



FEDERAL REGISTER

Vol. 91 Tuesday,
No. 96 May 19, 2026

Pages 29037–29358

OFFICE OF THE FEDERAL REGISTER



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Federal Register

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

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73, 74, and 76

[MB Docket No. 24–626; GN Docket No. 25–133; FCC 26–14; FR ID 346480]

Broadcast Station Rule Updates

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopts updates to several broadcast radio and TV rules to better reflect current application processing requirements, clarify ambiguity, and remove references to outdated procedures and legacy filing systems. Such action ensures that the Commission's rules are accurate, reducing potential confusion among the public, applicants, licensees, and practitioners, and alleviating unnecessary burdens.

DATES: Effective June 18, 2026.

FOR FURTHER INFORMATION CONTACT: Ariane Rangel, Audio Division, Media Bureau at Ariane.Rangel@fcc.gov or (202) 418–4036, or Lisa Scanlan, Audio Division, Media Bureau at Lisa.Scanlan@fcc.gov or (202) 418–2704.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O), in MB Docket No. 24–626; GN Docket No. 25–133; FCC 26–14, adopted and released on March 25, 2026. The full text of this document is available by downloading the text from the Commission's website at: <https://docs.fcc.gov/public/attachments/FCC-26-14A1.pdf>. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to fcc504@fcc.gov or calling the Commission's Consumer and Government Affairs Bureau at (202) 418–0503.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as

amended (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the R&O on small entities. The FRFA is set forth in Appendix B of the R&O.

Paperwork Reduction Act of 1995 Analysis. This document contains no new or modified information collection requirements.

Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the R&O to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

I. Introduction

1. In the Report and Order (R&O) adopted and released on March 25, 2026, the Commission revises various broadcast radio and television regulations in parts 1, 73, 74 and 76 of title 47 of the CFR. The R&O updates rules to best reflect current application processing requirements, codify existing Media Bureau (Bureau) practices, and remove references to outdated licensing procedures. These revisions further the Commission's continued effort to remove rules and processes that are no longer necessary, and ensure that our rules are clear and functional for licensees and the public.

II. Background

2. This R&O continues our efforts to update broadcast radio and television rules. In response to the Notice of Proposed Rulemaking (NPRM), FCC 24–126, 90 FR 13432, we received comments and replies from broadcast industry stakeholders who overwhelmingly support the majority of the proposed changes. We received mixed comments in response to our proposal to harmonize processing procedures for minor change LPMF

applications with the current processing procedures for minor change full service FM and FM translator applications, and in response to our proposal to revise the informal objection rule to require service of pleadings upon the relevant applicant and objector, limit the number of responsive pleadings, and impose filing deadlines. As detailed below, we adopt 13 of the proposals set out in the NPRM and decline to adopt the two remaining proposals.

III. Discussion

A. Replace References to CDBS With References to LMS

3. We amend §§ 1.5000(b), 1.5004(d)(2), 1.30001(d), 1.30004(a), 73.202(a), 73.3700(b)(5)(iv), and 76.66(d)(2)(ii) to replace references to the Bureau's Consolidated Database System (CDBS) electronic filing system with references to the Bureau's new Licensing and Management System (LMS) electronic filing system.

B. Update Form Names

4. We update §§ 73.30(c), 73.45(d)(1), 73.51(c), 73.311(a), 73.512(a), 73.625(c)(4)(i), 73.872(b)(1), 73.875, 73.1670(b), 73.1690(c)(9), 73.3580(d)(2), and 73.5002(b) to update application references from outdated form designations used in CDBS, such as “FCC Form 301,” to conform to current conventions used in LMS such as “FCC Form 2100, Schedule 301.”

C. Change Table of Assignments/ Allotments References To Conform to Existing Language

5. We update inconsistent terminology in Rule references to the tables governing FM and TV allotments, by amending §§ 1.401, 1.403, 1.420, and 73.3573 to correspond with the standard language used in §§ 73.202, 73.606, and 73.622; and change references in these sections from “FM Table of Allotments” to “Table of FM Allotments;” from “TV Table of Allotments” to “Table of TV Allotments;” from “FM Table of Assignments” to “Table of FM Allotments;” and from “TV Table of Assignments” to “Table of TV Allotments.”

D. Eliminate § 73.503(g), the 2021 NCE FM Window Application Cap

6. In the NPRM, we proposed to eliminate the 10 application cap on the number of applications each applicant

could submit in the 2021 NCE FM filing window, as mandated in § 73.503(g) of the Commission's rules. While the filing window has passed, several applications remain pending from the 2021 NCE FM window. We therefore delegate authority to the Bureau to remove § 73.503(g) from our rules once the applications are final and therefore no longer subject to reconsideration or administrative or judicial review.

E. Eliminate AM Station Power Increase Restrictions

7. We update our rules for AM station power increases to eliminate the requirement that stations request at least a 20% increase in nominal power; and update AM station classifications to conform to current classifications used in the Class B and Class D definitions in § 73.21(a)(2) and (3) of our rules and international agreements. We amend § 73.3571(e)(1) through (4), to reflect these changes. We also relocate the Note to the text of § 73.3571, to conform with publishing conventions of the National Archives and Records Administration's Office of the Federal Register.

F. Post-Incentive Auction Viewer and MVPD Notification Requirements

8. We remove obsolete rule language and notice requirements that had been adopted to implement the broadcast television spectrum incentive auction. Because the post-incentive auction transition period concluded on July 3, 2020, post-incentive auction notice provisions are now outdated. We delete the post-incentive auction transition consumer notification requirements in § 73.3700(c) and revise the MVPD notice provisions for ATSC 3.0 stations in §§ 73.3801(h)(4)(i), 73.6029(h)(4)(i), and 74.782(i)(4)(i) by eliminating the extended notice period for repacked stations and removing the reference to the post-incentive auction transition period. In addition, we delete § 73.3700(i), which relates to TV broadcast station operations above channel 37 (614–698 MHz, the so-called “600 MHz Band”).

G. Update § 73.870, Processing LPFM Minor Modification Applications

9. We proposed in the NPRM to codify the existing interpretation of § 73.870(e) that LPFM minor modification applications received on the same day will be treated as simultaneously filed and, if mutually exclusive, directed to use engineering solutions and good-faith negotiation to resolve the mutual exclusivity. We received conflicting comments in response to the NPRM. While NAB agrees with the NPRM's proposed

approach, pointing out that it would make the processing rules consistent with treatment of applications in other similar services, three other commenters oppose the proposal. Several commenters suggest that we should move to a true first-come, first-served approach based on the exact time of day an application is received, since application submission order can be determined using receipt time stamps, a technical capability not previously available in CDBS but now available in LMS.

10. REC also suggests that we broaden the scope of commenters' alternative proposal to apply a receipt time stamp approach to all other services, rather than just LPFM minor modification applications received on the same day. While this alternative proposal goes beyond the scope of the specific rule revisions posed here, we may consider the proposal in a separate future proceeding in which we can fully assess implementing time stamp receipt technology in the context of first-come, first-served procedures for minor modification applications, not just for the LPFM service, but for all services going forward.

11. We decline to codify in the Commission's rules the Bureau's existing interpretation of § 73.870(e) at this time, and the Bureau should continue to rely on existing precedent, as appropriate, whereby LPFM minor modification applications received on the same day will be treated as simultaneously filed and, if mutually exclusive, directed to use engineering solutions and good-faith negotiation to resolve the mutual exclusivity.

H. Revisions to § 73.807, Minimum Distance Separation Between Stations

1. Codification of Definition of the Term “Authorized” Station

12. We codify in § 73.807(a) and (c) of the Commission's rules the existing interpretation of the term “authorized” stations as including both licensed stations and/or granted construction permits for FM, LPFM, and FM translator stations.

2. Prior-Filed Application Protections

13. In the NPRM we proposed to modify §§ 73.807(a)(1) and 73.807(c) to state that LPFM applicants must protect FM, LPFM, and FM translator applications submitted prior to a public notice announcing the procedures for an LPFM filing window. The NPRM also proposed to remove the reference to “cutoff FM translator applications” as redundant and potentially confusing.

14. In order to safeguard the integrity of the filing window and the application filing process, the Bureau must retain flexibility and discretion to issue multiple public notices, should circumstances require. More than one public notice may be necessary given the particularities of future application filing windows. Accordingly, we modify §§ 73.807(a)(1) and 73.807(c) to state that FM, LPFM, and FM translator applications filed prior to the release of the public notice announcing the filing procedures that will apply to any upcoming LPFM application filing window must be protected under these rule sections. We clarify that a public notice which simply announces an upcoming filing window would not terminate protection requirements for prior-filed applications under §§ 73.807(a)(1) and 73.807(c). We also remove the potentially confusing reference to “cutoff FM translator applications” in § 73.807(c).

I. Revise the Signature Rule

15. In the NPRM, the Commission proposed to: (1) codify the existing interpretation of the Signature Rule (§ 73.3513), applicable to all broadcast services, that “directors” of corporations may sign applications; (2) expand the definition of who may sign an application on behalf of a corporation, a partnership, and an unincorporated association, to include a “duly authorized employee;” and (3) clarify that the term “signed,” for applications submitted in LMS, includes an electronic signature.

16. We amend § 73.3513 to codify the existing interpretation of the Signature Rule that directors of corporations may sign applications. Prometheus, REC, and Common Frequency all support this addition, and no commenter opposes it. Accordingly, we adopt the change as proposed in the NPRM. Next, we clarify that the term “signed,” for applications submitted in LMS, includes an electronic signature. No commenter opposed this proposal, and we therefore adopt this additional modification to § 73.3513.

17. The NPRM also proposed to expand the Signature Rule to permit a corporation, partnership, or unincorporated association to designate a “duly authorized employee,” to sign applications or amendments on its behalf rather than continuing to require a signature from an officer. Prometheus, Public Broadcasters, and Common Frequency support the proposal. Prometheus and Public Broadcasters also make additional suggestions to expand flexibility. REC supports the change only in a limited circumstance.

18. Prometheus agrees that the current rule leads to far too many otherwise qualified organizations having applications dismissed without an opportunity to amend. In conjunction with its endorsement of expanding the Signature Rule and allowing “duly authorized employees” to sign applications, Prometheus encourages the Commission to define the term broadly to “include the part-time, contract, and volunteer roles often held by nonprofit professionals in corporations, associations, and other civic and religious organizations.” Common Frequency also agrees with the option to designate a “duly authorized employee” to sign applications or amendments, and contends that any employee of the organization, or in the case of volunteer nonprofits, any person at the nonprofit with a position title, *i.e.* “Executive Director” or “Pastor,” should have authority to sign and file an application. Public Broadcasters likewise supports the proposal to allow duly authorized employee signatures and certifications, but requests extension of this flexibility to allow duly authorized employees of governmental entities to sign Commission applications.

19. REC does not generally support expanding the definition of who may sign an application. It states that the Commission must approach this issue from a public interest standpoint that maintains the integrity of the meaning of the signature on the application and the accountability that goes with it, in order to prevent abuse of process. REC counters that, for the integrity of the application, the applicant’s organization and the LPFM and NCE broadcast services in general, in the case of corporations, the application signatory must be a person with an attributable interest in the applicant entity, such as an officer or director. However, REC does support allowing a “duly authorized employee” to sign on behalf of a physically disabled board member.

20. We adopt the proposal to expand the definition of who may sign an application on behalf of a corporation, a partnership, and an unincorporated association, to include a “duly authorized employee,” and we adopt the proposed changes to § 73.3513(a). We also revise the Signature Rule to allow a “duly authorized employee” of a governmental entity to sign an application. Additionally, in light of commenters’ requests, while we codify the term “duly authorized employee,” we direct the Bureau to interpret the term “employee” broadly, as circumstances may require, to take account of all types of employees

(whether paid or unpaid) and the varied roles and positions that each organization and entity may utilize.

21. To address REC’s observation that the majority of the applications with Signature Rule defects in the 2023 LPFM window were signed by consultants and technicians that were not under the “direct employ of the organization,” we clarify that the term “duly authorized employee” will therefore not include independent consultants or other third party professionals outside of the applicant organization.

22. In response to the NPRM’s proposal, commenters also seek an opportunity to amend or correct Signature Rule violations. REC argues that if an application is dismissed due to a Signature Rule violation, that the application should be eligible for *nunc pro tunc* reinstatement. We decline to adopt this proposal. We note that the Commission has found that strict adherence to signature requirements is critical in holding applicants accountable for the truthfulness and accuracy of their applications. We anticipate that our broadening of the definition of who can certify and sign an application to include a “duly authorized employee” will significantly decrease the number of Signature Rule violations and application dismissals. Moreover, we are directing the Bureau to interpret the term “employee” broadly. We expect that this expanded processing policy will reduce prospective Signature Rule violations and application signature defects, while at the same time will safeguard the integrity of the Commission’s processes that the Signature Rule was designed to protect. We therefore decline to modify the current curative amendment or *nunc pro tunc* reinstatement procedures for application dismissals for Signature Rule violations.

J. Local Public Notice Requirement After Acceptance for Filing

23. The NPRM proposed to codify the established practice concerning when applicants for new NCE FM, NCE TV, or LPFM construction permits must give local public notice of their applications. Section 73.3580 of our rules sets out what types of applicants and licensees are required to provide local public notice, what applications trigger the requirement, the timing of the notice, and the content of the notice. The current rule provides that the Commission’s release of an “acceptance public notice” of a newly filed application triggers the applicant’s local public notice obligation. However, the current rule does not specify all of the

ways that the Commission announces tentative selectees for new NCE FM, NCE TV, and LPFM construction permits, and accepts the tentative selectees’ application for filing, which can take various forms.

24. Therefore, the NPRM proposal sought to codify the various scenarios under which certain applications are accepted for filing, for purposes of triggering an applicant’s local public notice obligation, and proposed to amend §§ 73.3580(a)(1), 73.7002(b), 73.7003(a), and 73.872(a) to indicate that the “acceptance for filing” of tentative selectee(s) in a 307(b) Order, NCE Comparative Points Order, or LPFM MX Tentative Selectee Order, triggers the applicant’s local public notice obligation in § 73.3580. The NPRM also proposed to revise § 73.3580(a)(1) to define “an acceptance public notice” as a Commission or Bureau public notice announcing that an application has been accepted for filing, or an equivalent Order accepting for filing applications from a filing window under §§ 73.7002, 73.7003 or 73.872.

25. Accordingly, we: (1) amend § 73.7002(b) to indicate that the “acceptance for filing” of the various tentative selectee(s) in a 307(b) Order triggers the applicant’s local public notice obligation; (2) amend § 73.7003(a) to indicate that the “acceptance for filing” of the various tentative selectee(s) in an NCE Comparative Points Order triggers the applicant’s local public notice obligation; (3) amend § 73.872(a) to indicate that the “acceptance for filing” of the various tentative selectee(s) in an LPFM MX Tentative Selectee Order or Public Notice, triggers the applicant’s local public notice obligation; and (4) revise § 73.3580(a)(1) to define “an acceptance public notice” as a Commission or Bureau public notice announcing that an application has been accepted for filing, or an equivalent Order accepting for filing applications from a filing window under §§ 73.7002, 73.7003 or 73.872.

K. Remove 90-Day STA Restriction Necessitated by Technical or Equipment Problems

26. We amend § 73.1635(a)(4) to remove language providing that an initial STA necessitated by technical or equipment problems may only be granted for 90 days with a limited number of 90-day extensions, rather than the full 180-day period permitted for STAs for other reasons. We will also correct a typo in the fourth sentence of paragraph (a)(4) by replacing

“expeditions” with “expeditious.” No commenters objected to this change.

L. Remove Obsolete Application Processing Language

27. The NPRM proposed to modify various application processing rules to remove and/or revise references to application processing procedures that are no longer used, including, for example, replacing “tendered for filing” terminology with “filed,” and removing obsolete paper-filing references.

28. These include: § 73.37(c), which addresses application requirements for new AM stations; § 73.3516(e), which sets forth the process for filing a petition to deny during a license renewal proceeding; §§ 73.3526 and 73.3527, which describe required online public inspection file documents; § 73.3573(f)(1), which outlines the processing of FM applications; § 73.3578(a), which concerns amendments to applications; § 73.3591(b), which explains the processing of applications without a hearing; and § 73.3597(b)(2), which addresses the processing of transfer and assignment applications. We also delete all obsolete paper-filing procedure references from § 73.3564(a), and replace the term “tendered for filing” with “filed” throughout § 73.3564. We further delete § 73.3564(c) references to cut-off procedures for reserved band FM NCE applications that have since been eliminated by the Commission in favor of a filing window approach. Lastly, we remove Note 1 to § 73.3522, which reflects amendment processing procedures that have been eliminated with the implementation of electronic filing. We delegate authority to the Bureau to update LMS to display application statuses based on our rules, including the changes adopted herein. The Bureau is instructed to issue a Public Notice once the LMS updates have been completed and explain the system revisions.

M. Redesignate Renewal Application Petition To Deny Rule

29. We consolidate our rules for petitions to deny under a single rule; § 73.3584. Accordingly, we redesignate the revised § 73.3516(e) as a new paragraph (f) to rule § 73.3584. We also replace cross-references to current § 73.3516(e) with references to redesignated § 73.3584(f).

N. Revise the Informal Objection Rule

30. In the NPRM, we proposed to: (1) require that informal objections and responsive pleadings be served upon the relevant applicant or objector; (2) limit the type of responsive pleadings that

may be filed; and (3) impose filing deadlines for responsive pleadings that aligned with the limitations set for responsive pleadings to petitions to deny.

31. Four commenters support requiring service on the applicant. NAB argues that a service requirement for informal objections will afford opportunity for the applicant to respond and will improve staff processing efficiency without needing to act as an intermediary. Prometheus agrees that informal objectors should notify the applicant and every contact representative by email or surface mail. Public Broadcasters observes that these common-sense updates will provide clarity and improve organization regarding the procedures. Two commenters also propose that service be implemented using LMS, via automatic email notifications to the applicant of any pleadings filed.

32. REC opposes adding any restrictions to the informal objection process, arguing that: (1) informal objections are a critical tool to combat gamesmanship; (2) LPFM and NCE community “watchdogs” use the mechanism to maintain application and service integrity; (3) informal objections allow unsophisticated members of the public to participate without an attorney; and (4) the service requirement is not in the public interest because it would create a barrier to stations’ obligation to allow for participation from local listeners. REC also expresses concern that applicants could exploit procedural requirements to get informal objections dismissed.

33. We also received mixed comments regarding the proposal to limit responsive pleading types to one opposition and one reply. REC opposes limiting responsive pleadings to one opposition and one reply because new information may occur outside of the proposed deadlines, and objectors require flexibility with respect to supplemental pleadings. NAB, Public Broadcasters, and Common Frequency agree with limiting the type of responsive pleadings allowed to one opposition and one reply. Similarly, we received mixed support regarding the proposal to implement filing deadlines for responsive pleadings. REC supports use of time limits for responsive pleadings, and NAB supports “appropriate response timelines,” but proposes relaxation of the deadlines for “bona fide” objections filed by inexperienced parties. Common Frequency maintains that pleading time restrictions should only apply to renewal applications, and opposes

deadlines for informal objections filed against non-renewal applications.

34. We are persuaded by the concerns REC raises regarding imposing new requirements and restrictions on the informal objection process, and we conclude that the current rule strikes an appropriate balance to promote critical participation from members of the public in our application filing and licensing proceedings. We therefore decline to adopt these specific changes at this time.

IV. Final Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the Amendment of Parts 1, 73, 74 and 76 of the Commission’s rules to Update rules Applicable to Broadcast Stations, Notice of Proposed Rulemaking (NPRM), released in December 2024. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were filed addressing the IRFA; however, we discuss relevant comments and related proposals that may impact small entities below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA and it (or summaries thereof) will be published in the **Federal Register**.

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

36. The R&O updates the Commission’s rules by revising various broadcast radio and television regulations in parts 1, 73, 74, and 76 of title 47 of the Code of Federal Regulations (CFR). The proposals adopted therein revise rules to best reflect current application processing requirements, codify existing Media Bureau (Bureau) practices, and remove references to outdated licensing procedures. These revisions further the Commission’s continued effort to remove rules and processes that are no longer necessary, and ensure that our rules are clear and functional for licensees and the public.

37. Specifically, the R&O: (1) replaces references to the Bureau’s legacy Consolidated Database System (CDBS) electronic filing system with references to the new Licensing and Management System (LMS) electronic filing system; (2) updates rules to correspond to the form naming conventions used in LMS; (3) changes table of assignments/allotments references to conform to current standard language; (4) delegates

authority to the Bureau to remove a ten application cap adopted for the 2021 Noncommercial (NCE) FM new station application window, upon finality of the remaining NCE FM applications; (5) updates the AM station power increase rules to eliminate the requirement that stations seeking facility modifications request at least a 20% increase in power and to reflect current AM station classifications and other administrative updates; (6) updates the TV rules to remove obsolete language concerning the now-completed incentive auction; (7) codifies in § 73.807 of the Commission's rules the existing interpretation of the term "authorized" stations to include both licensed stations and/or granted construction permits; (8) modifies §§ 73.807(a)(1) and 73.807(c) of the Commission's rules to clarify that a low power FM (LPFM) applicant submitting an application in a filing window for a new construction permit or modification of an existing LPFM authorization must protect FM, LPFM, and FM translator applications submitted prior to a public notice announcing the procedures for an LPFM filing window; (9) modifies the Signature Rule, which currently states that only officers can sign applications, to allow a "duly authorized employee" to sign, and codifies the existing rule interpretation that directors may sign applications; (10) clarifies the rules concerning when an applicant for a new Noncommercial Educational (NCE) FM, NCE TV, or LPFM construction permit must give local public notice of its application; (11) removes language limiting grant of certain Special Temporary Authority (STA) submissions to 90 days, rather than the full 180-day period permitted for other reasons; (12) modifies the application processing rules to remove and revise references to various procedures that are now obsolete; and (13) consolidates the rules for petitions to deny license renewal applications under a single rule section.

38. In response to the NPRM, we received comments and replies from broadcast industry stakeholders who overwhelmingly support the majority of the proposed changes. We received mixed comments in response to our proposal to harmonize processing procedures for minor change LPFM applications with the current processing procedures for minor change full service FM and FM translator applications, and in response to our proposal to revise the informal objection rule to require service of pleadings upon the relevant applicant and objector, limit the number of responsive pleadings, and impose

filing deadlines. While these two proposals were significant, the record on these proposals is mixed and lacks clear support from commenters. Therefore we decline to adopt these two specific changes in the R&O.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

39. Though no comments were filed directly addressing the IRFA, a number of comments were submitted regarding proposals that may impact small entities. We received substantive comments for the following five proposals: (1) updating the AM station power increase rules to eliminate the requirement that stations seeking facility modifications request at least a 20% increase in power, and to reflect current AM station classifications; (2) modifying §§ 73.807(a)(1) and 73.807(c) to clarify that an LPFM applicant submitting an application in a filing window for a new construction permit or modification of an existing LPFM authorization must protect FM, LPFM, and FM translator applications submitted prior to a public notice announcing the procedures for the LPFM filing window; (3) modifying the Signature Rule to allow a "duly authorized employee" to sign, and codifying the existing rule interpretation that directors may sign applications; (4) clarifying the rules concerning when an applicant for a new NCE FM, NCE TV, or LPFM construction permit must give local public notice of its application; and (5) removing language limiting grant of certain Special Temporary Authority (STA) submissions to 90 days, rather than the full 180-day period permitted for other reasons.

40. We received a robust record on these five significant proposals. For example, Prometheus, REC, and NAB support the AM power increase rule revisions and agree that the changes would offer increased flexibility to AM broadcasters. NAB also maintains that eliminating the 20% minimum increase in power requirement will help AM stations achieve required community of license coverage, and contribute to the elimination of minimum efficiency requirements for AM stations. Commenters largely support codifying the term "authorized" to include both licensed stations and/or granted construction permits as proposed. REC argued there should only be one public notice released prior to an LPFM filing window, and that it should contain all of the relevant window information and filing procedures. NAB argued that a public notice that only announces future filing window dates should not

trigger the rule's protections. We also received varied responses regarding our proposed changes to the Signature Rule. Prometheus and Public Broadcasters support the changes, and feel the term "duly authorized employee" should be interpreted broadly. Public Broadcasters also requested that it be extended to government entities, in order to alleviate the burdensome requirement that a high-level government official must be the signatory. REC opposed our proposed changes, arguing that the signatory must be a person with a presumed attributable interest in the application, such as an officer or director. Prometheus and REC both proposed allowing nunc pro tunc reinstatement and curative amendments for signature rule violations. Regarding when an NCE applicant must give local public notice of its application, REC and Public Broadcasters supported the proposed rule updates. In addition, Prometheus and REC requested that we update LMS to display an "accepted for filing" application status. Lastly, commenters support removing the 90-day grant restriction on technical STAs; NAB agreed that this reduces burdens on both applicants and FCC staff. Public Broadcasters also agreed it would greatly benefit from this extension of the STA term, which is more realistic, given the time it takes to procure and replace technical equipment. We discuss these proposals and other alternatives that minimize the impact on small broadcasters in section F.

C. Response to Comments by the Chief Counsel for the Small Business Administration Office of Advocacy

41. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for the Small Business Administration (SBA) Office of Advocacy, and also provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

42. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the adopted rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business"

has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The SBA establishes small business size standards that agencies are required to use when promulgating regulations relating to small businesses; agencies may establish alternative size standards for use in such programs, but must consult and obtain approval from SBA before doing so.

43. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe three broad groups of small

entities that could be directly affected by our actions. In general, a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses. Next, “small organizations” are not-for-profit enterprises that are independently owned and operated and are not dominant in their field. While we do not have data regarding the number of non-profits that meet that criteria, over 99 percent of nonprofits have fewer than 500 employees. Finally, “small governmental jurisdictions” are defined as cities, counties, towns, townships, villages, school districts, or special districts with populations of less than fifty thousand. Based on the 2022

U.S. Census of Governments data, we estimate that at least 48,724 out of 90,835 local government jurisdictions have a population of less than 50,000. 44. The rules adopted in the R&O will apply to small entities in the industries identified in the chart below by their six-digit North American Industry Classification System (NAICS) codes and corresponding SBA size standard. Based on currently available U.S. Census data regarding the estimated number of small firms in each identified industry, we conclude that the adopted rules will impact a substantial number of small entities. Where available, we also provide additional information regarding the number of potentially affected entities in the identified industries below.

