a floating roof effectively limits vaporization, the EPA considered them a technically infeasible control method for storage tanks in the Oil and Natural Gas Production source category. This conclusion has not changed since we did not receive any new data that indicated otherwise.

The EPA proposes that no new practices, processes, or control technologies under CAA section 112(d)(6) were discovered in the review of available data, nor were significant changes in the cost or performance of previously evaluated technologies identified to further reduce emissions from the Oil and Natural Gas Production source category for storage vessels with the PFE.

3. Leak Detection and Repair (LDAR) at Processing Plants

Equipment leak emissions can occur through different types of connection points (*e.g.,* flanges, pressure relief valves, open-ended lines or threaded fittings) or through moving parts of valves, pumps, and other types of process equipment. These emissions are unintentional and occur due to changes in pressure, temperature, and mechanical stress on equipment which may eventually cause them to leak. Equipment leak emissions can also occur due to normal operation of equipment, which over time can cause seals and gaskets to wear. The type and number of equipment components, along with the HAP concentration in the stream, determine the total volume of emissions from equipment leaks.

The practices, processes, and control technologies that were considered and evaluated for reducing emissions from equipment leaks from ancillary equipment and compressors at natural gas processing plants as part of the original 1999 NESHAP development and/or the 2012 technology review and amendments for NESHAP subpart HH included ''traditional'' LDAR programs based on EPA Method 21, optical gas imaging (OGI) to identify equipment

[32] NESHAP subpart HH, 40 CFR 63.761; NESHAP subpart HHH, 40 CFR 63.1274.

[33] NESHAP subpart HH, 40 CFR 63.771(d).

[34] Storage vessels without PFE have only working and breathing emissions. Neither NESHAP subparts HH and HHH includes standards for these storage vessels and are not subject to this technology review.

[35] See sections III.B.4.b and III.B.4.c of this preamble.

leaks, equipment standards/modifications (including low emissions design equipment), ultrasound leak detection, directed inspection and maintenance, compressor rod packing systems, and centrifugal compressor seals. As a result of the 2012 technology review, the EPA determined that as part of the traditional NESHAP subpart HH Method 21-based LDAR program, it was warranted to lower the leak definition for valves to an instrument reading of at least 500 ppm and add connectors to the list of monitored components.

Regarding the 2012 technology review for NESHAP subpart HH related to the use of OGI, we concluded that the additional costs of OGI programs were not justified. Therefore, NESHAP subpart HH was not updated in 2012 to include OGI as a requirement or option for the equipment leak requirements at natural gas processing plants.

The EPA identified no developments in practices, processes, or control technologies from its review of the RBLC or the 2023 ICR results.

Historically, the method typically used for detecting leaking components from oil and natural gas facilities is EPA Method 21 (40 CFR part 60, appendix A). The EPA Method 21 procedure detects leaks from components using a toxic vapor analyzer or an organic vapor analyzer. For several NSPS, NESHAP, State and local regulations, EPA Method 21 has been the primary method for leak detection.

Another monitoring method for detecting leaking components from oil and natural gas production, transmission and storage facilities is OGI using an infrared (IR) camera. The IR camera may be passive or active. The operators use passive IR cameras to scan an area to produce images of equipment leaks from a number of sources. Active IR cameras point or aim an IR beam at a potential source to indicate the presence of gaseous emissions (equipment leaks). An equipment leak is any emissions that are visualized by an OGI instrument. The optical imaging camera can be very efficient in monitoring multiple pieces of equipment in a short amount of time, but the traditional optical imaging camera cannot quantify the amount or concentration of the equipment leak. Note that while the current NESHAP subpart HH equipment leak standards require EPA Method 21 monitoring, the use of OGI is allowed if owners and operators follow the alternative work practice (AWP) titled ''Alternative Work Practice to Detect Leaks from Equipment'' in 40 CFR part 63's General Provisions at 40 CFR 63.11(c). If a facility chooses to monitor components following the AWP, annual EPA Method 21 monitoring must be performed in addition to periodic OGI monitoring.

The use of OGI was evaluated in the 2012 technology review but the EPA did not elect to update NESHAP subpart HH primarily based on the costs. As noted above, the General Provisions for NESHAP at 40 CFR 63.11(c) allows as an alternative to a traditional LDAR monitoring program (*e.g.,* EPA Method 21) the use of the AWP under 40 CFR 63.11(c), which allows the use of OGI along with an annual EPA Method 21 survey of all of the equipment. However, because the OGI protocol had not yet been issued at the time of the 2012 technology review, standardized operating procedures and compliance determination protocols were not available. Without these procedures and protocols in place, replacing the existing LDAR requirements with OGI could not have been considered a development under CAA section 112(d)(6) at that time.

Since that time, OGI technology and its regulatory processes have advanced significantly. Many State regulations now include OGI, but the EPA primarily relies on CAA 40 CFR part 60, subpart OOOOb (and Emission Guidelines for 40 CFR part 60, subpart OOOOc). Over the last few years, OGI has matured into a prevalent technology that operators frequently use in the field to identify emissions from leaking components and equipment. Many oil and natural gas facilities currently use OGI to find leaks efficiently and repair leaking equipment quickly.

Under the final rule published 89 FR 16820, March 8, 2024 for NSPS for oil and natural gas operations (40 CFR part 60, subpart OOOOb), the EPA finalized the protocol for using OGI for leak detection specifically at a natural gas processing plant. The protocol is referred to as ''Appendix K'' to 40 CFR part 60. OGI uses an infrared camera to identify the presence and location of VOC and methane leaks that may otherwise be invisible. Requirements in appendix K includes performance specifications of infrared cameras, requisite operator training and auditing, the development of operating envelopes that define the boundary conditions for using an OGI camera, monitoring plans for conducting OGI surveys, recordkeeping, and development of response factors.

Based on the discussion above regarding maturity, procedures, and protocols specifying proper OGI use now available (*i.e.,* appendix K to part 60), the EPA determined that the use of OGI for detecting equipment leaks at natural gas processing facilities is considered a development under CAA section 112(d)(6). As specified in 40 CFR part 60 appendix K section 1.2, the use of the protocol is applicable to facilities only when incorporated through rulemaking into a specific subpart.

The EPA is not proposing to replace the existing EPA Method 21-based monitoring requirements with appendix K/OGI. As a method of leak detection, EPA Method 21 is not effective on a cost-basis when seeking to limit HAP. The EPA estimates the annual cost of bi-monthly OGI monitoring under appendix K, as required by 40 CFR part 60, subpart OOOOb, at approximately $62,000 for a small gas processing plant and $122,000 for a large processing plant. The emissions reductions achieved compared to the baseline level of no monitoring, was estimated at 0.47 tpy of HAP removed for a small processing plant and 0.98 tpy of HAP removed for a large processing plant. Therefore, the cost effectiveness is $132,000 and $125,000 per ton of HAP emissions reduced, for a small and large processing plant, respectively.

The EPA is seeking comment on whether to adopt OGI and appendix K as an alternative to EPA Method 21 for leak detection at processing plants, in part because OGI is an approved option in other oil and gas regulations for leak detection.[36] Should the EPA adopt OGI and 40 CFR part 60 appendix K as an alternative to EPA Method 21 leak detection and repair at processing plants? (Question #1)

B. What other actions are we proposing, and what is the rationale for those actions?

In this proposal, we are proposing actions to address unregulated HAP pursuant to the D.C. Circuit's decision in *LEAN*, various technical matters, and outstanding petition issues. Based on a review of available information pursuant to the *LEAN* decision, we are proposing the following: we are proposing to add methanol as a regulated HAP for the production and processing category (NESHAP subpart HH), and we are proposing to change how we apply CAA section 112(n)(4) with respect to major sources of HAP emissions in production (NESHAP subpart HH). While the EPA is proposing that CAA section 112(d)(6) does not require the Agency to expand the NESHAP to previously unregulated emission points, we are proposing in the alternative emission limits for AGRUs at major source natural gas processing plants subject to NESHAP subpart HH

[36] 40 CFR part 60, subparts OOOOa and OOOOb.

and at major source natural gas transmission and storage facilities subject to NESHAP subpart HHH; emission limits for storage vessels at major source natural gas transmission and storage facilities subject to NESHAP subpart HHH, and for storage vessels without the PFE at major sources subject to NESHAP subpart HH; emission limits for transport vessel loading operations at major source natural gas processing plants subject to NESHAP subpart HH and at major source natural gas transmission and storage facilities subject to NESHAP subpart HHH; and emission limits for process controllers and pumps powered by natural gas that are at major natural gas transmission and storage facilities subject to NESHAP subpart HHH.

We are proposing the existing BTEX limits for both new and existing small glycol dehydrators as a surrogate standard for all HAP from small glycol dehydrators, except for methanol and ethylene glycol at sources subject to NESHAP subparts HH and HHH[37] [38]. The results and proposed decisions, as well as the rationale for those decisions, are presented below.

1. Major Source Definition

CAA section 112(a)(1) defines a ''major source'' as ''any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tpy or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants.'' [39] However, specifically for oil and gas sources, CAA section 112(n)(4)(A) states that ''[n]otwithstanding [CAA section 112(a)], emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section.'' [40]

In 1999, the EPA promulgated the major source NESHAP for the Oil and Gas Production Facilities (NESHAP subpart HH) and for Natural Gas Transmission and Storage Facilities (NESHAP subpart HHH). The NESHAP subpart HH covers production field facilities (where wells and associated equipment are located) and processing plants. In that rulemaking, the EPA interpreted CAA section 112(n)(4)(A) to mean ''HAP [hazardous air pollutant] emissions from each well and each piece of equipment considered to be associated with the well must be evaluated separately in a major source determination. That is, any well or piece of associated equipment would only be determined to be a major source if HAP emissions from that well or piece of associated equipment were major.'' [41] To implement this provision, the EPA included in the rule a definition for ''associated equipment.'' In the 1999 Final Rule, the EPA defined ''associated equipment'' to exclude glycol dehydrators and storage vessels with PFE. Specifically, ''Associated equipment, as used in this subpart and as referred to in section 112(n)(4) of the Act, means equipment associated with an oil or natural gas exploration or production well, and includes all equipment from the wellbore to the point of custody transfer to the natural gas processing plant, except glycol dehydration units and storage vessels with PFE.'' [42] The EPA explained that Congress did not define ''associated equipment,'' and the Agency wanted to ''arrive at a reasonable interpretation that would . . . prevent aggregation of small, scattered HAP emission points in major source determinations . . . [but] not preclude the aggregation of significant HAP emission points in the source category.'' [43]

As a result, glycol dehydrators and storage vessels with PFE at a production field are major sources if their aggregate emissions at the facility meet the ''major source'' definition. In 2012, the EPA amended the definition of ''associated equipment'' to remove ''with potential flash emissions,'' thereby allowing emissions from all storage vessels and gylcol dehydrators at a production field facility to be aggregated to determine major source status.[44]

We are proposing to revise the definition of ''associated equipment'' to remove ''except glycol dehydrators and storage vessels.'' The EPA is proposing this change because glycol dehydrators and storage vessels are clearly equipment associated with production wells, and we do not see any language in CAA section 112(n)(4) allowing aggregation of emissions from any associated equipment in determining whether any such equipment is a major source; on the contrary, CAA section 112(n)(4) not only prohibits aggregating emissions of associated equipment for major source determination, it prohibits aggregating emissions from ''any oil or gas production or exploration well (with their associated equipment) . . . for any purpose under [section 112].'' It is clear from CAA section 112(n)(4) that Congress intended to regulate any associated equipment as a major source only if such equipment individually emits (or has the potential to emit) at a major source level of HAP (*i.e.,* at least 10 tpy of one HAP or 25 tpy of any combination of HAP).[45] We therefore propose this change to closely align with the text of the CAA.

The proposed revision to the definition of ''associated equipment,'' prevents the aggregation of emissions from storage vessels and glycol dehydrators when determining whether they are major sources. Under CAA section 112(n)(4), the EPA will evaluate emissions from glycol dehydration and storage vessels individually to determine if any of those units qualify as ''stand-alone'' major sources. We are soliciting comment on several subjects related to this proposal: Approximately how many current major sources will be affected, such that the facility or unit would convert from a major source to an area source? (Question #2a) What cost savings will your facility achieve due to it being converted from a major source to an area source under this change? (Question #2b) Will facilities that would no longer be considered major sources remove or modify their current control systems such that the unit or facility would increase HAP emissions from current emissions? (Question #2c)

As a result of this proposed change to the major source definition, the universe of storage vessel and dehydrator affected sources will likely change, making it necessary to re-examine the determination of the level of the standards under CAA section 112(d)(2) and (3) based on this universe. Sections III.B.1.a and b of this preamble discuss the evaluation and proposed determination.

[37] See 40 CFR part 63, subpart HH, appendix table 1 for the list of HAP emitted in this category, to which methanol is proposed to be added.

[38] Ethylene glycol was the liquid desiccant historically used in dehydrators, resulting in the potential for emissions of ethylene glycol. However, triethylene glycol is now the liquid desiccant used. The EPA does not have evidence that ethylene glycol emission occur from oil and gas operations at this time.

[39] 42 U.S.C. 7412(a)(1) (emphasis added).

[40] Id. 7412(n)(4)(A) (emphasis added).

[41] 64 FR 32610, 32619 (June 17, 1999).

[42] Id. at 32629.

[43] Id. at 32619.

[44] 77 FR 49490, 49501 (August 16, 2012).

[45] See CAA section 112(a)(1), 42 U.S.C. 7412(a)(1).

a. Glycol Dehydrators

To evaluate the MACT floor for the revised universe of major source dehydrators, the EPA revisited the original MACT floor determination for the original rule promulgated in 1999.[46] Information collected via several mechanisms was considered for this previous analysis, including responses to a CAA section 112 ICR questionnaire distributed in 1993, site visits, meetings with industry, and industry studies. The 1993 ICR responses formed the primary basis for the MACT floor recommendation. The EPA based the 1999 Final Rule evaluation on the 1997 MACT memo because 30-year-old raw data are unavailable for detailed analysis.

Information was submitted on an individual dehydrator basis, and it was determined that 200 dehydrators for which information was submitted were major sources of HAP. The 1997 MACT floor recommendation was based on the controls identified for these 200 dehydrators. The description of these dehydrators is clear that they were ''stand-alone major'' sources (that is, the HAP emissions from each dehydrator is above 10 tons or more per year of an individual HAP or 25 tons or more of all HAP). Therefore, the data set used to determine the MACT floor recommendation in 1997 is directly appropriate for use in this reassessment based on the proposed changes to the definition of major source.

Of these 200 stand-alone major source dehydrators, 34 percent were controlled for air emissions. These controls included condensers, condensers operating with a flash tank, venting the non-condensable stream to a combustion device, and incineration systems. Based on this information, the EPA determined that a 95 percent reduction in HAP emissions set the MACT floor for both new and existing dehydrators. Considering the proposed change in the major source definition for production field facilities, the EPA still views this previous conclusion as valid.

The dehydrator standards in the 1999 final NESHAP subpart HH rule only applied to dehydrators with an actual annual average natural gas flowrate equal to or greater than 85 thousand standard cubic meters per day and actual annual average benzene emissions equal to or greater than 0.90 Mg/yr. Although the 1999 Final Rule did not specifically define them, these criteria represent the ''Large Dehydration Unit'' definition promulgated in the 2012 Final Rule amendments to NESHAP subpart HH. Dehydrators with a natural gas flowrate less than 85 thousand standard cubic meters per day or actual annual average benzene emissions less than 0.90 Mg/yr were exempt from any requirements in the 1999 Final Rule. The EPA later defined this subcategory as ''Small Dehydration Units'' and finalized standards for them in the 2012 Final NESHAP subpart HH amendments.

As noted earlier in this section, the raw data from the 1993 ICR responses are not available at this time. Therefore, we are unable to determine which of the 200 stand-alone major source dehydrators were large dehydrators or small dehydrators. However, we have concluded this is immaterial to the revisitation of the MACT floor for the proposed revision of the major source definition for production field facilities in NESHAP subpart HH. The MACT floor, based on the stand-alone dehydrators in the data set, is 95 percent control. The EPA has concluded this as an appropriate standard for all stand-alone major dehydrators at production field facilities, without regard to the actual annual average natural gas flowrate or the actual annual average benzene emissions. Therefore, we are proposing to delete the subcategorization of dehydrators at production field facilities in NESHAP subpart HH and require that all stand-alone major dehydrators at production field facilities comply with the closed vent system requirements in 40 CFR 63.771(c) and the control device requirements in 40 CFR 63.771(d), which include either: (1) route emissions to an enclosed combustion device that reduces the mass content of either TOC or total HAP in the gases vented to the device by 95.0 percent by weight or greater; (2) reduces the concentration of either TOC or total HAP in the exhaust gases at the outlet to the device to a level equal to or less than 20 parts per million by volume; (3) operates at a minimum temperature of 760 ° C or, (4) if a boiler or process heater is used as the control device, introduce the vent stream into the flame zone of the boiler or process heater. Other options include routing to a compliant flare or by routing to a vapor recovery device or other non-destructive control device that is designed and operated to reduce the mass content of either TOC or total HAP in the gases vented to the device by 95.0 percent by weight or greater.

These changes do not impact the NESHAP subpart HH area source standards, the standards applicable to dehydrators at natural gas processing plants, or the NESHAP subpart HHH standards applicable to dehydrators at transmission and storage facilities. There are additional proposed decisions and actions related to the small dehydrator standards at natural gas processing plants and transmission and storage facilities in sections III.B.3 and III.B.5 of this preamble.

b. Storage Vessels

As with dehydrators, the EPA began the evaluation by reviewing the 1997 MACT floor determination. Unlike dehydrators, the EPA did not base the storage vessels universe on individual stand-alone units. Instead, the Agency identified 68 storage vessels associated with major source facilities. Therefore, the EPA cannot determine which of these 68 storage vessels were stand-alone major sources.

Of these 68 storage vessels, operators reported that they suppressed emissions with a cover and then routed by closed vent system to a control device for 32 percent of units. Therefore, the EPA determined the MACT floor as using a cover and routing emissions through a closed vent system to a control achieving 95 percent.

While the EPA cannot separate the 68 storage vessels into stand-alone major sources, we expect that the frequency of control for stand-alone major source storage vessels is at least as prevalent as for the entire data set. In fact, since these stand-alone major source storage vessels are higher emitting sources, we would expect that they were controlled at a higher frequency than the lower-emitting storage vessels. Therefore, the EPA concluded the previous 1997 MACT floor determination can be applied for the purpose of determining the MACT floor for the universe of stand-alone major sources. Consequently, the proposed amendments require that stand-alone major source storage vessels at production field facilities comply with the cover, closed vent system, and control device requirements in 40 CFR 63.771.

This does not impact the NESHAP subpart HH requirements for storage vessels with the PFE located natural gas processing plants. In addition, note that amendments are being proposed to NESHAP subpart HH to regulate storage vessels without the PFE at natural gas processing plants (see section III.B.4.b of this preamble) and storage vessels at transmission and storage facilities under

[46] Fitzsimons & Vicononic. (1997). Memorandum: ''Recommendation of MACT Floor Levels for HAP Emission Points at Major Sources in the Oil and Natural Gas Production Source Category.'' (September 23, 1997).

NESHAP subpart HHH (see section III.B.4.c of this preamble).

2. Regulation of Methanol Emitted From Regulated Emission Points (Except Small Dehydrators)

As required by the D.C. Circuit's decision in *LEAN*, we are proposing to address unregulated HAP emissions. We recognize that the D.C. Circuit determined that the Agency has a ''clear statutory obligation to set emission standards for each listed HAP'' and must address previously unregulated HAP known to be emitted by a source category during a technology review.[47]

NESHAP subpart HH includes the following definition: ''*Hazardous air pollutants* or *HAP* means the chemical compounds listed in section 112(b) of the Clean Air Act. All chemical compounds listed in section 112(b) of the Act need to be considered when making a major source determination. Only the HAP compounds listed in table 1 of NESHAP subpart HH need to be considered when determining compliance.'' [48] NESHAP subpart HHH includes a similar definition.

In the original development of NESHAP subparts HH and HHH, the EPA determined that the primary HAP associated with the oil and natural gas production and natural gas transmission and storage source categories included BTEX and n-hexane. The EPA also determined that 2,2,4-trimethylpentane (iso-octane), formaldehyde, acetaldehyde, naphthalene, ethylene glycol, carbon disulfide, and carbonyl sulfide were emitted. In response, the EPA included these HAP in table 1 to NESHAP subparts HH and HHH.

a. Proposed Changes to Table 1 of NESHAP subparts HH and HHH

In responses to the 2023 ICR questionnaire, industry reported emissions of the HAP listed in table 1 of NESHAP subparts HH and HHH (excluding ethylene glycol, which is no longer used in dehydrators), as well as emissions of methanol. While methanol is not a naturally occurring component of oil and gas, it is sometimes added as a hydrate-preventor to keep water from being absorbed into the natural gas stream. Respondents reported methanol emissions from approximately 20 percent of dehydrators across 22 facilities in Pennsylvania, West Virginia, and Colorado, as well as from storage vessels at 10 sites. The EPA concluded that methanol emissions must be addressed in NESHAP subpart HH, and therefore we are proposing to add methanol to table 1 in NESHAP subpart HH.

The responses to the 2023 ICR questionnaire for natural gas transmission and storage facilities did not report any methanol emissions. We are specifically soliciting comment and request information on whether methanol is emitted at natural gas transmission and storage facilities (Question #3a). If we receive comments that indicate there are no methanol emissions, we request information and rationale for this claim (Question #3b). In the absence of clear information to verify that methanol is emitted from natural gas transmission and storage facilities, we are not proposing to amend table 1 in NESHAP subpart HHH to add methanol. If we receive information during the comment period, we will evaluate whether it is appropriate to include methanol in a future rulemaking.

b. Regulation of Methanol From Sources Other Than Small Dehydrators

The EPA proposes methanol emissions standards for emission points covered by NESHAP subpart HH. For storage vessels with the PFE and large dehydrators, the current standards require 95 percent reduction of all HAP emissions. The work practice standards for equipment leaks also work to reduce leaks of methanol.

Currently, NESHAP subpart HH requires a combination of equipment and work practice standards for equipment leaks at natural gas processing plants. The EPA proposal includes similar requirements for storage vessel requirements for storage vessels without PFE, cargo vessel loading operations, and natural gas-driven process controllers and pumps. These measures reduce total gas emissions, ensuring that the system cuts methanol at the same rate as all other HAPs. Thus, compliance with these standards guarantees methanol reduction alongside other organic HAPs. Therefore, there would be no impact in adding methanol to table 1 of NESHAP subpart HH for these situations.

We are proposing a 95 percent reduction performance standard for AGRUs in the alternative. We expect all commonly used control devices to achieve the reduction of methanol at the same levels, or higher, as other HAP. Further, the compliance determination for these percent reduction performance standards is based on EPA Method 25A. The EPA Method 25A includes method procedures for the determination of total gaseous organic concentrations. Thus, compliance with the percent reduction performance standard would ensure that methanol emissions are reduced along with all other organic HAP. Therefore, there would be no impact in adding methanol to table 1 of NESHAP subparts HH for these situations.

c. Regulation of Methanol From Small Dehydrators

The one instance identified where there may be an impact of adding methanol to table 1 in NESHAP subpart HH is for small dehydrators. The standards for small dehydrators are in the form of equations from which dehydrator-specific BTEX emission limitations are calculated. We conclude that BTEX is an appropriate surrogate for all current table 1 of NESHAP subpart HH HAP that are emitted (see section III.B.3 of this preamble). However, we question whether it is an appropriate surrogate for methanol. Therefore, we are proposing separate methanol-specific limits for methanol for small dehydrators. This is discussed in detail in section III.B.3 of this preamble. We are soliciting comment on using BTEX limits as a surrogate for all HAP except methanol (Question #4a). We are also soliciting data and comment as to whether BTEX is an appropriate surrogate for methanol emitted from small dehydrators and storage vessels (Question #4b).

3. Regulation of all HAP From Small Dehydrators

In the 2012 Final Rule, in addition to risk and technology review, the EPA also established BTEX standards for small dehydrators but not for other HAP; however, the EPA noted that control of BTEX reduces emissions of VOC and HAP. The current NESHAP subparts HH and HHH rules continue to require compliance for small dehydrators to be demonstrated based on a BTEX emissions limit.[49]

Petitioners on the August 2012 NESHAP Final Rules raised concerns that small glycol dehydration units emit other HAP besides BTEX.[50] Petitioners asserted that the EPA could not ignore other HAP emitted by these sources, and that the EPA must also set limits on all other emitted HAP.

[47] *Nat'l Lime Ass'n* v. *EPA*, 233 F.3d 625, 634 (D.C. Cir. 2000); *see* also *LEAN*, 955 F.3d at 1092.

[48] NESHAP subpart HH, 40 CFR 63.761.

[49] U.S. Environmental Protection Agency. (2013). Oil and Natural Gas Sector: Reconsideration of Certain Provisions of New Source Performance Standards. Response to Public Comments on Proposed Rule (78 FR 22126; April 12, 2013). July 2013. EPA Document ID No. EPA–HQ–OAR–2010–0505–4639 at 247.

[50] Earthjustice, et al. (2012). Re: Petition for Reconsideration of Oil and Natural Gas Sector: National Emission Standards for Hazardous Air Pollutants Reviews; Final Rule, 77 FR 49490 (August 16, 2012), 40 CFR part 63, subparts HH and HHH. Docket ID No. EPA–HQ–OAR–2010–0505 at 42–44 (October 15, 2012).

Petitioners also argued that CAA section 112(d)(1) and (2) and case law require the EPA to set a limit on all emitted HAP.[51] Petitioners claimed the EPA acted unlawfully by setting a BTEX-only MACT for small glycol dehydrators. The petitioners noted that the EPA's own response to comments stated it was not using BTEX as a surrogate, which prevents the Agency from using that principle as an ''excuse'' for failing to limit all HAPs. They added that the EPA further stated it set a limit only for BTEX because the data available from the 1999 rulemaking only contained BTEX emissions for all units and the Agency intended to further investigate the non-BTEX emissions from small glycol dehydrators. Once we obtained sufficient data we would propose a MACT standard for those other HAP. The petitioners argue that a lack of data does not legally excuse the EPA from failing to control HAP under CAA section 112(d) when the data show HAP emissions.

In response to petitioner concerns, the EPA requested data in 2015 on HAP emissions from regulated small glycol dehydrators.[52] With regards to the small glycol dehydrators, the EPA specifically requested data regarding any emissions of HAP other than BTEX, as well as information on available control options for any such HAP and information regarding a potential compliance demonstration issue with respect to the 2012 standards for small glycol dehydration units, as they apply to units with very low emissions.[53]

Several industry representatives provided information on small dehydrator information requests.[54] One industry response to the 2015 ICR provided that benzene, ethyl benzene, n-hexane, naphthalene, toluene, 2,2,4-trimethylpentane, xylenes, o-xylene, m-xylene, and p-xylene appear to be a complete list of known HAP in natural gas or condensate/crude oil. Of these HAP, according to respondents, BTEX (aromatics) are the HAP most preferentially absorbed in glycol (*i.e.,* the only ones where greater than 10 percent of component in inlet gas is absorbed into glycol). They contended that other HAP are absorbed about one percent or less into glycol. For instance, they noted that natural gas might contain n-hexane, but emissions from a glycol still vent are predominately BTEX since such a small proportion of the n-hexane is absorbed by the glycol. In addition, if other non-BTEX HAP were present, respondents point out that controls required in NESHAP subpart HH to reduce benzene or BTEX will result in the reduction of all HAP to similar levels. Therefore, they contended that benzene is still a good surrogate for all HAP emissions from glycol dehydrators. Other industry responses similarly supported the use of BTEX as a surrogacy for HAP for small dehydrators.

The EPA considered the petitioner's concerns and researched the situation more thoroughly. In response to the 2023 ICR questionnaire, industry reported information for 261 dehydrators at oil and natural gas production facilities and natural gas processing plants. For these dehydrators, BTEX made up over 79 percent of the total HAP emissions reported. The two other major HAP emitted n-hexane (13.5 percent) and methanol (seven percent) also contributed to the total, while 2,2,4-trimethylpentane accounted for less than 0.1 percent. For dehydrators at natural gas transmission and storage facilities, BTEX comprised 91 percent of the reported HAP emissions, with n-hexane as the only other reported pollutant.

We consider BTEX to be an excellent surrogate for organic HAP from glycol dehydrators at oil and natural gas production facilities and natural gas transmission and storage facilities for multiple reasons. First, BTEX is ubiquitous at petroleum and natural gas facilities, and is present in all natural gas inlet streams to small glycol dehydrators that have measurable HAP content. Second, BTEX compounds have a higher affinity for water than aliphatic compounds, such as n-hexane or 2,2,4-trimethylpentane. Consequently, a much larger portion of the BTEX compounds inlet to the dehydrator are absorbed with the water in the glycol solution and potentially emitted during the regeneration of the rich glycol solution. That is, BTEX and compounds like BTEX are much more likely to be emitted from glycol dehydrator vents than most other organic HAP. Modeling of n-hexane emissions from the glycol dehydrators was used to establish the MACT floor in 1999. We found that the units that achieved 95 percent control efficiency of BTEX emissions achieved over 99 percent control efficiency for hexane.[55]

Therefore, we continue to conclude that BTEX is a reliable and appropriate surrogate for HAP emissions from small glycol dehydrators, with the possible exception of methanol. Methanol is not a naturally occurring element that is typically present in the extracted oil and natural gas. Rather, it is sometimes added as a hydrate-preventor to keep water from being absorbed into the natural gas stream. As noted above, methanol made up seven percent of the reported HAP emissions from dehydrators in oil and natural gas production and natural gas processing. Specifically, methanol emissions were reported from 58 dehydrators at 22 facilities. The uncontrolled methanol emissions ranged from less than 0.1 tpy to 29 tpy per dehydrator, with an average of 9.8 tpy per dehydrator. The EPA received no data indicating methanol was emitted from dehydrators at transmission and storage facilities.

Like n-hexane, the EPA finds that methanol is controlled by combustion to a greater extent than BTEX. Therefore, if compliance with one of the small dehydrator equations is achieved by using a combustion device, the EPA is convinced that BTEX represents a reasonable surrogate for methanol. However, the possibility exists that if a measure or control other than combustion is used, BTEX may not be an appropriate surrogate for methanol. This is largely based on the fact that, unlike the other non-BTEX HAP emitted from dehydrators, methanol has a higher affinity for water than BTEX. Thus, if methanol is in the inlet stream to the dehydrator, it is more likely to be emitted from glycol dehydrator vents than BTEX in the absence of combustion. The EPA is specifically requesting comment on whether BTEX is a surrogate for methanol emissions from small dehydrators that comply using a method other than combustion (Question #5a). The EPA also requests information, analyses, and data that may support such surrogacy (Question #5b).

However, in the absence of clear information to support BTEX as a surrogate for methanol, the EPA is proposing a separate CAA section 112(d)(3) standard for methanol from small dehydrators in NESHAP subpart HH. The 2023 ICR questionnaire responses for oil and natural gas production sites and natural gas processing plants did not include methanol emissions from dehydrators at facilities identified as major sources. Therefore, the MACT floor determination was based on the data from dehydrators at area sources, as they represent similar sources.

[51] *Nat'l Lime Ass'n*, 233 F.3d at 634.

[52] 80 FR 74068 (November 27, 2015).

[53] *Id.*

[54] Document ID. Nos. EPA–HQ–OAR–2015–0747–0022, –0023, –0025, and –0027.

[55] Becker & Coburn, RTI International. (2018). Memorandum to Witosky, M., EPA. ''Evaluation of current standards for small glycol dehydrators for limiting HAP emissions.'' (September 5, 2018). See Docket ID No. EPA–HQ–OAR–2025–1348.