TABLE 1—2022 U.S. CENSUS BUREAU DATA BY NAICS CODE

Regulated Industry (footnotes specify potentially affected entities within a regulated industry where applicable)	NAICS code	SBA size standard	Total firms	Total small firms	% small firms
Radio Broadcasting Stations	516110	\$47 million	2,616	2,136	81.65%
Television Broadcasting Stations	516120	\$47 million	413	316	76.51%

TABLE 2—BROADCAST ENTITY DATA

Broadcast station owners (as of August 8, 2025)	SBA size standard (\$47 Million)		
Affected entity	# commercial licensed	Small firms	% Small entities
Radio Stations (AM & FM) Groups	2,881	2,863	99.38
Television Stations	171	142	83.04

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

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

46. As discussed above, the R&O updates various broadcast radio and television regulations in Parts 1, 73, 74, and 76 of title 47 the CFR. The proposals adopted in the R&O amend existing rules to better reflect current application processing requirements, codify existing Media Bureau practices, clarify and harmonize rule provisions, and remove references to outdated procedures and legacy filing systems. These included, for example, replacing references to the legacy database system;

changing table of allotment references to conform to current language; updating rules to correspond to the application form naming conventions used in the new LMS electronic filing system; updating the TV rules to remove obsolete language concerning the no-completed incentive auction; codifying the existing interpretation of the term “authorized stations” to include both licensed stations and granted construction permits; and consolidating the rules for petitions to deny license renewal applications under a single rule section. The Commission seeks comment on whether any of the burdens associated the filing, recordkeeping and reporting requirements described in the NPRM can be minimized for small entities. The Commission is open to considering alternatives to the rules proposed in the NPRM, including but not limited to alternatives that will minimize significant economic burdens on small and other broadcasters. 47. The other rule revisions do not impose additional reporting requirements or compliance

requirements for small entities, but rather, reduce and/or clarify compliance burdens. For example, the R&O eliminates the requirement that an AM station requesting to increase power must propose at least a 20% increase in the station’s nominal power. Elimination of this requirement will provide AM broadcasters with greater flexibility and thus allow for new opportunities for stations to optimize their technical operations. The R&O also revises the minimum distance separation rule for new and modified LPFM applications to clarify which prior-filed applications must be protected; defines an “authorized station” that must be protected; and clarifies that a public notice that just announces the filing window dates will not serve to terminate protection requirements for prior-filed applications. These clarifications will help small entities understand their compliance obligations, thus reducing the amount of time and financial resources broadcast applicants incur.

48. The R&O further defines the term “acceptance public notice,” which triggers the local public notice obligations for applicants for new NCE FM, NCE TV, or LPFM construction permits, many of whom are small entities. The rule currently only addresses an application’s acceptance for filing vis-a-vis a routinely released LMS Public Notice, but the rule revisions in the Report and Order clarify that certain types of NCE construction permit applications are “accepted for filing” by Orders and documents other than a standard LMS-issued Acceptance public notice. While this change simply codifies an existing interpretation, it will help applicants understand and thus better comply with their local notice obligations.

49. The R&O also removes language providing that an initial STA required by technical or equipment problems may only be granted for 90 days with a limited number of 90-day extensions, rather than the full 180-day period permitted for STAs for other reasons, which will ease the regulatory burden on small entities. Applicants seeking a technical STA currently have to file STA requests twice as often as applicants for other STAs—90 days instead of 180 days. However, as commenters note, station technical problems often require at least 180 days to order equipment and complete the repairs. Therefore, this revision allows stations to reduce their STA filing requirements in half.

50. In addition, the R&O expands the definition of who may sign a certification beyond an officer of the corporation, a partner in the partnership, a member who is an officer of the unincorporated association, or a governmental entity to include a “duly authorized employee,” similar to rules used by other bureaus and offices that allow for directors and authorized employees to sign applications and amendments for the organization. This revision will help small entities avoid signature rule violations, reduce the number of application dismissals, and avoid excessive costs associated with responding to petitions to deny.

51. All of the above changes will promote application efficiency and shorter application processing times. In determining the economic impact and projected compliance requirements for small and other entities, in the NPRM, the Commission sought comment on the costs and benefits associated with the proposals made in the NPRM. However, no commenters directly addressed this inquiry.

F. Discussion of Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

52. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities. . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”

53. In the NPRM, the Commission considered alternatives such as retaining the existing rules, while taking steps to amend other related rules to further improve the accuracy of the CFR, many of which may minimize the impact of the regulations on small broadcasters. For example, in proposing to revise the Signature Rule, we considered whether to permit a “duly authorized employee” to sign for the corporation, partnership or unincorporated association, or, in the alternative, to maintain our current rules requiring officers, partners, or members who are officers to sign, which often results in application dismissals. Public Broadcasters noted that, for governmental organizations, the current rule is burdensome and requires signatures from high-level officials in large organizations, which are often difficult to obtain. We therefore considered adding “duly authorized employee” to the rule defining who may sign on behalf of a governmental entity applicant. We also considered whether we should limit “duly authorized employee” to specific employees, and how this decision, if adopted, might impact small broadcasters that may not be represented by counsel. In the R&O, to minimize the impact on small and other entities, and to prevent dismissal of applications for signature rule violations, the Commission now allows duly authorized employees to sign applications on behalf of partnerships, corporations, unincorporated associations, and governmental entities. We also considered updating our processing procedures to allow for curative amendments or nunc pro tunc reinstatement procedures to remedy signature rule violations, but ultimately declined to do so because strict adherence to signature requirements is critical in holding applicants accountable for the truthfulness and accuracy of their applications. We anticipate that the increased processing flexibility for signature rule compliance

will ease compliance burdens for small entities and result in a significant reduction of rule violations.

54. We similarly considered leaving the technical STA filing requirement at 90 days, but based on comments, decided that revising the rule, to the allow for the full 180-day period permitted for STAs for other reasons, would result in fewer burdens and application processing obligations. NAB agreed with this approach, noting that it reduces burdens on both applicants and staff. Public Broadcasters also noted that applicants will greatly benefit from this revision because the longer term more realistically reflects the time it takes to procure and replace defective technical equipment. Commenters generally agreed with our proposal to update the AM station power increase rules to eliminate the requirement that stations seeking facility modifications request at least a 20% increase in power, which will reduce compliance burdens for these small entities.

55. As discussed in section B, REC and NAB proposed certain modifications to the prior-filed application protections found in §§ 73.807(a)(1) and 73.807(c) of the Commission’s rules. We did not adopt those alternatives because the modifications in the Report and Order clarify that a public notice, which simply announces an upcoming filing window, would not terminate protection requirements for prior-filed applications under the applicable rules.

56. Lastly, we declined to adopt the proposal in the NPRM to codify the existing interpretation of § 73.870(e) that LPFM minor modification applications received on the same day will be treated as simultaneously filed and, if mutually exclusive, directed to use engineering solutions and good-faith negotiation to resolve the mutual exclusivity. There was a general lack of support from commenters, with some alternatively proposing that the Commission move to a true first-come, first-served approach based on the exact time of day an application is received. This alternative goes beyond the scope of the rule revisions posed in this proceeding, and will not be adopted at this time.

G. Report to Congress

57. The Commission will send a copy of the Report and Order, including this Final Regulatory Flexibility Analysis, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this Final Regulatory Flexibility Analysis, to the Chief Counsel for the SBA Office of Advocacy and will publish a copy of the

Report and Order, and this Final Regulatory Flexibility Analysis (or summaries thereof) in the **Federal Register**.

V. Ordering Clauses

58. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1, 4, 7, 301, 302, 303, 307, 308, 309, 310, 316, 319, 324, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 302a, 303, 307, 308, 309, 310, 316, 319, 324, and 336, this Report and Order *is adopted* and *shall become effective* 30 days after publication in the **Federal Register**.

59. 47. *It is further ordered* that, pursuant to the authority found in sections 1, 4, 7, 301, 302, 303, 307, 308, 309, 310, 316, 319, 324, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 302a, 303, 307, 308, 309, 310, 316, 319, 324, and 336, the Commission's rules *are amended* as set forth in Appendix A and such amendments shall be effective 30 days after publication in the **Federal Register**.

60. *It is further ordered* that the Media Bureau is *delegated* authority to remove § 73.503(g) in accordance with the terms set forth herein.

61. *It is further ordered* that the Commission's Office of the Secretary, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for the Small Business Administration (SBA) Office of Advocacy.

62. *It is further ordered* that the Office of the Managing Director, Performance Program Management *shall send* a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

63. *It is further ordered* that should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 24–626 *shall be terminated*, and the docket closed.

List of Subjects

47 CFR Part 1

Administrative Practice and Procedure, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Parts 73 and 74

Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 76

Television.

Federal Communications Commission.

Aleta Bowers,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 73, 74, and 76 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

■ 2. Amend § 1.401 by revising paragraph (d) to read as follows:

§ 1.401 Petitions for rulemaking.

* * * * *

(d) Petitions for amendment of the Table of FM Allotments (§ 73.202 of this chapter) or the Table of TV Allotments (§ 73.622 of this chapter) shall be served by petitioner on any Commission licensee or permittee whose channel assignment would be changed by grant of the petition. The petition shall be accompanied by a certificate of service on such licensees or permittees. Petitions to amend the Table of FM Allotments must be accompanied by the appropriate construction permit application and payment of the appropriate application filing fee.

* * * * *

■ 3. Revise § 1.403 to read as follows:

§ 1.403 Notice and availability.

All petitions for rulemaking (other than petitions to amend the Table of FM Allotments, Table of TV Allotments, and Air-Ground Table of Assignments) meeting the requirements of § 1.401 will be given a file number and, promptly thereafter, a “Public Notice” will be issued (by means of a Commission release entitled “Petitions for Rule Making Filed”) as to the petition, file number, nature of the proposal, and date of filing. Petitions for rulemaking are available through the Commission's Reference Information Center at the FCC's main office, and electronically at <https://www.fcc.gov>.

■ 4. Amend § 1.420 by:

■ a. Revising the section heading, and

paragraphs (a) and (b);

■ b. Redesignating the note to paragraph (g) as Note 1 to paragraph (g);

■ c. Redesignating Note 1 to paragraph (h) as Note 2 to paragraph (h);

■ d. Revising paragraph (j) introductory text and the note at the end of the section.

The revisions read as follows:

§ 1.420 Additional procedures in proceedings for amendment of the Table of FM Allotments, the Table of TV Allotments, or for amendment of certain FM assignments.

(a) Comments filed in proceedings for amendment of the Table of FM Allotments (§ 73.202 of this chapter) or the Table of TV Allotments (§ 73.622(j) of this chapter) which are initiated on a petition for rule making shall be served on petitioner by the person who files the comments.

(b) Reply comments filed in proceedings for amendment of the Table of FM Allotments or the Table of TV Allotments shall be served on the person(s) who filed the comments to which the reply is directed.

* * * * *

(j) Whenever an expression of interest in applying for, constructing, and operating a station has been filed in a proceeding to amend the Table of FM Allotments or the Table of TV Allotments, and the filing party seeks to dismiss or withdraw the expression of interest, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

* * * * *

Note 3 to § 1.420: The reclassification of a Class C station in accordance with the procedure set forth in Note 4 to § 73.3573 of this chapter may be initiated through the filing of an original petition for amendment of the Table of FM Allotments. The Commission will notify the affected Class C station licensee of the proposed reclassification by issuing a notice of proposed rulemaking, except that where a triggering petition proposes an amendment or amendments to the Table of FM Allotments in addition to the proposed reclassification, the Commission will issue an order to show cause as set forth in Note 4 to § 73.3573 of this chapter, and a notice of proposed rulemaking will be issued only after the reclassification issue is resolved. Triggering petitions will be dismissed upon the filing, rather than the grant, of an acceptable construction permit application to increase antenna height to at least 451 meters HAAT by a subject Class C station.

■ 5. Amend § 1.5000 by revising the third sentence of paragraph (b)(1) to read as follows:

§ 1.5000 Citizenship and filing requirements under section 310(b) of the Communications Act of 1934, as amended.

* * * * *

(b) * * *

(1) * * * Petitions for declaratory ruling required by paragraph (a) of this section involving broadcast stations only shall be filed electronically on the internet through the Media Bureau's Licensing and Management System (LMS) or any successor system thereto when submitted to the Commission as part of an application for a construction permit, assignment, or transfer of control of a broadcast license; if there is no associated construction permit, assignment or transfer of control application, petitions for declaratory ruling should be filed with the Office of the Secretary via the Commission's Electronic Comment Filing System (ECFS).

* * * * *

■ 6. Amend § 1.5004 by revising the third sentence of paragraph (d)(2) to read as follows:

§ 1.5004 Routine terms and conditions.

* * * * *

(d) * * *

(2) * * * The letter must also reference the licensee's foreign ownership ruling(s) by ICFS File No. and FCC Record citation, if available; or, if a broadcast licensee, the letter must reference the licensee's foreign ownership ruling(s) by LMS File No., Docket No., call sign(s), facility identification number(s), and FCC Record citation, if available. * * *

* * * * *

■ 7. Amend § 1.30001 by revising paragraph (d) to read as follows:

§ 1.30001 Definitions.

* * * * *

(d) *Distance from the AM station.* The distance shall be calculated from the tower coordinates in the case of a nondirectional AM station, or from the array center coordinates given in LMS or any successor database for a directional AM station.

■ 8. Amend § 1.30004 by revising the second sentence of paragraph (a) to read as follows:

§ 1.30004 Notice of tower construction or modification near AM stations.

(a) * * * Notice shall be provided to any AM station that is licensed or operating under Program Test Authority using the official licensee information and address listed in LMS or any successor database. * * *

* * * * *

PART 73—RADIO BROADCAST SERVICES

■ 9. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 10. Amend § 73.30 by:

■ a. Revising paragraph (c) and

■ b. Redesignating notes 1 through 5 as note 1 to § 73.30 through note 5 to § 73.30.

The revision reads as follows:

§ 73.30 Petition for authorization of an allotment in the 1605–1705 kHz band.

* * * * *

(c) If awarded an allotment, a petitioner will have sixty (60) days from the date of public notice of selection to file an application for construction permit on FCC Form 2100, Schedule 301. (See §§ 73.24 and 73.37(e) for filing requirements). Unless instructed by the Commission to do otherwise, the application shall specify Model I facilities. (See § 73.14). Upon grant of the application and subsequent construction of the authorized facility, the applicant must file a license application on FCC Form 2100, Schedule 302.

* * * * *

■ 11. Amend § 73.37 by revising paragraph (c) to read as follows:

§ 73.37 Applications for broadcast facilities, showing required.

* * * * *

(c) If otherwise consistent with the public interest, an application requesting an increase in the daytime power of an existing Class C station on a local channel from 250 watts to a maximum of 1kW, or from 100 watts to a maximum of 500 watts, may be granted notwithstanding overlap prohibited by paragraph (a) of this section. In the case of a 100 watt Class C station increasing daytime power, the provisions of this paragraph shall not be construed to permit an increase in power to more than 500 watts, if prohibited overlap would be involved, even if successive applications should be filed.

* * * * *

■ 12. Amend § 73.45 by revising paragraph (c)(1) to read as follows:

§ 73.45 AM antenna systems.

* * * * *

(c) * * *

(1) Whenever the measurements show that the antenna or common point resistance differs from that shown on the station authorization by more than 2%, FCC Form 2100, Schedule 302 must

be filed with the information and measurement data specified in § 73.54(d).

* * * * *

■ 13. Amend § 73.51 by revising the introductory text of paragraph (c) to read as follows:

§ 73.51 Determining operating power.

* * * * *

(c) Applications for authority to operate with antenna input power which is less than nominal power and/or to employ a dissipative network in the antenna system shall be made on FCC Form 2100, Schedule 302. The technical information supplied on this form shall be that applying to the proposed conditions of operation. In addition, the following information shall be furnished, as pertinent:

* * * * *

■ 14. Amend § 73.202 by revising the third sentence of paragraph (a) introductory text to read as follows:

§ 73.202 Table of Allotments.

(a) * * * Channels to which licensed, permitted, and “reserved” facilities have been assigned are reflected in the Media Bureau's publicly available Licensing and Management System.

* * * * *

■ 15. Amend § 73.311 by revising paragraph (a) to read as follows:

§ 73.311 Field strength contours.

(a) Applications for FM broadcast authorizations must show the field strength contours required by FCC Form 2100, Schedule 301 or 340, as appropriate.

* * * * *

■ 16. Amend § 73.512 by revising the introductory text of paragraph (a) to read as follows:

§ 73.512 Special procedures applicable to Class D noncommercial educational stations.

(a) All Class D stations seeking renewal of license for any term expiring June 1, 1980, or thereafter shall comply with the requirements set forth below and shall simultaneously file an application on FCC Form 2100, Schedule 340, containing full information regarding such compliance with the provisions set forth in paragraphs (a)(1) through (3) of this section.

* * * * *

■ 17. Amend § 73.625 by revising the second sentence of paragraph (c)(4)(i) to read as follows:

§ 73.625 TV antenna system.

* * * * *

(c) * * *

(4) * * *

(i) * * * A formal application (FCC Form 2100, Schedule 301, or FCC Form 2100, Schedule 340 for a noncommercial educational station) will be required if the proposal involves substantial change in the physical height or radiation characteristics of the AM broadcast antennas; otherwise an informal application will be acceptable.

* * *

■ 18. Amend § 73.807 by:

- a. Revising the introductory text of paragraph (a)(1) and designating the table as Table 1 to paragraph (a)(1);
- b. Designating the table in paragraph (b) as Table 2 to paragraph (b);
- c. Revising (c) introductory text and designating the table as Table 3 to paragraph (c); and
- d. Designating the table in paragraph (g)(1) as Table 4 to paragraph (g)(1) and the table in paragraph (g)(2) as Table 5 to paragraph (g)(2).

The revisions read as follows:

§ 73.807 Minimum distance separation between stations.

* * *

(a) * * *

(1) An LPFM station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing the filing procedures for the LPFM window period, authorized LPFM stations, LPFM station applications that were timely-filed within a previous window, and vacant FM allotments. The term authorized [FM or LPFM] station means the FM or LPFM station currently holds a granted construction permit and/or a granted license. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations.

* * *

(c) In addition to meeting the separations specified in paragraphs (a) and (b) of this section, LPFM applications must meet the minimum separation requirements in the following table with respect to authorized FM translator stations, and FM translator applications filed prior to the release of the Public Notice announcing the filing procedures for the LPFM window period. The term authorized FM translator station means the FM translator station currently holds

a granted construction permit and/or a granted license.

* * *

- 19. Amend § 73.872 by revising paragraphs (a) and (b)(1) to read as follows:

§ 73.872 Selection procedure for mutually exclusive LPFM applications.

(a) Following the close of each window for new LPFM stations and for modifications in the facilities of authorized LPFM stations, the Commission will issue a public notice identifying all groups of mutually exclusive applications. Such applications will be awarded points to determine the tentative selectee. Unless resolved by settlement pursuant to paragraph (e) of this section, the tentative selectee will be the applicant within each group with the highest point total under the procedure set forth in this section, except as provided in paragraphs (c) and (d) of this section. Acceptance for filing of a tentative selectee's application in the LPFM Mutually Exclusive Tentative Selectee Order or Public Notice, or an equivalent Order, triggers the applicant's local public notice obligation under § 73.3580.

(b) * * *

(1) *Established community presence.*

An applicant must, for a period of at least two years prior to application and at all times thereafter, have qualified as local pursuant to § 73.853(b). Applicants claiming a point for this criterion must submit any documentation specified in FCC Form 2100, Schedule 318 at the time of filing their applications.

* * *

- 20. Amend § 73.875 by revising paragraph (b) introductory text and the second sentence of paragraph (c) introductory text to read as follows:

§ 73.875 Modification of transmission systems.

* * *

(b) The following changes may be made only after the grant of a construction permit application on FCC Form 2100, Schedule 318.

* * *

(c) * * * A modification of license application (FCC Form 2100, Schedule 319) must be submitted to the Commission within 10 days of commencing program test operations pursuant to § 73.1620. * * *

* * *

- 21. Amend § 73.1020 by revising paragraph (b) to read as follows:

§ 73.1020 Station license period.

* * *

(b) For the deadline for filing petitions to deny renewal applications, see § 73.3584(f).

* * *

- 22. Amend § 73.1635 by revising paragraph (a)(4) to read as follows:

§ 73.1635 Special temporary authorizations (STA).

(a) * * *

(4) An STA may be granted for an initial period not to exceed 180 days. A limited number of extensions of such authorizations may be granted for additional periods not exceeding 180 days per extension. The permittee or licensee must demonstrate that any further extensions requested are necessary and that all steps to resume normal operation are being undertaken in an expeditious and timely fashion. The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any STA or provision, term, or condition of the license to the contrary.

* * *

- 23. Amend § 73.1670 by revising paragraph (b) to read as follows:

§ 73.1670 Auxiliary transmitters.

* * *

(b) Authorization to install an auxiliary transmitter for use with other than the main antenna or authorized auxiliary antenna must be obtained by filing an application for a construction permit on FCC Form 2100, Schedule 301 (FCC Form 2100, Schedule 340 for noncommercial educational stations).

* * *

- 24. Amend § 73.1690 by revising the first sentence of paragraph (c)(9) to read as follows:

§ 73.1690 Modification of transmission systems.

* * *

(c) * * *

(9) The licensee of an AM, FM, or TV commercial station may propose to change from commercial to noncommercial educational on a modification of license application, provided that the application contains the completed Eligibility Certifications and Financial sections from FCC Form 2100, Schedule 340. * * *

* * *

- 25. Amend § 73.3513 by revising paragraphs (a)(2) through (5), and adding paragraph (e) to read as follows:

§ 73.3513 Signing of applications.

(a) * * *

(2) *Partnership*. One of the partners, or a duly authorized employee, if the applicant is a partnership.

(3) *Corporation*. An officer, director, or duly authorized employee, if the applicant is a corporation.

(4) *Unincorporated Association*. A member who is an officer, or a duly authorized employee, if the applicant is an unincorporated association.

(5) *Governmental Entity*. Such duly elected or appointed officials as may be competent to do so under the law of the applicable jurisdiction, or a duly authorized employee, if the applicant is an eligible governmental entity, such as a State or Territory of the United States and political subdivisions thereof, the District of Columbia, and a unit of local government, including an unincorporated municipality.

* * * * *

(e) The Commission only accepts electronic applications. An electronic application is “signed” when there is an electronic signature. An electronic signature is the typed name of the person “signing” the application, which is then electronically transmitted via LMS.

§ 73.3516 [Amended]

■ 26. Amend § 73.3516 by removing paragraph (e).

§ 73.3522 [Amended]

■ 27. Amend § 73.3522 by removing note 1 to § 73.3522.

■ 28. Amend § 73.3526 by revising paragraphs (e)(2) and (4), redesignating paragraphs (e)(18)(1) and (2) as paragraphs (e)(18)(i) and (ii), and revising paragraph (f).

The revisions read as follows:

§ 73.3526 Online public inspection file of commercial stations.

* * * * *

(e) * * *

(2) *Applications and related materials*. A copy of any application filed with the FCC, together with all related material, and copies of Initial Decisions and Final Decisions in hearing cases pertaining thereto. If petitions to deny are filed against the application and have been served on the applicant, a statement that such a petition has been filed shall be maintained in the file together with the name and address of the party filing the petition. Applications shall be retained in the public inspection file until final action has been taken on the

application, except that applications for a new construction permit granted pursuant to a waiver showing and applications for assignment or transfer of license granted pursuant to a waiver showing shall be retained for as long as the waiver is in effect. In addition, license renewal applications granted on a short-term basis shall be retained until final action has been taken on the license renewal application filed immediately following the shortened license term.

* * * * *

(4) *Contour maps*. A copy of any service contour maps, submitted with any application filed with the FCC, together with any other information in the application showing service contours and/or transmitter location (State, county, city, street address, or other identifying information). These documents shall be retained for as long as they reflect current, accurate information regarding the station.

* * * * *

(f) *Definitions*. (1) For purposes of this section, action taken on an application filed with the FCC becomes final when that action is no longer subject to reconsideration, review, or appeal either at the FCC or in the courts.

(2) For purposes of this section, the term “all related material” includes all exhibits, letters, and other documents filed with the FCC as part of an application, report, or other document, all amendments to the application, report, or other document, copies of all documents incorporated therein by reference and not already maintained in the public inspection file, and all correspondence between the FCC and the applicant pertaining to the application, report, or other document, which according to the provisions of §§ 0.451 through 0.461 of this chapter are open for public inspection at the offices of the FCC.

■ 29. Amend § 73.3527 by revising paragraphs (e)(2) and (3) and (f) to read as follows:

§ 73.3527 Online public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(2) *Applications and related materials*. A copy of any application filed with the FCC, together with all related material, including supporting documentation of any points claimed in the application pursuant to § 73.7003, and copies of FCC decisions pertaining

thereto. If petitions to deny are filed against the application and have been served on the applicant, a statement that such a petition has been filed shall be maintained in the file together with the name and address of the party filing the petition. Applications shall be retained in the public inspection file until final action has been taken on the application, except that applications for a new construction permit granted pursuant to a waiver showing and applications for assignment or transfer of license granted pursuant to a waiver showing shall be retained for as long as the waiver is in effect. In addition, license renewal applications granted on a short-term basis shall be retained until final action has been taken on the license renewal application filed immediately following the shortened license term.

(3) *Contour maps*. A copy of any service contour maps, submitted with any application filed with the FCC, together with any other information in the application showing service contours and/or transmitter location (State, county, city, street address, or other identifying information). These documents shall be retained for as long as they reflect current, accurate information regarding the station.

* * * * *

(f) *Definitions*. (1) For purposes of this section, a decision made with respect to an application filed with the FCC becomes final when that decision is no longer subject to reconsideration, review, or appeal either at the FCC or in the courts.

(2) For purposes of this section, the term “all related material” includes all exhibits, letters, and other documents filed with the FCC as part of an application, report, or other document, all amendments to the application, report, or other document, copies of all documents incorporated therein by reference and not already maintained in the public inspection file, and all correspondence between the FCC and the applicant pertaining to the application, report, or other document, which according to the provisions of §§ 0.451 through 0.461 of this chapter are open for public inspection at the offices of the FCC.

■ 30. Amend § 73.3564 by revising paragraphs (a)(1) and (3), (c), and (e) to read as follows:

§ 73.3564 Acceptance of applications.

(a) * * *

(1) Applications are dated upon filing in LMS. Except for applications for minor modifications of facilities in the non-reserved FM band, as defined in § 73.3573(a)(2), long form applications subject to the provisions of § 73.5005 found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, a deficiency letter will be issued and the applicant will be required to supply the missing or corrective information. Applications that are not substantially complete will not be considered and will be returned to the applicant.

* * * * *

(3) Applications found not to meet minimum filing requirements will be returned to the applicant. Applications found to meet minimum filing requirements, but that contain deficiencies, shall be given an opportunity for corrective amendment pursuant to § 73.3522. Applications found to be substantially complete and in accordance with the Commission's core legal and technical requirements will be accepted for filing. Applications with uncorrected defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for amendment.

* * * * *

(c) At regular intervals, the FCC will issue a Public Notice listing all long form applications which have been accepted for filing. Pursuant to §§ 73.3571(h), 73.3572, and 73.3573(f), such notice shall establish a cut-off date for the filing of petitions to deny. However, no application will be accepted for filing unless certification of compliance with the local notice requirements of § 73.3580(h) has been made in the tendered application.

* * * * *

(e) Applications for minor modification of facilities may be filed at any time, unless restricted by the FCC. These applications will be processed on a "first come/first served" basis and will be treated as simultaneously filed if filed on the same day. Any applications received after the filing of a lead application will be grouped according to filing date, and placed in a queue behind the lead applicant. The FCC will periodically release a Public Notice listing those minor modification of facilities applications accepted for filing.

* * * * *

- 31. Amend § 73.3571 by:
- a. Revising paragraph (e);
- b. Adding paragraph (h)(1)(ii)(D); and
- c. Removing the note to § 73.3571.

The revision and addition read as follows:

§ 73.3571 Processing of AM broadcast station applications.

* * * * *

(e) The following special procedures will be followed in authorizing Class D daytime-only stations on 940 and 1550 kHz, and Class D daytime-only stations on the 41 regional channels listed in § 73.26(a), to operate unlimited-time.

(1) Each eligible daytime-only station in the foregoing categories will receive an Order to Show Cause why its license should not be modified to specify operation during nighttime hours with the facilities it is licensed to start using at local sunrise, using the power stated in the Order to Show Cause, that the Commission finds is the highest nighttime level—not exceeding 0.5 kW—at which the station could operate without causing prohibited interference to other domestic or foreign stations, or to co-channel or adjacent channel stations for which pending applications were filed before December 1, 1987.

(2) Stations accepting such modification shall be reclassified. Those authorized in such Show Cause Orders to operate during nighttime hours with a power of 0.25 kW or more, or with a power that, although less than 0.25 kW, is sufficient to enable them to attain an equivalent RMS field strength of at least 107.5 mV/m at 1 kilometer, shall be redesignated as Class B stations if they are assigned to 940 or 1550 kHz, and as unlimited-time Class B stations if they are assigned to regional channels.

(3) Stations accepting such modification that are authorized to operate during nighttime hours at powers less than 0.25 kW, and that cannot with such powers attain an equivalent RMS field strength of less than 107.5 mV/m at 1 kilometer, shall be redesignated as Class D stations if they are assigned to 940 or 1550 kHz, and as Class D stations if they are assigned to regional channels.

(4) Applications for new stations may be filed at any time on 940 and 1550 kHz and on the regional channels. Also, stations assigned to 940 or 1550 kHz, or to the regional channels, may at any time, regardless of their classifications, apply for power increases up to the maximum generally permitted. Such applications for new or changed facilities will be granted without taking into account interference caused to Class D stations, but will be required to show interference protection to other classes of stations, including stations that were previously classified as Class

D, but were later reclassified as Class B unlimited-time stations.

* * * * *

(h) * * *

(1) * * *

(ii) * * *

(D) For purposes of this paragraph (h)(1)(ii), § 73.182(k) interference standards apply when determining nighttime mutual exclusivity between applications to provide AM service that are filed in the same window. Two applications would be deemed to be mutually exclusive if either application would be subject to dismissal because it would enter into, *i.e.*, raise, the twenty-five percent exclusion RSS nighttime limit of the other.

* * * * *

- 32. Amend § 73.3573 by revising paragraph (f)(1) and note 4 to § 73.3573 to read as follows:

§ 73.3573 Processing FM broadcast station applications.

* * * * *

(f) * * *

(1) Applications for minor modifications for non-reserved FM broadcast stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and, generally, will be processed in the order in which they are tendered. The FCC will periodically release a Public Notice listing those applications accepted for filing. Processing of these applications will be on a "first come/first serve" basis with the first acceptable application cutting off the filing rights of subsequent applicants. All applications received on the same day will be treated as simultaneously filed and, if they are found to be mutually exclusive, must be resolved through settlement or technical amendment. Applications received after the filing of a lead application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, as against all other applicants, are determined by the date of filing, but the filing date for subsequent applicants for that channel and community only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

* * * * *

Note 4 to § 73.3573: A Class C station operating with antenna height above average terrain ("HAAT") of less than

451 meters is subject to reclassification as a Class C0 station upon the filing of a triggering application for construction permit that is short-spaced to such a Class C station under § 73.207 but would be fully spaced to such a station considered as a Class C0 assignment. Triggering applications may utilize § 73.215. Triggering applications must certify that no alternative channel is available for the proposed service. Available alternative frequencies are limited to frequencies that the proposed service could use at the specified antenna location in full compliance with the distance separation requirements of § 73.207, without any other changes to the Table of FM Allotments. Copies of a triggering application and related pleadings must be served on the licensee of the affected Class C station. If the staff concludes that a triggering application is acceptable for filing, it will issue an order to show cause why the affected station should not be reclassified as a Class C0 station. The order to show cause will provide the licensee 30 days to express in writing an intention to seek authority to modify the subject station's technical facilities to minimum Class C HAAT or to otherwise challenge the triggering application. If no such intention is expressed and the triggering application is not challenged, the subject station will be reclassified as a Class C0 station, and processing of the triggering application will be completed. If an intention to modify is expressed, an additional 180-day period will be provided during which the Class C station licensee must file an acceptable construction permit application to increase antenna height to at least 451 meters HAAT. Upon grant of such a construction permit application, the triggering application will be dismissed. Class C station licensees must serve on triggering applicants copies of any FAA submissions related to the application grant process. If the construction is not completed as authorized, the subject Class C station will be reclassified automatically as a Class C0 station. The reclassification procedure also may be initiated through the filing of an original petition for rulemaking to amend the Table of FM Allotments as set forth in the Note to § 1.420(g).

* * * * *

■ 33. Amend § 73.3578 by revising paragraph (a) to read as follows:

§ 73.3578 Amendments to applications for renewal, assignment or transfer of control.

(a) Any amendments to an application for renewal of any instrument of

authorization shall be considered to be a minor amendment. However, the FCC may, within 15 days after filing of any amendment, advise the applicant that the amendment is considered to be a major amendment and therefore is subject to the provisions of § 73.3580.

* * * * *

■ 34. Amend § 73.3580 by revising paragraphs (a)(1) and (d)(2) to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

(a) * * *

(1) *Acceptance public notice.* A Commission or Bureau public notice announcing that an application has been accepted for filing, or an equivalent Order accepting for filing applications from a filing window under §§ 73.7002, 73.7003 or 73.872.

* * * * *

(d) * * *

(2) Consent to an involuntary assignment or transfer or to a voluntary assignment or transfer which does not result in a change of control and which may be applied for on FCC Form 2100, Schedule 316, or any successor form released in the future, pursuant to the provisions of § 73.3540(b).

* * * * *

■ 35. Amend § 73.3584 by revising paragraphs (a) and (c) and adding paragraph (f) to read as follows:

§ 73.3584 Procedure for filing petitions to deny.

(a) For mutually exclusive applications subject to selection by competitive bidding (non-reserved channels) or fair distribution/point system (reserved channels), petitions to deny may be filed only against the winning bidders or tentative selectee(s), and such petitions will be governed by §§ 73.5006 and 73.7004, respectively. For all other applications the following rules will govern. Except in the case of applications for new low power TV and TV translator stations, for major changes in the existing facilities of such stations, or for applications for a change in output channel tendered by displaced low power TV and TV translator stations pursuant to § 73.3572(a)(1), any party in interest may file with the Commission a Petition to Deny any application (whether as originally filed or if amended so as to require a new file number pursuant to §§ 73.3571(j), 73.3572(b), 73.3573(b), 73.3574(b) or 73.3578) for which local notice pursuant to § 73.3580 is required, provided such petitions are filed prior to the day such applications are granted or designated for hearing; but where the FCC issues a

public notice pursuant to the provisions of §§ 73.3571(c), 73.3572(c) or 73.3573(d), establishing a “cut-off” date, such petitions must be filed by the date specified. In the case of applications for transfers and assignments of construction permits or station licenses, Petitions to Deny must be filed not later than 30 days after issuance of a public notice of the acceptance for filing of the applications. In the case of applications for renewal of license, Petitions to Deny may be filed at any time up to the deadline established in paragraph (f) of this section. Requests for extension of time to file Petitions to Deny applications for new broadcast stations or major changes in the facilities of existing stations or applications for renewal of license will not be granted unless all parties concerned, including the applicant, consent to such requests, or unless a compelling showing can be made that unusual circumstances make the filing of a timely petition impossible and the granting of an extension warranted.

* * * * *

(c) In the case of applications for new low power TV and TV translator stations, for major changes in the existing facilities of such stations, or for applications for a change in output channel tendered by displaced low power TV and TV translator stations pursuant to § 73.3572(a)(1), any party in interest may file with the FCC a Petition to Deny any application (whether as originally filed or if amended so as to require a new file number pursuant to § 73.3572(b)) for which local notice pursuant to § 73.3580 is required, provided such petitions are filed within 30 days of the FCC Public Notice proposing the application for grant (applicants may file oppositions within 15 days after the Petition to Deny is filed); but where the FCC selects a tentative permittee pursuant to § 1.1601 of this chapter, Petitions to Deny shall be accepted only if directed against the tentative selectee and filed after issuance of and within 15 days of FCC Public Notice announcing the tentative selectee. The applicant may file an opposition within 15 days after the Petition to Deny is filed. In cases in which the minimum diversity preference provided for in § 1.1623(f)(1) of this chapter has been applied, an “objection to diversity claim” and opposition thereto, may be filed against any applicant receiving a diversity preference, within the same time period provided herein for Petitions and Oppositions. In all pleadings, allegations of fact or denials thereof shall be supported by appropriate

certification. However, the FCC may announce, by the Public Notice announcing the acceptance of the last-filed mutually exclusive application, that a notice of Petition to Deny will be required to be filed no later than 30 days after issuance of the Public Notice.

* * * * *

(f) A petition to deny an application for renewal of license of an existing broadcast station will be considered as timely filed if it is filed by the end of the first day of the last full calendar month of the expiring license term.

(1) If the license renewal application is not timely filed as prescribed in § 73.3539, the deadline for filing petitions to deny thereto is the 90th day after the FCC gives public notice that it has accepted the late-filed renewal application for filing.

(2) If any deadline falls on a nonbusiness day, the cutoff shall be the close of business of the first full business day thereafter.

(3) The dates when the licenses of all broadcast and broadcast auxiliary services regularly expire are listed in §§ 73.733, 73.1020 and 74.15.

■ 36. Amend § 73.3591 by revising paragraphs (b) introductory text and (b)(2) to read as follows:

§ 73.3591 Grants without hearing.

* * * * *

(b) In making its determinations pursuant to the provisions of paragraph (a) of this section, the FCC will not consider any other application, or any application if amended so as to require a new file number, as being mutually exclusive or in conflict with the application under consideration unless such other application was substantially complete, and filed by:

* * * * *

(2) The date prescribed in § 73.3584(f) in the case of applications which are mutually exclusive with applications for renewal of license of broadcast stations; or

* * * * *

■ 37. Amend § 73.3597 by revising paragraph (b)(2) to read as follows:

§ 73.3597 Procedures on transfer and assignment applications.

* * * * *

(b) * * *

(2) In determining whether the station has been operating on-air for one year, the FCC will calculate the period between the date of initiation of program tests (as specified in paragraph (b)(1) of this section) and the date the application for transfer or assignment is filed with the FCC.

* * * * *

■ 38. Amend § 73.3700 by

■ a. Revising paragraph (b)(5)(iv);

■ b. Removing and reserving paragraph (c), and removing paragraph (i).

The revision reads as follows:

§ 73.3700 Post-incentive auction licensing and operation.

* * * * *

(b) * * *

(5) * * *

(iv) Applications for additional time to complete construction must be filed electronically in LMS using FCC Form 337 no less than 90 days before the expiration of the construction permit.

* * * * *

■ 39. Amend § 73.3801 by revising paragraph (h)(4)(i) to read as follows:

§ 73.3801 Full power television simulcasting during the ATSC 3.0 (Next Gen TV) transition.

* * * * *

(h) * * *

(4) * * *

(i) Next Gen TV stations must provide notice at least 90 days in advance of relocating their ATSC 1.0 signals.

* * * * *

■ 40. Amend § 73.5002 by revising the second sentence of paragraph (b) to read as follows:

§ 73.5002 Application and certification procedures; return of mutually exclusive applications not subject to competitive bidding procedures; prohibition of collusion.

* * * * *

(b) * * * So determinations of mutual exclusivity for auction purposes can be made, applicants for non-table broadcast services must also submit the engineering data contained in the appropriate FCC application FCC Form 2100, Schedule 301, 346, or 349. * * *

* * * * *

■ 41. Amend § 73.6029 by revising paragraph (h)(4)(i) to read as follows:

§ 73.6029 Class A television simulcasting during the ATSC 3.0 (Next Gen TV) transition.

* * * * *

(h) * * *

(4) * * *

(i) Next Gen TV stations must provide notice at least 90 days in advance of relocating their ATSC 1.0 signals.

* * * * *

■ 42. Amend § 73.7002 by revising paragraph (b) to read as follows:

§ 73.7002 Fair distribution of service on reserved band FM channels.

* * * * *

(b) In an analysis performed pursuant to paragraph (a) of this section, a full-

service FM applicant that identifies itself as a Tribal Applicant, that proposes Tribal Coverage, and that proposes the first reserved channel NCE service owned by any Tribal Applicant at a community of license located on Tribal Lands, will be awarded a construction permit. If two or more full-service FM applicants identify themselves as Tribal Applicants and meet the above criteria, the applicant providing the most people with reserved channel NCE service to Tribal Lands will be awarded a construction permit, regardless of the magnitude of the superior service or the populations of the communities of license proposed, if different. If two or more full-service FM applicants identifying themselves as Tribal Applicants each meet the above criteria and propose identical levels of NCE aural service to Tribal Lands, only those applicants shall proceed to be considered together in a point system analysis. In an analysis performed pursuant to paragraph (a) of this section that does not include a Tribal Applicant, a full service FM applicant that will provide the first or second reserved channel noncommercial educational (NCE) aural signal received by at least 10% of the population within the station's 60dBu (1mV/m) service contours will be considered to substantially further fair distribution of service goals and to be superior to mutually exclusive applicants not proposing that level of service, provided that such service to fewer than 2,000 people will be considered insignificant. First service to 2,000 or more people will be considered superior to second service to a population of any size. If only one applicant will provide such first or second service, that applicant will be selected as a threshold matter. If more than one applicant will provide an equivalent level (first or second) of NCE aural service, the size of the population to receive such service from the mutually exclusive applicants will be compared. The applicant providing the most people with the highest level of service will be awarded a construction permit, if it will provide such service to 5,000 or more people than the next best applicant. If none of the applicants in a mutually exclusive group would substantially further fair distribution goals, all applicants will proceed to examination under a point system. If two or more applicants will provide the same level of service to an equivalent number of people (differing by less than 5,000), only those equivalent applicants will be considered together in a point system. Acceptance for filing of a tentative selectee's application in a

Threshold Fair Distribution of Service Order, or an equivalent Order, triggers the applicant's local public notice obligation under § 73.3580.

- 43. Amend § 73.7003 by revising paragraph (a) to read as follows:

§ 73.7003 Point system selection procedures.

(a) If timely filed applications for reserved FM channels or reserved TV channels are determined to be mutually exclusive, applications will be processed and assessed points to determine the tentative selectee for the particular channels. The tentative selectee will be the applicant with the highest point total under the procedure set forth in this section and will be awarded the requested permit if the Commission determines that an award will serve the public interest, convenience, and necessity. Acceptance for filing of a tentative selectee's application in an NCE Comparative Points Order, or an equivalent Order, determined under this section triggers the applicant's local public notice obligation under § 73.3580.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

- 44. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336 and 554.

- 45. Amend § 74.782 by revising paragraph (i)(4)(i) to read as follows:

§ 74.782 Low power television and TV translator simulcasting during the ATSC 3.0 (Next Gen TV) transition.

(i) * * *

(4) * * *

(i) Next Gen TV stations must provide notice at least 90 days in advance of relocating their ATSC 1.0 signals.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

- 46. The authority citation for part 76 continues to read as follows:

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

- 47. Amend § 76.66 by revising paragraph (d)(2)(ii) to read as follows:

§ 76.66 Satellite broadcast signal carriage.

(d) * * *

(2) * * *

(ii) Except as provided in this paragraph (d)(2)(ii), satellite carriers shall transmit the notices required by paragraph (d)(2)(i) of this section via certified mail to the address for such television station licensee listed in the Licensing and Management System maintained by the Commission. After July 31, 2020, the written notices required by paragraphs (d)(1)(vi), (d)(2)(i), (v), and (vi), (d)(3)(iv), (d)(5)(i), (f)(3) and (4), and (h)(5) of this section shall be delivered electronically via email to the email address for carriage-related questions that the station lists in its public file in accordance with §§ 73.3526 and 73.3527 of this subchapter.

[FR Doc. 2026-10008 Filed 5-18-26; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 21-455, CC Docket No. 02-6; FCC 26-30; FR ID 345648]

Promoting Fair and Open Competitive Bidding in the E-Rate Program; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) takes action to reinforce the success and integrity of the E-Rate program by establishing a competitive bidding portal and document repository to strengthen the E-Rate program's competitive bidding rules as well as other actions to simplify and streamline program processes and procedures for E-Rate participants. In addition, the Commission adopts changes to streamline and simplify the E-Rate program while maintaining the integrity of the program and grant an Order on Reconsideration. These actions will provide greater transparency into the applicants' competitive bidding and bid evaluation and selection processes, and protect the program against waste, fraud, and abuse.

DATES: Effective June 18, 2026, except for amendatory instructions 4 and 5 which are delayed indefinitely. The Commission will publish a document in

the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: For further information, please contact, Jennifer Mensah, Telecommunications Access Policy Division, Wireline Competition Bureau, at Jennifer.Mensah@fcc.gov or (202) 418-1387 or TTY: (202) 418-0484. Requests for accommodations should be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order (*Report and Order*) and Order on Reconsideration in WC Docket No. 21-455, CC Docket No. 02-6; FCC 26-30, adopted on April 30, 2026 and released on May 1, 2026. The full text of this document is available at the following internet address: <https://docs.fcc.gov/public/attachments/FCC-26-30A1.pdf>.

I. Introduction

The Federal Communications Commission (Commission) is committed to strengthening the integrity of the E-Rate program—formally known as the schools and libraries universal service support mechanism—and protecting limited E-Rate funds against waste, fraud, and abuse. We take action to reinforce the success and integrity of the E-Rate program by establishing a competitive bidding portal and document repository to strengthen the E-Rate program's competitive bidding rules as well as other actions to simplify and streamline program processes and procedures for E-Rate participants.

Beginning in funding year (FY) 2028, service providers will be required to respond to applicants' FCC Form 470 requests for services by submitting their bids into a Universal Service Administrative Company (USAC)-managed bidding portal, and applicants will be required to upload all bid evaluation and vendor selection documents, including contracts, to the portal after they select their service providers. The E-Rate program's competitive bidding requirements reflect the Commission's determination that competition is the most efficient and effective means to ensure that applicants can receive and select the most cost-effective service offerings. The Commission has long held that a fair and open competitive bidding process is a cornerstone of and fundamental to the integrity of the E-Rate program. In addition, we adopt changes to

streamline and simplify the E-Rate program while maintaining the integrity of the program and grant an Order on Reconsideration. These actions will provide greater transparency into the applicants' competitive bidding and bid evaluation and selection processes, and protect the program against waste, fraud, and abuse.

II. Report and Order

In this *Report and Order*, we take steps to both strengthen the integrity of the E-Rate program and simplify and improve program administration. Recognizing the Commission's recent achievements in addressing and managing fraud risks in the E-Rate program, and mindful of the need to balance effective oversight of the program with minimizing unnecessary administrative burdens, the measures we take are aimed at refining and improving certain aspects of the program, while tightening our oversight of the competitive bidding process. To that end, we first adopt our proposal to establish a competitive bidding portal, which will strengthen program integrity by increasing transparency and reducing reliance on self-certifications and will be effective for funding year 2028. Under the competitive bidding portal rules adopted, we will require: (1) prospective service providers to respond to applicants' FCC Forms 470 by submitting their bids into the USAC-managed portal; and (2) applicants to upload their bid evaluation and vendor selection documentation, including contract(s), after selecting their service provider(s). In addition, we take steps to simplify and streamline program rules and administration to improve how applicants transition services during the funding year; clarify cost allocation rules and procedures; provide competitive bidding guidance; eliminate a program form; modify the invoice filing deadline rules; and update E-Rate program definitions. Each of these issues have caused challenges for applicants in applying for and receiving funding for eligible services, and we anticipate that these changes will simplify E-Rate procedures and processes.

Based on the record and pursuant to our authority under section 254 of the Communications Act, we adopt the Commission's proposal to require applicants and service providers to use a competitive bidding portal and document repository during the E-Rate procurement process. In the *Promoting Competitive Bidding NPRM*, 87 FR 4182, January 27, 2021, the Commission proposed to "require prospective service providers to respond to applicant

requests for services and equipment by uploading bids into a bidding portal managed by USAC, rather than submitting bids directly to applicants." The Commission also sought comment on whether the competitive bidding portal should be used as a repository to store documentation associated with the FCC Form 470 requests and competitive bidding process. We discuss these new requirements.

Specifically, beginning with funding year 2028, we will require service providers to submit their bids in response to applicants' FCC Forms 470 into a USAC-managed competitive bidding portal. Applicants, in turn, will be required to use the bidding portal for bidder communications and updates during the competitive bidding process and then must upload bid evaluation and vendor selection documentation with their FCC Form 471 applications. Applicants will also be required to upload contracts and award documentation, to the extent that they are not already doing so. We direct USAC, under the direction and oversight of the Wireline Competition Bureau (Bureau) and the Commission's Office of the Managing Director (OMD), to develop and implement the competitive bidding portal and leverage USAC's existing web-based account and application management portal, known as the E-Rate Productivity Center (EPC), for this purpose. We also direct the Bureau, working with OMD and other Commission staff, to provide clarification and guidance in the case of any ambiguity that may arise during the implementation of the competitive bidding portal. Additionally, we direct USAC to enhance training and outreach materials, under the oversight of the Bureau, to better assist participants with complying with the Commission's E-Rate competitive bidding rules, including the use of the new bidding portal functionality in EPC. We also direct USAC, at the direction of the Bureau, to add guidance on their website and seek stakeholder feedback on the technical aspects of portal functionality during the development input. Stakeholders proposed multiple methods to provide feedback and some commenters requested specific portal functionality. We find directing USAC, under the oversight of the Bureau, to solicit direct feedback from stakeholders through interactive feedback sessions to be the most effective approach for implementing the portal and ensuring its successful use before going live. We agree with commenters that user testing and training will provide valuable input

for developing and launching the competitive bidding portal. We conclude that these methods allow USAC to demonstrate portal functionality, which in turn supports more informed stakeholder discussions and specific clarification questions. To promote maximum effectiveness and smooth implementation and administration of the competitive bidding portal, we also delegate to the Bureau the authority to address and resolve unforeseen administrative issues or problems, provided that doing so is not inconsistent with the decisions we reach here.

Benefits to the New Approach. First, we find that a competitive bidding portal will help ensure a more fair and open competitive bidding process by increasing visibility and transparency into bidding information received during the E-Rate competitive bidding process. As noted in the 2020 United States Government Accountability Office (GAO) E-Rate report, a competitive bidding portal would strengthen E-Rate program controls and increase transparency by "allowing USAC direct access to obtain and monitor bidding information submitted by bidders without having to request such information." The Commission's Office of Inspector General (OIG) similarly explained that "submission of service provider bids prior to bid selection prevents a service provider or applicant from submitting an altered bid or contract to USAC . . . to create the appearance of compliance." We agree and further conclude that this increased transparency will give USAC and the Commission direct and instant insight into the competitive bidding process to reduce opportunities for potential bid collusion and the submission of sham or altered bids, thereby protecting the E-Rate program from waste, fraud, and abuse. We agree with several commenters that suggest the portal and the insight gained from having direct access to this competitive bidding documentation and information could lead to a more fair and open process and reduce potential waste. Additionally, we find that the competitive bidding portal and repository would streamline program administration by providing USAC and the Commission with direct access to the bids and competitive bidding documentation, which, in turn, would make reviews more efficient. Moreover, a competitive bidding portal and an associated repository will streamline both applicant and service provider document retention and other requirements, simplifying review in many cases, while requiring only that

applicants simply upload documents they are already required to retain and produce through a portal that is integrated with EPC, a system E-Rate program participants are accustomed to using. The document repository will alleviate the burden imposed by recordkeeping requirements on applicants and service providers by preserving retrievable documents in the repository. Finally, the competitive bidding portal will bolster “more robust enforcement of laws designed to protect the E-Rate program’s public procurement process” by preserving the integrity of source documents and ensuring that pre-award bid and bid selection documents remain “unaltered and available to auditors and investigators.”

We disagree with commenters that contend that such a portal or repository is unnecessary, or that it would not reduce waste, fraud, or abuse. Some commenters suggest a lack of sufficient justification, others suggest the current rules provide sufficient protection, while still others worry that the new requirements will be overly burdensome for E-Rate program participants. As recent OIG and U.S. Department of Justice (DOJ) criminal investigations into the program have shown, fraud remains a problem, and we believe that establishing a portal and associated repository will reduce opportunities for fraud. As noted by both OIG and the GAO, the Commission’s ability to detect and deter fraud has historically been limited by its lack of direct access to underlying competitive bidding documentation. Access to the real-time submission of competitive bidding documentation will assist in uncovering fraud, simplifying reviews, ensuring program compliance, and reducing the potential for waste, fraud, and abuse. Enhanced fraud detection will also deter program participants from violating the rules. As stewards of limited universal service funds, we have a responsibility to identify ways to prevent bad actors from participating in the E-Rate program and ensure program participants continue to comply with our rules. We find that the competitive bidding portal and repository we adopt furthers this objective.

Although how prospective bidders will respond to applicants’ FCC Forms 470 will change based on the actions we take, on balance, we expect that imposing these new requirements will significantly benefit program integrity. While requiring applicants and service providers to submit documentation that they are already required to maintain and produce pursuant to § 54.516(a)–(b) of the Commission’s rules into a

competitive bidding portal changes how and where program participants are required to submit this information, we find that it will not impose a substantial burden on program participants. Applicants are already required to post their FCC Form 470 on USAC’s website in addition to uploading the form to any state bidding portal that may also be required. Additionally, certain E-Rate participants are already accustomed to uploading the documentation into an online portal or repository, and uploading the documentation into the USAC-managed competitive bidding portal integrated with EPC should not be a significant burden. We agree with the OIG that “as service providers are already required to submit bids and [applicants] are already required to compile and maintain bid submissions, providing for the submission of such data to USAC initially should not result in more than de minimis additional costs or additional burdens to either service providers or [] applicants.” Moreover, the document repository will reduce burdens for applicants and service providers with meeting recordkeeping and production requirements because the competitive bidding documentation will be available to USAC and the Commission through the portal. E-Rate participants will no longer need to separately retain documentation uploaded to the portal, and USAC and the Commission will be able to obtain competitive bidding documentation directly through the portal instead of through document requests to applicants and service providers. We agree with the National School Board Association (NSBA) that “[m]aximizing the program’s impact on school and classroom broadband connectivity rates, while ensuring that bad actors are unable to defraud the program and ratepayers must be a high priority for policymakers.” We also agree with commenter Juniper Networks that a bidding portal “would lead to a more fair, open, and competitive bidding process” and with Infinity Communications & Consultants, Inc. that it would “reinforce the bidding process set forth in the E-Rate rules and lead to lower instances of bid protests or questions of bid efficacy.” In weighing the concerns about the competitive bidding portal against the benefits of limiting the risk for potential waste, fraud, or abuse, we conclude that the benefits weigh in favor of creating the competitive bidding portal and repository.