Of the 58 dehydrators that reported methanol emissions, 38 dehydrators (66 percent) reported that emissions were controlled using a combustion device. Therefore, the EPA finds that the use of combustion represents the MACT floor level of control. The EPA has long recognized the use of properly operating flares and combustion devices can routinely achieve 95 percent reduction, and higher efficiencies can potentially be achieved but will require more rigorous monitoring. Given the remote nature of many oil and natural gas production sites, such rigorous monitoring is challenging. The EPA recognized this fact, and even though flares are a common control device in the oil and natural production segment, Federal air regulations for this industry have consistently established standards that require the use of a flare or 95 percent reduction. This is the case for numerous emission points (including storage vessels) subject to New Source Standards of Performance for Crude Oil and Natural Gas Facilities (40 CFR part 60, subparts OOOO, OOOOa, and OOOOb), and for dehydrators and storage vessels with the PFE subject to NESHAP subpart HH. Therefore, the EPA determined that the MACT floor for methanol from small dehydrators is 95 percent reduction or the use of a flare.

As noted above, the annual average reported methanol emissions were 9.8 tons per dehydrator. The estimated capital cost of a flare is $135,489 and the annual costs are $37,716 per year. For a 95 percent reduction, this results in a cost-effectiveness of $4,058 per ton of methanol reduced per year. The EPA also considered a beyond the floor option of 98 percent control. With a capital cost of $564,769, and an annual cost of $101,833 per year, the incremental cost effectiveness of this additional three percent of emission reduction is $218,438 per ton of additional annual methanol reduction. The EPA does not consider this cost, in relation to additional emission reduction, to be reasonable. Therefore, for NESHAP subpart HH, the EPA is proposing that small glycol dehydrators reduce methanol emissions by 95 percent or route the emissions to a flare.

a. Proposed Actions Related to the Regulation of All HAP From Small Dehydrators in NESHAP Subpart HH

For small dehydrators at oil and natural gas production sites prior to the point of custody transfer to a natural gas processing plant where dehydrator emissions are greater than 10 tpy of a single HAP or 25 tpy of all HAP, and for major source natural gas processing plants, the EPA is proposing that the BTEX emission limit, as determined by the applicable equation, is a surrogate for all emitted HAP with the exception of methanol. For small dehydrators that emit methanol, the EPA is proposing that those emissions be reduced by 95 percent or by routing to a flare. The EPA is requesting comment on whether this additional standard is necessary for methanol emissions, or if the BTEX equation can also be proven to be an appropriate surrogate for methanol (Question #5c).

b. Proposed Actions Related to the Regulation of All HAP From Small Dehydrators in NESHAP Subpart HHH

For small dehydrators at major source natural gas transmission and storage facilities, the EPA is proposing to use the BTEX emission limit, as determined by the applicable equation as a surrogate for all emitted HAP.

Unlike dehydrators at oil and natural gas production facilities and natural gas processing plants, there were no methanol emissions reported in the ICR questionnaire responses for any dehydrator at a natural gas transmission and storage facility. Since the EPA lacks data confirming methanol emissions, the Agency is not proposing to regulate methanol from those facilities. The EPA is requesting comment and information on whether methanol is emitted from dehydrators at natural gas transmission and storage facilities (Question #6a). If the comments indicate there are no methanol emissions, the EPA is requesting information and rationale for this claim (Question #6b).

4. Regulation of Previously Unregulated Emission Points

a. Introduction to Proposal and Alternative Proposal

The EPA is seeking comment on whether the CAA requires the EPA to revise a major source NESHAP to set standards for unregulated emission points or processes when conducting a CAA section 112(d)(6) review. To ensure the public has an adequate opportunity to comment, the EPA proposes not to regulate these sources, while simultaneously offering an alternative proposal that would regulate these sources.

The EPA is proposing that when conducting a CAA section 112(d)(6) technology review, the Agency is not obligated to expand the NESHAP to include previously unregulated emission points because the review focuses instead on whether revisions to the existing standards for the NESHAP and source category, presently understood, are ''necessary.'' In the past, the EPA has suggested that the D.C. Circuit's decision in *LEAN* mandates that the EPA expand the NESHAP to include additional emission points as part of the technology review under CAA section 112(d)(6). However, the Agency now proposes that *LEAN* does not mandate such action pursuant to CAA section 112(d)(6) for two reasons and, on that basis, proposes not to address potential additional emission points and associated standards in this action.

First, while CAA section 112(d)(1) requires the EPA to ''establish standards for each category or subcategory,'' [56] it does not speak to whether those standards must include emission limits for each emission point within the category and leaves to the Agency's reasoned discretion whether particular emission points belong in one or another source category or subcategory. CAA section 112(d)(6) then instructs the EPA to periodically revise these standards ''as necessary,'' [57] considering developments since the last rulemaking, but does not mandate that the EPA expand the standards or reconsider the scope of the source category or subcategory to include additional emission points at that time. This silence makes practical sense, as the EPA has considerable discretion to determine what emission points are included within a particular source category. Indeed, some sources (like certain chemical production facilities), contain emission points from multiple source categories, so it may not be entirely clear whether an unregulated emission point is best regulated as part of one source category or another.

Second, *LEAN* did not involve previously unregulated emission points, and the D.C. Circuit did not address this distinct issue or indicate that it must be resolved as part of the periodic and mandatory CAA section 112(d)(6) technology review. Instead, Petitioners in *LEAN* challenged the EPA's failure to promulgate emission limits for previously unregulated HAP emitted from *already regulated* emission points in the Pulp and Paper Production source category when the Agency was reviewing the existing standards pursuant to CAA section 112(d)(6). The D.C. Circuit remanded the standards to the EPA to ''set limits on the remaining [HAP] emitted'' by these already regulated emission points.[58]

Therefore, the EPA proposes to defer action on a potential expansion of the NESHAP to include previously

[56] 42 U.S.C. 7412(d)(1).

[57] *Id.* 7412(d)(6).

[58] *LEAN*, 955 F.3d at 1100.

unregulated emission points. The EPA is requesting comment on the interpretation of CAA section 112(d)(6) adopted by the D.C. Circuit in *LEAN* and the scope of the Agency's obligation and statutory authority to impose additional standards under the CAA section 112(d)(6) process for particular emission points not previously regulated (Question #7).

Although we maintain that CAA section 112(d)(6) review is not the appropriate posture to address such issues and outstanding questions remain as to whether such standards belong in the relevant NESHAP, we are including below a tentative proposal about what standards could be if we were not to finalize the proposed understanding in the previous subsection. To derive the alternative proposed standard for each such emission point discussed, the EPA first determines the appropriate MACT floor under CAA section 112(d)(3) and then analyzes whether to adopt a more stringent standard under a combined CAA section 112(d)(2) beyond the floor review and CAA section 112(d)(6) technology review. For these unregulated emission points, the EPA proposes to set MACT floors that reflect the state of the industry at the time the Agency first promulgated the Oil and Gas NESHAP in 1999 to align with the statutory framework of CAA section 112. CAA section 112 requires that the EPA set technology-based standards under CAA section 112(d)(2)–(3) (MACT standards) for listed source categories, including Crude Oil and Natural Gas Production and Natural Gas Transmission and Storage Facilities, by the year 2000.[59] CAA section 112(d)(6) then requires that the EPA review and, as necessary, revise the standards every eight years.[60] Under the statutory framework, Congress clearly envisioned that the initial MACT standards would be based on technological performance around the 1990–2000 time period, and subsequent technology developments would be evaluated every eight years. Therefore, to best align with the statutory framework we are conducting the MACT analysis for unregulated emission points considering the performance of units prior to promulgation of the original NESHAP. This avoids the potential of establishing standards decades after the year 2000 deadline, which could create a cost burden that Congress did not intend the EPA to impose without due consideration.[61] In addition, the EPA would treat the unregulated emissions fairly by setting MACT floors (which cannot consider costs) based on the state of the oil and gas industry in 1999 (when the NESHAP was initially promulgated) instead of the industry's performance recently. In *U.S. Sugar Corp.* v. *EPA*, 113 F.4th 984 (D.C. Cir. 2024), the D.C. Circuit upheld the EPA's decision to use an original dataset when it recalculated the MACT floors for certain emission units on remand. The EPA explained that one of its reasons for not using more recent data was to avoid a '' 'potentially inequitable outcome'—some units could be subject to 'more stringent standards solely because of the EPA error' '' at the time of initial standard setting.[62] Similarly here, the currently unregulated oil and gas emission points would be unfairly subject to more stringent standards than would have been adopted if the EPA were to set MACT floors based on recent emissions data because the Agency did not set MACT for these sources in 1999.

After determining the MACT floor, the EPA then assesses whether the MACT floor should be strengthened under a combined CAA 112(d)(2)/112(d)(6) review. CAA section 112(d)(2) requires the EPA to determine whether a more stringent standard than the MACT floor is ''achievable'' considering cost and the other factors listed in that subsection.[63] CAA section 112(d)(6) similarly requires the EPA to assess ''whether standards should be tightened in view of developments in technologies and practices since the standard's promulgation or last revision, and, in particular, the cost and feasibility of developments and corresponding emissions savings.'' [64] Because of the similarity of the two reviews, the EPA is conducting one review based on current developments and other factors, as required by CAA section 112(d)(6).

Provided below are the EPA's analyses and the resulting proposed standards for the following unregulated emission points: AGRUs at natural gas processing plants; storage vessels without flash emissions at field production facilities prior to the point of custody transfer to natural gas processing plants and at natural gas processing plants; storage vessels at natural gas transmission and storage facilities; transport vessel loading operations at natural gas processing plants and at natural gas transmission and storage facilities; and natural gas-driven process controllers and pumps at natural gas transmission and storage facilities. For each of these emission points, the EPA first describes its proposed MACT standard under CAA section 112(d)(3) and then analyzes whether a more stringent standard is necessary under a combined CAA section 112(d)(2) beyond-the-floor and CAA section 112(d)(6) technology review.

b. AGRUs

AGRUs are used to remove acidic components in natural gas to meet sales gas quality specifications. AGRUs include an absorber unit and a regenerator unit. In the absorber, sour gas is contacted with amine solvent to remove H_2S and CO_2 to produce a sweetened gas stream and an amine solution rich in absorbed acid gases. The rich amine solution is routed to a regenerator to produce regenerated or lean amine and an acid gas stream. The lean amine is recycled for reuse in the absorber. The acid gas stream is vented to a control device. AGRU emissions that originate from the regenerator acid gas stream can contain H_2S, CO_2, BTEX, and CS_2. If high concentrations of H_2S are present, the acid gas stream is routed to a sulfur recovery unit.

i. NESHAP Subpart HH (AGRUs at Major Source Natural Gas Processing Plants)

CAA Section 112(d)(3) MACT Floor Determination

The 1997 Background Information Document (1997 BID) for the proposed NESHAP subpart HH standards discussed AGRUs, explaining that AGRUs had the potential for significant HAP emissions.[65] Specifically, the HAPs identified were BTEX, COS, and CS_2. However, there was no specific data on HAP emissions or control methods for AGRUs.

Controls used for glycol dehydrators and storage vessels with the PFE were extensively studied, and the EPA established MACT standards of 95 percent emission reduction in 1999 for these sources (both new and existing). The EPA determined that 95 percent control reflected the emission reductions achieved by the best performing 12 percent of these two sources at the time.[66] The EPA also set a 95 percent standard for new sources, indicating that to be the performance level by the best controlled source. The

[59] 42 U.S.C. 7412(e).

[60] 42 U.S.C. 7412(d)(6).

[61] 77 FR 49490 (August 16, 2012); 81 FR 35824 (June 3, 2016); 89 FR 16820 (March 8, 2024).

[62] *U.S. Sugar Corp.*, 113 F.4th at 1000.

[63] *Nat'l Lime Ass'n*, 233 F.3d at 629.

[64] *Nat'l Ass'n for Surface Finishing*, 795 F.3d at 5.

[65] National Emission Standards for Hazardous Air Pollutants for Source Categories: Oil and Natural Gas Production and Natural Gas Transmission and Storage Background Information for Proposed Standards. EPA–453/R–94–079a. (April 1997).

[66] 42 U.S.C. 7412(d)(3).

types of control devices used to reduce emissions from dehydrators and storage vessels with the PFE, particularly combustion devices, are commonly used devices to reduce emissions from AGRUs. Because the types of controls used for glycol dehydrators and storage vessels also are used to control AGRUs, and in fact the same devices could be used to co-control AGRU emissions, it is reasonable to conclude that the best controlled 12 percent of AGRUs at the time were also achieving 95 percent control of their HAP emissions. The EPA is not aware of factors other than control technology that would affect the emissions achieved by the best performing AGRUs.[67]

In 1985, pursuant to CAA section 111, the EPA promulgated new source performance standards (NSPS) for SO_2 emissions from acid gas removal at natural gas processing plants. The 1985 NSPS required control of acid gas by sulfur capture or emission reduction ranging from 74 to 99 percent reduction of SO_2 emissions (depending on the sulfur feed rate and sulfur content of the acid gas). One of the control techniques used to meet this standard is combustion, which would also reduce HAP in the stream by at least 95 percent.

For the reasons explained above, the EPA concludes that 95 percent reduction in HAP emissions from AGRUs represents the level of control for the best performing similar source, and the level of control for the top performing 12 percent of sources. Therefore, the EPA is proposing a 95 percent reduction as the MACT floor for both new and existing AGRUs at major source natural gas processing plants. The EPA is specifically soliciting comment on this determination, along with information to support or refute these assumptions about the controls used in 1999 to reduce emissions from AGRUs at natural gas processing plants. (Question #7a)

CAA 112(d)(2) Beyond-the-Floor/ Section 112(d)(6) Technology Review

The EPA then assesses whether the MACT floor should be strengthened under a combined CAA 112(d)(2)/ 112(d)(6) review. We reviewed various sources of information to identify potential options for standards more stringent than the MACT floor, as well as for developments in practices, processes, and control technology since the time frame for which the MACT floor was determined (as discussed in the previous section). For AGRUs, these sources included information submitted in response to the 2023 ICR and other NESHAP regulations in the petroleum industry.

The EPA assessed the options to revise the stringency of these MACT floor standards by considering the cost weighed against the emission reductions that a more stringent standard can achieve, with the inherent energy impacts of regulating energy production.

The EPA determined that 98 percent control represents a development in practices, processes, and control technologies from the MACT level for AGRUs at major source natural gas processing plants. In responses to the 2023 ICR, several sources reported controls that achieved at least a 98 percent reduction in HAP emissions. In addition, 98 percent reduction is a standard in the Petroleum Refinery NESHAP (NESHAP subpart UUU). The EPA estimated the incremental cost effectiveness of increasing the stringency from the 95 percent MACT level to 98 percent for AGRUs is just under $15,000 per ton of additional reduction in HAP, which is above what we had previously determined to be unreasonable. We had determined that the cost effectiveness of $11,750 (adjusted for inflation) was not reasonable in the 2022 technology review for the NESHAP for the Gasoline Distribution NESHAP (NESHAP subpart R).[68]

Proposed Standard for AGRUs at Major Source Natural Gas Processing Plants

Based on the above MACT floor analysis under CAA section 112(d)(3) and the beyond-the-floor/technology review under CAA sections 112(d)(2)/ 112(d)(6), we are proposing that HAP emissions from new and existing AGRUs at major source natural gas processing plants be reduced by 95 percent or greater.[69]

ii. NESHAP Subpart HHH

The 2023 ICR responses identify one AGRU at a major source natural gas transmission and storage facility. We therefore propose standards for HAP emissions from AGRUs at major source natural gas transmission and storage facilities subject to NESHAP subpart HHH. We are also requesting comments and information on the existence of AGRUs at natural gas transmission and storage facilities, as well as emissions and control information (Question #7b).