We reject commenters’ views that state and local procurement requirements alone are sufficient to

protect the integrity of the E-Rate program. Our experience over the years has shown that certain E-Rate applicants, including private and charter schools and private libraries, are exempt from, or otherwise not subject to, state and local procurement rules. Moreover, the Commission, as steward of E-Rate funding, has both the most direct stake in ensuring that the limited program funds are protected and not misused, and it has the unique ability to tailor E-Rate program rules based on insight into how the program operates across all states and localities. While state and local procurement requirements play an important role in ensuring that E-Rate funding is protected, state and local requirements vary among jurisdictions and are not specifically designed to protect the integrity of the E-Rate program. Additionally, the Commission has an independent obligation to safeguard every dollar in the Universal Service Fund, which cannot be delegated to a variety of state and local authorities to carry out through their procurement rules.

Many commenters believe that adopting a repository without the bidding portal would offer several advantages. We disagree and conclude that adopting only a repository would not achieve the Commission’s goals of protecting the program from waste, fraud, and abuse. Specifically, we find that implementing a repository without the bidding portal fails to address OIG’s and DOJ’s concerns with bid collusion and bid alteration. Indeed, OIG emphasized that because there was no upfront collection of bids *during* the competitive bidding process, their ability to deter and detect waste, fraud, and abuse was severely limited. DOJ explained that the bidding portal “best preserves the integrity of source documents and any subsequent investigation” noting that the “threat of altered bid documents is real.” GAO concurred, reporting that E-Rate participants could misrepresent facts concerning the competitive bidding processes without the Commission’s or USAC’s knowledge. As such, GAO agreed that a portal “could strengthen program controls by allowing USAC direct access to obtain and monitor bidding information submitted by bidders without having to request such information from the applicants or service providers.” Failing to adopt the bidding portal would overlook identified fraud risks in the E-Rate program and prevent law enforcement officials from being able to identify and stop bad actors in the program.

Requiring E-Rate participants to upload bids and competitive bidding documentation into a repository after the completion of their bid process does not sufficiently address the risk of applicants and service providers altering bids during the procurement process nor does it discourage bid collusion.

We find that implementing a bidding portal and repository is a prudent method to simplify program integrity reviews, streamline audits, and ensure program compliance. We observe that commenters raise concerns regarding the potential costs associated with creating, implementing and managing the competitive bidding portal, and the impact it may have on program participation. For example, Arkansas State Library expresses concern that small and rural libraries do not have the staff time or expertise to devote to a more complex filing process. The Council of the Great City Schools also speculates that the bidding portal could have the “unintended effect of deterring service providers from submitting bids” resulting in weakened competition and less cost savings. Other commenters argue that requiring participants to use a federal competitive bidding portal in addition to other bidding portals would be burdensome and confusing for applicants and service providers. For example, AASA speculates that districts would have to rely more on consultants, increasing compliance costs. To address the cost concerns, we estimate that the cost of creating, implementing, and managing the competitive bidding portal for the first year of operation will be under \$750,000, followed thereafter by annual operating costs of \$100,000 to \$200,000, which together represents a comparatively low cost to take measures to protect a program where the funding cap in funding year 2026 is \$5.2 billion. These costs are also markedly lower than the millions of dollars in E-Rate funding that have been recovered as a result of OIG and DOJ investigations of competitive bidding violations. As explained, the competitive bidding portal will be integrated into the EPC system ensuring that E-Rate program participants will be able to quickly adjust to the new requirements and minimizing costs to both the Universal Service Fund and stakeholders. As noted, to address stakeholder concerns regarding the transition to the competitive bidding portal, the Bureau will work with USAC to provide training and guidance on its use.

While we acknowledge that there will be a change, we disagree that using the competitive bidding portal will be significantly more complex than

existing rules requiring the FCC Form 470 to be posted on USAC’s website or that a higher level of expertise will be required. The proposal we adopt requires applicants to upload documents that they are already required to retain and produce under our rules and provides a centralized place for service providers to submit bids and communicate with applicants about any questions they may have. Currently, to initiate the competitive bidding process, applicants are required to complete and upload their FCC Forms 470 and documentation into EPC, for posting on USAC’s website. Under the new rules, our expectation is that service providers will upload bids and applicants will submit their evaluation and vendor selection documentation into the competitive bidding portal. As such, E-Rate program participants already possess the requisite skills they need to comply with these new requirements. In other words, other than adjusting how this documentation is collected and shared with the Commission and USAC, the proposal we adopt is not intended to change the way applicants conduct their competitive bidding processes. Consequently, we disagree that the competitive bidding portal will discourage applicants or service providers from participating in the E-Rate program. Notably, we observe that no individual service provider submitted a filing opposing the bidding portal’s implementation.

To the extent that the portal does alter current rules, we expect that it leans towards a more fair, open, and transparent process, resulting in more cost-effective service proposals and a reduction of waste, fraud, and abuse. Indeed, the use of a document repository should aid smaller entities in complying with recordkeeping requirements because the required documents would be uploaded and be available in the portal. Also, we find that many participants are already utilizing bid portals; as such, being required to upload similar documentation to a competitive bidding portal should not be burdensome because it is a familiar process. We also note the potential streamlining for E-Rate participants, as commenters who use bid portals for their E-Rate bidding requirements explained that they “appreciate the singular place to post, respond, and collect documents.” We find that the competitive bidding portal may also assist participants with complying with state or local requirements by providing a centralized place for communications and

documentation regarding their competitive bidding processes. As such, although we decline to adopt a one-year grace period during which applicants would not be denied funding for procedural-type errors related to the bidding portal’s use, we direct the Bureau to take into account when the new portal was adopted when considering requests for waiver, particularly for procedural or administrative errors by smaller or more rural participants.

We acknowledge that commenters express concerns that the proposed bidding portal is duplicative of existing state and local portals and could conflict with state and local laws, noting that state and local procurement requirements are complex, tailored to the needs of individual states, and are likely to change over time. As an initial matter, although E-Rate program participants may have to upload documentation to different portals, we find that the process will be minimally burdensome as they will already be familiar with utilizing bidding portals. Also, we conclude that taking this step to upload documentation into the federal bidding portal will be beneficial as applicants and service providers will no longer have to maintain this documentation once uploaded into the portal, and USAC and the Commission will not need to request this documentation for reviews or audit purposes. We next find that the competitive bidding portal will not conflict with state or local laws nor raise any preemption concerns because the portal will not supplant existing state and local requirements and instead must be used alongside these requirements. For example, State E-rate Coordinators’ Alliance (SECA) states that “numerous E-rate applicants are required by state and local laws to receive printed, signed, and sealed bids. Some require notarized signatures to be lawful. Paper bids copies would be precluded by the portal.” Infinity Communications & Consultants, Inc. notes that some states “require wet signatures for contracts, or hard copy responses not digital.” Under our adopted rules, E-Rate program participants are required to comply with state and local rules; however copies of the bids, bidding documentation and any communication between applicants and service providers would also need to be uploaded into the competitive bidding portal. We recognize that state and local governments have procurement rules aimed at safeguarding against waste, fraud and abuse, and the federal bidding portal is

not intended to impact these measures. Accordingly, in addition to using the new, USAC-managed competitive bidding portal, our expectation is that applicants and service providers would continue to use existing state or local bidding portals where required. We clarify that the submission of bids or questions to other state or local portals would not violate E-Rate program rules. Specifically, applicants should include instructions regarding any additional state or local requirements in their FCC Form 470 or request for proposals (RFP) document allowing service providers to upload their response to the FCC Form 470 in the bidding portal, and to comply with other requirements for submitting a responsive bid. The bidding portal will not replace other procurement requirements under state or local procurement laws, including submitting the bid or questions in an additional portal. We clarify that if a service provider or applicant is submitting different information to a state/local portal than what is being submitted to the competitive bidding portal, that may be treated as a competitive bidding violation and the E-Rate funding requests could be subject to denial. We direct the USAC, under the direction of the Bureau, to provide guidance and training on this issue.

We reject commenters' remaining arguments regarding potential conflicts between the bidding portal and state and local laws. Some commenters argue that the proposed bidding portal would conflict with state requirements concerning the publicizing of bid requests. For example, Infinity notes that California Public Contract Code and Utah's State Statute both require public advertisement for the submission of bids. We conclude that the rules we adopt and the competitive bidding portal requirements do not conflict with rules requiring the publication of bids—applicants may post advertisements and public notices soliciting bids to the FCC Forms 470 as required by state regulations and include instructions that copies of the bids must be uploaded to the competitive bidding portal as well. We also find that a public opening of bids would not violate E-Rate program rules. Further, state rules that require a bid be emailed or hand delivered do not conflict with the portal, service providers merely need to ensure that copies of the bids are submitted into the federal competitive bidding portal. Los Angeles Unified School District (LAUSD) speculates that “[r]equired bidders’ security, in the form of cash, a cashier’s check made payable to the school district, a certified

check made payable to the school district, or a bidder’s bond executed by an admitted surety insurer made payable to the school district, may not be transmissible through a third-party portal.” We find that there is no such conflict between California’s procurement laws and the federal competitive bidding portal as California’s Public Contract Code does not prevent E-Rate program participants from submitting bids to the federal bidding portal and the rules we adopt place no restrictions on the submissions of securities required under state law. Additionally, to the extent there are state or local laws requiring bidder’s security and specific instructions for submitting the security, these laws do not preclude the creation of a competitive bidding portal, as applicants and service providers may satisfy the state or local requirements regarding the bidder’s security requirements while also submitting the bids and competitive bidding documentation to the competitive bidding portal. Similarly, we disagree with Schools, Health & Libraries Broadband (SHLB) that Mississippi state procurement law precludes the use of a federal competitive bidding portal. While the statute states that it “shall not require any bidder to submit bids electronically,” service providers may choose to submit electronic bids. We find that this is not incongruent with the competitive bidding portal and that service providers can reply to the applicant’s FCC Form 470 using the competitive bidding portal and be compliant with Mississippi state procurement requirements. The South Dakota Department of Education speculates that the portal will interfere with the state’s inclusion of ineligible E-Rate entities into its procurement, which may impact the bid evaluation process for eligible entities. However, requiring the bids, questions about the RFP and FCC Form 470, walkthroughs with vendors, and bid/vendor evaluation documentation related to the E-Rate supported contract to be uploaded should not interfere with a procurement that includes ineligible entities. We are not changing the requirements of the Commission’s competitive bidding rules and the rules that apply to ineligible entities remain in place. Overall, we note that stakeholders have not provided an example of an actual conflict with the competitive bidding portal’s requirements and instead have speculated that there could be conflicts. To the extent that there is a true conflict between the competitive bidding portal

and state or local laws, parties may request a waiver of the Commission’s rules.

Communications between Applicants and Service Providers. In the *Promoting Competitive Bidding NPRM*, the Commission proposed that “[s]ervice providers may anonymously submit questions or other inquiries to applicants through the bidding portal, to which applicants must respond during the competitive bidding process.” In addition, the Commission proposed that “no communication between service providers and applicants related to the competitive bid or the competitive bidding process would be permitted outside of the bidding portal during the competitive bidding process.” Commenters raise concerns regarding this process, asking whether the applicant could set the timeline for questions and answers in a fair and open manner, and whether this requirement effectively precludes applicants from holding bidder conferences or walkthroughs to discuss service needs with potential bidders and answer any questions. We adopt a modified version of the proposal prohibiting communication between service providers, applicants, and any representative thereof outside the bidding portal. A few commenters requested clarity regarding when the ban on communication applies, while others expressed concern about the burden imposed by these new rules. We clarify that bidders and applicants will use the portal for communications regarding the requested services and products beginning on the date the applicant files the FCC Form 470 until the contract is awarded, or the contract award date, with limited exceptions described. New requirements limiting communication between applicants and service providers is a change, however we find that the portal will assist participants with complying with these rules as documentation will only have to be uploaded to the competitive bidding portal and program participants will not have to separately retain the uploaded competitive bidding emails and related communication documentation.

We also adopt the proposal for bidders to be able to submit anonymous questions in the bidding portal for all participants to view, and for applicants to answer those questions in the bidding portal. We direct the Bureau and USAC to create a process for submitting questions anonymously through the competitive bidding portal and for the applicant to respond to the questions through the portal. Service providers may submit their questions regarding

the competitive bidding process to applicants through the competitive bidding portal without using the anonymous question format. Applicants will be required to respond to the bidders' questions through the portal so all bidders may see the questions asked and the provided responses. We find that this question and response requirement will not supplant an applicant's existing ability to set deadlines for questions and otherwise ensure that all interested bidders are treated fairly and given access to the same information. However, if an applicant has already answered a question, they do not need to answer the same question multiple times. The South Dakota Department of Education raised concerns that the bidding portal rules could be challenging for rural applicants who largely receive no bids or one bid. Applicants that receive no bids are allowed to request quotes or bids from service providers; however, the solicitation and response must be uploaded to the portal to demonstrate how the service provider was selected. Applicants that receive one bid during the competitive bidding process may use the bid provided it is cost-effective and consistent with the rules. Additionally, states may withhold confidential information regarding its internal procurement and evaluation process. However, documentation on the final bid evaluation and vendor selection process (*i.e.*, bid matrices or other documentation showing how each bid was carefully considered and evaluated) must be uploaded to the portal. After the contract award notice has been issued and uploaded to the portal, confidential contract negotiation documentation is not required to be uploaded, but the final contract is required.

In addition, under our new rules, applicants can continue to hold conferences or other meetings with interested bidders. Questions and answers that were provided during the meeting and are relevant to the competitive bidding process must be uploaded to the competitive bidding portal within 72 hours to ensure that all potential bidders have access to the same information, and the competitive bidding process is fair and open to all bidders. A summary of the meetings held between the applicant and any potential bidders must be uploaded to the competitive bidding portal by the time the FCC Form 471 is filed. We find that this affords applicants the ability to hold these important conferences and walkthroughs without raising a concern about certain bidders having

conversations with an applicant in a manner that gives special treatment. Internal communications between the applicant's bid evaluation team do not need to be uploaded, but the final bid evaluation results must be uploaded. The documentation included in the portal should be similar to the documentation applicant and service providers are already required to retain and produce under the Commission's rules. We believe this enables applicants to use a variety of methods, including conferences and walkthroughs, to ensure that interested bidders have the required information to thoroughly respond to a bid solicitation, while ensuring that the program is protected against special treatment, inside information, or other anticompetitive practices that undermine the integrity of the E-Rate program.

Bid Holding Period. In the *Promoting Competitive Bidding NPRM*, the Commission sought comment on "requiring applicants to wait a specified amount of time before they can access bids submitted in response to their FCC Form 470 service requests." The Commission discussed the risk that the current process enables applicants to share bids received from one service provider with another, perhaps more favored service provider, in a manner that violates the program rules, and it asked whether a bid holding period could address this concern. The Commission further asked whether withholding the bids from applicants until the deadline for bids has passed would help applicants comply with § 54.503(c) of the Commission's rules, which requires applicants to wait at least four weeks from the date of posting the FCC Form 470 to USAC's website before entering into a contract with a service provider. Consistent with the majority of commenters, we decline to require a bid holding period for the competitive bidding portal at this time. We agree with INCOMPAS that prohibiting applicants from reviewing bids early would prevent them from identifying potential issues and permit service providers to "cure their proposal and correct their bid," thus leading more service providers to be disqualified, resulting in higher costs of service for the E-Rate program. We also agree with SHLB that "requiring USAC to withhold proposals from applicants for some period of time would needlessly extend the bidding process." Some commenters express concern that the "current system of allowing applicants to open bids on a rolling basis could lead to a lack of competition because applicants might view earlier

bids more favorably than later bids (or vice versa) based simply on when they are received." However, we conclude that the benefits of a bid holding period are outweighed by the costs of a holding period. We anticipate that because of the measures adopted, applicants will be deterred from viewing earlier bids more favorably and instead will evaluate all bids fairly pursuant to our rules. We find that the competitive bidding portal will assist service providers in correcting their bids and streamlining the competitive bidding process. Accordingly, under the rules we adopt, applicants will be notified when a bid is uploaded into the portal and service providers will be able to communicate with applicants in the competitive bidding portal to modify bids to address any issues that may be identified during the E-Rate competitive bidding process and provide documentation of this communication in the portal.

Some commenters note that certain states have sealed bid requirements, or further require that applicants open bids at a predefined time. To accommodate this, we direct the Bureau and USAC to develop controls on who can access bids and an audit log for the bidding portal that would show a date and time for when a bid is received, opened, and downloaded, and by whom, along with the IP address. Applicants will be required to abide by state and local requirements regarding opening bids. We find that the audit log would help applicants demonstrate compliance with state and local laws that may preclude them from opening a bid prior to the bid deadline.

The access controls and audit log will also address OIG's concerns about bid collusion and improper sharing of bids. OIG recommended that bids be withheld from the applicant for a 28-day period to help prevent improper bid sharing or collusion between applicants and service providers. We note that because there is no mandatory 28-day period for bids to be submitted in the E-Rate program, holding bids for a 28-day period would not fully address OIG's concerns about bid collusion and improper bid sharing activities as there may still be time for parties to improperly share information and submit a bid to the FCC Form 470 after the 28-day holding period has expired. Applicants may file the FCC Form 470 to initiate the competitive bidding process up to one year before the start of the relevant funding year and thus, there could still be opportunities for bid collusion or improper bid sharing activities even with a 28-day holding period for each bid submitted. We

believe an audit log and controls on who can access the bids will be a better way to address this issue than implementing a 28-day holding period as the audit controls and logs will indicate who accessed bids, the date/time when bids were accessed, and the date and time of bids as they are received. If there was improper bid sharing or bid collusion, the audit log would help identify these actions allowing USAC and the Commission to take appropriate actions.

State and Other Master Contracts. In the *Promoting Competitive Bidding NPRM*, the Commission sought comment on whether, “for those applicants using state master contracts, [there is] documentation that applicants should be required to upload [to] demonstrate compliance with the E-Rate rules.” Some commenters identify challenges that a bidding portal would create for applicants conducting large procurements, or those who must comply with unique rules and processes. For example, commenters note concerns with the use of state master contracts, in particular state master contracts that result in multiple awards schedules and require the use of mini-bids. Commenters offer that, to account for state master contracts, the bidding portal must have “considerable flexibility,” or further, that competitive bidding processes that result in state master contracts should be exempt from the bidding portal. We require applicants to upload a copy of a state master contract and the related bidding documentation to the competitive bidding portal when filing their FCC Form 471 application if the state master contract was used as part of an applicant’s competitive bidding process or is the contract that was selected. We disagree with SECA that the competitive bidding portal is “unable to accommodate multi-stage bidding or mini-bids conducted using E-rate qualified master contracts.” Instead, we find that the bidding portal will have sufficient flexibility to accommodate a variety of competitive bidding processes, including those with multiple stages. When applicants are required to perform a “mini-bid” evaluation based on a multi-award state master contract, the documents that the applicant prepared, in connection with the mini-bid process, including those reflecting how the applicant selected the winning bidder among the available vendors in the multi-award state master contract, must also be uploaded to the competitive bidding portal. For consortium applicants, we require the consortium leader to submit the

competitive bidding and contract documentation related to the consortium’s FCC Form 471 on behalf of its members to the competitive bidding portal. We find that this approach is consistent with the role of a consortium leader as the entity that takes the lead in responding to USAC inquiries related to the consortium applicant’s competitive bidding process.

For multi-stage bidding, we require that applicants use the portal for each round of the procurement, and that portal functionality will enable multiple successive rounds in a multi-stage procurement to be linked or otherwise associated. This functionality will permit applicants that do multi-stage procurements, or who wish to include a “Best and Final Offer” phase of a procurement, to manage the entire procurement through the bidding portal.

Multi-Year Contracts. For multi-year contracts, we require applicants to upload the required competitive bidding and contract documentation to the competitive bidding portal only once in the first year of the contract, and applicants will not be required to upload duplicative competitive bidding and contract documentation for the remainder of the contract’s term provided there are not any modifications that require a new competitive bidding process. For existing multi-year contracts that are currently being used to support funding requests, in funding year 2029, applicants will be required to upload the associated bids, competitive bidding, and bid evaluation documents for the multi-year contract into the portal by the time the applicant submits their FCC Forms 471 that rely on that contract. This is one year after the portal is implemented, giving applicants time to focus on the funding year 2028 competitive bidding process before needing to provide past competitive bidding documentation to the repository.

In the *Promoting Competitive Bidding NPRM*, the Commission asked whether applicants and service providers should “be permitted access to their stored competitive bidding documents for a period long enough to be able to comply with recordkeeping requirements.” The Commission also asked, “if E-Rate program participants retain access to their records, should this access be afforded to them in a way to permit them to produce the records at the request of any representative (including any auditor) appointed by a state education department, USAC, the Commission, or any local, state or federal agency with jurisdiction over the entity, as is required by § 54.516(b)?”

We answer both these questions affirmatively. Under our adopted rules, once an applicant uploads the competitive bidding documentation into the bidding portal and repository, applicants will be able to access this documentation when needed and provide it to other local, state, or federal agencies with jurisdiction over the applicant as necessary. Thus, by preserving this documentation in the bidding portal and repository, the portal will assist in ensuring compliance with the competitive bidding recordkeeping and production requirements set forth in § 54.516(a)-(b) of the Commission’s rules. We agree with the Illinois Office of Broadband that the bidding portal “reduces the burden of complying with the Commission’s document retention rules over the long term.” In adopting this requirement, we do not make any modifications to § 54.516(a) of the Commission’s rules. However, applicants and service providers do not need to separately retain documents that are also uploaded to the competitive bidding portal and can rely on this documentation to meet their document retention requirements.

Processing of FCC Forms 471. We expect that USAC will continue to issue funding commitments in a timely manner according to the standard that the Commission provided in the *First 2014 E-Rate Order*, 80 FR 167, January 5, 2015. There, the Commission directed USAC “to aim to issue funding commitments or denials for all ‘workable’ funding requests by September 1st of each funding year,” noting that this date would “provide[] USAC with approximately five months beyond the [usual] application filing window deadline to review all timely filed and complete funding requests.” In issuing this direction, the Commission acknowledged that “even ‘workable’ funding requests may be time consuming for USAC to process” and that USAC should continue to perform a “thorough review of each application,” including by “contact[ing] applicants to seek additional information concerning a funding request” and “provid[ing] applicants with an opportunity to respond to [USAC’s] questions.”

A few commenters raise concerns about whether the additional data and documentation submitted to the competitive bidding portal may result in system issues or delays in reviewing applications and slow procurement timelines. While these process changes will result in additional documentation, we find that expecting USAC to maintain the same processing timelines for issuing funding commitments is

justified, given the paramount importance of making funding commitments prior to the start of the typical school year, *i.e.*, in or around early September. We direct USAC to incorporate data analytics and other tools to select specific FCC Form 471 applications for additional review and to detect potential competitive bidding violations during pre-commitment reviews using the additional documentation that will be available through the competitive bidding portal. While any additional pre-commitment reviews may increase processing times in some respects, we find that USAC's processing times will be lessened in other respects as it can use the submitted competitive bidding and contract documentation to resolve potential issues with funding applications internally, rather than incur delays by reaching out to applicants or service providers for additional information. We find that asking USAC to continue to follow existing processing times and review standards while, at the same time, strategically incorporating this additional competitive bidding and contract documentation into its review processes strikes a reasonable balance between ensuring that funding commitments are issued in time for schools and libraries to purchase vital broadband services and equipment and ensuring that USAC uses this additional information to detect rule violations and strengthen program integrity.

Information Security and Confidentiality. Some commenters raise the question of whether proprietary and confidential information submitted to the competitive bidding portal would be kept confidential. For example, the South Dakota Department of Education notes that the public availability of bidding information submitted into the competitive bidding portal could run afoul of state law. Given the possibility that certain bidding documentation (*i.e.*, non-winning bids) submitted to the bidding portal may contain confidential financial or proprietary information, we will treat bids and other pricing data submitted to the bidding portal as presumptively confidential and will not make the non-winning bids and submitted pricing data routinely available for public inspection. This includes bid reviews by applicants and other related documents which may include or reference information from bids. However, we are not making any changes to the data that is currently available for the E-Rate program, and all pricing data included on the FCC Form 471 will remain publicly available. We

direct the Bureau, in consultation with the Office of General Counsel, to evaluate and determine whether additional data (*e.g.*, aggregated information for reporting purposes) could be made publicly available without compromising the security or confidentiality concerns raised in the record, including not publicly disclosing any data that is confidential, like non-winning bids. We direct USAC to retain all documentation in the portal and repository in accordance with the applicable federal records schedule for Universal Service Fund-related records and protect, retain, manage, and use all data and documentation in accordance with applicable federal information security and privacy requirements. We also direct that access to the competitive bidding portal and repository be limited to the applicant's Account Administrator and up to two other authorized users (including consultants) and audit logs to be maintained on when, by whom, and what documentation was accessed in the portal.

Bid Response Template. In the *Promoting Competitive Bidding NPRM*, the Commission sought comment on "whether service providers should be required to submit information in a manner that enables applicants to compare competing bids." The Commission also asked whether applicants face difficulty in comparing bids submitted in different formats. Most commenters did not address this issue. DOJ supports this proposal, specifically stating that service providers should submit information "in a manner that enables applicants to compare competing bids." In particular, DOJ supports a requirement that service providers submit a summary form, which could be a portion of the FCC Form 471, that contains "key data points," in an effort to allow USAC to better leverage the data for compliance and investigative purposes, and allow applicants to "be confident that they are comparing apples to apples when selecting a service provider."

We direct the Bureau, after seeking comment if deemed necessary or advisable, to develop a standardized bid response template, and make it available for applicants to use on an optional basis. We find that a standardized template, made available for service providers to use for submitting bids, would prove useful to applicants, as it could help standardize bid responses and make it easier for applicants to compare bids and ensure compliance with our rules for several reasons. First, we find that having a standardized bid response template would help service

providers formulate bids in a more uniform manner by making clear the required information. Second, a standard template would help applicants in their bid evaluation process because each response would contain data that could easily and appropriately be compared across service providers. Third, we find that a bid template could help USAC better utilize data analytics because it will allow for the data points to be provided in a uniform manner, making it easier for USAC to identify areas of concern that warrant further review. Applicants choosing to use the template can require potential bidders to use the template bid response form by stating that use of the template is a requirement for responding to its FCC Form 470. We will determine in the future whether to require mandatory use of a standardized bid response form by service providers.