We are proposing the same standards for NESHAP subpart HHH for the same basic reasons as discussed for natural gas processing plants under NESHAP subpart HH. Controls used for glycol dehydrators at natural gas transmission and storage facilities were extensively studied, and the EPA established MACT standards of 95 percent emission reduction in 1999 for glycol dehydrators (both new and existing). The EPA determined that 95 percent control reflected the emission reductions achieved by the best performing 12 percent of this source at the time.[70] The EPA also set a 95 percent standard for new sources, indicating that to be the performance level by the best controlled source. The types of control devices used to reduce emissions from dehydrators, particularly combustion devices, are commonly used devices to reduce emissions from AGRUs. Because the types of controls used for glycol dehydrators also are used to control AGRUs, and in fact the same devices could be used to co-control AGRU emissions, it is reasonable to conclude that the best controlled 12 percent of AGRUs at the time were also achieving 95 percent control of their HAP emissions. The EPA is not aware of factors other than control technology that would affect the emissions achieved by the best performing AGRUs.[71] The proposed standards require a 95 percent reduction in HAP emissions or route to a flare.

c. Storage Vessels Without the PFE Prior to the Point of Custody Transfer and Storage Vessels Without the PFE at Natural Gas Processing Plants (NESHAP Subpart HH)

Crude oil, condensate, and produced water are typically stored in fixed-roof storage vessels. These fixed-roof vessels, which are operated at or near atmospheric pressure conditions, are typically located in tank batteries at well sites and at centralized gathering facilities in the oil and natural gas production segment and at transmission and storage facilities in the oil natural gas transmission and storage segment. A tank battery refers to the collection of process components used to separate, treat, and store crude oil, condensate, intermediate hydrocarbon liquids, and produced water. At well sites and centralized gathering facilities, the

[67] *Cement Kiln Recycling Coal.* v. *EPA*, 255 F.3d 855, 864–65 (D.C. Cir. 2001) (''if factors other than MACT technology do indeed influence a source's performance, it is not sufficient that EPA considered sources using only well-designed and properly operated MACT controls'' because they ''may not reflect what the best-performers actually achieve'').

[68] 87 FR 35608 (June 10, 2022).

[69] The proposed standard allows for routing to a flare. Flares operated property under the General Provisions of the NESHAP are expected to achieve 95 percent or greater reduction.

[70] 42 U.S.C. 7412(d)(3).

[71] *Cement Kiln Recycling Coal.*, 255 F.3d at 864–65.

extracted products from production wells enter the tank battery through the production header, which may collect product from many wells.

Emissions are a result of working, breathing, and flash losses. Working losses occur due to the emptying and filling of storage vessels. Specifically, emissions are released through a vapor vent as liquid is pushed into the storage vessel, displacing any built-up vapors in the vessel. Breathing losses are the release of gas associated with daily temperature fluctuations and other equilibrium effects. Flash losses occur when a liquid with entrained gases is transferred from a vessel with higher pressure to a vessel with lower pressure, and thus, allowing entrained gases or a portion of the liquid to vaporize or flash.

NESHAP subpart HH currently regulates storage vessels with the PFE, but it excludes storages vessels without the PFE. Because storage vessels without the PFE in this industry segment emit HAP, they remain unregulated emission points. Therefore, we propose standards for storage vessels without the PFE.

According to the information provided in the 2023 ICR responses, there are stand-alone major source storage vessels without the PFE located at oil and natural gas production sites located in the producing operations (*i.e.,* prior to the point of custody transfer to a natural gas processing plant) and at natural gas processing plants that have the potential to emit HAP at levels greater than the major source thresholds.[72]

CAA Section 112(d)(3) MACT Floor Determination

The EPA studied emissions and controls for storage vessels with the PFE at oil and gas production sites and natural gas processing plants for the original promulgation of NESHAP subpart HH in 1999, yet no specific information is available regarding analysis of storage vessels without the PFE. However, submerged fill techniques were mentioned in the 1997 BID, and the EPA recognizes that submerged filling has long been a standard practice in the oil and natural gas industry because splash filling causes a considerable loss of valuable petroleum product.

There are many similarities between the storage vessels at gasoline bulk plants and those in at oil and natural gas production sites and at natural gas processing plants. While the specific composition of the oil or condensate differs from gasoline, the design, operation, size, and HAP emitted are the same. Bulk gasoline plants have long been studied by the EPA, beginning with the development of Control Technique Guidelines (CTG) in 1977.[73] Submerged filling is a primary control technique discussed in the 1977 CTG, although the prevalence of its use in 1977 is not discussed. However, in 2008, the EPA promulgated NESHAP subpart BBBBBB, which covers HAP emissions from bulk gasoline plant area sources.[74] NSPS subpart BBBBBB requires that submerged filling be used to load gasoline into bulk plant gasoline storage vessels.[75] When this regulation was proposed in 2006, the EPA asserted that ''approximately 5,500 out of 5,900 bulk plants are estimated to utilize submerged fill.'' [76]

The EPA concludes that in 1999, submerged filling at oil and natural gas production sites and at natural gas processing plants represents the control utilized at the best performing similar source, as well as the control utilized for the top performing 12 percent of sources. This is based on the knowledge that it has long been the standard industry practice utilized in the petroleum industry to save valuable product, and the fact that in 2006, the EPA determined that over 93 percent of the comparable storage vessels at bulk gasoline terminals employed submerged filling.

Based on this information, the EPA concludes submerged filling for storage vessels without the PFE that are stand-alone major sources prior to the point of custody transfer to natural gas processing plants, and at major source natural gas processing plants, represents the control utilized at the best performing similar source, as well as the control utilized for the top performing 12 percent of sources. Therefore, the EPA established a MACT floor under CAA section 112(d)(3) that requires submerged filling for both new and existing storage vessels without the PFE that are stand-alone major sources prior to the point of custody to a natural gas processing plant, and for both new and existing storage vessels without the PFE at major source natural gas processing plants. We are specifically soliciting comment on this determination, along with information to support or refute these assumptions about the use of submerged filling in 1999 to reduce emissions from storage vessels without the PFE at oil and natural gas production sites and at natural gas processing plants. (Question #8)

CAA 112(d)(2) Beyond-the-Floor/ Section 112(d)(6) Technology Review

The EPA then assesses whether the MACT floor should be strengthened under a combined CAA 112(d)(2)/ 112(d)(6) review. We reviewed various information sources to identify standards more stringent than the MACT floor and find developments in practices, processes, and control technology since we determined the MACT floor (as discussed in the previous section). For storage vessels without the PFE, our review included basic petroleum industry practices, NESHAP subpart HH standards for storage vessels with the PFE at these same sites, and responses to the 2023 ICR.

The EPA assessed the options to revise the stringency of these MACT floor standards by considering the cost weighed against the emission reductions that a more stringent standard can achieve, with the inherent energy impacts of regulating energy production.

Operators sometimes use internal floating roof tanks to reduce emissions from storage vessels. The small quantities of liquid stored in these types of tanks typically do not provide sufficient buoyancy to support floating roofs. While a floating roof effectively limits vaporization, the EPA still considers them a technically infeasible control method for storage tanks in the Oil and Natural Gas Production source category.

The EPA determined that 95 percent control represents a development in practices, processes, and control technologies from the MACT level of submerged filling. This is the standard for storage vessels with the PFE in NESHAP subpart HH. In addition, a number of storage vessels without the PFE reported controls that achieved at least 95 percent reduction in HAP emissions. The incremental cost effectiveness to 95 percent for storage vessels without the PFE is estimated to be just under $18,000 per ton of additional reduction in HAP. This is above a level that we had already previously determined to be unreasonable.

[72] CAA section 112(n)(4)(A) prohibits aggregating emissions at oil and natural gas production sites for purposes of determining major source status. *See* 42 U.S.C. 7412(n)(4)(A).

[73] Control of Volatile Organic Emissions from Bulk Gasoline Plants. EPA–450/2–77–035. (December 1977).

[74] 73 FR 1933 (January 10, 2008).

[75] 40 CFR 63.11086.

[76] 71 FR 66072 (November 9, 2006).

iii. Proposed Standards for Storage Vessels Without the PFE Prior to the Point of Custody Transfer and Storage Vessels Without the PFE at Major Source Natural Gas Processing Plants

Based on the above MACT analysis under CAA section 112(d)(2)–(3) and technology review under CAA section 112(d)(6), we are proposing to require the installation and use of submerged filling to reduce HAP emissions from new and existing stand-alone major storage vessels without the PFE prior to point of custody transfer to a natural gas processing plant, and for new and existing storage vessels without the PFE at major source natural gas processing plants.

d. Storage Vessels at Natural Gas Transmission and Storage Facilities (NESHAP Subpart HHH)

Storage vessels at natural gas transmission and storage facilities are typically fixed-roof storage vessels at atmospheric conditions that contain condensate and produced water. While there may be other storage vessels that contain process fluids such as maintenance and lubricating oils, these storage vessels are not in the scope of the NESHAP.

No storage vessels (whether with or without PFE) are currently regulated in NESHAP subpart HHH. There were no methanol emissions specifically reported in the 2023 ICR responses for storage vessels at major source natural gas transmission and storage facilities. During the 2023 ICR data collection, the EPA did not specifically request information on storage vessel emissions. However, based on previous analyses, the EPA found that the composition of the gas at natural gas transmission and storage facilities included small amounts of HAP. Specifically, a 2011 analysis concluded that 2.97 percent of the VOC emissions in gas streams at natural gas transmission and storage facilities was HAP.[77] Therefore, the EPA maintains that the reported VOC emissions contain the same type of HAP emitted from storage vessels at oil and natural gas field production facilities and natural gas processing plants, although in smaller quantities. Therefore, we are proposing standards for storage vessels at major source natural gas transmission and storage facilities. Since the EPA used previously established HAP-to-VOC ratios to estimate HAP emissions from the VOC emissions reported in the 2023 ICR responses for storage vessels at major source natural gas transmission and storage facilities, the EPA requests data on the quantities of HAP emissions as a component of VOC emissions from these storage vessels (Question #8a).[78] If EPA receives information during the comment period that the 2011 analysis was incorrect, the HAP-to-VOC ratio was incorrect, or other relevant information that EPA's assumptions related to methanol emissions from natural gas transmission or storage facilities are incorrect, the EPA will revise the final rule accordingly.

CAA Section 112(d)(3) MACT Floor Determination

The discussion in section III.B.4.b of this preamble regarding the expected use of submerged filling to reduce working losses for storage vessels at oil and natural gas production sites and natural gas processing plants also applies to storage vessels at natural gas transmission and storage facilities. Therefore, the EPA concludes that in 1999, submerged filling at natural gas transmission and storage facilities plants represents the control utilized at the best performing similar source, as well as the control utilized for the top performing 12 percent of sources, to reduce working loss emissions. Submerged filling is a measure to reduce working loss emissions, but it does not impact flash emissions. In the 2023 ICR responses, there was no instance where flash emissions (or any emissions from a storage vessel at a natural gas transmission and storage facility) were reported to be routed to a control device. If no control devices are utilized at this time, the EPA is comfortable concluding that no control devices were in place in 1999 to reduce flash emissions from storage vessels at natural gas transmission and storage facilities.

Based on this information, the EPA concludes submerged filling for storage vessels at major source natural gas transmission and storage facilities represents the control utilized at the best performing similar source, as well as the control utilized for the top performing 12 percent of sources. Therefore, the EPA established a MACT floor under CAA section 112(d)(3) that requires submerged filling for both new and existing storage vessels at major source natural gas transmission and storage facilities. We are specifically soliciting comment on this determination, along with information to support or refute these assumptions about the use of submerged filling in 1999 to reduce emissions from storage vessels without the PFE at oil and natural gas production sites and at major source natural gas processing plants. (Question #8b)

CAA 112(d)(2) Beyond-the-Floor/ Section 112(d)(6) Technology Review

The EPA then assesses whether the MACT floor should be strengthened under a combined CAA 112(d)(2)/ 112(d)(6) review.

We reviewed various sources of information to identify potential options for standards more stringent than the MACT floor, as well as for developments in practices, processes, and control technology since the time frame for which the MACT floor was determined (as discussed in the previous section). For storage vessels, the primary source was the controls used for storage vessels at sources subject to NESHAP subpart HH.

The EPA assessed the options to revise the stringency of these MACT floor standards by considering the cost weighed against the limited emission reductions that a more stringent standard can achieve, with the inherent energy impacts of regulating energy production. The EPA determined that the use of combustion devices (including flares) and VRUs that achieve 95 percent control represents a development in practices, processes, and control technologies from the MACT level. This is the level of control for storge vessels with the PFE in NESHAP subpart HH. The incremental cost effectiveness to 95 percent for storage vessels at major source natural gas transmission and storage facilities is estimated to be just under $550,000 per ton of additional reduction in HAP. This is above a level that we had already previously determined to be unreasonable.

iii. Proposed Standards for Storage Vessels at Major Source Natural Gas Transmission and Storage Facilities

Based on the above MACT floor analysis under CAA section 112(d)(3) and the beyond-the-floor/technology review under CAA section 112(d)(2)/ 112(d)(6), we are proposing to require the installation and use of submerged filling to reduce HAP emissions from new and existing storage vessels at major source natural gas transmission and storage facilities.

e. Transport Vessel Loading Operations

Loading operations are used to conduct a transfer of liquids from

[77] Memorandum. Brown, H., EC/R Incorporated, to Moore, B., EPA/OAPS/SPPD. ''Composition of Natural Gas for Use in the Oil and Natural Gas Sector Rulemaking.'' (July 28, 2011).

[78] Memorandum. Wilson, D., Enoch, S., Weyl, R., ERG, to Pope, A., EPA. ''Documentation for NEI Updates for Oil and Natural Gas Production and Natural Gas Transmission and Storage'' (July 15, 2011).

storage vessels to a type of transportation (*i.e.,* transport) vessel using loading racks. Typically, the transfer of the liquids is for the purpose of transporting refined or waste products to an end destination. The types of transport vessels loaded can be tank trucks, railcars, marine vessels (barges and ships), and smaller containers such as drums or totes. At onshore natural gas production facilities, natural gas processing plants, and natural gas transmission and storage facilities, the liquids loaded primarily are crude oil, condensate, and produced water, and the transport vessels into which the liquids are loaded are almost exclusively tank trucks.

Loading losses from the loading of liquids into transport vessels occur as organic vapors in ''empty'' transport vessels are displaced to the atmosphere by the liquid being loaded into the vessels. These vapors are a composite of (1) vapors formed in the empty vessel by evaporation of residual product from previous loads, (2) vapors transferred to the vessel in vapor balance systems (if present) as product is being unloaded, and (3) vapors generated in the vessel as the new product is being loaded. The quantity of evaporative losses from transport vessel loading operations is a function of the physical and chemical characteristics of the cargo, the method of unloading the previous cargo, operations to transport the empty carrier to a loading terminal, the method of loading the new cargo, and the physical and chemical characteristics of the new cargo.[79]

i. NESHAP Subpart HH (Transport Vessel Loading Operations at Major Source Natural Gas Processing Plants)

CAA Section 112(d)(3) MACT Floor Determination

In the 1997 BID for the proposed standards, there are statements regarding transport vessel loading techniques at oil and natural gas sites. Specifically, at both tank batteries and natural gas processing plants, the EPA states ''transfer may also involve loading crude oil, condensate, or produced water into tank trucks, railcars, and barges through the use of splash loading or submerged fill techniques.'' [80]

In 1995, the EPA promulgated MACT standards for Marine Vessel Loading Operations. [81] [82] While the loading of marine vessels is not a common practice in the oil and natural gas industry, loading petroleum-based liquids into marine vessels is analogous to the loading of oil, condensate, and produced water into tank trucks or railcars. Specifically, the basic design of the loading rack and the operation to fill the transport vessel (marine vessel or tank truck) is the same, as are the HAP emitted. In 40 CFR part 63 subpart Y, the major source MACT requirements for existing sources with HAP emissions less than 10 and 25 tons must utilize submerged fill methods.