We also take steps to streamline or clarify aspects of the E-Rate program and its administration based on the record received in response to the *2023 FNPRM*, 88 FR 152, August 9, 2023. Specifically, we amend the E-Rate program rules to improve how applicants transition between service providers during a funding year and establish a process for applicants to increase bandwidth within a funding year. We also take this opportunity to provide guidance on transition of services; clarify cost allocation rules and procedures; provide guidance on competitive bidding requirements; eliminate the FCC Form 486; amend the Commission's invoicing rules; and update E-Rate program definitions. Each of these issues have caused challenges for applicants in applying for and receiving discounts on eligible services, and we anticipate that these changes will result in an overall simplification of E-Rate procedures and processes.

First, we adopt changes to improve how applicants request funding when they are transitioning between two service providers (or service offerings) during the funding year, given the difficulty in determining the precise cutover date during the application filing window. To prevent funding duplicative services, E-Rate procedures do not allow USAC to commit funding to two funding requests for service, to the same recipients, that overlap in time. At the same time, due to concerns about exceeding the E-Rate funding cap, the Commission's service substitution rules require that post-commitment service substitutions be based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service. In

the *2023 FNPRM*, the Commission sought comment on the best way to allow applicants to adjust transition dates during the funding year, such as requesting twelve months of funding for the higher-priced service and then filing a post-commitment change request to reduce one of the requests. Commenters agree that the current process for transitioning services during the funding year should be streamlined.

Upon review of the record and consideration of the potential impact on demand, we amend our rules to create a process for applicants that are transitioning services to file a post-commitment request that changes the service start and end dates and permits, if the applicants meet certain criteria, increases in the commitment amount. Applicants that seek the flexibility to increase a funding commitment, if needed, will file partial year funding requests for both the old and the new services, estimating the cutover dates, but not to exceed twelve months. The applicant must indicate on the FCC Form 471 application that the services are transitioning. Once the dates are known, the applicant may file a post-commitment request, which USAC will be permitted to grant even if the date change results in a higher funding commitment.

Some commenters support an option mentioned in the *2023 FNPRM* to have the applicant request 12 months of service from the higher cost service; however, we find that this option would result in more volatile program demand and a more burdensome review when applicants want to transition service providers. By requiring applicants to file partial year funding requests for both services, estimated demand at the close of the application filing window will be closer to the actual demand, rather than inflating demand to accommodate the highest possible cost of every transition. In addition, USAC can review both funding requests and the associated contract records at the time of the application review and the amount of time needed for post-commitment review will be reduced. This will also permit the existing service provider to be reimbursed for services provided even if the new service provider has the higher-cost service. Additionally, applicants that estimated the transition dates correctly will not need to file any post-commitment requests, giving applicants an added incentive to work with their service providers to try to determine accurate cutover dates when transitioning service during a funding year. We expect that, in total, these changes will enable applicants to be able to more easily receive approved E-

Rate funding when they are transitioning services even when the transition dates are not known at the time they are applying for E-Rate funding during the application filing window and will simplify the process for when they are transitioning services during the funding year. These changes will be effective in the funding year application filing window after the Office of Management and Budget (OMB) approves any necessary program form changes.

To effectuate this change, we direct USAC to approve a post-commitment increase if the applicant: (1) filed partial funding year requests for funding from both service providers (or service offerings, in the case of a transition to a different service from the same service provider) during the application filing window using the best estimates of the transition dates; (2) indicated on the FCC Form 471 that the requests were for a transition of service; and (3) there are available funds below the E-Rate program funding cap. We caution that if there are no available E-Rate funds when an applicant files the post-commitment request, USAC will not be permitted to approve an increase in the funding commitment. We do not expect this to be an issue in the near future under the current funding cap and demand, but we direct the Bureau to monitor demand and release guidance on how to request funding for transitions in future funding years if demand is nearing the cap. During post-commitment review, the applicant shall provide details about the transition and dates of actual transition between the two service providers or offerings, including a showing of agreement from both service providers about the end date of the first service provider and the start date of the second service provider. We disagree with commenters suggesting that USAC should be permitted to commit funding for both service providers for the transition month and to resolve the duplicate funding issues during the invoicing review; we find that the administrative challenges during invoicing and potential for improper payments to both service providers outweigh any potential benefits of such an approach.

Finally, we recognize that there are some applicants that have transitioned services without the benefit of this post-commitment process and as a result have been unable to obtain reimbursement for all of the approved services delivered. For pending requests for waiver/appeals or pending service substitution requests, we direct the Bureau to review requests based on the new rules, once effective, and to find

good cause for a waiver, if the following conditions are met: (1) the party indicated it was transitioning to new services during the funding year; (2) the delay in transitioning services was for reasons beyond the service providers' control; (3) the party filed an appeal within a reasonable amount of time after determining there was an issue with the transition of services; and (4) there is funding available based on overall program demand and the funding cap. When these conditions are met, there is good cause to find that applicants have taken the steps needed to transition between service providers, and it is appropriate to provide E-Rate support when the transition of service is delayed for reasons beyond their control.

Next, in response to stakeholder requests, we offer additional guidance on cost allocation rules and procedures. As part of its efforts to simplify the E-Rate program, the Commission provided guidance in the *2023 E-Rate Report and Order*, 88 FR 156, August 15, 2023, on several common cost allocation issues that applicants experienced. Specifically, the Commission provided guidance on when on-campus internet usage can be considered ancillary and when the use of shared equipment located in a non-instructional facility requires cost allocation. In addition, the Commission sought further comment on cost allocation issues that would benefit from additional guidance.

Several commenters support applying the internet ancillary use guidance to data transmission services, wide area network services, or to all category one services. In the *2023 E-Rate Report and Order*, the Commission adopted a presumption that, if at least 90% of an applicant's requested internet service is being used for eligible purposes, the remaining ineligible use of the internet service will be presumed to be ancillary and, therefore, cost allocation is not required. The *2023 E-Rate Report and Order* included guidance regarding data transmission services, and we agree that if at least 90% of an applicant's requested recurring category one service, be it a data transmission service or any other category one service, will be used for an eligible purpose during the funding year, the remaining ineligible use of the category one service at eligible locations will be presumed to be ancillary and, therefore, cost allocation will not be required. As the Commission stated in the *2023 E-Rate Report and Order*, if an applicant selected the most cost-effective offering to meet its needs, then the minimal ineligible use of the service should be treated as ancillary and cost allocation is not required. Category one services,

including internet access services, provide connectivity to a location as a whole, and incidental, ancillary on-premises use beyond that eligible use should be permissible without additional paperwork burdens.

Next, American Library Association (ALA) notes that some libraries may extend their Wi-Fi a short distance into the community and asks whether the presumption of ancillary use applies. This presumption is limited to on-premises ancillary use. Each of the examples provided by commenters to the *2023 E-Rate Report and Order* discussed the burden of attempting to allocate costs associated with in-building school or library ineligible uses, such as healthcare clinics, childcare services, or services to a classroom offering services to students under the age of three. Applicants are required to cost allocate off-campus use from their E-Rate requests.

As proposed, we adopt a limited exception to our competitive bidding rules to allow applicants to seek needed bandwidth increases in between E-Rate funding cycles. The E-Rate program rules require applicants to competitively bid services using the FCC Form 470. This process starts at least four weeks before the applicant files its FCC Form 471 applications during the annual filing window, but can occur six months before, or—in the case of multi-year contracts—years before the funding application is submitted. Applicants are encouraged to seek bids for and sign contracts that include a range of bandwidths in order to accommodate changes in bandwidth needs in the future, but applicants are not always able to anticipate all their bandwidth needs. For example, in 2020, the Bureau opened a second application filing window in September to address increased on-campus bandwidth needs as a result of remote learning challenges caused by the COVID-19 pandemic. However, in other instances, applicants may be unable to increase their bandwidth mid-funding year without potentially violating the E-Rate program competitive bidding rules. We therefore agree with commenters supporting a limited exception to the competitive bidding rules so applicants can submit a service substitution request to increase bandwidth during the funding year at the existing commitment amount (*i.e.*, total price of the current bandwidth service). We clarify that this exception means applicants will be responsible for any corresponding increase in price for the increased bandwidth for the remaining period of the funding year. To request the increased bandwidth (and a potential increased funding

commitment) in subsequent funding years, applicants would need to file a new FCC Form 470 and seek competitive bids for the increased bandwidth service for the next application filing window. Applicants that can demonstrate that the bandwidth and price increase were covered by an existing FCC Form 470 and competitive bidding process would not need to rebid the service.

By providing this limited exception, we allow applicants flexibility to work with their service providers to obtain the services they need without risking unexpected changes in program demand or program abuse. We disagree with certain alternate proposals in the comments to the *2023 FNPRM*. For example, commenters suggest allowing for a commitment increase using pricing adjusted from the original bid or contract or allowing applicants to seek new bids mid-funding year. The E-Rate program relies on fair and open competitive bidding to ensure that schools and libraries supported by federal universal service funds receive the highest-quality services at the lowest available rates, and we do not intend to introduce unnecessary complexity to these rules. In general, the program does not allow for mid-funding year, post-commitment funding increases, and we find this action appropriately allows applicants to increase bandwidth during the funding year without affecting program demand.

We expect that the competitive bidding portal will help address the issue of unsolicited spam bids because the bidder will be required to use the portal to respond to the applicant's FCC Form 470 and the applicant will not be permitted to consider bids received outside of the portal. Here, we address the treatment of spam or other automated bid responses that applicants receive until the portal is fully implemented. In the *2023 FNPRM*, the Commission sought comment on the types of spam and other automated bid responses that are being generated and sent to the applicant once or soon after their FCC Form 470 is posted, their frequency and quantity, as well as whether to consider changes to the FCC Form 470 to simplify how to establish disqualification factors and deadlines. In considering comments, the Commission is primarily focused on how to ensure applicants carefully consider all qualified bids in accordance with program requirements.

We expect applicants to retain all bid documentation, including those applicants consider to be spam bid responses. Commenters raise concerns about bid responses received that lacked

information requested on the FCC Form 470, such as pricing or information tailored to the applicant. These responses often appear as generic email solicitations with a list of all goods and services and contact information to receive additional information. Applicants may establish disqualification factors, such as disqualifying if the bid lacks pricing and other necessary information, in the FCC Form 470, provided those factors are consistent with applicable Commission rules, and document when a bid response is disqualified. Although we recognize that applicants may face a small burden in documenting why a bid was disqualified or not considered during the bid evaluation, our current information concerning the quantity and types of bid responses that applicants seek to discard is limited, and it would be premature to determine whether particular bid responses do not need to be retained and the characteristics of such responses.

We also agree with those commenters that assert that bid responses that do not include pricing information or require the applicant to contact the solicitor to request pricing for the sought-after services for the requested time period can be disqualified as non-responsive even if the applicant does not state in the FCC Form 470 that pricing information is specifically required. The Commission's rules require that price be the primary factor in selecting the most cost-effective service offering. In the 2011 *Baltimore City Order*, the Bureau provided guidance that explained that applicants must provide notice—in either its FCC Form 470 or its RFP—of any disqualification criteria, but also made clear that price is required to be the primary factor applicants must consider. When pricing is not expressly provided in the bid response, the bid response can be disqualified without the applicant needing to state that fact in its FCC Form 470 or RFP. The applicant should still retain the bid response and note why the response was disqualified and not evaluated. Multiple copies of the same spam bid need only be disqualified once in a bid evaluation. The Commission encourages the Bureau and USAC to consider implementing system controls for spam bids during the design and development of the portal.

We next modify our rules to clarify the bids that applicants must consider in the evaluation process. Applicants must wait at least four weeks from the posting of the FCC Form 470 before selecting service providers. Our rules require applicants to carefully consider all bids received before the bid

evaluation process has occurred. Even if the minimum 28-day waiting period has lapsed, applicants should consider all bids received up until they begin consideration, unless they provided a specific bid submission deadline and noted that bids received after the deadline would be disqualified on the FCC Form 470 or RFP document. Commenters suggest that the bid response deadline, the point after which a bid could be disqualified for being late-submitted, should be presumed to be at 11:59 p.m. E.T. on the day before the allowable contract date (the day after the 28-day waiting period when applicants may select a service provider), but some also seek the flexibility to consider bids received after that deadline. We reject this proposal and revise our rules to make our current interpretation clear that absent a deadline in the narrative, applicants should consider all bids received before the evaluation process, which may occur sometime after the minimum 28-day waiting period. Considering more bids, rather than fewer, benefits applicants and the E-Rate program. Stakeholders also acknowledge that “there may be some instances where the applicant may want to consider all late submitted bid[s],” noting that rural or remote applicants may need additional time to receive bids. The benefits of considering additional bids that may be meritorious and are received prior to the bid evaluation far outweigh the burden to applicants of considering them, and to the extent that an applicant finds the burden to be too high, it may set a bid response deadline in the narrative section of the FCC Form 470 or an RFP document that could be used to disqualify all late-submitted bids.

To reduce the number of forms required to be filed by E-Rate applicants throughout the funding year, we adopt the proposal to remove the requirement that applicants file the FCC Form 486 (Receipt of Service Confirmation and Children’s Internet Protection Act (CIPA) Certification Form) for future funding years, beginning in funding year 2028. We find the notification that an applicant makes that their services have started to be duplicative and we transfer the remaining CIPA compliance certifications to the FCC Form 471 funding application. There was strong support from commenters regarding this proposal and no opposition.

We agree with commenters that state this proposal would reduce applicant burden by removing duplicative certifications and reducing the risk of penalties. Requiring applicants to provide notice to USAC that services have started is duplicative of

certifications made on the FCC Forms 472 and 474, associated invoicing forms. For example, the FCC Form 472 currently requires certification that “The discount amounts listed in this Billed Entity Applicant Reimbursement Form are accurate and represent charges for eligible services and/or equipment delivered to and used by eligible schools, libraries, or consortia of those entities for educational purposes, on or after the service start date reported on the associated Form 486.” We also find the limited benefits of requiring an applicant to certify that services have started prior to invoicing are outweighed by the burden of filing the FCC Form 486. Commenters also note that “any ministerial or clerical errors made by applicants in the form [486] can result in reduced or denial of funding thereby causing additional hardship and burdens without a corresponding benefit.” The failure to timely file the FCC Form 486 has real consequences for applicants and service providers, resulting in loss of funding or additional time spent filing appeals.

For the CIPA certifications that are collected on the FCC Form 486, we will move the certifications to the funding application form, or the FCC Form 471. Commenters support this transfer. We do not expect applicants to have significant challenges with making this annual certification of compliance earlier in the calendar year.

In order to move the CIPA certification, beginning in funding year 2028, consortia applicants will need to collect the annual FCC Form 479, the Certification by Administrative Authority to Billed Entity of Compliance with the Children’s Internet Protection Act (CIPA) Form, prior to the Billed Entity certifying a consortium’s CIPA compliance on the FCC Form 471 application. This aligns the timing of the FCC Form 479 with both the FCC Form 471 application filing window and the existing timeline for applicant entities to demonstrate that a consortium billed entity applicant has authorization to file on behalf of its member entities. We recognize that this will be a shift in the filing procedures of consortia, but decline to preemptively extend this new FCC Form 479 filing deadline and encourage consortia leads to start planning for this timeline change in advance of funding year 2028’s application filing window. Relatedly, we decline to adopt a proposal by SECA to allow school or library applicants that are part of a consortium to fill out an FCC Form 479 that certifies to CIPA compliance for multiple funding years, while the consortium lead is required to certify

annually. We find this proposal inconsistent with the language of section 254(h) of the Communications Act requiring schools and libraries to annually certify compliance regarding the CIPA requirements. Although the statute does not prescribe consortium requirements, we do not agree that an annual certification by the consortium lead alone is sufficient to meet the plain language requirement that a school and library annually certify its compliance with the CIPA requirements to the Commission.

To align program rules with the elimination of FCC Form 486 for future funding years, we also amend § 54.514(a) of the Commission’s rules, which codifies the invoice filing deadline, to remove the reference to the FCC Form 486 and replace it with a deadline based on the date of the funding commitment decision letter. This change permits applicants and service providers time to invoice in the limited instances when a funding commitment decision letter is not issued until after the last day to receive service. In those instances, we direct USAC to remind applicants in the funding commitment decision letter of the last day to receive service and to check that services were delivered during the appropriate funding period before disbursing funds in response to requests for reimbursement. We also make further changes to § 54.520 of the Commission’s rules to revise references to FCC Form 486.

Lastly, we direct the Bureau to take all necessary steps to remove the FCC Form 486 requirement for future funding years, transfer the annual CIPA compliance certifications to the FCC Form 471, and update the FCC Forms 472 and 474 (*i.e.*, the invoicing certifications and forms). In accordance with this section, we also direct the Bureau to work with USAC to update the EPC, all program notifications (*e.g.*, the funding commitment decision letter), and all outreach materials regarding references to the FCC Form 486 or next steps in the funding commitment process. Because applicants are required to annually certify compliance with CIPA, the FCC Form 486 must continue be filed until the CIPA certifications can be made on the FCC Form 471 and the EPC is updated to account for the new application and invoicing certifications, as well as to account for any changes to the invoicing filing system. Applicants with open commitments or approved appeals from prior funding years will continue to use the FCC Form 486 to certify CIPA compliance for the appropriate funding year at issue.

Next, we amend E-Rate program invoicing rules to ease certain restrictions around the invoice filing deadline. In 2014, the Commission codified the invoice filing deadline and adopted an “extraordinary circumstances” standard for waiving the rule and granting extensions to ensure the efficient operation of the program, provide certainty for program participants, and allow USAC and the Commission to identify unused E-Rate funds that may be carried forward to future funding years. The rule met those objectives, but some commenters suggest that additional leeway is needed for a small number of applicants and service providers that failed to file their requests for reimbursement or request an extension by the invoice filing deadline despite navigating most of the E-Rate funding processes. In the 2023 *FNPRM*, the Commission sought comment on a proposal to modify the invoice filing deadline extension rule to allow applicants and service providers to seek an extension of the original invoice filing deadline from USAC if the request is made within 15 days of the original invoice filing deadline. The Commission also directed the Bureau to hold any waiver requests that were filed within 15 days of the original invoice filing deadline and sought further comment on other potential ways to simplify or streamline the invoicing and disbursement process, including providing a grace period for applicants and service providers to re-submit timely filed but rejected requests for reimbursement.

We now amend our rules and adopt the proposal to permit applicants and service providers under § 54.514(b) of the Commission’s rules to request the single 120-day extension of the original invoice filing deadline from USAC if the request is made within 15 days of the original invoice filing deadline. This change will reduce the number of waiver requests by providing a small window for applicants and service providers who missed the invoice filing deadline to request additional time, while maintaining the codified invoice filing deadline rule. Commenters are broadly supportive of this proposed rule change, with the Illinois Office of Broadband pointing out that such a rule change would “avert the dire consequences” of failing to request an extension before the invoice filing deadline. While one commenter suggests providing a longer period, we conclude that 15 days provides an adequate window of time for those who missed the initial deadline to submit an invoice filing extension request. Fifteen

days is also consistent with the 15-day period provided after the USAC reminder to file the FCC Form 486. Consistent with this new approach, we direct the Bureau to grant all of the held waiver requests that are pending and were filed within 15 days of the missed invoice filing deadline, or that demonstrate an attempt to file a reimbursement request with USAC within 15 days of the missed invoice filing deadline.

At the same time, we decline to permit applicants and service providers to submit requests for more than one 120-day extension of the invoice filing deadline to USAC because such extensions would be contrary to our efforts to ensure timely invoicing. To the extent applicants and service providers can demonstrate good cause for an additional extension, they may consider seeking an additional extension through a waiver from the Commission. We also decline to direct USAC to accept requests for *reimbursement* from applicants and service providers that are filed within 15 days of the invoice filing deadline date if USAC has not granted a request for extension filed by the applicant. We are concerned that this could lead to confusion or ambiguity over the invoice filing deadline itself. At the same time, we direct USAC to develop a mechanism to remind applicants and service providers that have not filed a request for reimbursement or a request for extension as of the invoice filing deadline to seek an extension within 15 days of the deadline. We also direct USAC to include instructions in the reminder on how to request an extension of the invoice filing deadline consistent with this Order.

We retain the extraordinary circumstances standard for those seeking a waiver of the invoice filing deadline rule from the Commission, and we disagree with those parties suggesting that we eliminate it. The invoice filing deadline provides certainty to applicants and service providers, as well as to the Commission and USAC, which relies on the invoicing filing deadline to de-obligate committed funds efficiently. The extraordinary circumstances standard incentivizes parties to meet the invoice filing deadline and reduces uncertainty regarding extensions. The Bureau has waived the invoice filing deadline rules when warranted, such as when a service provider acquisition made invoicing a technical impossibility, when the owner of a service provider and person responsible for invoicing passed away, and when weather and other similar disasters impeded applicants’ ability to

file requests for reimbursement by the invoice filing deadline. Taken together, we find that the extraordinary circumstances standard, the new invoice filing reminder mechanism, and the 15-day period after the invoice filing deadline to request a one-time, 120-day extension from USAC strike the right balance between flexibility for E-Rate participants and certainty to ensure the efficient administration of the E-Rate program.

Next, we adopt a rule providing for a one-time, 60-day grace period for applicants and service providers to resubmit corrected versions of requests for reimbursement that were timely filed before the invoice filing deadline but rejected by USAC. Requests for reimbursement may be rejected for a variety of reasons and, while applicants and service providers have the option to appeal a rejected request for reimbursement to USAC that was timely filed, submitting an appeal is more burdensome than refiling a corrected request for reimbursement, especially for smaller schools and libraries that, as NCTA—The Internet & Television Association (NCTA) identifies in their comments, are more “well-versed” in refiling corrected requests for reimbursement than in drafting and submitting an appeal. Commenters are broadly supportive of this change, claiming that it would increase program efficiency by removing the appeal review process for those applicants and service providers who timely filed a request for reimbursement that was rejected. While the Commission initially sought comment on a 30-day grace period, some commenters suggest a 60-day grace period is more consistent with the 60-day appeal period. We agree that aligning these two time periods is the most streamlined option and will reduce confusion. This will allow applicants and service providers that can correct the rejected request for reimbursement to refile, rather than filing an appeal, waiting for a decision, and then being given an additional period of time to resubmit the request for reimbursement. We decline USTelecom—The Broadband Association’s (USTelecom) request to allow for invoice filing deadline extensions for funding requests that have pending invoices for the total amount, finding it unneeded based on the other changes adopted in this Order that permit refiling after an invoice is rejected.

As indicated, applicants and service providers also have the option to appeal a rejected request for reimbursement to USAC, if for some reason they are unable to correct the discrepancy or

deficiency that is causing the rejection. We also clarify that the applicants and service providers that choose to refile the invoice but receive another rejection can appeal that subsequent rejection to USAC within 60 days. If the appeal is granted, our rules provide that the applicant or service provider will have 120 days from the date of the revised funding commitment decision letter (RFCDL) to refile the request for reimbursement. If the appeal is denied, the applicant may file a request for review and/or waiver from the Commission.

Finally, we provide guidance to applicants, service providers, and USAC, and modify the rule language regarding post-commitment requests to extend the invoice filing deadline under § 54.514(a)(3). In 2020, the Commission addressed an issue in the program rules that left applicants with some pending post-commitment requests or appeals unable to invoice by the invoice filing deadline. To fix the issue, the Commission amended the invoicing deadline rules to provide 120 days from the date of a Revised Funding Commitment Decision Letter approving a post-commitment request or a successful appeal. Such relief is limited to approvals of timely filed post-commitment requests that affect invoicing, like service substitutions filed prior to the service delivery deadline or service provider changes. Reduction or cancellation of a portion of a funding request would not, for example, result in additional time to invoice. We amend the rule now to provide applicants and service providers with clarity without notice and comment in accordance with the exception to the Administrative Procedure Act (APA) for procedural rules.

We next update certain E-Rate program's definitions to better reflect current technology and to eliminate confusion. We also amend § 54.503(b) of the Commission's to clean up an incorrect cross-reference and § 54.513(d) to align the document retention period for equipment transfers with the overall document retention rule.

Wiring Between Buildings. We first adopt language that should make it easier for multiple schools that share a campus to use category two support for cabling. In funding year 2017, the Bureau modified the eligible services list to provide guidance on the classifications of connections between buildings of a single school. In that guidance, the Bureau noted that “[c]onnections between different schools with campuses located at the same property (e.g., an elementary

school and middle school located on the same property) are considered to be category one digital transmission services,” which have separate competitive bidding requirements. In funding year 2018, the Bureau further clarified that connections between two schools in a single building may be classified as a category two service, but rejected requests to allow the term “single school campus” in the definition of “internal connections” as allowing for a single campus containing multiple schools.

In order to make this cabling eligible under category two, the Commission sought comment on a proposal to modify the definitions of “internal connections” and “wide area network” to allow applicants to seek funding for wiring between different schools (e.g., a high school and a middle school) in the same contiguous area as an internal connection. Commenters agree with the need for a change, and we adopt language to implement it and permit multiple schools located on the same property to share a single school campus. We decline to replace “single school” with the phrase “E-Rate eligible site(s)” because the rule language already includes references to libraries. In addition, we remove references to “voice” in the definition of “wide area network” because voice services are no longer eligible for E-Rate support. We received no comments opposing this change.

Definition of Consortium. We also adopt our proposal to amend the definition of “consortium” to align it with the definition of “consortium” used in the Emergency Connectivity Fund (ECF) program. Our E-Rate rules allowed ineligible private sector entities to join consortia only if the pre-discount prices for interstate services are at tariffed rates. Given that many services have been de-tariffed, we find the definition adopted for the ECF program is more appropriate and do not allow private sector entities to participate in E-Rate consortia. While the American Library Association suggests that we should continue to allow private entities to participate in a consortium, we lack sufficient information to ensure universal service funds are safeguarded with this practice. We also find the ECF definition to more clearly ensure that E-Rate eligible entities are in control of the competitive bidding process and compliance with program rules. Commenters also support this change.

Finally, we amend § 54.503(b) of the Commission's rules to correct a cross reference to the competitive bidding exemptions in § 54.503(e). We also amend § 54.513(d) of the Commission's

rules to remove the reference to five years in order to eliminate confusion and align the document retention period with § 54.516(a), which requires retention of documents relating to compliance with the equipment transfer rules for ten years.

III. Order on Reconsideration

Finally, we address SECA's petition for reconsideration and/or clarification regarding the Commission's discussion in the *2023 E-Rate Report and Order* of whether the shared use of a category two piece of equipment by a non-instructional facility must be cost allocated from the request for E-Rate funding for that piece of equipment. The Commission provided that if the applicant is choosing the most cost-effective offering for the shared equipment without regard for the non-instructional facility's use, the applicant is not required to cost allocate the non-instructional facility's use of the shared equipment. SECA asserts that the *2023 E-Rate Report and Order* and associated regulation, § 54.502(d)(6), are ambiguous and could be construed to limit relief only to those non-instructional facilities where the equipment is physically located, and not to other non-instructional facilities that use the equipment. We now clarify that the use of shared equipment by other non-instructional facilities also does not require cost allocation “[a]s long as the applicant is choosing the most cost-effective offering for the shared equipment (e.g., a district switch) without regard for the [non-instructional facility's] use.” In a district-wide budget, we find this cost allocation is unnecessarily burdensome given the need for shared equipment within school or library networks to serve their students and library patrons. Accordingly, we grant SECA's petition and amend § 54.502(d)(6) of the Commission's rules to make clear that shared equipment does not require cost allocation of a non-instructional facilities' use.

IV. Procedural Matters

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes

contained in this *Report and Order* on small entities.

As required by the RFA, an Initial Regulatory Flexibility Analyses (IRFAs) in the *Promoting Fair and Open Competitive Bidding in the E-Rate Program NPRM*, released December 2021 and in the *Schools and Libraries Universal Service Support Mechanism, et al., Report and Order and Further Notice of Proposed Rulemaking*, released in July 2023. The Commission sought written public comment on the IRFAs. No comments were filed addressing the IRFAs. This FRFA conforms to the RFA and it (or summaries thereof) will be published in the **Federal Register**.

The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Specifically, under the schools and libraries universal service support mechanism, also known as the E-Rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, internet access, and internal connections. The E-Rate program thus plays an important role in expanding digital equity and closing the digital divide. Taking steps to close the digital divide is a top priority for the Commission. The Commission's E-Rate program provides vital support to schools and libraries allowing them to obtain affordable, high-speed broadband services and internal connections, which enables them to connect students and library patrons to critical next-generation learning opportunities and services.

In the *Report and Order*, we enhance the E-Rate program's competitive bidding rules by establishing the bidding portal. Starting in funding year 2028 (FY 2028), service providers will be required to respond to applicants' FCC Form 470 by uploading their bids into the Universal Service Administrative Company (USAC)-managed portal and applicants will use the portal to finalize their competitive bidding process. We also create a competitive bidding documentation repository to store applicants' competitive bidding and contract documentation, along with the submitted bids. After applicants complete their bid evaluation process, the evaluation and contract award

documentation must be uploaded into the bidding portal. If there is a delay in implementing the portal by FY 2028, applicants are required to upload all competitive bidding documentation (i.e., bids, correspondence with bidders, evaluation documentation, contracts) when they submit the FY 2028 FCC Form 471 applications. This will ensure the competitive bidding documentation is collected with the FCC Form 471 beginning in FY 2028 and stored in the repository should any delays with implementation occur.

For multi-year contracts, the applicant needs to upload the contract during the first year of the contract, and then reference the existing contract record for the multi-year contract for the subsequent funding years relying on that contract. For existing multi-year contracts that are currently being used to support funding requests, in funding year 2029, applicants will be required to upload the associated bids, competitive bidding, and bid evaluation documents for the multi-year contract into the portal by the time the applicant submits their FCC Forms 471 that rely on that contract. For state master contracts, applicants are required to upload a copy of the state master contract and the related bid documentation to show how they selected the winning bidder. When applicants are required to perform a "mini-bid" evaluation, based on a multi-award state master contract, the documents that the applicant prepared, considered, executed or relied on in connection with the mini-bid process, including those reflecting how the applicant selected the winning bidder among the available vendors in the multi-award state master contract, must also be provided to USAC. For consortium applicants, the consortium lead needs to provide to USAC the competitive bidding and contract documentation related to the consortium's FCC Form 471 application on behalf of its members.

The *Report and Order* establishes (after seeking comment, if necessary) a bid response template that can optionally be used by service providers when submitting their bids to an applicant's FCC Form 470. This template will allow applicants to more quickly review and evaluate bids from service providers and allow applicants to conduct an apples to apples bid evaluation. This template could also help service providers formulate bids in a more uniform manner and help USAC better utilize data analytics as part of its investigative function. In addition, the bid template can be incorporated into the applicant's FCC Form 471

application to further streamline the time for completing this form.

In addition, the *Report and Order* adopts proposals from the 2023 *FNPRM* for streamlining the E-Rate program. The *Report and Order* refines the process for applicants requesting funding when they are transitioning from one service provider to another during the funding year and provide further guidance on cost allocation rules and procedures in response to stakeholder requests. In the *Report and Order*, we also make changes and clarifications to the E-Rate competitive bidding requirements, including guidance on mid-year bandwidth increases; when competitive bidding must be restarted; clarifications around spam bids and bids received after the 28 day waiting period. We amend our E-Rate invoicing rules to provide greater flexibility to applicants and service providers that failed to file requests for reimbursements or extensions by the invoice filing deadline and provide a streamlined way to refile requests for reimbursement that were filed timely, but rejected after the invoice filing deadline. We also adopt the proposal to remove the requirement that applicants file the FCC Form 486 (Receipt of Service Confirmation and Children's Internet Protection Act (CIPA) Certification Form) for future funding years, beginning in FY 2028. We find the notification that services have started to be duplicative and we transfer the remaining CIPA compliance certifications to the FCC Form 471 funding application. In order to move the CIPA certification, beginning in funding year 2028, consortia applicants will need to collect the annual FCC Form 479, the Certification by Administrative Authority to Billed Entity of Compliance with the Children's Internet Protection Act (CIPA) Form, prior to the Billed Entity certifying a consortium's CIPA compliance on the FCC Form 471 application. This aligns the timing of the FCC Form 479 with both the FCC Form 471 application filing window and the existing timeline for applicant entities to demonstrate that a consortium billed entity applicant has authorization to file on behalf of its member entities. Lastly, we update several E-Rate program definitions.

These actions allow the Commission and USAC to improve efficiencies in the E-Rate competitive bidding process, thus better ensuring that limited E-Rate funds are more effectively used by schools and libraries to connect students and library patrons to critical next-generation learning opportunities and services. The requirements in the

Report and Order will allow the Commission and USAC to better identify and remediate instances of waste, fraud, and abuse associated with the E-Rate competitive bidding, improve transparency and competition associated with E-Rate bidding processes, and ensure that limited E-Rate funds are spent efficiently, including by reducing the number of denials, rescissions, and recoveries of funding, and audit findings based on an applicant's failure to retain or otherwise produce competitive bidding documentation after receiving E-Rate program funding commitment(s). The requirements will also promote greater accountability and enhance program integrity as USAC will have timely access to the competitive bidding and contract documentation associated with each FCC Form 471 application.

These actions are expected to lessen the burden on applicants in responding to requests from USAC and auditors for applicants' contract related documentation, as this documentation will be uploaded into the bidding portal at the time the applicants have completed their competitive bid process and signed contracts with their service providers. As part of the *Report and Order*, we also direct USAC to prepare training and outreach materials that will enable applicants and service providers to successfully participate in the E-Rate program and avoid common errors that lead to audit findings and improper payments. This action is also expected to lessen burdens on E-Rate applicants by ensuring that they have the information and tools they need comply with program rules and requirements. We also direct USAC, at the direction of the Bureau, to add guidance on their website and seek stakeholder feedback on the technical aspects of the development of the portal via means that will provide constructive input, such as user testing.

Comments expressed concerns that a bidding portal may increase burden, costs and discourage small schools, libraries, and vendors from participating. The proposals adopted in this *Report and Order*, require applicants to upload documents that they already are required to retain and

produce under our rules and provides a centralized place for service providers to submit bids and communicate with applicants about any questions they may have. Currently, to initiate the competitive bidding process, applicants are required to complete and upload their FCC Form 470 applications and documentation into EPC. As such, E-Rate program participants already possess the requisite skills they need to comply with these new requirements and other than adjusting how this documentation is shared with the Commission and USAC, the proposals adopted are not intended to change the way applicants or service providers conduct their competitive bidding processes. Therefore, we disagree that the competitive bidding portal will discourage applicants or service providers from participating in the E-Rate program and that the burden of the adopted changes will be substantial. To the extent that the portal does alter the rules, we expect that it leans towards a more fair, open, and transparent process, resulting in the cost effectiveness of the proposed services and reduction of waste. The use of the document repository will aid smaller entities with compliance with recordkeeping requirements because all the required documents would be uploaded and available in the portal.

Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for the Small Business Administration (SBA) Office of Advocacy, and also provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the adopted rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business

concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The SBA establishes small business size standards that agencies are required to use when promulgating regulations relating to small businesses; agencies may establish alternative size standards for use in such programs, but must consult and obtain approval from SBA before doing so.

Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe three broad groups of small entities that could be directly affected by our actions. In general, a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses. Next, "small organizations" are not-for-profit enterprises that are independently owned and operated and are not dominant in their field. While we do not have data regarding the number of non-profits that meet that criteria, over 99 percent of nonprofits have fewer than 500 employees. Finally, "small governmental jurisdictions" are defined as cities, counties, towns, townships, villages, school districts, or special districts with populations of less than fifty thousand. Based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 out of 90,835 local government jurisdictions have a population of less than 50,000.

The rules adopted in the *Report and Order* will apply to small entities in the industries identified in the chart by their six-digit North American Industry Classification System (NAICS) codes and corresponding SBA size standard. Based on currently available U.S. Census data regarding the estimated number of small firms in each identified industry, we conclude that the adopted rules will impact a substantial number of small entities. Where available, we also provide additional information regarding the number of potentially affected entities in the identified industries.

TABLE 1—2022 U.S. CENSUS BUREAU DATA BY NAICS CODE

Regulated industry (footnotes specify potentially affected entities within a regulated industry where applicable)	NAICS code	SBA size standard	Total firms	Total small firms	% small firms
Telephone Apparatus Manufacturing	334210	1,250 employees	155	136	87.74
Radio and Television Broadcasting and Wireless Communications Equip Manufacturing.	334220	1,250 employees	155	136	87.74
Wired Telecommunications Carriers	517111	1,500 employees	3,403	3,027	88.95

TABLE 1—2022 U.S. CENSUS BUREAU DATA BY NAICS CODE—Continued

Regulated industry (footnotes specify potentially affected entities within a regulated industry where applicable)	NAICS code	SBA size standard	Total firms	Total small firms	% small firms
Wireless Telecommunications Carriers (except Satellite).	517112	1,500 employees	1,184	1,081	91.30
All Other Telecommunications	517810	\$40 million	1,673	1,007	60.19
Libraries and Archives	519210	\$21 million	2,030	1,891	93.15
Schools	611110	\$20 million	14,088 ¹	14,087	99.99

TABLE 2—TELECOMMUNICATIONS SERVICE PROVIDER DATA

2024 Universal service monitoring report telecommunications service provider data (data as of December 2023)	SBA size standard (1500 employees)		
Affected entity	Total number FCC form 499A filers	Small firms	(%) Small entities
Wired Telecommunications Carriers	4,682	4,276	91.33
Wireless Telecommunications Carriers (except Satellite)	585	498	85.13
Wireless Telephony	326	247	75.77

TABLE 3—E-RATE FUNDING DATA

Affected Entity	Number receiving E-Rate funding commitments
Schools	101,522
Libraries	11,671

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

The purpose of the *Report and Order* is to strengthen the competitive bidding rules for the E-Rate program by requiring applicants to submit their competitive bidding and contract related documentation into the competitive bidding portal, and also to streamline the E-Rate administrative process, as detailed in section A. Small entity applicants are already required to retain this documentation under § 54.516(a) of the Commission's rules. Therefore, we expect that the burden of uploading the documentation will not be substantial. Under our adopted rules, once an applicant uploads the competitive bidding documentation into the bidding portal, applicants will be able to access this documentation when needed and provide it to other local, state, or federal agencies with jurisdiction over the applicant as necessary. Thus, by preserving this documentation in the bidding portal and repository, the portal will assist in ensuring compliance with the

competitive bidding recordkeeping and production requirements set forth in § 54.516(a)–(b) of the Commission's rules. In adopting this requirement, we do not make any modifications to § 54.516(a) of the Commission's rules. However, applicants and service providers do not need to separately retain documents that are also uploaded to the competitive bidding portal and can rely on this documentation to meet their document retention requirements. Moreover, the new process reduces the likelihood that small entity applicants will receive, and respond to, outreach communications from USAC and its auditors, related to their compliance with E-Rate program's competitive bidding rules.

Under our new rules, applicants can continue to hold conferences or other meetings. Questions and answers that were provided during the meeting and are relevant to the competitive bidding process must be uploaded to the competitive bidding portal within 72 hours to ensure that all potential bidders have access to the same information, and the competitive bidding process is fair and open to all bidders. A summary of all meetings held between the applicant and any potential bidders must be uploaded to the competitive bidding portal by the time the FCC Form 471 is filed. This affords applicants the ability to hold these

important conferences and walkthroughs without raising a concern about certain bidders having conversations with an applicant in a manner that gives special treatment. Internal communications between the applicant's bid evaluation team do not need to be uploaded, but the final bid evaluation results must be uploaded. The documentation included in the portal should be similar to the documentation applicant and service providers are already required to retain and produce under the Commission's rules.

We estimate that the cost of creating, implementing, and managing the competitive bidding portal for the first year of operation will be under \$750,000, followed thereafter by annual operating costs of around \$100,000 to \$200,000, which together represents a comparatively low cost to take measures to protect a program where the funding cap in funding year 2026 is \$5.2 billion. Notably, the competitive bidding portal will be integrated into the existing EPC system, minimizing costs to both the Universal Service Fund and stakeholders, while ensuring that E-Rate program participants will be able to quickly adjust to the new requirements.

Further, the creation of a standardized bid template will reduce the burden on small applicants to compare bids as compared to existing E-Rate processes.

We also direct USAC to enhance its E-Rate training and outreach materials for use by applicants that will help applicants avoid common errors that lead to audit findings and improper payments. Also, the improvements made in the *Report and Order* to streamline the E-Rate administrative process may result in new or reduced reporting, recordkeeping, and compliance obligations for small entities. The Commission's rule modifications will simplify the E-Rate application and reimbursement process for small entities. For example, if a small entity wishes to transition service during a funding year, the applicant may request a funding commitment for a partial year of both services and then file a request for a post commitment change once the applicant knows the cutover dates. We also amend our rules to allow small applicants and service providers to request a single 120-day extension of the original invoice filing deadline if the request is made within 15 days of the original invoice filing deadline. We also adopt the proposal to remove the requirement that applicants file the FCC Form 486 for future funding years, beginning in FY 2028. The Commission anticipates these modifications will not require small entities to hire professionals to comply with the new rules, will have modest cost implications and should reduce compliance requirements for small entities that may have smaller staff and fewer resources. As such, we expect that the Commission's rule modifications will reduce the economic impact of current compliance obligations on small entities.

The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."

In the *Report and Order*, we take steps to minimize the economic impact on small entities through the rule changes that we have adopted. In considering whether to establish a competitive bidding and repository portal, we disagree with commenters that believe the portal will be unnecessary or substantially burdensome. Though the portal will require new or additional document submissions, we find that these obligations are outweighed by the Commission's goals of strengthening the E-Rate program by reducing the

potential for waste, fraud, and abuse. As an initial matter, we expect that any burden on applicants to upload documentation as specified by the new rules will be offset, in part or in full, by the lessened burden on applicants to consider and prepare responses to outreach communications from USAC, and its auditors, related to their compliance with the E-Rate program's rules. Moreover, we take a number of additional steps in the *Report and Order* to provide small entity E-Rate applicants with maximum flexibility in reducing their potential costs of compliance with the document upload requirements. For multi-year contracts, our rules require to applicants to provide the required competitive bidding and contract documentation only once, thus avoiding additional burdens on applicants for uploading duplicative competitive bidding and contract documentation for the remainder of the contract's term. This approach minimizes burdens on these applicants as compared to an alternative potential requirement that they upload this documentation with each year's funding cycle. For existing multi-year contracts that are currently being used to support funding requests, in funding year 2029, applicants will be required to upload the associated bids, competitive bidding, and bid evaluation documents for the multi-year contract into the portal by the time the applicant submits their FCC Forms 471 that rely on that contract. For consortium applicants, we only require that the consortium leader upload the competitive bidding and contract documentation related to the consortium's FCC Form 471 application on behalf of its members, thus avoiding an additional burden on each member to perform a similar upload. Removing the requirement that applicants file the FCC Form 486 will also lessen the burden on applicants.

In the *Report and Order*, we considered the alternative proposal to adopt a repository without the proposed competitive bidding portal. However, implementing a repository alone would fail to address Office of Inspector General's and the United States Department of Justice's concerns with bid collusion and bid alteration. Additionally, in the *Report and Order*, we also consider a number of alternatives designed to streamline the E-Rate administrative process, many of which result in rule changes that will minimize the economic impact for small applicants to the E-Rate program. For example, the Commission aims to alleviate burdensome cost allocation by not requiring an applicant to cost

allocate the non-instructional facility's use of shared equipment. This provision should eliminate unnecessary burden for small entities, given the need for shared equipment within school or library networks to serve their students and library patrons. We clarify our cost allocation rules to limit the burden on all applicants, including small entities, clarifying that if at least 90% of an applicant's requested category one data or internet service is being used for eligible purposes, the remaining ineligible portion is presumed to be ancillary and, therefore, cost allocation is not required. We also update our invoicing rules to provide a 15-day period after the original invoice filing deadline for applicants and service providers to request a single 120-day extension of the original invoice filing deadline, instead of allowing multiple extensions because many requests are filed in a timely manner, and providers with special circumstances may request a waiver from the Commission. Such a change will provide small entities that miss the deadline by a short period of time with the opportunity to still receive E-Rate funding if they fail to file their requests for reimbursement by the deadline.

Moreover, in the *Report and Order*, we direct USAC, with oversight from the Wireline Competition Bureau (WCB) and the Office of the Managing Director (OMD), to create a bid response template (after seeking comment, if necessary) for service providers to use when responding to applicants' FCC Forms 470. The optional use of this bid response template by service providers will standardize bid responses that applicants receive and make it easier for applicants to compare bids, thus reducing their burdens for conducting competitive bidding as required by E-Rate rules. Applicants choosing to use the template can require potential bidders to use the template bid response form by stating that use of the template is a requirement for responding to its FCC Form 470. We will determine in the future whether to require mandatory use of a standardized bid response form by service providers. We also direct USAC to enhance its training and outreach materials to better assist E-Rate participants with complying with the Commission's competitive bidding rules. These enhanced training and outreach materials will reduce applicant confusion thus reducing burdens on applicants for complying with E-Rate rules. We also direct USAC, at the direction of the Bureau, to add guidance on their website and seek stakeholder feedback on the technical aspects of the

development of the portal via means that will provide constructive input, such as user testing. Further, we direct the Bureau to take into account when the new portal was adopted when considering requests for waiver, particularly for procedural or administrative errors by smaller or more rural participants.

Finally, to the extent that these rules introduce new compliance burdens on applicants in some respects, those burdens are outweighed by the benefits to applicants. These rules will better ensure that applicants receive and retain funding from the E-Rate program by reducing the number of denials, rescissions, and recoveries of funding, as well as by reducing audit findings based on an applicant's failure to retain or otherwise produce competitive bidding documentation after receiving E-Rate program funding commitment(s).

The Commission will send a copy of the *Report and Order*, including this Final Regulatory Flexibility Analysis, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order*, including this Final Regulatory Flexibility Analysis, to the Chief Counsel for the SBA Office of Advocacy and will publish a copy of the *Report and Order*, and this Final Regulatory Flexibility Analysis (or summaries thereof) in the **Federal Register**.

Paperwork Reduction Act. This *Report and Order* contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the revised information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees. We provide guidance to applicants, service providers, and USAC, and modify the rule language regarding post-commitment requests to extend the invoice filing deadline under § 54.514(a)(3). In 2020, the Commission addressed an issue in the program rules that left applicants with some pending post-commitment requests or appeals unable to invoice by the invoice filing deadline. To fix the issue, the Commission amended the invoicing

deadline rules to provide 120 days from the date of a Revised Funding Commitment Decision Letter approving a post-commitment request or a successful appeal. Such relief is limited to approvals of timely filed post-commitment requests that affect invoicing, like service substitutions filed prior to the service delivery deadline or service provider changes. Reduction or cancellation of a portion of a funding request would not, for example, result in additional time to invoice. We amend the rule now to provide applicants and service providers with clarity without notice and comment in accordance with the exception to the APA for procedural rules. The updated rule will become effective upon publication in the **Federal Register**.

Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that the rules are non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *Report and Order* and Order on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order* and Order on Reconsideration, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.

V. Ordering Clauses

Accordingly, it is ordered, that pursuant to the authority contained in sections 1 through 4, 201–202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–202, 254, 303(r), and 403, this *Report and Order* and Order on Reconsideration IS ADOPTED and effective thirty (30) days after publication in the **Federal Register**.

It is further ordered, that pursuant to the authority contained in sections 1 through 4, 201 through 202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–202, 254, 303(r), and 403, Part 54 of the Commission's rules, 47 CFR part 54, is AMENDED, and such rule amendments shall be effective thirty (30) days after publication in the **Federal Register**, except for §§ 54.503(c)(4)–(6) and 54.504(d)(1)(iv), which contains information collection requirements that are not effective until approved by the Office of Management

and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for these sections.

It is further ordered, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, that the Petition for Reconsideration and/or Clarification of the State E-rate Coordinators' Alliance on September 6, 2023, IS GRANTED.

List of Subjects in 47 CFR Part 54

Communications common carriers, Hotspots, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Aleta Bowers,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

- 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted.

- 2. Amend § 54.500 by revising the definitions of “*Consortium*,” “*Internal connections*,” and “*Wide area network*” to read as follows:

§ 54.500 Terms and definitions.

* * * * *

Consortium. A “consortium” is any local, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for support under this Subpart that seeks competitive bids for eligible services or funding for eligible services on behalf of some or all of its members. A consortium may also include health care providers eligible under subpart G of this part, and public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, although such entities are not eligible for support.

* * * * *

Internal connections. A service is eligible for support as a component of an institution's “internal connections” if such service is necessary to transport or distribute broadband within one or

more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch. Multiple schools with the same billed entity may share a single school campus.

* * * * *

Wide area network. For purposes of this subpart, a “wide area network” is a data network that provides connections from one or more computers within an eligible school or library to one or more computers or networks that are external to such eligible school or library. Excluded from this definition is a data network that provides connections between or among instructional buildings of a single school campus or between or among non-administrative buildings of a single library branch.

■ 3. Amend § 54.502 by revising paragraph (d)(6) to read as follows:

§ 54.502 Eligible services.

* * * * *

(d) * * *

(6) Non-instructional buildings.

Support is not available for category two services provided to or within non-instructional school buildings or separate library administrative buildings unless those category two services are essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose, as defined in § 54.500. When applying for category two support for eligible services shared with or within a non-instructional school building or library administrative building, the applicant shall not be required to deduct the cost of a non-instructional building’s use of the category two services or equipment.

* * * * *

■ 4. Delayed indefinitely, amend § 54.503 by revising paragraphs (b) and (c)(4) and adding paragraphs (c)(5) and (6) to read as follows:

§ 54.503 Competitive Bid Requirements.

* * * * *

(b) Competitive bid requirements.

Except as provided in paragraph (e) of this section, an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid requirements apply in addition to state and local competitive bid requirements

and are not intended to preempt such state or local requirements.

(c) * * *

(4) After posting on the Administrator’s website an eligible school, library, or consortium FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. Providers of services shall not respond to a request for services directly to the requesting entity and shall not reveal responses to other parties, including other providers of services, but shall submit responses through a secured website portal (“bidding portal” or “bid portal”) managed by the Administrator. The eligible school, library, or consortium shall then wait at least four weeks from the date on which its description of services is posted on the Administrator’s website before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s). The entity must consider all bid responses received prior to their bid evaluation, unless it has set a specific bid deadline within the controlling FCC Form 470 or any associated Requests for Proposal.

(5) Service providers shall respond to requests for services through a secured website portal (“bidding portal” or “bid portal”) managed by the Administrator, by submitting bids into the portal. Service providers will not have access to the bids of other service providers. If permitted under state/local law, service providers may anonymously submit questions or other inquiries to applicants through the bidding portal, to which applicants must publicly respond during the competitive bidding process. Applicants may hold meetings or conferences with interested bidders, so long as applicants post new questions and answers from the meeting/conference relevant to the competitive bidding process no later than 72 hours after the meeting. A summary of all meetings and conferences held with interested bidder(s) must be submitted by the time the FCC Form 471 is filed. Otherwise, communications between service providers and applicants or any representative thereof related to the services and products requested or the competitive bidding process must be conducted in the bidding portal from the date the FCC Form 470 is posted to the contract award. This requirement does not prohibit service providers from submitting bids or having communications with the applicant that are required under state/local law. The bids must be identical and copies of

such communications must be submitted to the bidding portal by the time the FCC Form 471 is filed. All potential program bidders and service providers must have access to the same information and must be treated in the same manner throughout the entire procurement process.

(6) After making commitments with the selected providers of services, eligible schools, libraries, or consortia shall upload the following before submitting an FCC Form 471 for the services:

(i) *Competitive bidding documents.* Applicants must submit documentation to support their certifications that they have carefully considered and selected the most cost-effective bid with price being the primary factor considered, including the bid evaluation criteria, and the following documents (as applicable, and to the extent not already captured and stored as part of competitive bidding process): Completed bid evaluation worksheets or matrices; explanation for any disqualified bids; a list of people who evaluated the bids (along with their title/role/relationship to the applicant), memos, board minutes, or similar documents related to the service provider selection/award; copies of notices to winners; and any correspondence with the service providers during the competitive bidding (*i.e.*, from the date the FCC Form 470 is filed to the contract award date), evaluation, and award phase of the process that occurred outside of the bidding portal.

(ii) *Contracts or other documentation.* All applicants must submit a contract or other documentation, as applicable, that clearly identifies the service provider(s) selected; costs for which support is being requested; and the term of the service agreement(s) if applicable (*i.e.*, if services are not being provided on a month-to-month basis). For services provided under contract, the applicant must submit a copy of the contract signed and dated after the Allowable Contract Date established pursuant to paragraph (c)(4) in this section by the applicant. If the services are provided by another legally binding agreement or on a month-to-month basis, the applicant must submit a bill, service offer, letter, or similar document from the service provider that provides the required information.

* * * * *

■ 5. Delayed indefinitely, amend § 54.504 by revising paragraphs (d)(1)(iv) and adding paragraph (g) to read as follows:

§ 54.504 Requests for Services.

* * * *

(d) * * *

(1) * * *

(iv) The applicant certifies that the requested change is either within the scope of the controlling FCC Form 470, including any associated Requests for Proposal, for the original services, or is the result of an unanticipated need for additional bandwidth and the applicant will seek competitive bids prior to the next funding year if the applicant plans to continue to receive the additional bandwidth.

* * * *

(g) *Transition of services during a funding year.* (1) The Administrator shall grant a request by an applicant to modify the service start and end dates, including in the event that a service start and end date modification results in an upward change in the pre-discount price for the supported service provided during the funding year for the transitioning recurring services identified on its FCC Form 471, where:

(i) The applicant filed partial funding year requests for the supported service from both providers (or service offerings, in the case of a transition to a different service from the same provider) during the application filing window using the best estimates of the transition dates, provided there is no overlap in dates,

(ii) The applicant indicated on the FCC Form 471 that the requests were for a transition of service, and

(iii) There are available funds below the schools and libraries universal service support program funding cap.