In 2008, the EPA promulgated NESHAP for area source gasoline distribution bulk terminals, bulk plants, and pipeline facilities. [83] [84] As discussed in section III.B.4.b of this preamble, the design, operation, size, and HAP emitted from storage vessels and transport vessel loading operations are similar at natural gas processing plants and gasoline bulk plants. The requirement for cargo loading at bulk plants in 40 CFR part 63 subpart BBBBBB is submerged filling.

The EPA concludes that in 1999, for transport vessel loading operations at natural gas processing plants, submerged filling represents the control utilized at the best performing similar source, as well as the control utilized for the top performing 12 percent of sources. This is based on the knowledge that it has long been the standard industry practice utilized to save valuable product, and the fact that the EPA concluded that this was the appropriate standard to reduce HAP from comparable marine vessel loading operations and at bulk gasoline plants.

Based on this information, the EPA concludes that submerged filling to reduce HAP emissions from transport vessel loading operations at major source natural gas plants represents the control utilized at the best performing similar source, as well as the control utilized for the top performing 12 percent of sources. Therefore, the EPA established a MACT floor under CAA section 112(d)(3) that requires submerged filling for both new and existing transport loading operations at major source natural gas processing plants. We are specifically soliciting comment on this determination, along with information to support or refute these assumptions about the use of submerged filling in 1999, and currently, to reduce emissions from transport vessel loading operations at major source natural gas processing plants. (Question #9a)

CAA 112(d)(2) Beyond-the-Floor/ Section 112(d)(6) Technology Review

The EPA then assesses whether the MACT floor should be strengthened under a combined CAA 112(d)(2)/ 112(d)(6) review.

We reviewed various sources of information to identify potential options for standards stricter than the MACT floor, as well as for developments in practices, processes, and control technology since the time frame for which the MACT floor was determined (as discussed in the previous section). For transport loading operations at major source natural gas plants, the sources where for more stringent controls were in the 2023 ICR responses and NESHAP subpart R, which covers loading racks at major source bulk gasoline terminals.

The EPA assessed the options to revise the stringency of these MACT floor standards by considering the cost weighed against the emission reductions that a more stringent standard can achieve, with the inherent energy impacts of regulating energy production. In the responses to the 2023 ICR, over 25 percent of the major source natural gas processing plants reported that HAP emissions from transport vessel loading operations were controlled by combustion devices. NESHAP subpart R includes a numeric emission limit of 10 milligrams of total organic compounds per liter of gasoline loaded. This limit is unique to gasoline, but the control devices typically employed to achieve this standard include combustion devices and vapor recovery units. These types of devices can be used to control emissions from cargo vessel loading operations at natural gas processing plants, and the EPA concludes that they can achieve a 95 percent reduction in HAP emissions in the oil and natural gas industry. Therefore, we conclude that this represents a development in control technology from submerged filling alone. The incremental cost effectiveness to 95 percent for transport vessel loading operations at major source natural gas processing plants is estimated to be $47,000 per ton of additional reduction in HAP. This is above a level that we had already previously determined to be unreasonable.

[79] U.S. Environmental Protection Agency. (Last updated in January 1995). AP 42 Compilation of Air Pollutant Emission Factors. Fifth Edition. Section 5.2: Transportation And Marketing Of Petroleum Liquids.

[80] National Emission Standards for Hazardous Air Pollutants for Source Categories: Oil and Natural Gas Production and Natural Gas Transmission and Storage Background Information for Proposed Standards. EPA–453/R–94–079a. April 1997. pp. 2–16, 2–18.

[81] 60 FR 48399 (September 19, 1995).

[82] 40 CFR part 63, subpart Y.

[83] 73 FR 1933 (January 8, 2008).

[84] 40 CFR part 63, subpart BBBBBB.

Proposed Standards for Transport Vessel Loading Operations at Major Source Natural Gas Processing Plants

Based on the above MACT floor analysis under CAA section 112(d)(3) and the beyond-the-floor/technology review under CAA sections 112(d)(2)/112(d)(6), we are proposing to require the installation and use of submerged filling to reduce HAP emissions from new and existing transport vessel loading operations at major source natural gas processing plants.

ii. NESHAP Subpart HHH (Transport Vessel Loading Operations at Major Source Natural Gas Transmission and Storage Facilities)

CAA Section 112(d)(3) MACT Floor Determination

The discussion above related to the 1999 MACT floor for transport vessel loading operations at natural gas processing plants is also applicable for natural gas transmission and storage facilities. Based on this information, the EPA concludes that submerged filling to reduce HAP emissions from transport vessel loading operations at major source natural gas transmission and storage facilities represents the control utilized at the best performing similar source, as well as the control utilized for the top performing 12 percent of sources. Therefore, the EPA established a MACT floor under CAA section 112(d)(3) that requires submerged filling for both new and existing transport loading operations at major source natural gas transmission and storage facilities. We are specifically soliciting comment on this determination, along with information to support or refute these assumptions about the use of submerged loading in 1999, and currently, to reduce emissions from transport vessel loading operations at natural gas transmission and storage facilities. (Question #9b)

CAA 112(d)(2) Beyond-the-Floor/Section 112(d)(6) Technology Review

The EPA then assesses whether the MACT floor should be strengthened under a combined CAA 112(d)(2)/112(d)(6) review. As mentioned in regard to NESHAP subpart HH, we reviewed various sources of information to identify potential options for standards stricter than the MACT floor, as well as for developments in practices, processes, and control technology since the time frame for which the MACT floor was determined (as discussed in the previous section). For transport loading operations at major source natural gas plants, the most relevant source identified was control information for loading racks at major source bulk gasoline terminals related covered by NESHAP subpart R.

The EPA assessed the options to revise the stringency of these MACT floor standards by considering the cost weighed against the emission reductions that a more stringent standard can achieve, with the inherent energy impacts of regulating energy production. NESHAP subpart R includes a numeric emission limit for loading racks that is unique to gasoline, but the control devices typically employed to achieve this standard include combustion devices and vapor recovery units. These types of devices can be used to control emissions from cargo vessel loading operations at natural gas processing plants, and the EPA concludes that they can achieve a 95 percent reduction in HAP emissions in the oil and natural gas industry. Therefore, we conclude that this represents a development in control technology from submerged filling alone. The incremental cost effectiveness to 95 percent for transport vessel loading operations at major source natural gas transmission and storage facilities is estimated to be $64 million per ton of additional reduction in HAP. This is above a level that we had already previously determined to be unreasonable.

Proposed Standards for Transport Vessel Loading Operations at Major Source Natural Gas Transmission and Storage Facilities

Based on the above MACT floor analysis under CAA section 112(d)(3) and the beyond-the-floor/technology review under CAA sections 112(d)(2)/112(d)(6), we are proposing to require the installation and use of submerged filling to reduce HAP emissions from transport vessel loading operations at major source natural gas transmission and storage facilities.

f. Regulation of Emissions From Natural Gas-Driven Process Controllers at Major Source Natural Gas Transmission and Storage Facilities (NESHAP Subpart HHH)

Process controllers are automated instruments used for maintaining the process condition, such as liquid level, pressure, pressure difference, or temperature. In the oil and gas industry, many process controllers are powered by pressurized natural gas and emit natural gas into the atmosphere. However, process controllers may also be powered by electricity or compressed air, and these types of process controllers do not use or emit natural gas. Natural gas-driven process controllers are a source of HAP emissions. Process controllers are used in several segments of the oil and natural gas industry, including at well sites, gathering and boosting stations, and natural gas processing plants. Process controllers are also used at natural gas transmission and storage facilities. While there are many natural gas-driven process controllers used in the industry, each individual natural gas-driven process controller only emits an average of approximately 25 pounds of HAP per year.

i. CAA Section 112(d)(3) MACT Floor Determination

Process controllers were not evaluated as part of the original rulemaking efforts for NESHAP subpart HHH. Emissions of methane and VOC are regulated under CAA section 111 of the CAA. The EPA has gathered information on these devices through other rulemakings that have taken place over time. New, modified, or reconstructed natural gas-driven process controllers are subject to 40 CFR part 60, subpart OOOO since 2012, and beginning in 2016, new, modified, or reconstructed natural gas-driven process controllers are subject to 40 CFR part 60, subpart OOOOa. Under both regulations, new natural gas-driven process controllers at transmission and storage facilities are required to operate at a natural gas bleed rate of less than 6 standard cubic feet per hour (scfh) (*i.e.,* low-bleed), with exceptions for demonstrated functional needs and safety. In 2024, process controllers subject to 40 CFR part 60, subparts OOOOb and OOOOc became subject to zero-emission standards, except for those at non-electrified sites in Alaska.[85]

MACT Floor for New Process Controllers

Based on information provided in response to the 2023 ICR questionnaire, all natural gas transmission major source facilities have electrical power provided by the grid or on-site power generation. In the final 1999 NESHAP, it was also determined that many natural gas transmission and storage facilities had electrical service in 1999. The existence of electricity provides the opportunity to use electric process controllers or pneumatic process controllers that are powered by compressed air. Both of these options eliminate organic HAP emissions from process controllers. While there are other options currently available to allow the use of zero-emitting process controllers, such as solar-powered

[85] Emission Guidelines OOOOc regulating existing sources will be implemented through a future state or Federal plan.

electrical process controllers or pneumatic controllers that are powered by nitrogen gas, these options were not common in 1999. However, it is safe to assume that zero-emitting electric process controllers or pneumatic process controllers powered by compressed air were in use at natural gas transmission and storage facilities with electrical service in 1999, meaning that the ''best controlled similar source'' has zero HAP emissions.

Based on this information, the EPA concludes that zero emissions for process controllers at natural gas transmission and storage facilities represents the emissions level achieved by the best performing similar source. Based on this information, the EPA determines zero-emissions to be the MACT floor for new process controllers at existing major source transmission and storage facilities We are specifically soliciting comment on this determination, along with information to support or refute these assumptions about the use of zero emission process controllers at natural gas transmission and storage facilities in 1999. (Question #10a)

MACT Floor for Existing Process Controllers

While specific information is not available to confirm the prevalence of the use of low-bleed pneumatic controllers specifically at natural gas transmission and storage facilities in 1999, it is safe to assume that at least 12 percent of natural gas driven process controllers at these facilities were low-bleed devices at that time. Therefore, the EPA concludes that the use of low-bleed natural gas driven process controllers represents the control level utilized for the best performing 12 percent of sources. Based on this, the EPA established an existing source MACT floor under CAA section 112(d)(3) that requires natural gas-driven process controllers at existing major source transmission and storage facilities to operate at a natural gas bleed rate of less than 6 scfh (*i.e.,* low-bleed), with exceptions for demonstrated functional needs and safety. We are specifically soliciting comment on this determination, along with information to support or refute these assumptions about the location, use, and the types of process controllers used at natural gas transmission and storage facilities in 1999. (Question #10b)

CAA 112(d)(2) Beyond-the-Floor/ Section 112(d)(6) Technology Review

The EPA then assesses whether the MACT floor for existing sources process controllers should be strengthened under a combined CAA sections 112(d)(2)/112(d)(6) review. For existing natural gas-driven process controllers at major source natural gas transmission and storage facilities, this is based on the new source MACT floor.

The EPA assessed various factors, including considering the cost weighed against the emission reductions that a more stringent standard can achieve, and the inherent energy impacts of regulating energy production. The estimated HAP emissions reductions for a facility switching to zero-emissions process controllers is approximately 0.03 tons per year. The incremental cost effectiveness of this zero-emissions option is estimated to be $4.5 million per ton of additional reduction in HAP. This is above a level that we had already previously determined to be unreasonable.

The MACT standard for new sources was determined to be the use of zero-emission process controllers at major source natural gas transmission and storage facilities. As this standard would eliminate all HAP emissions from process controllers, under CAA section 112(d)(6) technology review and a CAA section 112(d)(3) beyond-the-floor analysis, there are no developments in practices, processes, and control technologies that would achieve greater emission reductions from the 1999 MACT floor for new sources.

iii. Proposed Standards for Process Controllers at Major Source Natural Gas Transmission and Storage Facilities

Based on the above MACT floor analysis under CAA section 112(d)(3) and the beyond-the-floor/technology review under CAA sections 112(d)(2)/ 112(d)(6), we are proposing standards that require all natural gas-driven process controllers at existing major source transmission and storage facilities to operate at a natural gas bleed rate of less than 6 scfh (*i.e.,* low-bleed), with exceptions for demonstrated functional needs and safety. For new major source natural gas transmission and storage facilities, we are proposing that all process controllers have zero emissions.[86]

[86] In terms of cost and impact, the EPA anticipates all affected sources will emit zero emissions via instrument air starting in 2029 due to the NSPS Emission Guidelines OOOOc. See 40 CFR 60.5394c, the model rule for States implementing controller requirements, and the EIA in the docket.

g. Regulation of Emissions From Natural Gas-Driven Pumps at Natural Gas Transmission and Storage Facilities (NESHAP Subpart HHH)

In the oil and natural gas industry, pumps are used for many purposes, including chemical injection, hot glycol circulation for heat tracing/freeze protection, and glycol circulation in dehydrators. These pumps are generally either piston pumps or diaphragm pumps that can be powered by compressed air, compressed natural gas, or electricity. Of these pumps, those that are units driven by natural gas emit HAP to the atmosphere as part of their normal operation. Pumps can also have emissions from equipment leaks; however, those emissions are not related to normal operations and are addressed separately. In many situations across all segments of the oil and gas industry, natural gas-driven pneumatic pumps are used where electricity is not readily available. Natural gas-driven pumps are used in several segments of the oil and natural gas industry, including well sites, gathering and boosting stations, and natural gas processing plants. Natural gas-driven pumps are also used in the natural gas transmission and storage facilities.

i. CAA Section 112(d)(3) MACT Floor Determination

As pumps were not evaluated as part of the original rulemaking efforts for NESHAP subpart HHH, there was no information gathered in connection with the 1998 proposal or 1999 Final Rule. Thus, there is no data available from that time period to perform a detailed MACT floor analysis.

As noted in section III.B.4.e of this preamble, all natural gas transmission major source facilities for which information was provided in the 2023 ICR have electrical power provided by the grid or on-site power generation. Further, the 2024 Phase II ICR data indicated that approximately 95 percent of the pumps in the natural gas transmission and storage category have zero emissions by using either electrical pumps or pumps powered by compressed air rather than natural gas.

Based on information provided in response to the 2023 ICR questionnaire, all natural gas transmission major source facilities have electrical power provided by the grid or on-site power generation. In the 1999 Final NESHAP, it was also determined that many natural gas transmission and storage facilities had electrical service in 1999. While we believe that the percentage of zero emission pumps at major source natural gas transmission and storage

facilities in 1999 may have been less than 95 percent, we expect that at least 12 percent of the pumps would have been either electrical pumps or pumps driven by compressed air and have zero emissions, as it has been common since at least the 1990s in the oil and gas industry to use natural gas-powered pumps where electricity is not available and to use electrical pump or pumps driven by compressed air where electricity is available. As these pumps have zero emissions, there is no technology or practice that could achieve a higher emissions reduction rate.

Based on this information, the EPA concludes zero emissions for pumps at major source natural gas transmission and storage facilities, represents the emissions level achieved by the best performing similar source, as well as the emissions level achieved by the top performing 12 percent of sources. Therefore, the EPA established a MACT floor under CAA section 112(d)(3) that requires zero emissions for both new and existing pumps at major source natural gas transmission and storage facilities. We are specifically soliciting comment on this determination, along with information to support or refute these assumptions about the use of zero emissions pumps at natural gas transmission and storage facilities in 1999. (Question #11a)

ii. CAA 112(d)(2) Beyond-the-Floor/ Section 112(d)(6) Technology Review

As discussed above, the MACT floor was determined to be the use of zero-emission pumps at major source natural gas transmission and storage facilities. As this standard would eliminate all HAP emissions from pumps, there are no developments in practices, processes, and control technologies that would achieve greater emission reductions from the MACT level.

iii. Proposed Standards for Pumps at Major Source Natural Gas Transmission and Storage Facilities

Based on the above MACT floor analysis under CAA section 112(d)(3) and the beyond-the-floor/technology review under CAA sections 112(d)(2)/ 112(d)(6), we are proposing that all pumps at new and existing major source natural gas transmission and storage facilities have zero emissions.