■ 6. Amend § 54.513 by revising paragraph (d) to read as follows:

§ 54.513 Resale and transfer of equipment.

* * * *

(d) Eligible services and equipment components of eligible services purchased at a discount under this subpart shall not be transferred, with or without consideration of money or any other thing of value, for a period of three years after purchase, except that eligible services and equipment components of eligible services may be transferred to another eligible school or library in the event that the particular location where the service originally was received is permanently or temporarily closed, or is part of the same eligible school district or library system as the location receiving the eligible services or equipment components of eligible services. If an eligible service or equipment component of a service is transferred pursuant to this paragraph, both the transferor and recipient must

maintain detailed records documenting the transfer and the reason for the transfer.

■ 7. Amend § 54.514 by revising paragraphs (a) and (b) to read as follows:

§ 54.514 Payment for discounted services.

(a) *Invoice filing deadline.* Invoices must be submitted to the Administrator by the latest of:

(1) 120 days after the last day to receive service;

(2) 120 days after the date of the Funding Commitment Decision Letter;

(3) 120 days after the date of the Revised Funding Commitment Decision Letter approving a post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request that is impacting requests for reimbursement, whichever is latest; or

(4) 60 days after the date of the first notification of a denial or reduction of a timely filed request for reimbursement.

(b) *Invoice filing deadline extension.* Service providers or billed entities may request a one-time extension of the invoicing filing deadline if such request is filed before, or within 15 days after, the deadline calculated pursuant to paragraph (a) of this section. The Administrator shall grant a 120-day extension of the invoice filing deadline calculated in paragraph (a) of this section if it is timely requested. The Commission may find good cause for a waiver of the invoice filing deadline extension rule and a one-time extension of 120 days from the original invoicing deadline for requests for waiver where the Petitioner can demonstrate that they attempted to file for an extension within 15 days of the original invoice filing deadline.

* * * *

■ 8. Amend § 54.520 by revising introductory text of paragraph (c)(1), paragraph (c)(1)(iii), introductory text of paragraph (c)(2), paragraphs (c)(2)(iii), (c)(3)(ii) and (iii), and (g) to read as follows:

§ 54.520 Children's internet Protection Act certifications required from recipients of discounts under the federal universal service support mechanism for schools and libraries.

* * * *

(c) * * *

(1) *Schools.* The billed entity for a school that receives discounts for internet access or internal connections must certify on FCC Form 471 that an internet safety policy is being enforced. If the school is an eligible member of a consortium but is not the billed entity for the consortium, the school must

certify instead on FCC Form 479 ("Certification to Consortium Leader of Compliance with the Children's internet Protection Act") that an internet safety policy is being enforced.

* * * *

(iii) A school must satisfy its obligations to make certifications by making one of the following certifications required by paragraph (c)(1) of this section on FCC Form 471:

(A) The recipient(s) of service represented in the Funding Request Number(s) on this Form 471 has (have) complied with the requirements of the Children's internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 471, for whom this is the first funding year in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service represented in the Funding Request Number(s) on this Form 471 is (are) receiving discount services only for telecommunications services.

(2) *Libraries.* The billed entity for a library that receives discounts for internet access and internal connections must certify, on FCC Form 471, that an internet safety policy is being enforced. If the library is an eligible member of a consortium but is not the billed entity for the consortium, the library must instead certify on FCC Form 479 ("Certification to Consortium Leader of Compliance with the Children's internet Protection Act") that an internet safety policy is being enforced.

* * * *

(iii) A library must satisfy its obligations to make certifications by making one of the following certifications required by paragraph (c)(2) of this section on FCC Form 471:

(A) The recipient(s) of service represented in the Funding Request Number(s) on this Form 471 has (have) complied with the requirements of the Children's internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service

represented in the Funding Request Number(s) on this Form 471, for whom this is the first funding year in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service represented in the Funding Request Number(s) on this Form 471 is (are) receiving discount services only for telecommunications services.

(3) * * *

(ii) The billed entity for a consortium, as defined in paragraph (a)(3) of this section, must make one of the following two certifications on FCC Form 471: "I certify as the Billed Entity for the consortium that I have collected duly completed and signed Forms 479 from all eligible members of the consortium."; or I certify "as the Billed Entity for the consortium that the only services that I have been approved for discounts under the universal service support on behalf of eligible members of the consortium are telecommunications services, and therefore the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), do not apply."; and

(iii) The billed entity for a consortium, as defined in paragraph (a)(3) of this section, who filed an FCC Form 471 as a "consortium application" and who is also a recipient of services as a member of that consortium must select one of the certifications under paragraph (c)(3)(i) of this section on FCC Form 471.

* * * * *

(g) *Funding year certification deadlines.* For Funding Year 2003 through Funding Year 2027, billed entities shall provide one of the certifications required under paragraph (c)(1), (c)(2) or (c)(3) of this section on an FCC Form 486 in accordance with the prior existing program guidelines established by the Administrator. For Funding Year 2028 and for subsequent funding years, billed entities shall provide one of the certifications required under paragraph (c)(1), (c)(2), or (c)(3) of this section on an FCC Form 471.

* * * * *

[FR Doc. 2026-10011 Filed 5-18-26; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2024-0005;
FXES1113090FEDR-267-FF09E22000]

RIN 1018-BG68

Endangered and Threatened Wildlife and Plants; Reclassification of the Rough Popcornflower From Endangered to Threatened With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reclassifying the rough popcornflower (*Plagiobothrys hirtus*) from endangered to threatened (downlist) under the Endangered Species Act of 1973, as amended (Act). This action is based on our evaluation of the best scientific and commercial data available, which indicates that the species' status has improved such that it is not in danger of extinction throughout all or a significant portion of its range, but that it is still likely to become so within the foreseeable future. We also finalize protective regulations under the authority of section 4(d) of the Act that are necessary and advisable to provide for the conservation of this species.

DATES: This rule is effective June 18, 2026.

DATES: This final rule is available on the internet at <https://www.regulations.gov>. Comments and materials we received are available for public inspection at <https://www.regulations.gov> at Docket No. FWS-R1-ES-2024-0005.

Availability of supporting materials: Supporting materials we used in preparing this rule, including the 5-year reviews, the 2003 recovery plan, the 2019 recovery plan amendment, and the species status assessment report, are available on the Service's website at <https://ecos.fws.gov/ecp/species/2500> and at <https://www.regulations.gov> under Docket No. FWS-R1-ES-2024-0005.

FOR FURTHER INFORMATION CONTACT: Kessina Lee, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office; 503-231-6179; kessina_lee@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United

States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act (16 U.S.C. 1531 *et seq.*), a species warrants reclassification from endangered to threatened if it no longer meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range). The rough popcornflower is listed as endangered, and we are reclassifying (downlisting) the rough popcornflower as threatened. We have determined the rough popcornflower does not meet the Act's definition of an endangered species but it does meet the definition of a threatened species (likely to become an endangered species throughout all or a significant portion of its range within the foreseeable future). Reclassifying a species as a threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This rule downlists the rough popcornflower from endangered to threatened on the Federal List of Endangered and Threatened Plants (List), with a rule issued under section 4(d) of the Act, based on the species' current status, which has been improved through implementation of conservation actions including additional monitoring that has revealed populations and plants not known at the time of listing.

The basis for our action. Under the Act, we may determine that a species is an endangered species or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We may reclassify a species if the best scientific and commercial data available indicate the species no longer meets the applicable definition in the Act. Based on the status review, the current threats analysis, and evaluation of conservation measures discussed in this rule, we conclude that the rough popcornflower no longer meets the Act's definition of an endangered species and should be reclassified to a threatened species. The species is no longer in danger of extinction throughout all or a

significant portion of its range, but is likely to become so within the foreseeable future.

We have determined that the rough popcornflower is a threatened species due to the following threats: destruction and/or alteration of habitat by development and hydrological changes (e.g., wetland fills, draining, construction), competition from nonnative invasive plant species, impacts due to climate change (e.g., winter flooding, drier summer soils, and decreased fruit production), and lack of regulatory mechanisms.

Previous Federal Actions

Please refer to the proposed rule to reclassify the rough popcornflower, published on December 11, 2024 (89 FR 99809), for a detailed description of previous Federal actions concerning this species.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the rough popcornflower. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing and recovery actions under the Act (<https://www.fws.gov/sites/default/files/documents/peer-review-policy-directors-memo-2016-08-22.pdf>), we solicited independent scientific review of the information contained in the rough popcornflower SSA report. As discussed in the proposed rule, we sent the SSA report to three independent peer reviewers and received two responses. The peer reviews can be found at <https://www.regulations.gov> under Docket No. FWS-R1-ES-2024-0005. In preparing the proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which was the foundation for the proposed rule and this final rule. A summary of the peer review comments and our responses can be found in the proposed rule (89 FR 99811–99812).

Summary of Changes From the Proposed Rule

We received two responses to our request for information on the proposed

rule during the public comment period. Only the submission from the Oregon Department of Agriculture (ODA) raised substantive issues that needed to be fully considered and addressed. We summarize these issues in the 7 comments and provide our responses below (See Summary of Comments and Recommendations). Minor, nonsubstantive changes and corrections were made in response to comments on the proposed rule and are reflected throughout this final rule. The information we received during the comment period on the proposed rule did not change our determination for either reclassifying the rough popcornflower as a threatened species under the Act or the 4(d) rule for the species.

The ODA submitted comments that included additional information on current population numbers from recent surveys and refined population areas. Surveys were conducted by The Nature Conservancy (TNC), the Oregon Department of Transportation (ODOT), ODA, and the Service. In addition, Service staff conducted visits of some rough popcornflower populations to get new estimates of population size and area coverage. In response, we updated the population numbers and area for all populations of rough popcornflower where available. This new information resulted in one more downlisting criterion being fulfilled and changed the degree to which other recovery criteria have been met. We updated the number of populations reaching certain recovery criteria where applicable throughout this final rule.

Finally, we developed an addendum to accompany the SSA report version 1.0 that contains the updated population and area data for the rough popcornflower that became available since the publication of the proposed rule on December 11, 2024 (89 FR 99809). The addendum also contains updated monitoring information for all populations of rough popcornflower (USFWS 2026, entire).

Summary of Comments and Recommendations

In the proposed rule published on December 11, 2024 (89 FR 99809), we requested that all interested parties submit written comments on the proposal by February 10, 2025. We also contacted appropriate Federal and State agencies, Tribal entities, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in The News-Review. We did not receive any requests for a

public hearing. All substantive information received during the comment period has either been incorporated directly into this final determination or is addressed below.

Comments From States

(1) *Comment:* ODA commented that data presented in the proposed downlisting rule (89 FR 99809) did not adequately demonstrate that the downlisting criteria in the 2019 amendment to the recovery plan for rough popcornflower (USFWS 2019, entire) had been fully met, though they agreed that rough popcornflower merits downlisting from endangered to threatened.

Our response: In accordance with section 4(b)(1)(A) of the Act (16 U.S.C. 1531*et seq.*), the downlisting determination for rough popcornflower is based on the best scientific and commercial data available to the Service. While we consider recovery plans to be ‘roadmaps’ to guide recovery, they are not binding regulatory documents, and achievement, or lack of achievement, of specific recovery criteria therein does not automatically confer regulatory status under section 4(a)(1) of the Act. Ultimately, our determination of listing status is based on an evaluation of whether a species meets the definition of a threatened or endangered species under the Act. Therefore, in our SSA, we analyzed population resiliency, redundancy, and representation to evaluate whether a species still meets the definition of “endangered.” In the case of the rough popcornflower, we determined that the best scientific and commercial data available supports downlisting the species from endangered to threatened. For more information on the viability of the species, please see the SSA (USFWS 2021, entire). Responses to ODA’s comments on specific recovery criteria not being fully met are provided below.

(2) *Comment:* ODA stated that our assessment that 10 of 12 reserves meet recovery criterion 1 (see Background for descriptions of the recovery criteria) is misleading because two populations are not legally protected. Further, they stated that the definition of a “reserve” requires both a minimum population size (5,000 plants) and formal protection with management for long-term survival. ODA commented that two rough popcornflower populations (Horsepasture 2 and TNC/ODOT Popcornswale Preserve) are not legally protected, and it is unclear if they are managed specifically to protect the species.

Our response: We agree that the two rough popcornflower populations on privately held property do not have formal protection. We consider formal protection to be habitat secured through ownership or management arrangement that ensures long-term preservation of the habitat features on which rough popcornflower depends. We acknowledge the Horsepasture 2 population occurs on privately held land that is not managed specifically to protect rough popcornflower, and it is not subject to any legal land or regulatory protection (except for requirements for consultation with the Service for any Federal actions that may affect the rough popcornflower). We now consider the property unprotected and have removed it as a “reserve” population.

We consider the TNC/ODOT Popcornswale Preserve population, which contains lands owned by both TNC and ODOT, to be a reserve due to: (1) our long-term partnership with TNC; and (2) the protections in place on the portion of the lands owned by ODOT. We have cooperated with TNC on many occasions to augment the rough popcornflower population, restore habitat, and survey the TNC/ODOT Popcornswale Preserve population. TNC has partnered with many of our agency’s initiatives and programs throughout the United States for many years, including a Jobs in the Woods program at the TNC/ODOT Popcornswale Preserve that focused on rehabilitating wet prairie at the Popcornswale Preserve through removal of trees and shrubs and the control of nonnative invasive species to benefit rough popcornflower (USFWS 2003a, entire). We maintain close communication with TNC regarding the rough popcornflower population at this site.

The rough popcornflower is afforded protection by state law on the ODOT portion of this population, under Oregon Revised Statutes (ORS) 564.010-.994 (e.g., ORS 564.115, Protection and conservation programs). Because the ODOT’s Popcornswale property lies adjacent to and is part of the same biological population as the TNC property, we consider the ODOT population to independently meet “reserve” level population status without considering the portion of the population that falls on TNC property. Thus, for the reasons stated above, we consider the TNC/ODOT Popcornswale Preserve population to be a reserve.

(3) *Comment:* ODA commented that criterion 3, which requires a specific distribution of reserve populations throughout the three recovery units and areas outside the recovery units, has not

been met. ODA remarked that there is a need for one more qualifying reserve in both the Sutherlin and Calapooya Creek recovery units to meet the criterion, though they consider the intent of criterion 3 met. ODA commented that we should meet these requirements or formally revise them with clear scientific justification before proceeding with downlisting the rough popcornflower.

Our response: In the past several years, new census data has resulted in updated population numbers for the rough popcornflower populations. These data refine the area estimates for populations of rough popcornflower, which changed the number of populations that met the distribution requirement for criterion 3. Currently, there are four reserves in the Sutherlin Creek recovery unit (Orenco Ponds, ODOT Wilbur, ODOT Popcornswale, and Southside Swale), one reserve in the Yoncalla Creek recovery unit (Yoncalla 2), no reserves in the Calapooya Creek recovery unit, and one reserve located in the North Bank Habitat Management Area (Middle Barn), that meet criterion 3. Although not considered a reserve, the Horsepasture 2 population meets both area and population requirements for criterion 3, as well. The most recent survey data indicate that 12 populations, including Horsepasture 2, exceed 5,000 plants distributed across all recovery units and the Umpqua Management Area, and 8 populations exceed 500 square meters (m²) (5,382 square feet (ft²)) of plant cover. Considering this updated information, we find that the intent of criterion 3 has been met.

It is not a requirement of the Act that we revise recovery criteria prior to undertaking a reclassification. Recovery plans provide roadmaps to species recovery but are not required to achieve recovery of a species or to evaluate it for downlisting. In addition, recovery plans are nonbinding documents that rely on voluntary participation from landowners, land managers, and other recovery partners. A determination of the status for a valid, extant species is made solely on the question of whether it meets the definition of an endangered or threatened species. As explained below (see Final Reclassification Decision), the rough popcornflower no longer meets the definition of an endangered species but meets the definition of a threatened species.

(4) *Comment:* ODA commented that monitoring data presented in the proposed rule do not fully support the criterion 4 objective that stable or increasing population trends occur over

a 5-year period for at least seven reserve populations, with only six reserve populations showing population stability and three other populations without sufficient data.

Our response: New data obtained since the proposed rule now show that nine reserve populations have a stable or increasing population trend over a 5-year period (USFWS 2026, entire); thus, this criterion is met.

(5) *Comment:* ODA commented that persistent threats to rough popcornflower remain across its range and should be routinely addressed to ensure the species persists. They suggested that one-third of the rough popcornflower populations are small, at risk of exposure to development or succession, and likely to suffer from genetic isolation and other genetic problems. In addition, they expressed concern that rough popcornflower populations face challenges from a changing climate, lack of secure regulatory requirements to protect the species, and invasive species.

Our response: We review the best scientific and commercial data available when conducting a threats analysis. The identification of factors that could impact a species negatively is not sufficient to compel a finding that a species meets the definition of an endangered or threatened species under the Act. In considering what factors might constitute a threat, we must look beyond the mere exposure of the species to the factor to determine whether the exposure is likely to cause actual impacts to the species and the degree to which these factors are currently impacting and likely to impact the species within the foreseeable future.

We agree with ODA that the factors identified present some level of continued threat to the species into the future, and we discuss these population-level threats in the context of the overall species-level population and occupied area trends in the SSA (USFWS 2021, pp. 17–26). However, the species has recovered to the point at which it is no longer currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future. While some populations remain small and potentially isolated, the majority of rough popcornflower populations support more than 5,000 individuals each, which is the population size at which the species is resilient to disturbances and less susceptible to stochastic events and genetic issues. Connectivity between populations has also improved since the initial listing of the species, helping to alleviate potential genetic isolation for some populations.

Competition with nonnative invasive plants remains an ongoing threat for the rough popcornflower, primarily due to habitat encroachment and elimination of bare ground needed for popcornflower seed germination. However, nonnative invasive species management remains a priority for many of the land managers where rough popcornflower is found, and investments in weed control and improved invasive species management have contributed to the species' stable or increasing populations (USFWS 2021, p. 24). While these efforts need to be maintained, the impact of nonnative invasive plants can be managed.

Rough popcornflower has the potential to be negatively impacted by climate change, primarily due to the increased variability of precipitation leading to periods of prolonged drought interspersed by years with heavy rainfall events. This variation in precipitation could increase the frequency at which wetlands dry before rough popcornflower has completed the flowering and fruiting stage. Temperatures could also rise above those suitable for growth of the species. Conservation efforts have increased the species' resiliency, redundancy, and representation such that the species is now better able to sustain viability through changing climate conditions, though we agree these impacts may persist in the foreseeable future (USFWS 2021, pp. 24–25).

Rough popcornflower is a conservation-reliant species, and significant progress has been made in protecting and managing sites supporting the species through the use of conservation efforts such as vegetation control, reintroductions and augmentation, and conservation agreements. At the time of listing, rough popcornflower was known to consist of approximately 7,000 individuals in 8

populations. With implementation of recovery actions and the discovery of previously unknown populations, there are currently over 2,000,000 plants in 18 populations. While challenges for the species remain, the current and future viability of the species supports a status change to downlist from an endangered species to a threatened species under the Act.

(6) *Comment:* ODA commented that the analysis of resiliency, redundancy, and representation under Scenario B indicating that the viability of rough popcornflower is not likely to be significantly reduced over the next 30 years is overly optimistic given the current threats facing rough popcornflower.

Our response: Future scenarios are not intended to function as predictions; rather, they are a tool for assessing the potential long-term viability of the species in response to a range of plausible future conditions.

In our assessment of future viability of the species in the SSA report, we considered better than expected (Scenario A), moderate (Scenario B), and worse than expected (Scenario C) scenarios that examined species viability over the next 30 years (USFWS 2021, pp. 41–47). We include these scenarios to capture the full range of plausible futures for rough popcornflower. Scenario B is the most likely scenario based on current condition trajectories; it estimates that government agencies, non-profit conservation organizations, academic institutions, and private landowners will continue to collaborate and contribute conservation resources to the rough popcornflower and its habitats. Scenario A, the upper plausible limit, projects even greater conservation effort. Scenario C projects conservation efforts decrease from current levels. Therefore, Scenario B is only one of the plausible

future outcomes we considered for the species and falls between the upper and lower condition outcomes. No one scenario is relied on to assess the status of the species. Rather, we look at the entire range of plausible outcomes to inform the status determination.

(7) *Comment:* ODA commented that it is misleading to suggest that conservation measures and recovery actions of partners are responsible for the increase of known plants from about 7,000 at the time of listing to over 800,000 at the time of the proposed rule (now over 2,000,000 with updated survey information).

Our response: We amended language in the rule to attribute some population increases to reintroduction, augmentation, and restoration efforts, and attribute other population increases to the discovery of existing populations that were not known or completely censused at the time of the listing. We further note that we consider the discovery of additional populations to be the direct result of recovery plan-driven survey efforts by partners such as ODOT, ODA, Phoenix School volunteers, and TNC and their volunteers.

I. Final Reclassification Determination Background

Rough popcornflower is an herbaceous plant in the borage or “forget-me-not” family (Boraginaceae) and is endemic to the Umpqua River basin in Douglas County, Oregon, with populations concentrated in the Sutherlin Creek drainage (figure 1). It is closely associated with emergent wetlands within seasonally wet meadows or prairie and relatively level, open habitats formed from poor draining clay-loam soils.

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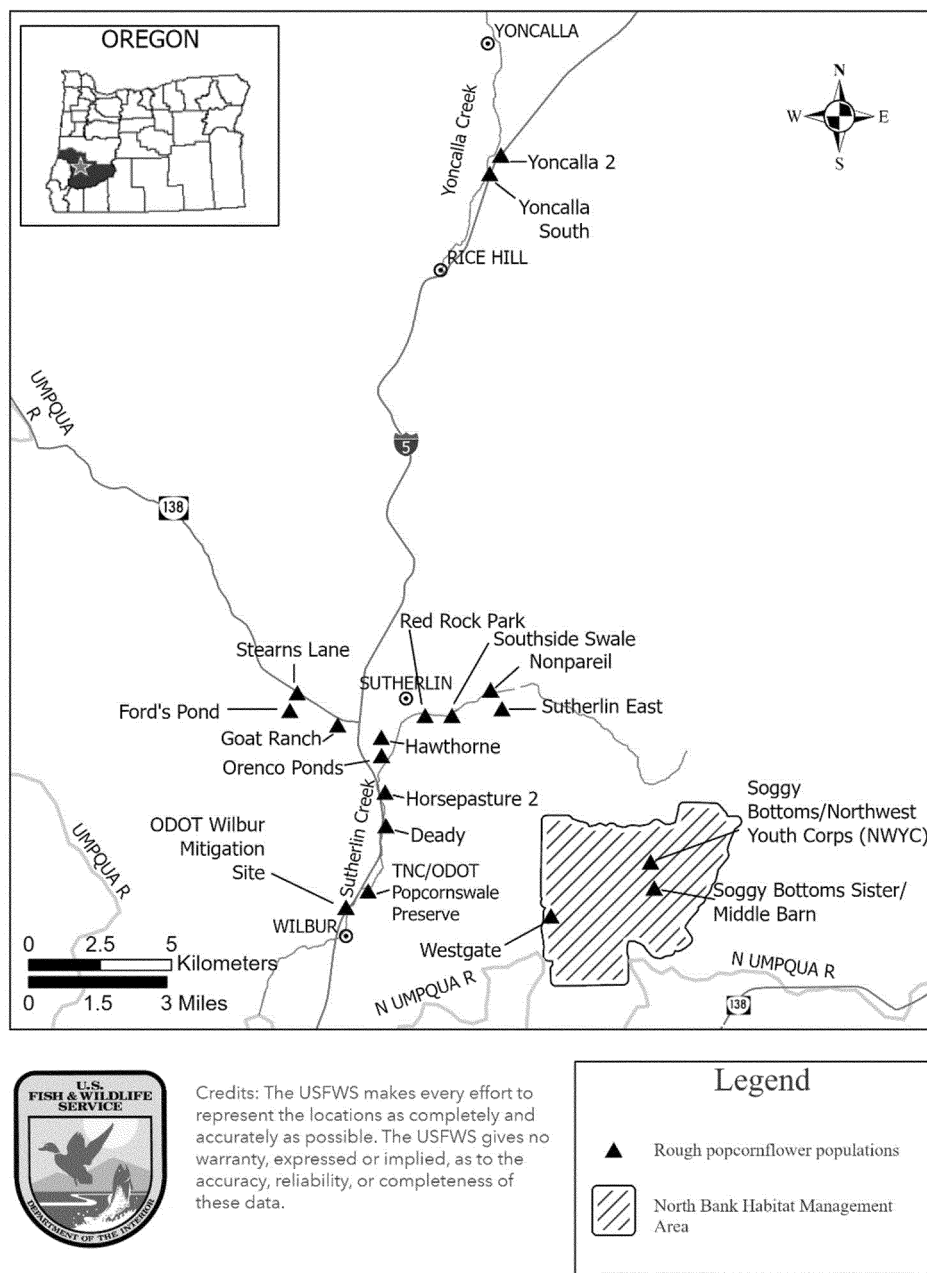


Figure 1—Distribution of Rough Popcornflower in Douglas County, Oregon.

Rough popcornflower can be either an annual or a short-lived perennial. Individual rough popcornflower plants are between 7 centimeters (cm) (2.75 inches (in)) and 60 cm (23.6 in) tall, with narrow, bright-green leaves. Their trumpet-shaped, non-fragrant flowers consist of five fused petals and are mostly white with yellow centers. Rough popcornflower plants, whether annual or perennial, reach sexual maturity and produce fruits in their first year. The plants generally germinate in the fall, bloom in late spring and early summer, produce seed beginning in late

June, and then senesce between July and November. The species is capable of either self-fertilization or cross-fertilization; however, generalist insect pollination appears to be the predominant vector enabling rough popcornflower reproduction (Amsberry and Meinke 2001, pp. 12–13). A thorough review of the taxonomy, life history, and ecology of the rough popcornflower is presented in the SSA report, version 1.0 (USFWS 2021, entire).

Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of

endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the Lists of Endangered and Threatened Wildlife and Plants.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and

assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species, is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

We completed a final recovery plan for the rough popcornflower in 2003 (USFWS 2003b, entire) and amended the plan in 2019 (USFWS 2019, entire). The objective of the original recovery plan for rough popcornflower was to reduce the threats and increase population viability to the point that the species could be downlisted to threatened status (USFWS 2003b, p. 21). The original recovery plan assigned each known natural population to one of three recovery units (Calapooya Creek, Sutherlin Creek, and Yoncalla Creek). The recovery units each corresponded to a drainage basin within the Lower North Umpqua system and represented groups of populations which share phenotypic similarities and are potentially genetically similar. The original recovery plan also established recovery criteria for downlisting (USFWS 2003b, pp. 21–22). At that time, the information available was insufficient to identify recovery criteria

for delisting. The 2019 recovery plan amendment evaluated the adequacy of existing recovery criteria, amended downlisting criteria, added delisting criteria, and presented rationale supporting the recovery plan modification (USFWS 2019, entire).

Below are the downlisting criteria for the rough popcornflower as amended in 2019 (USFWS 2019, pp. 4–6), and the progress made to date toward achieving each criterion.