5. Proposed Changes to Small Dehydrator Emission Limit Equations

Dehydrators are used in the oil and gas industry to remove water from natural gas to meet pipeline quality standards. The most common approach to remove water from production streams is to use a liquid desiccant like triethylene glycol (TEG). During the dehydration process, the liquid desiccant primarily absorbs water, but it can also inadvertently separate methane, VOCs, and other HAP out of the gaseous stream. Once the liquid desiccant is saturated with gases, it can be regenerated through a heat treatment in a reboiler. At this stage, the absorbed water, methane, VOCs, and other HAP stored in the liquid desiccant degas and are vented to the atmosphere. At some sites, the liquid desiccant is recirculated with a natural-gas-assisted pump where even more natural gas components are absorbed into the liquid desiccant thereby leading to higher emissions during the degassing process. While the total HAP emissions from dehydrators may vary by operational, compositional, and system variables, it is largely understood that HAP emissions will scale with the concentration of HAP in the inlet stream to the dehydrator.

The HAP emissions from dehydrators at major sources are regulated in both NESHAP subpart HH and NESHAP subpart HHH. For both regulations, dehydrators are separated into two subcategories: Large Dehydrators and Small Dehydrators. In NESHAP subpart HH, the following definitions apply.

Small glycol dehydration unit is defined as a glycol dehydration unit, located at a major source, with an actual annual average natural gas flowrate less than 85 thousand standard cubic meters per day or actual annual average benzene emissions of less than 0.90 Mg/yr.[87] [88]

Large glycol dehydration unit is defined as a glycol dehydration unit with an actual annual average natural gas flowrate equal to or greater than 85 thousand standard cubic meters per day and actual annual average benzene emissions equal to or greater than 0.90 Mg/yr.[89] A glycol dehydration unit complying with the 0.9 Mg/yr control option under 40 CFR 63.765(b)(1)(ii) is considered to be a large dehydrator.

The definitions in NESHAP subpart HHH are similar to the definitions in subpart HH, except the flowrate criteria are different.

Small glycol dehydration unit means a glycol dehydration unit, located at a major source, with an actual annual average natural gas flowrate less than 283.0 thousand standard cubic meters per day or actual annual average benzene emissions less than 0.90 Mg/yr.[90] *Large glycol dehydration unit* means a glycol dehydration unit with an actual annual average natural gas flowrate equal to or greater than 283.0 thousand standard cubic meters per day and actual annual average benzene emissions equal to or greater than 0.90 Mg/yr.[91] A glycol dehydration unit complying with the 0.9 Mg/yr control option under 40 CFR 63.1275(b)(1)(ii) is considered to be a large dehydrator.

The EPA is not proposing any changes to the large dehydrator provisions in either NESHAP subpart HH or NESHAP subpart HHH. However, revisions are being proposed to the small dehydrator requirements in both NESHAP subparts.

For small dehydrators both NESHAP subpart HH and NESHAP subpart HHH include equations that calculate dehydrator-specific limits for the combined emissions of BTEX. The equations in NESHAP subpart HH are as follows.

For existing sources:

Equation 1

$$EL_{BTEX} = 3.28x10^{-4} \times Throughput \times C_{i,BTEX} \times 365 \frac{days}{year} \times \frac{1\,Mg}{1x10^{6}\,grams}$$

Where:

EL_{BTEX} = Unit-specific BTEX emission limit, megagrams per year;

3.28×10^{-4} = BTEX emission limit, grams BTEX/standard cubic meter-ppmv;

Throughput = Annual average daily natural gas throughput, standard cubic meters per day; and

[87] Determined using NESHAP subpart HH, 40 CFR 63.772(b).

[88] 40 CFR 63.761

[89] Determined using NESHAP subpart HH, 40 CFR 63.772(b).

[90] Determined using NESHAP subpart HHH, 40 CFR 63.1282(a).

[91] Determined using NESHAP subpart HHH, 40 CFR 63.1282(a).

$C_{i,BTEX}$ = Annual average BTEX concentration of the natural gas at the inlet to the glycol dehydration unit, ppmv.

For new sources:

Equation 2

$$EL_{BTEX} = 4.66x10^{-6} \times Throughput \times C_{i,BTEX} \times 365 \frac{days}{year} \times \frac{1\,Mg}{1x10^{6}\,grams}$$

Where:

EL_{BTEX} = Unit-specific BTEX emission limit, megagrams per year;

4.66×10^{-6} = BTEX emission limit, grams BTEX/standard cubic meter-ppmv;

Throughput = Annual average daily natural gas throughput, standard cubic meters per day; and

$C_{i,BTEX}$ = Annual average BTEX concentration of the natural gas at the inlet to the glycol dehydration unit, ppmv.

Similar equations are in NESHAP subpart HHH, as follows.

For existing sources:

Equation 1

$$EL_{BTEX} = 3.10x10^{-4} \times Throughput \times C_{i,BTEX} \times 365 \frac{days}{year} \times \frac{1\,Mg}{1x10^{6}\,grams}$$

Where:

EL_{BTEX} = Unit-specific BTEX emission limit, megagrams per year;

3.10×10^{-4} = BTEX emission limit, grams BTEX/standard cubic meter-ppmv;

Throughput = Annual average daily natural gas throughput, standard cubic meters per day; and

$C_{i,BTEX}$ = Annual average BTEX concentration of the natural gas at the inlet to the glycol dehydration unit, ppmv.

For new sources:

Equation 2

$$EL_{BTEX} = 5.44x10^{-5} \times Throughput \times C_{i,BTEX} \times 365 \frac{days}{year} \times \frac{1\,Mg}{1x10^{6}\,grams}$$

Where:

EL_{BTEX} = Unit-specific BTEX emission limit, megagrams per year;

5.44×10^{-5} = BTEX emission limit, grams BTEX/standard cubic meter-ppmv;

Throughput = Annual average daily natural gas throughput, standard cubic meters per day; and

$C_{i,BTEX}$ = Annual average BTEX concentration of the natural gas at the inlet to the glycol dehydration unit, ppmv.

Under both NESHAP subparts HH and HHH, the BTEX emission limits calculated through Equations 1 and 2. These standards may be met by emission reductions using control devices, process modifications, or a combination of control devices and process modifications. Alternatively, the standards can be met by demonstrating that the actual emissions from the uncontrolled operation of the glycol dehydration units are below the emission limit threshold. Demonstration of compliance with the standards is achieved via monitoring, recordkeeping, or documentation of work practices, dependent on the emissions reduction method selected.

The EPA has received feedback from industry that suggest that using the small dehydrator emissions limit equations provided in NESHAP subparts HH and HHH, and the GlyCalc™ software can generate emission limits for BTEX near zero.[92] In these cases, industry contends that the cost to control reaches infinite values for sources with very low inlet BTEX concentrations. Specifically, industry stakeholders explained that the infinitesimally high cost of control tends to arise in values of Ci,BTEX below 1 ppmv. To alleviate this problem, industry stakeholders suggested that small glycol dehydrators with inlet concentrations below the BTEX emission rates used to establish the MACT floor should be exempt from the emission standards.

On November 27, 2015, the EPA published a request for information regarding the compliance demonstrations for small glycol dehydration units with low BTEX emissions.[93] Industry provided input on this issue, including the following.

The Gas Processors Association reported that they conducted gas analyses for a new glycol dehydrator unit with inputs from several gas streams from their facility. The results from these tests found that their actual BTEX concentrations in their input streams were below the detection limit of 0.1 ppmv for the test they performed. In tandem to this measurement, the commenter also calculated the respective emission limits using the equations listed in the NESHAP. From the comparison of the values, the petitioner concluded that the calculated emission limits were untenable for a device that had input stream with concentrations of BTEX below the detection limit.[94] Another commenter cited the example of a TEG dehydrator used to treat the gas in a molecular sieve regeneration bed at a gas plant that was determined a major source under the NESHAP subpart HH. The throughput for the dehydrator averaged around 7.5 MMscf/day and the uncontrolled benzene emissions were 0.11 tpy. The BTEX concentration of the inlet stream measured less than 2 ppmv. To control this dehydration unit according to the requirements in the NESHAP subpart HH, an emission limit of 0.001 tpy of BTEX needed to be met. This emission limit require a 99.87 percent control. For this reason, the petitioner noted that the high level of control is excessive for a unit with less than 2 ppm inlet BTEX and a low volumetric throughput.[95]

[92] Gas Processors Association (GPA). (2012). Administrative Petition for Reconsideration of Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutant Reviews; Final Rule, Promulgated at 77 FR 49490 (August 16, 2012); Docket ID. No. EPA–HQ–OAR–2010–0505. (October 16, 2012).

[93] 80 FR 74068 (November 27, 2015).

[94] Boss, T., Interstate Natural Gas Association of America. (2016). Letter to Witosky, M., EPA. RE: Docket ID No. EPA–HQ–OAR–2015–0747. Response to EPA Request for Information for Natural Gas Transmission and Storage NESHAP (40 CFR, part 63, subpart HHH). March 11, 2016. Document ID No. EPA–HQ–OAR–2015–0747–0023.

[95] Hite, M., Gas Processors Association. (2016). Letter to U.S. Environmental Protection Agency Docket Clerk. Re: Comments on Oil and Natural Gas

Continued

Moreover, commenters suggested that the EPA should (1) add regulatory text to exempt glycol dehydrators with an average BTEX concentration of the natural gas at the inlet to the glycol dehydration of 1 ppmv or less from the requirements of 40 CFR 63.765(b)(1)(iii) and 63.1275(b)(1)(iii), or (2) develop an alternative standard for glycol dehydrators with low concentrations of BTEX in the input streams regardless of HAP concentrations in the glycol reboiler still overhead.[96] To address the petitioner's concerns, the EPA proposes an alternative of the original compliance equation where unit-specific parameters lead to an inviable emission limit using the original equation. The alternative equation is to be used by small glycol dehydrators whose BTEX inlet concentration is three times the relative detection limit of BTEX in the inlet stream to the dehydrator or lower. Thus, the proposed alternative equations are in the following format.

$$EL_{BTEX,alt} = Constant * Throughput * \left(3 * \sum RDL_{i,BTEX}\right) * 365 \frac{days}{year} * \frac{1\,Mg}{1\,x\,10^{6} grams}$$

Where:

$EL_{BTEX,\ alt}$ = Unit-specific BTEX emission limit for small dehydrators with $C_{i,BTEX}$ of ($3*\Sigma RDL_{i,BTEX}$) or less, megagrams per year;

Constant = BTEX emission limit, grams BTEX/standard cubic meter-ppmv from current equations (3.28×10^{-4} for small existing dehydrators in subpart HH; 4.66×10^{-6} for new small dehydrators in subpart HH; 3.10×10^{-4} for small existing dehydrators in subpart HHH; and 5.44×10^{-5} for small new dehydrators in subpart HHH);

Throughput = Annual average daily natural gas throughput, standard cubic meters per day; and

RDL_i = relative detection limit of benzene, toluene, ethylbenzene, and xylenes, ppmv.[97]

Based on data received in a previous rulemaking, the EPA estimates that the relative sum of the detection limits of BTEX is 0.116 ppmv.[98] This would mean that three times the sum of the detection limits of BTEX amounts to 0.348 ppmv. The EPA believes that the RDLs for BTEX may be higher than 0.116 ppmv in this source category and is specifically requesting data specific to the relative detection limits of BTEX in inlet streams of glycol dehydrators (Question #9a).

We are also seeking comment on this application of the compliance equation for small glycol dehydrators on two specific questions. First, does this use of the equation ease the demonstration and verification of compliance on the part of operators and enforcement personnel? (Question #9b) Second, does using this equation create any incentive for operators to change the control methods used for these units to achieve compliance, and if so, how? (Question #9c)

6. Electronic Reporting

The EPA is proposing that owners and operators of Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities submit electronic copies of the required performance test reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for this action. The proposed rule requires that performance test results be submitted in the format generated through the use of the EPA's Electronic Reporting Tool (ERT) or an electronic file consistent with the xml schema on the ERT website.[99] Similarly, performance evaluation results of continuous emissions monitoring systems (CEMS) that include a relative accuracy test audit must be submitted in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website. Electronic files consistent with the xml schema on the ERT website must be accompanied by all the information required by 40 CFR 63.7(g)(2) in PDF format. The proposed rule also requires that Notification of Compliance Status (NOCS) reports be submitted as a PDF upload in CEDRI.

For semiannual compliance reports, the proposed rule requires that owners and operators use the appropriate spreadsheet template to submit information to CEDRI. A draft version of the proposed template[s] for these reports is included in the docket for this rulemaking. The EPA specifically requests comment on the content, layout, and overall design of the template[s] (Question #10).

The electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated State, local, Tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected sources, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan to implement Executive Order 13563 and is in keeping with the EPA's agency-wide policy. [100] [101] For more information on the benefits of electronic reporting, see the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and*

Sector: National Emission Standards for Hazardous Air Pollutants; Request for Information (Docket ID. No. EPA–HQ–OAR–2015–0747). (March 11, 2016). Document ID No. EPA–HQ–OAR–2015–0747–0025.

[96] Todd, M. American Petroleum Institute. (2016). Letter to McCarthy, G., EPA. Re: Environmental Protection Agency's (EPA's) ''Request for Information—Oil and Natural Gas Sector: National Emission Standards for Hazardous Air Pollutants''. (March 11, 2016). Document ID No. EPA–HQ–OAR–2015–0747–0022.

[97] The RDL for Benzene is 0.022 ppmv, for Toulene is 0.014 ppmv, for Ethyl Benzene is 0.057 ppmv and for Xylenes is 0.023 ppmv.

[98] Representative Detection Limit (RDL) for Organic HAP for Lime Manufacturing Sources, Docket ID. EPA–HQ–OAR–2017–0015.

[99] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

[100] EPA's Final Plan for Periodic Retrospective Reviews, (August 2011). Available at: *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[101] E-Reporting Policy Statement for EPA Regulations, (September 2013). Available at: *https://www.epa.gov/sites/default/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules, referenced earlier in this section.

7. Additional Proposed Actions

In addition to the proposed actions described above, we are soliciting comment on three additional issues related to the NESHAP.

As referenced in section II.C of this preamble, we requested testing for glycol dehydrators and acid gas removal units in the 2024 Phase II ICR. We requested analysis of rich TEG samples from glycol dehydrators and rich amine from AGRU's to detect the presence of metals that could be transferred from the raw natural gas to the rich glycol during dehydration or the rich amine solution from acid gas removal units during acid gas removal. We collected data on units that emit HAP to help inform the Agency in its review of the Oil and Gas NESHAP with respect to additional HAP that could be emitted from the oil and gas category.

The data showed negligible but detectable concentrations of metals for both units using EPA Method 6000/7000 for mercury and EPA Method 200 for all other metals. Notably, both EPA Method 200 and Method 6000/7000 test for trace elements in solution, and as such, the results do not reflect the concentration of metals in the gas phase. For the EPA to set standards applicable to the HAP, the HAP need to be in the gas phase at detectable levels to trigger CAA section 112(d).

To determine the potential HAP concentrations in the gas streams of glycol dehydrators and amine units, the vapor pressure of the metals must be considered. For most metals, the vapor pressure is negligible at working conditions (1–50 bar, and 300–450 Kelvin).[102] However, mercury can produce substantial emissions depending on the concentration of the aqueous stream. Using the data provided, the average concentration of mercury was multiplied by its vapor pressure for a range of working temperatures.[103] The resulting value as seen in the docket showed the theoretical concentration of mercury in the gas phase for both devices. For both units the results showed negligible, theoretical concentrations of mercury. Additionally, both units are fully enclosed and have low flow, making the potential of mercury and other metallic HAP to be minimal.

We are soliciting comment on whether to further pursue analysis of potential metal HAP emissions (Question #11). We consider the low levels of detected metals in solution, and the low likelihood of HAP emissions that could result from the presence of these metals to not warrant further investigation. Nonetheless, we invite comment and data showing more than theoretical emissions of HAP from such units, and what the magnitude of what those emissions may be before committing to further investigation of these potential emissions. We also request information from operators for data or information indicating that AGRUs and glycol dehydrators retain the metals that could be present in the amine and TEG, thereby reducing the potential for metal emissions where such metals could be present in the gas being treated.

The second issue the EPA is soliciting comment on adding other modeling software that can quantify emissions from glycol dehydrators and associated equipment for the purpose of determining emissions and showing compliance with applicable NESHAP. While the 1999 Final Rule allowed only the Glycalc™ model to be used for these purposes, the EPA now recognizes that operators use other available software.

The EPA has approved the use of the ProMax™ model as suitable for performing the emissions and related parameter determinations for which the GLYCalc™ model is already allowed in subpart HH and may be used as an alternative to the GLYCalc™ model under a list of stipulated conditions.[104] We are requesting comment on adding ProMax™ version 6.0 (or if an earlier version should also be acceptable) as an alternative to GLYCalc™ within the regulatory text, and other programs that operators may already be using, or considered using but declined to use because they were not listed in the NESHAP as acceptable alternatives (Question #12a). We also solicit comment on whether the EPA should revise the standard to a generic reference allowing the use of such software, and what performance requirements the EPA should include with a generic allowance of such software without requiring that the trademarked name of the software be promulgated into the NESHAP (Question #12b). Finally, since GRI–GLYCalc™ was classified as Legacy Software in 2023 and will no longer be supported or updated, should references to GRI–GLYCalc™ be removed from both NESHAP subpart HH and subpart HHH? (Question #12c)

As discussed in section III.B.5 of this preamble, NESHAP subparts HH and HHH include equations that are required to be used to calculate glycol-dehydrator-specific limits for the combined emissions of BTEX. In the 2011 Proposed Rule Amendments, the EPA originally proposed these equations. In the 2012 Final Rule, the EPA revised these equations in response to public comments. Specifically, the EPA stated ''[i]n response to comments, we revised the MACT floor limit, which was calculated based on the average of the best performing 12 percent of small glycol dehydration units in the subpart HH source category (and the best performing five for subpart HHH), to account for these units' variability. To account for variability in the operation and emissions, the BTEX emission rates (in terms of g BTEX/scm-ppmv) were used to calculate the average emission rate and the 99 percent UPL to derive the MACT floor limit.'' [105] The details for this analysis were provided in a technical memorandum.[106] Regarding the changes made in the final rule, petitioners indicated that because significant changes were made to the MACT limit for small glycol dehydrators from the proposal to the final rule, it was impracticable for the public to comment on those changes during the comment period. Therefore, we are specifically requesting comment on the 2012 MACT floor analysis for small glycol dehydrators that determined the UPL (Question#16).

The UPL approach addresses variability of emissions test data from the best-performing source or sources in setting MACT standards. The UPL also accounts for uncertainty associated with emission values in a dataset, which can

[102] U.S. Environmental Protection Agency. *Background Technical Support Document for the National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities—Technology Review and Reconsideration. NESHAP Subparts HH and HHH. Proposed Rules.* Natural Resources Division, Office of Clean Air Programs, Research Triangle Park, NC. (January 2026).

[103] Hicks, W.T., *Evaluation of Vapor-Pressure Data of Mercury, Lithium, Sodium, and Potassium,* J. Chem. Phys., 1963, 38, 8, 1873–1880, *https://doi.org/10.1063/1.1733889.*

[104] Johnson, S., EPA. (2022). Letter to Mr. Josh Ravichandran, Consulting Engineer—Western U.S., Bryan Research & Engineering, LLC. March 31, 2022. Letter approving the use of ProMax™ as an alternative to GLYCalc™, Docket ID No. EPA–HQ–OAR–2025–1348.

[105] Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews 40 CFR parts 60 and 63 Response to Public Comments on Proposed Rule, (August 23, 2011). (76 FR 52738). Document ID EPA–HQ–OAR–2023–0234–0448. p. 255.

[106] Memorandum. Brown, H., EC/R Inc., to Nizich, G. and Moore, B., EPA. Impacts of Final MACT Standards for Glycol Dehydration Units—Oil and Natural Gas Production and Natural Gas Transmission and Storage Source Categories. (April 17, 2012). Docket ID EPA–OAR–2010–0505–4494.

be influenced by components such as the number of samples available for developing MACT standards and the number of samples that will be collected to assess compliance with the emission limit. The UPL approach has been used in many environmental science applications. As explained in more detail in the UPL Memorandum, the EPA uses the UPL approach to reasonably estimate the emissions performance of the best-performing source or sources to establish MACT floor standards when the EPA has emissions test data that allow for such calculations.[107]

C. Technical Corrections to Subparts HH and HHH

We are proposing the following technical corrections to the CFR subparts HH and HHH. We are proposing to remove the word ''fuel'' from the text of 40 CFR 63.772(h)(4)(iii) ''inlet gas fuel sampling'' because it is not fuel being sampled. In addition, we are proposing to add a reference to the text of 40 CFR 63.766 (b)(3) in introduction in 40 CFR 63.766(b) that was inadvertently omitted.

D. What compliance dates are we proposing, and what is the rationale for the proposed compliance dates?

As discussed in section III.B.4 of this preamble, while the EPA proposes that CAA section 112(d)(6) does not require the Agency to expand the NESHAP to previously unregulated emission points, we are proposing in the alternative emission limits for these emission points. The EPA is proposing a series of compliance dates for the addition of methanol as a regulated HAP. The EPA is also proposing alternative compliance dates for the alternative standards we are proposing should the Agency proceed to finalize the alternative proposal with respect to unregulated emission points. Under CAA section 112(h)(i)(3)(A), those proposed compliance dates provide for compliance as expeditiously as practicable, but must require compliance within 3 years.

We are proposing new requirements for the control of methanol emissions from small dehydrators and storage vessels at major sources subject to subpart HH. This requirement will require owners or operators to identify all affected units where methanol could be introduced and emitted. Operators will have to begin recordkeeping and reporting to show compliance with the new standard. The EPA considers 12 months a reasonable period to comply where operators use combustion as the control method because we do not anticipate that operators will need to acquire and install new control systems and monitoring systems to verify compliance. However, the EPA is taking comment on whether non-combustion control methods are as effective as combustion control with respect to methanol. Since such units that do not currently use combustion may need to be addressed, we are accepting comment on whether 12 months is sufficient for existing sources that do not use combustion devices to come into compliance (Question #18a).

For AGRU's, the alternative limits would require some owners or operators to identify all affected units, acquire and install control systems and monitoring systems to verify compliance, and conduct recordkeeping and reporting. While EPA data show most operators already possess the necessary controls, the Agency cannot practically distinguish them from operators who must acquire and install new systems which could take up to three years. Given this impracticality, we are proposing to provide up to three years for existing sources to comply with the proposed alternative requirements.

For storage vessels at facilities subject to NESHAP subpart HHH, the proposed alternative standard would require owners or operators to identify all affected units, review and revise operations to ensure that submerged fill will be used at all times and revise any recordkeeping and reporting procedures. The EPA is proposing to provide a year for existing sources to comply with this proposed alternative requirement. The EPA is proposing a year because sources generally use submerged fill, but the Agency considers it plausible that since it was not a requirement, new procedures may be required to ensure that submerged fill will be used at all times. The EPA considers a year as a reasonable period come into compliance.

We are proposing new requirements for control of HAP emissions from storage vessels without PFE at major facilities subject to NESHAP subpart HH. The proposed alterative standard would require owners or operators to identify all affected units, review and revise operations to ensure that submerged fill will be used at all times and conduct recordkeeping and reporting. The EPA is proposing to provide a year for existing sources to comply with these proposed alternative requirements. The EPA is proposing a year because sources generally use submerged fill, but the Agency considers it plausible that since it was not a requirement, new procedures may be required to ensure that submerged fill will be used at all times. The EPA considers a year as a reasonable period come into compliance.

The EPA's alternative proposal requires submerged fill for control of emissions from transport vessel loading operations at major source facilities subject to NESHAP subpart HHH. The proposed alterative standard would require owners or operators to identify all affected units, review and revise operations to ensure that submerged fill will be used at all times, and conduct recordkeeping and reporting. The EPA is proposing to provide a year for existing sources to comply with these proposed alternative requirements. The EPA is proposing a year because sources generally use submerged fill, but the Agency considers it plausible that since it was not a requirement, new procedures may be required to ensure that submerged fill will be used at all times. The EPA considers a year as a reasonable period come into compliance.

We are proposing standards for natural gas-driven process controllers at major sources subject to NESHAP subpart HHH. This requirement will require owners and operators to identify all affected units, acquire and install process controllers meeting the standards, and begin recordkeeping and reporting. While our analysis indicates that facilities have generally converted their systems to lower-emitting units, the EPA recognizes that in a case where a controller must be replaced for compliance, the period of time required to replace a unit could be significant because it could include scheduling a shut-down of the operation. Therefore, the EPA is accepting comment on a proposal to allow existing sources to come into compliance by no later than 36 months after the effective date of the rule to allow operators to acquire and install equipment (Question #18b).

We are proposing zero emission standards for natural gas-driven pumps at major sources subject to NESHAP subpart HHH. This requirement will require owners or operators to identify all affected units, acquire and install pumps with zero emissions, and begin recordkeeping and reporting. While most units will already be zero-emission units, the Agency allows that some units may still exist that require replacement. The EPA is proposing that existing sources come into compliance within 12 months. However, based on the idea

[107] For more information regarding the general use of the UPL and why it is appropriate for calculating MACT floors, see *Use of Upper Prediction Limit for Calculating MACT Floors* (UPL Memorandum), which is available in the docket for this rulemaking.

that some units may need to be replaced, the EPA is taking comment on whether it is reasonable that existing sources have up to 12 months to comply with these new requirements (Question #18c).

We are proposing to change the application of CAA section 112(n)(4) as it applies to glycol dehydrators and storage vessels that are used upstream of processing plants in the production segment. We are proposing that glycol dehydrators and storage vessels be treated as associated equipment with respect to determining major source status, unless those units emit sufficient HAP to be considered major sources. This change will not affect prior determinations or the current status of existing sources. Any change to the status of facilities under this change would take force and effect upon application by an operator to change the status of an existing source, or determine first-time status for a new source, either of which can be effectuated upon application.

IV. Request for Comments

We are soliciting comments on this proposed rulemaking. In addition to general comments on this proposed rulemaking, we are also interested in additional data that may improve the analysis. We are specifically interested in receiving information regarding developments in practices, processes, and control technologies that reduce HAP emissions. Additionally, throughout this preamble, we solicit comment and responses to questions related to the differing standards. For convenience, we provide these questions in table 3.

TABLE 3—LIST OF QUESTIONS

Question No.	Question
1	Should the EPA adopt OGI and 40 CFR part 60 appendix K as an alternative to EPA Method 21 leak detection and repair at processing plants?
2a	Approximately how many current major sources will be affected, such that the facility or unit would convert from a major source to an area source?
2b	What cost savings will your facility achieve due to it being converted from a major source to an area source under this change?
2c	Will facilities that would no longer be considered major sources remove or modify their current control systems such that the unit or facility would increase HAP emissions from current emissions?
3a	The EPA requests comment and information on whether methanol is emitted at natural gas transmission and storage facilities.
3b	If you provide comments that indicate there are no methanol emissions, the EPA requests information and rationale for this claim.
4a	The EPA is soliciting comment on using BTEX limits as a surrogate for all HAP except methanol.
4b	The EPA is soliciting data and comment as to whether BTEX is an appropriate surrogate for methanol emitted from small dehydrators and storage vessels.
5a	The EPA is specifically requesting comment on whether BTEX is a surrogate for methanol emissions from small dehydrators that comply using a method other than combustion.
5b	The EPA also requests information, analyses, and data that may support such surrogacy.
5c	The EPA is requesting comment on whether this additional standard is necessary for methanol emissions, or if the BTEX equation can also be proven to be an appropriate surrogate for methanol.
6a	The EPA is specifically requesting comment and information on whether methanol is emitted from dehydrators at natural gas transmission and storage facilities.
6b	If the comments indicate there are no methanol emissions, the EPA is requesting information and rationale for this claim.
7	The EPA is specifically requesting comment on the interpretation adopted by the D.C. Circuit in *LEAN* and the scope of the Agency's obligation and statutory authority to impose additional standards under the CAA section 112(d)(6) process for particular emission points not previously regulated.
7a	The EPA is requesting comment on whether AGRUs at facilities located prior to the point of custody transfer to a natural gas processing plant may also emit at major source levels and thus should be regulated to reduce emissions by 95 percent.
7b	The EPA is requesting comments and information on the existence of AGRUs at natural gas transmission and storage facilities, as well as emissions and control information.
8a	The EPA is proposing submerged fill as the MACT standard under CAA sections 112(d)(2)–(3), and requesting data showing that storage vessels are a source of HAP emissions at major source natural gas transmission and storage facilities.
8b	We are specifically soliciting comment on information to support or refute the assumptions about the use of submerged filling in 1999 to reduce emissions from storage vessels without the PFE at oil and natural gas production sites and at major source natural gas processing plants.
9a	We are soliciting comment on the EPA's proposal to establish a MACT standard under CAA section 112(d)(2)–(3) that requires submerged filling for both new and existing transport loading operations at major source natural gas processing plants and at major source transmission and storage facilities. We are specifically soliciting comment on this determination, along with information to support or refute these assumptions about the use of submerged filling in 1999, and currently, to reduce emissions from transport vessel loading operations at major source natural gas processing plants.
9b	We are specifically soliciting comment on information to support or refute these assumptions about the use of submerged loading in 1999, and currently, to reduce emissions from transport vessel loading operations at natural gas transmission and storage facilities.
10a	The EPA is soliciting comment on the proposal to establish that the MACT standard for existing sources is the use of low-bleed natural gas driven process controllers.
10b	We are specifically soliciting comment on information to support or refute these assumptions about the location, use, and the types of process controllers used at natural gas transmission and storage facilities in 1999.
11a	The EPA is requesting comment on the proposal to establish a MACT standard under CAA section 112(d)(2)–(3) that requires zero emissions for new and existing pumps at new natural gas transmission and storage facilities. We are specifically soliciting comment on this determination, along with information to support or refute these assumptions about the use of zero emissions pumps at natural gas transmission and storage facilities in 1999.
12a	The EPA believes that the BTEX RDLs may be higher than 0.116 ppmv in this source category and is specifically requesting data specific to the relative detection limits of BTEX in inlet streams of glycol dehydrators.
12b	Does this use of the equation ease the demonstration and verification of compliance on the part of operators and enforcement personnel? Second, do you have any comment on the EPA's use of a UPL in this standard.

TABLE 3—LIST OF QUESTIONS—Continued

Question No.	Question
12c	Does using this equation create any incentive for operators to change the control methods used for these units to achieve compliance, and if so, how?
13	The EPA requests comment on the content, layout, and overall design of the template[s] for performance reports.
14	Should EPA pursue more information to determine the actual emissions of metal HAP from acid gas removal units, glycol dehydrators, or other potential sources of metal HAP? Submit data showing actual emissions from oil and gas production, storage, or transmission units.
15a	The EPA is requesting comment on adding Promax™ version 6.0 (or if an earlier version should also be acceptable) as an alternative to Glycalc™ within the regulatory text, and other programs that operators may already be using, or considered using but declined to use because they were not listed in the NESHAP as acceptable alternatives.
15b	The EPA is soliciting comment on whether the Agency should revise the standard to a generic reference allowing the use of such software, and what performance requirements should be included with a generic allowance of such software without requiring that the trademarked name of the software be promulgated into the NESHAP.
15c	GRI–GLYCalc™ was classified as Legacy Software in 2023 and will no longer be supported or updated. The EPA is soliciting comment on whether references to GRI–GLYCalc™ should be removed from both NESHAP subparts HH and HHH?
16	The EPA is requesting comment on the 2012 MACT floor analysis for small glycol dehydrators that determined the UPL.
17	The EPA is soliciting industry comment as to the potential savings of the deregulatory provisions of this proposal.
18a	The EPA is taking comment on whether non-combustion control methods are as effective as combustion control with respect to methanol.
18b	The EPA is accepting comment on a proposal to allow existing controllers to come into compliance by no later than 36 months after the effective date of the rule to allow operators to acquire and install equipment.
18c	The EPA is accepting comment on a proposal to allow existing pumps to come into compliance by no later than 36 months after the effective date of the rule to allow operators to acquire and install equipment.

V. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action, and the EPA therefore did not submit this action to the Office of Management and Budget (OMB) for review. The EPA prepared an economic analysis of the potential costs and benefits associated with this action. This analysis, *Economic Impact Analysis for National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities. Technology Review and Reconsideration,* can be found in the docket for this action (see Docket ID No. EPA–HQ–OAR–2025–1348).

The proposed option in which the EPA proposes that it is not obligated at this time to revise the NESHAP to add standards for previously unregulated emission points, does not have quantified cost and emissions impacts. However, there may be cost savings and increased emissions because of the change to the major source definition in the production segment of subpart HH. Those impacts cannot be quantified for this proposed action due to a lack of information on the universe of sources to which the change in definition might apply. The EPA solicits comment on the potential cost savings and emissions impacts of the deregulatory provisions of this proposal (Question #17).

The economic analysis includes estimates of incremental compliance costs and emissions reductions for two additional scenarios: the alternative proposed standards, and hypothetical more stringent standards that rely more on numerical limits than work practices. The more stringent standards are not being proposed; they are included to provide additional information to the public. Both scenarios are assessed relative to a baseline scenario that includes assumptions about the application of control measures in lieu of this action.[108] The pollutants for which we estimate emissions reductions are HAP and VOC. The analysis horizon over which the present value (PV) and equivalent annualized value (EAV) are estimated are for years 2028 to 2038. We estimate the PV and EAV under three and seven percent discount rates discounted back to 2025 in 2024 dollars.

The analysis is based on applying assumptions about the distribution of equipment, emissions profiles, and control cost and performance to an estimate of the universe of potentially affected sources. After accounting for baseline levels of control, our central analysis scenario for the alternative proposal standards assumes that there are no quantifiable control cost and emissions impacts; the only estimated costs pertain to the recordkeeping and reporting requirements discussed in section VI.C of this preamble. For the more stringent standards, our central analysis scenario assumes that only standards applying to vessel loading operations at current major sources result in cost and emissions impacts (other than recordkeeping and reporting). We estimate that there are 648 (449 in production and 199 in processing) and 65 major source facilities subject to NESHAP subparts HH and HHH, respectively, for a total of 713 major source facilities. Of those, we assume that 94 percent of NESHAP subpart HH processing facilities and 23 percent of NESHAP subpart HHH facilities include vessel loading operations. Furthermore, we assume that 46 percent of vessel loading operations at NESHAP subpart HH processing facilities are controlled to at least 95 percent in the baseline.

The estimated compliance costs and emissions reductions are summarized in tables 4 and 5. There are no estimated impacts for the proposed option, though there may be cost savings and increased emissions because of the change to the major source definition in the production segment of subpart HH. For the alternative proposal standards, the estimated costs are attributable to recordkeeping and reporting, and there are no estimated emissions impacts. The estimates of the more stringent option

[108] Baseline control is assumed to result from the EG OOOOc for the more stringent standards for storage vessels (both subparts) and process controllers and pumps (NESHAP subpart HHH), and for other reasons (*e.g.,* State regulations) based our assessment of the ICR and technical expertise for AGRUs (alternative proposal and more stringent standards), storage vessels (alternative proposal standards), and vessel loading operations (alternative proposal and more stringent standards).

are much higher than those for the alternative proposal standards since they include control costs.

TABLE 4—PRESENT VALUE (PV) AND EQUIVALENT ANNUALIZED VALUE (EAV) OF THE ESTIMATED COMPLIANCE COSTS

[Million 2024$, discounted to 2025]

Option	3 Percent discount rate		7 Percent discount rate	
	PV	EAV	PV	EAV
Proposed Option	0	0	0	0
Alternative Proposal Standards	0.9	0.1	0.7	0.09
More Stringent Standards	35	3.7	27	3.6

TABLE 5—ESTIMATED EMISSIONS REDUCTIONS

[Thousand short tons]

Option	HAP	VOC
Proposed Option	0	0
Alternative Proposal Standards	0	0
More Stringent Standards	8,800	32,000

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is not an Executive Order 14192 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

The information collection activities in the proposed amendments for 40 CFR part 63, subparts HH and HHH were submitted for approval to the Office of Management and Budget (OMB) under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1788.14 and 1789.13. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The EPA is proposing a number of amendments to the Crude Oil and Natural Gas Production Facilities and from Natural Gas Transmission and Storage Facilities, regulating them under 40 CFR part 63, subparts HH and HHH. The amendments consist of: (1) already regulated emission points of currently regulated HAP; (2) proposed standards unregulated emission points as an alternative to the proposal that regulation is not required) ; and (3) regulated emission points of HAP for not currently regulated HAP. The EPA is also proposing amendments to add electronic reporting requirements for certain reports and performance test results. This ICR reflects the EPA's proposed changes to several emission points in the Crude Oil and Natural Gas source category. The information collected will be used by the EPA and delegated State and local agencies to determine the compliance status of affected facility subject to 40 CFR part 63, subparts HH and HHH. To address the average annual burden associated with these source categories, the EPA used a conservative assessment in the cost calculations associated with the increased burden due to the proposed and alternative amendments.

40 CFR part 63, subpart HH. The respondents are owners and operators of Crude Oil and Natural Gas Production Facilities. For the purposes of this ICR, it is assumed that oil and natural gas affected facilities located in the U.S. are owned and operated by the oil and natural gas industry, and that none of the affected facilities in the U.S. are owned or operated by Federal, State, Tribal, or local government. All affected facilities are assumed to be privately owned for-profit businesses.

The EPA estimates an average of 3,580 respondents will be affected by 40 CFR part 63, subpart HH over the three-year period (2026–2028). The average annual burden for the recordkeeping and reporting requirements for these owners and operators is 55,400 person-hours, with an average annual cost of $8,920,000 over the three-year period. Compared to the previously approved ICR (1789.13), the proposed amendments would result in an increase in burden of 600 hours (total estimated hours difference between the previous and new (revised) ICR from 55,400 to 54,800, or 600 hours) and $70,000 (total estimated cost difference between the previous ICR and new (revised) ICR is $70,000 (from $8,920,000 to $8,850,000) on average over the 3-year period. Dividing $70,000 by 3,580 respondents represents a $20 (19.55)/respondent change. Similarly, dividing 600 hours by 3,580 respondents represents a 0.2 (0.167) hour/respondent change. This reflects an increase in burden per respondent of 0.2 hour and $20 per year, on average over the 3-yr period.

Respondents/affected entities: Owners and operators of Crude Oil and Natural Gas Production Facilities.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 3,580.

Frequency of response: Varies depending on affected facility.[109]

Total estimated burden: 55,400 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $8,920,000 ($2024) plus $1,110,000 of annualized capital O&M costs.

40 CFR part 63, subpart HHH. The respondents are owners and operators of Natural Gas Transmission and Storage Facilities. For the purposes of this ICR, it is assumed that oil and natural gas affected facilities located in the U.S. are owned and operated by the oil and natural gas industry, and that none of the affected facilities in the U.S. are owned or operated by Federal, State, Tribal, or local government. All affected facilities are assumed to be privately owned for-profit businesses.

The EPA estimates an average of 100 respondents will be affected by 40 CFR part 63, subpart HHH over the three-year period (2026–2028). The average annual burden for the recordkeeping and reporting requirements for these owners and operators is 5,620 person-hours, with an average annual cost of $793,000 over the three-year period. Compared to the previously approved ICR (1789.12), the proposed

[109] The specific frequency for each information collection activity within this request is shown in tables 1a through 1d of the Supporting Statement in the public docket.

amendments would result in an increase in burden of 240 hours (total estimated hours difference between the previous and new (revised) ICR is from 5,380 to 5,620, or 240 hours) and $34,000 (total estimated cost difference between the previous ICR and new (revised) ICR is $34,000 (from $793,000 to $759,00) on average over the 3-year period. Dividing $34,000 by 106 respondents represents a $320/respondent change. Similarly, dividing 240 hours by 106 respondents represents a 2.3 hour/respondent change. This reflects an increase in burden per respondent of 2.3 hour and $320 per year, on average over the 3-yr period.

Respondents/affected entities: Owners and operators of Natural Gas Transmission and Storage Facilities.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 106.

Frequency of response: Varies depending on affected facility.[110]

Total estimated burden: 5,620 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $793,000 ($2,024), which includes no capital costs or O&M costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rulemaking. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *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. OMB must receive comments no later than May 22, 2026.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are small businesses with operations in the oil and natural gas industry. As described in section VI.A of this preamble, the Agency assumes that for the proposed option, in which the EPA is not setting new standards for previously unregulated emission points, there are no compliance costs. For the alternative proposal standards, no small entities are estimated to experience a compliance cost impact of more than one percent of revenues. For the more stringent standards (which are not being proposed), the Agency estimates that between 2 and 6 (3–9 percent) small entities may experience a compliance cost impact more than one percent of revenues, while one (one percent) small entity may experience a compliance cost impact more than three percent of revenues. Details of this analysis are presented in *Economic Impact Analysis for National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities. Technology Review and Reconsideration,* which can be found in the docket for this action (see Docket ID No. EPA–HQ–OAR–2025–1348).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million (adjusted annually for inflation) or more (in 1995 dollars) as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local or Tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action has Tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized Tribal governments, or preempt Tribal law, and does not have substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in E.O. 13175.[111] In the November 2021 Proposal for the New Source Performance Standards for Oil and Natural Gas Sector, the EPA found that 112 unique Tribal lands are located within 50 miles of an affected oil and natural gas source, and 32 Tribes have one or more oil or natural gas sources on their lands.[112] While many of the affected sources impacted by proposed NESHAP subparts HH and HHH Tribal lands are owned by private entities, some Tribes also own affected sources. There would be Tribal implications associated with this rulemaking in the case where an affected source is owned by a Tribal government or in the case of the NESHAP a Tribal government is given delegated authority to enforce the rulemaking.

While the EPA has not consulted with Tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes in the process of developing this action, the Agency specifically requests comments from Tribal officials on this action in accordance with the EPA Policy on Consultation and Coordination with Indian Tribes, and will engage in consultation with Tribal officials as these rules becomes finalized and implemented.

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

Executive Order 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

[110] The specific frequency for each information collection activity within this request is shown in tables 1a through 1d of the Supporting Statement in the public docket.

[111] See 65 FR 67249 (November 9, 2000).

[112] 86 FR 63143 (November 15, 2021).

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action does not involve any new technical standards. Therefore, the NTTAA does not apply.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Volatile organic compounds.

Lee Zeldin,

Administrator.

[FR Doc. 2026–07800 Filed 4–21–26; 8:45 am]

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FEDERAL REGISTER

Vol. 91 Wednesday,

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Part IV

The President

Executive Order 14401—Accelerating Medical Treatments for Serious Mental Illness

Federal Register
Vol. 91, No. 77
Wednesday, April 22, 2026

Presidential Documents

Title 3—

The President

Executive Order 14401 of April 18, 2026

Accelerating Medical Treatments for Serious Mental Illness

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. *Purpose and Policy.* Policymakers and the medical field have long struggled to address the burden of suicide and serious mental illness rates in America. Today, over 14 million American adults have a serious mental illness, defined as having a diagnosable mental, behavioral, or emotional disorder that substantially interferes with a person's life and ability to function, and about 8 million are on prescription medication for these conditions. Suicide rates tragically increased by 37 percent from 2000 to 2018. During my first term, we made historic progress in helping those struggling with some of the most insidious mental illnesses, and suicide rates decreased by 5 percent from 2018 to 2020. The COVID–19 pandemic and the Biden Administration's prolonged shutdown stunted this progress and suicide rates rebounded upwards again to their peak rate in 2022. Critically, veterans often suffer in greater measure from this tragedy. For over 20 years, there have been more than 6,000 veteran suicides per year, and the current veteran suicide rate is more than twice as much as the non-veteran adult population.

Individuals suffering from major depressive disorder and substance abuse disorder, among other serious mental illnesses, can relapse or not fully respond to standard medical and psychiatric therapies. Despite massive Federal investment into researching potential advancements in mental health care and treatment, our medical research system has yet to produce approved therapies that promote enduring improvements in the mental health condition of these most complex patients. Innovative methods are needed to find long-term solutions for these Americans beyond existing prescription medications.

Psychedelic drugs, including ibogaine compounds, show potential in clinical studies to address serious mental illnesses for patients whose conditions persist after completing standard therapy. Indeed, the Food and Drug Administration (FDA) has granted Breakthrough Therapy designation to specific psychedelic drugs, and there are numerous products currently in the clinical trial pipeline for review of safety and efficacy. It is the policy of my Administration to accelerate innovative research models and appropriate drug approvals to increase access to psychedelic drugs that could save lives and reverse the crisis of serious mental illness in America.

Sec. 2. *FDA Review Prioritization and Right to Try.* (a) The Commissioner of Food and Drugs shall provide Commissioner's National Priority Vouchers to appropriate psychedelic drugs that have received a Breakthrough Therapy designation and are in accordance with the criteria of the National Priority Voucher Program.

(b) The FDA and Drug Enforcement Administration shall facilitate and establish a pathway for eligible patients to access psychedelic drugs, including ibogaine compounds, under the Right to Try Act (21 U.S.C. 360bbb–0a), including any necessary Schedule I handling authorizations for treating physicians and researchers, consistent with 21 U.S.C. 823, and any applicable waiver authority under the Controlled Substances Act.

Sec. 3. *Department of Health and Human Services Funding for Federal-State Collaboration.* The Secretary of Health and Human Services shall,

through the Advanced Research Projects Agency for Health, allocate at least $50 million from existing funds to support and partner with State governments that have enacted or are developing programs to advance psychedelic drugs for serious mental illnesses, including through Federal funding, technical assistance, and data sharing as appropriate and consistent with applicable law.

Sec. 4. *Department of Health and Human Services and FDA Collaboration with the Department of Veterans Affairs and the Private Sector.* The Department of Health and Human Services (HHS) and FDA shall collaborate with the Department of Veterans Affairs (VA) and, as appropriate and consistent with applicable law, including any privacy restrictions from the Privacy Act of 1974 and the Health Insurance Portability and Accountability Act of 1996, with the private sector, to increase clinical trial participation, data sharing, and real-world evidence generation regarding psychedelic drugs, and shall prioritize drugs that have received a Breakthrough Therapy designation. The HHS, FDA, and VA are directed to sign data-sharing memoranda as appropriate to ensure that data from relevant clinical studies conducted by other executive departments and agencies is made available to FDA to facilitate the timely evaluation and approval of drugs that meet standards for approval under section 505 of the Federal Food, Drug, and Cosmetic Act.

Sec. 5. *Timely Rescheduling.* The Attorney General shall, in consultation with HHS, initiate and complete review of any product containing a Schedule I substance that has successfully completed Phase 3 clinical trials for a serious mental health disorder, so that rescheduling, if appropriate under 21 U.S.C. 811, may proceed as quickly as practicable for such specific products that are ultimately approved under section 505 of the Federal Food, Drug, and Cosmetic Act.

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

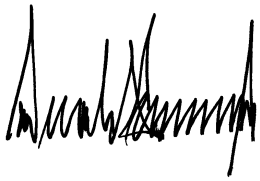
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The costs for publication of this order shall be borne by the Department of Health and Human Services.



THE WHITE HOUSE,
April 18, 2026.

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