Criterion 1 for Downlisting

Criterion 1 states that at least 9 reserves, containing a minimum of 5,000 plants each, are protected and managed to assure their long-term survival. A reserve refers to one or more patches of rough popcornflower located within 1 kilometer (km) (0.6 miles (mi)) of each other that are protected from development and managed for the continued existence of the species (USFWS 2019, p. 3). The minimum population size of 5,000 individuals per reserve is intended to provide sufficient resiliency to withstand stochastic events (Culotta 1995, pp. 31–32; Traill et al. 2007, p. 164). The number of reserves is intended to provide sufficient redundancy such that rough popcornflower is not at risk of extinction due to catastrophic events. The maximum distance between patches within a reserve provides connectivity for pollinator-mediated gene flow across the population (USFWS 2019, p. 4).

At the time of listing, our knowledge of rough popcornflower abundance and distribution was limited to approximately 7,000 known plants in 8 populations (USFWS 2021, p. 9). Since then, many conservation partners have made significant contributions to rough popcornflower recovery efforts, including additional monitoring that has revealed populations and plants not known at the time of listing. For example, the ODA collected seed, sowed seed for use by multiple partners, augmented existing populations, conducted monitoring, and provided technical expertise. Other conservation partners, such as the Douglas Soil and Water Conservation District, City of Sutherlin, and Bureau of Land Management (BLM), have committed to conservation measures that include habitat restoration followed by seeding on several properties (USFWS 2001, entire; USFWS 2004, entire; USFWS 2023c, entire). Recent surveys (USFWS 2021, appendix 3; USFWS 2022, entire; USFWS 2023a, entire; USFWS 2025, entire) documented a total of 11 rough popcornflower reserves. All 11 of those reserves are protected and managed,

while 1 additional population (a privately owned parcel containing over 1,000,000 plants) is currently adequately supporting rough popcornflower but is not protected and thus not considered a reserve (table 1).

Ten of the 11 reserves meet the minimum population size of 5,000 individuals per reserve to fully satisfy criterion 1 (USFWS 2026, entire). This number of plants and the distribution of populations is expected to enable rough popcornflower to withstand both stochastic and catastrophic events, and to maintain the capacity to adapt to future environmental changes. As such, we conclude that this downlisting criterion has been met and exceeded.

Criterion 2 for Downlisting

Criterion 2 states a minimum of 500 m² (5,382 ft²) is occupied by rough popcornflower within each of the 9 reserves called for in criterion 1. The intent of this criterion is to have multiple populations large enough to maintain sufficient resiliency to withstand stochastic events.

Six of the 10 reserves that meet criterion 1 contain at least 500 m² (5,382 ft²) of occupied habitat to meet the description of criterion 2. Two other populations (Deady and Horsepasture 2) also meet or exceed the area coverage parameter but do not satisfy the criterion as they are not considered to be protected populations (see table 1, below). Although this criterion is not fully met as identified in the 2019 amendment to the recovery plan, there are eight populations that meet or exceed the area coverage parameter (USFWS 2026, entire). These eight populations are sufficiently spatially distributed across the species' range to enable the species to withstand both stochastic and catastrophic events, and to maintain the capacity to adapt to future environmental changes. We conclude that the intent of this criterion has been met.

Criterion 3 for Downlisting

Criterion 3 states that a minimum of nine reserves, each meeting criteria 1 and 2, are distributed across the recovery units, with a minimum of five reserves in the Sutherlin Creek recovery unit and at least one reserve each in the Yoncalla Creek and Calapooya Creek recovery units. The remaining two reserves may be located within any of the natural recovery units or elsewhere within the watersheds containing the recovery units. The intent of this criterion is to provide sufficient redundancy of populations across the species' range to allow the species to withstand catastrophic events.

Of the six reserves meeting criteria 1 and 2, four are in the Sutherlin Creek recovery unit, one is in the Yoncalla Creek recovery unit, none are in the Calapooya Creek recovery unit, and one is in the Umpqua Management Area, which includes introduced populations of rough popcornflower in the BLM's North Bank Habitat Management Area (USFWS 2026, entire).

Criterion 3 has not been fully met because the number of reserves fully meeting both criteria 1 and 2 is not met, and one fewer reserve than is indicated in the criterion currently exists in both the Sutherlin Creek and Calapooya Creek recovery units. However, the distribution of 12 populations that each exceed 5,000 plants (10 meeting criterion 1) across all recovery units and the Umpqua Management Area, and 8 populations that exceed 500 m² (5,382 ft²) occupied by rough popcornflower, demonstrate that relatively large populations are spatially distributed across the species' range. Although reserve populations are not distributed as prescribed in the recovery plan, the distribution and number of populations

exceeding 5,000 plants indicate the species is likely to be sufficiently resilient to catastrophic events. Therefore, we find that the intent of this downlisting criterion has been met.

Criterion 4 for Downlisting

Criterion 4 states that over a period of 5 years, with a minimum of 3 individual years of monitoring, demographic data indicate at least seven of the nine reserves referenced in criterion 1 have average population numbers that are stable or increasing, without decreasing trends lasting more than 2 years. Stable or increasing populations are an indicator of resiliency. While some inter-annual variability is expected due to demographic and environmental stochasticity, this criterion is intended to provide sufficient confidence that large, sustained declines will not occur. Population monitoring, which entails taking a full plant census, occurs in late spring or early summer, either annually or biannually. We monitor populations on private, city, or county land when authorized to do so. Alternatively, we provide funding through the

Cooperative Endangered Species Conservation Fund to the ODA to monitor populations. Conservation partners, including the BLM, ODOT, and TNC monitor populations on their lands biennially.

Nine of the 10 rough popcornflower reserves that meet criterion 1 also currently meet this criterion (see table 1, below), and thus this downlisting criterion is met. Although the remaining reserve meeting criterion 1 has not been monitored with sufficient frequency to satisfy all of the requirements of this criterion (ODOT Wilbur Mitigation Site), it has maintained relatively stable population numbers between monitoring events from 2011–2024 (USFWS 2021 pp. 13–16; USFWS 2022, entire; USFWS 2023a, entire; USFWS 2025, entire). Having all 10 of the reserve populations exhibiting stable or increasing numbers across the range of the species demonstrates that rough popcornflower has sufficient resiliency to respond to inter-annual environmental variability and is unlikely to experience sustained declines across its range.

TABLE 1—ROUGH POPCORNFLOWER DOWNLISTING CRITERIA AND STATUS BY RECOVERY UNITS/AREA, DOUGLAS COUNTY, OREGON
[✓ = criterion met]

Population	Recovery unit	Downlisting criteria					
		#1			#2	#3	#4
		Plants >5,000 (number of plants)	Managed or protected	Patches within 1 km	Area >500 m ² (size in m ²)	Criteria #1 and #2 met ⁵	3 survey yrs. w/in last 5 yrs.; no 2-yr decrease
1. Horsepasture 2 ¹	Sutherlin Creek	✓ (1,000,000)	.....	✓	✓ (10,700)	.....	.....
2. TNC ² Popcornswale Pre- serve	Sutherlin Creek	✓ (326,951)	✓	✓	✓ (1,384)	✓	✓
3. ODOT ³ Wilbur Mitigation Site	Sutherlin Creek	✓ (590,361)	✓	✓	✓ (914)	✓	.....
4. Hawthorne	Sutherlin Creek	✓ (250)	.....	✓	✓ (10)	.....	.....
5. Orenco Ponds	Sutherlin Creek	✓ (97,126)	✓	✓	✓ (1,344)	✓	✓
6. Red Rock Park	Sutherlin Creek	✓ (3,175)	✓	✓	✓ (82)	.....	.....
7. Southside Swale	Sutherlin Creek	✓ (19,520)	✓	✓	✓ (2,785)	✓	✓
8. Deady	Sutherlin Creek	✓ (6,000)	.....	✓	✓ (506)	.....	.....
9. Sutherlin East	Sutherlin Creek	✓ (1,000)	.....	✓	✓ (6)	.....	.....
10. Ford's Pond	Calapooya Creek	✓ (27,130)	✓	✓	✓ (145)	.....	✓
11. Stearns Lane	Calapooya Creek	✓ (2)	.....	✓	✓ (2)	.....	.....
12. Nonpareil	Calapooya Creek	✓ (300)	.....	✓	✓ (100)	.....	.....
13. Goat Ranch	Calapooya Creek	✓ (75)	.....	✓	✓ (5)	.....	.....
14. ODOT ³ Yoncalla South	Yoncalla Creek	✓ (12,451)	✓	✓	✓ (210)	.....	✓
15. Yoncalla 2	Yoncalla Creek	✓ (15,175)	✓	✓	✓ (845)	✓	✓
16. Soggy Bottoms/NWYC Patch	Umpqua Mgmt. Area ⁴	✓ (7,698)	✓	✓	✓ (107)	.....	✓
17. Middle Barn/Soggy Bot- toms Sister	Umpqua Mgmt. Area ⁴	✓ (45,092)	✓	✓	✓ (500)	✓	✓
18. Westgate	Umpqua Mgmt. Area ⁴	✓ (10,157)	✓	✓	✓ (229)	.....	✓
Total .....	.....	2,162,463	.....	.....	19,874	.....	.....

¹ The Horsepasture 2 population meets the population and area requirements of downlisting criteria 1 and 2 but is located on private property and is not considered protected. We do not consider this population to be a reserve.

² TNC means The Nature Conservancy.

³ ODOT means the Oregon Department of Transportation.

⁴ The Umpqua Management Area is not an official recovery unit. This area is an additional recovery management area that includes introduced populations of rough popcornflower in the Bureau of Land Management (BLM)'s North Bank Habitat Management Area. While not an official recovery unit, the Umpqua Management Area populations do contribute toward the overall species' recovery.

⁵ Downlisting criterion 3 states that a minimum of nine reserves, each meeting the requirements in downlisting criteria 1 and 2, are distributed with at least one reserve each in the Calapooya Creek and Yoncalla Creek recovery units, and a minimum of five reserves in the Sutherlin Creek recovery unit.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations (CFR) set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species.

The Act defines an "endangered species" as a species that is in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. We consider these same five factors in downlisting a species from endangered to threatened.

We use the term "threat" to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term "threat" includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term "threat" may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an "endangered species" or a "threatened species." In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an "endangered species" or a "threatened species" only after conducting this cumulative analysis and describing the expected effect on the species.

The Act does not define the term "foreseeable future," which appears in the statutory definition of "threatened species." Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor (M-37021, January 16, 2009; "M-Opinion," available online at <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf>). The foreseeable future extends as far into the future as the U.S. Fish and Wildlife Service can make reasonably reliable predictions about the threats to the species and the species' responses to those threats. We need not identify the foreseeable future in terms of a specific period of time. We will describe the foreseeable future on a case-by-case basis, using the best scientific and commercial data available and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability. In other words, the foreseeable future is the period of time over which we can make reasonably reliable predictions. "Reliable" does not

mean "certain"; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data available regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be reclassified as a threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the rough popcornflower's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' future condition, including responses to positive and negative environmental and

anthropogenic influences. Throughout all of these stages, we used the best scientific and commercial data available to characterize viability as the ability of a species to sustain populations in the wild over time, which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R1–ES–2024–0005 on <https://www.regulations.gov> and at <https://ecos.fws.gov/ecp/species/2500>.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. In addition, the SSA (USFWS 2021, entire) documents our comprehensive biological status review for the species, including an assessment of the potential threats to the species. The following is a summary of this status review and the best scientific and commercial data available gathered since that time that have informed this decision.

Species Needs

Rough popcornflower typically occupies seasonally wet meadows or prairie, seasonally ponding mudflats, and Oregon ash (*Fraxinus latifolia*) swale openings dominated by native wetland-associated plants in valley lowlands where the ground is moist well into the summer season. Rough popcornflower requires early seral habitat and is not associated with dense tree or shrub canopies. Periodic disturbance (e.g., flooding, fire, mowing, or grazing) is necessary to control nonnative invasive plant competitors and maintain the early seral and open habitat conditions in which rough popcornflower populations thrive. Several insects are known to pollinate rough popcornflower: honeybees (*Apis* spp.); bumble bees (*Bombus* spp.); halictid and megachilid bees; Hemiptera (true bugs); bombyliid, syrphid, and tachinid flies; and red-shouldered ctenucha moths (*Ctenucha rubroscapus*). These insects require diverse native vegetation and minimal pesticide exposure.

Resilient rough popcornflower populations need enough individuals to withstand stochastic events and disturbances. The minimum viable population size for rough popcornflower has not been identified. However, the recovery plan characterizes 5,000 plants as approximately the number of plants

required to achieve an effective population size of 500—the minimum effective population size where an isolated population is likely to be resilient to most disturbances and capable of resisting inbreeding depression (USFWS 2003b, p. 17; USFWS 2019, p. 4). Though some current populations may have fewer than 5,000 plants, taking into consideration other factors such as habitat quantity, habitat quality, connectivity, management, protection, reproduction, they may still be considered to have high resiliency (USFWS 2021, p. 31). For rough popcornflower to be considered viable as a species, it must be able to withstand catastrophic events and adapt to environmental changes. This can be achieved with sufficient resilient populations distributed across the species' geographic range, representing the range of ecological settings in which the species is known to exist. The minimum number of populations required for rough popcornflower has not been determined. However, distribution and abundance goals laid out in the recovery plan (USFWS 2003b, pp. 21–22; USFWS 2019, pp. 4–8) and described above under Recovery Criteria provide a benchmark for evaluating the species' condition.

Threats

When we listed rough popcornflower as endangered (65 FR 3866; January 25, 2000), the primary threats were identified as habitat alteration by wetland filling and development, livestock grazing (or herbivory), and competition from nonnative invasive species. Small, isolated populations contributed toward the species' vulnerability to these threats. Lesser potential threats included overcollection for scientific or horticultural purposes, vandalism, the inadequacy of regulatory mechanisms, road maintenance, fire, and flooding (65 FR 3866 at 3870–3872; January 25, 2000). Since the time of listing, we found that the primary threats to rough popcornflower are habitat alteration by wetland filling and development, competition from native and nonnative species, impacts due to climate change, and lack of regulatory mechanisms. The best available information does not indicate that livestock grazing, overcollection, vandalism, road maintenance, fire or flooding currently pose a threat to the species (USFWS 2003b, p. 13; USFWS 2023b, entire).

Habitat Loss and Fragmentation

In the final listing rule (65 FR 3866 at 3869; January 25, 2000), we described

how rough popcornflower populations had become fragmented due to draining and filling of wetlands from properties being developed. At the time of listing, only five populations of rough popcornflower were protected from detrimental land-use activities. Currently, 11 of the 18 populations are under Federal, State, municipal, or land trust protections. Education efforts have increased recognition of rough popcornflower habitat, as well as avoidance, minimization, or mitigation of development impacts. Because 11 of the 18 known populations are now protected, the threat posed by detrimental land use activities has been significantly reduced since the time of listing. However, the lack of formal commitments for the long-term beneficial management of rough popcornflower in the remaining 7 populations (approximately 47 percent of the total number of individuals rangewide) means that the threat of detrimental land-use activities remains in some parts of the species' distribution.

Small Population Size

In the final listing rule (65 FR 3866 at 3869–3870; January 25, 2000), we described the distribution of the rough popcornflower as 17 small patches of 1 to 3,000 plants (8 populations with approximately 7,000 plants total) that were threatened by natural (i.e., flood) events, anthropogenic (e.g., herbicide treatment) events, or both. At that time, the species' small population size was considered a threat because a single natural or human-caused event had the potential to extirpate rough popcornflower patches.

Due to implementation of recovery actions, including survey efforts leading to the discovery of previously unknown populations, there are currently over 2,000,000 plants in 18 populations (see table 1, above). Twelve of the 18 populations have over 5,000 plants. At the time of listing, 84% of rough popcornflower individuals were on unprotected land, but new information gathered through these survey efforts indicates populations at protected sites have increased such that a much smaller proportion of individuals (47%) occur on unprotected land. Although small populations that remain vulnerable to extirpation occur, individual populations are broadly distributed and the likelihood of a large-scale event affecting them collectively is unlikely. During years with below average precipitation, drought, or fires, seed set could fall short of what is needed to maintain population stability. However, with a large number of seed produced

by plants, it is likely that any periodic depletion of seed bank will be short-term and the seed bank will be replenished (USFWS 2021, p. 7). One population thought to be extirpated for several years was documented flowering after 3 years of species absence (Amsberry and Meinke 2008, p. 14).

At the time of listing, data also indicated that small, isolated populations may not be able to sustain adequate genetic variation, and that a lack of connectivity between isolated patches and populations would limit pollinator-mediated gene flow. Our current analysis of connectivity for the 18 rough popcornflower populations ranked 11 populations as having high connectivity (within 950 meters (m) (3,117 ft) or less) and 3 populations as having medium connectivity (between 950 and 1,500 m (3,117 and 4,921 ft)) (USFWS 2021, p. 35), indicating that rough popcornflower populations are less isolated than at the time of listing. Overall, while the connectivity of small populations is still of some concern, the species is much less vulnerable to the effects of small population size and genetic isolation than when it was listed in 2000.

Herbivory

Herbivory by rodents and livestock has been documented and was identified as a threat to rough popcornflower (65 FR 3866 at 3871; January 25, 2000). Although high densities of white-tailed (*Odocoileus virginianus*) and black-tailed deer (*Odocoileus hemionus hemionus*) overlap with the distribution of rough popcornflower, the best available information does not indicate that deer herbivory is adversely impacting rough popcornflower populations (USFWS 2021, p. 23).

Grazing by livestock may or may not be consistent with rough popcornflower conservation. Grazing of rough popcornflower during its growing period can be detrimental to the species. However, grazing can help control nonnative plant competitors and provide a measure of disturbance that maintains the preferable early seral and open habitat conditions for rough popcornflower. Four rough popcornflower populations with more than 5,000 plants each are partially or entirely on privately-owned grazing lands; the largest single population (more than 1,000,000 plants) is on a private horse ranch where grazing is managed in a manner compatible with the long-term survival of rough popcornflower (USFWS 2021, p. 16). Depending on how grazing is managed, it can adversely impact or benefit

individual populations of rough popcornflower. With 11 of the 18 populations considered protected or on adequately managed land, livestock herbivory is not currently considered a threat to the species overall. However, because formal commitments for long-term management of livestock grazing for the benefit of rough popcornflower have not been secured for some populations (including the largest population of over 1,000,000 plants), these populations remain potentially exposed to this threat and its impacts.

Nonnative Invasive Plant Encroachment

Nonnative invasive plants, including pennyroyal (*Mentha pulegium*), teasel (*Dipsacus* spp.), creeping thistle (*Cirsium arvense*), and reed canary grass (*Phalaris arundinacea*) are a primary threat to the establishment and maintenance of rough popcornflower due to their encroachment of habitat and elimination of bare ground, which popcornflower seeds require to germinate. Pennyroyal is present at many rough popcornflower sites, and teasel and creeping thistle control require constant conservation efforts at the North Bank Habitat Management Area, Yoncalla South, and TNC/ODOT Popcornswale Preserve populations.

Rough popcornflower is conservation reliant, and when natural disturbance events are lacking, active management (e.g., manual weeding, herbicide application, mowing, and strategic grazing) is necessary to control competing vegetation and maintain early seral habitats, which can help rough popcornflower populations persist into the future (USFWS 2010, p. 27). Nonnative invasive plants appear to be less of a concern on private lands due to livestock grazing (USFWS 2020, p. 2). Strategic grazing by livestock, in terms of seasonal grazing periods and intensity, when closely monitored, can benefit rough popcornflower populations by reducing plant competition and creating open ground that facilitates seed germination and enables population expansion (USFWS 2021, p. 24).

While competition with nonnative invasive plants remains an ongoing threat to rough popcornflower, this threat can be successfully managed through continued investments in the adaptive management practices that have resulted in flourishing populations across the species' range (USFWS 2021, appendices 3 and 4).

Fire

At the time of listing, fire was considered a natural event key to the formation and maintenance of rough

popcornflower habitat (65 FR 3866 at 3867; January 25, 2000). In late September 2003, an accidental fire burned across the Soggy Bottoms rough popcornflower population at moderate intensity. The year following the burn, staff noted that individual rough popcornflower plants were much larger and robust, and the population had increased. The population dropped significantly during the following 5 years, although that was considered likely due to changed site hydrology. While the effects of fire in rough popcornflower habitat restoration are still unknown (USFWS 2010, p. 27), data collected after the 2003 fire suggest that low- to moderate-intensity fire can have at least short-term beneficial effects to the species.

Climate Change

The likely impacts of climate change on rough popcornflower's ecological processes are closely connected to the availability of water. Due to their shallow and ephemeral nature, wet swales in southwestern Oregon are particularly sensitive to increases in evaporation or reductions in rainfall. Strong climate variability is likely to persist in the Pacific Northwest, owing in part to the annual and decadal climate variability associated with the Pacific Ocean (May et al. 2018, p. 1,039). Models project periods of prolonged drought interspersed with years featuring heavy rainfall driven by powerful atmospheric rivers and strong El Niño winters (May et al. 2018, p. 1,039). Even modest temperature increases could result in more water runoff in winter and less in spring and summer, more winter flooding, and drier summer soils, thereby altering the seasonality and duration of wetland hydration (Fleishman 2025, pp. 63–64, 75). Reduced soil moisture due to evaporation and transpiration may exacerbate drought effects (Fleishman 2025, pp. 74–75). Drought-mediated decreases in water depth and inundation periods could increase the frequency at which wetlands dry before rough popcornflower has completed its flowering and fruiting stages. However, Southern Oregon, along with other areas in the western United States, has been experiencing a prolonged drought for several years (Fleishman 2023, p. 52) and rough popcornflower continued to demonstrate stable or increasing population trends. Climate change could also cause temperatures to exceed those suitable for growth of the species (USFWS 2010, p. 28).

The impact of climate change on rough popcornflower will likely vary depending on site-specific conditions

and annual precipitation variation. Rough popcornflower individuals are naturally adaptive to fall and winter inundation and depend on soil moisture until their seed has matured. An earlier warming trend may result in a limited seed set because the soil will dry out quicker and may benefit nonnative plants. Habitat management using herbicides and prescribed burning would likely increase with an increase in nonnative plants. However, if climate change in Oregon results in wetter winters and springs as predicted (Fleishman 2023, pp. 11–12), then the additional precipitation may lengthen seed set and favor rough popcornflower survival over competitors unable to adapt to saturated soils.

Conservation Efforts and Regulatory Mechanisms

Rough popcornflower is a conservation-reliant species, meaning that the species will require continued conservation efforts to remain viable (USFWS 2010, p. 30). Since listing the species in 2000, we have coordinated with local, State, and Federal stakeholders on conservation actions for the species, some of which we supported with funding.

Mowing in rough popcornflower habitat to control competing nonnative invasive plant species, and subsequent outplanting of rough popcornflower, has occurred regularly at several sites. Other conservation actions include fencing to protect populations from anthropogenic disturbance; population reintroductions and augmentations; and stakeholder workshops in which species' needs, recovery targets, and habitat conservation were discussed to raise landowner awareness. Agencies and property owners who have made commitments to protect or manage rough popcornflower and its habitat are the City of Sutherlin, Oregon; Douglas Soil and Water Conservation District, Oregon; ODA, Native Plant Conservation Program; the BLM; the Native Plant Society of Oregon, Umpqua Valley Chapter; and TNC.

In the 2007 City of Sutherlin Conservation Agreement and Conservation Plan (ODA 2007, entire), the signatories (the Service, the City of Sutherlin, ODA, the Umpqua Valley Chapter of the Native Plant Society of Oregon, the Sutherlin Stampede Association, and the Sutherlin Blackberry Festival, Inc.) agreed to the following measures:

- Prohibit activities that would disturb or destroy existing populations of rough popcornflower, or their habitat, on land owned or managed by the City of Sutherlin;

- Contract or coordinate appropriately timed surveys for new populations of rough popcornflower on city-owned or -managed land prior to initiating ground-disturbing projects;

- Contact the ODA Native Plant Conservation Program if a new population of rough popcornflower is found during a pre-project survey and cooperate with the ODA Native Plant Conservation Program to develop conservation-based alternatives to proposed projects that would impact rough popcornflower populations or their habitat; and

- Cooperate with the ODA Native Plant Conservation Program to implement a management plan promoting the conservation of the populations of rough popcornflower at the Red Rock Park (formerly Timber Days Grounds).

Since 2007, implementation of this Agreement has provided fencing to protect rough popcornflower populations, reduced competitive and nonnative invasive species, and increased population numbers. This agreement was updated in 2023. In the updated agreement, entitled “Conservation Agreement for Rough Popcornflower,” the City of Sutherlin agreed to continue to protect the plant and to extend the protection to Ford’s Pond, a property acquired after the original signing in 2007. The 2023 agreement also allows reintroduction of the species at Ford’s Pond (USFWS 2023c, p. 8).

The biological opinion on the North Bank Habitat Management Area issued by the Service in 2001 evaluated the effects of proposed management actions and conservation measures conducted by the BLM for three rough popcornflower populations occurring in the management area (USFWS 2001, p. 15). Proposed management actions included manual and mechanical removal of competitive vegetation and the use of integrated pest management techniques to control noxious weeds. Proposed conservation measures included retaining existing populations and introducing additional populations into suitable habitat. To date, the BLM has consistently implemented these management actions and conservation measures, and the BLM is expected to continue to maintain and enhance habitat for this species into the future.

The ODOT has established the Special Management Areas program to protect State-listed and federally listed endangered and threatened plant species identified on ODOT rights-of-way (ODOT 2017, p. 4). Special Management Areas are marked with signs that instruct ODOT maintenance

crews on allowable activities. ODOT entered a statewide habitat conservation plan (HCP) with the Service in 2017 (USFWS 2017, entire). Under the HCP, the Special Management Areas identify the known populations of rare plants along ODOT rights-of-way that they have agreed to avoid impacting. In most cases, only periodic maintenance is necessary in Special Management Areas, and site-specific restrictions have been developed to protect listed species.

All federally listed plants in Oregon are also protected by State law under the Oregon Endangered Species Act (ORS 564.010-.994), and their protection and conservation are administered by the ODA. The Oregon Endangered Species Act protects many other plant species in addition to those protected under the Federal Endangered Species Act. All State and municipal agencies, including City of Sutherlin, Douglas County, Douglas Soil and Water Conservation Service, and ODOT must consult with ODA when a proposed action on land owned or leased by the State, or for which the State holds a recorded easement, has the potential to appreciably reduce the likelihood of the survival or recovery of any listed plant species.

While we do not have a specific agreement in place with TNC that guarantees a commitment to future management, they have actively managed the rough popcornflower habitat at their property (the TNC/ODOT Popcornswale Preserve) since 1995 by monitoring populations, controlling nonnative invasive species, and managing habitat by reducing tree cover, mowing, and augmenting the population with seeding. TNC has continued to manage the TNC/ODOT Popcornswale Preserve multiple times a year since 1995 and is expected to continue these efforts.

These and other conservation efforts by us and our partners, including surveys, have helped increase the number of protected sites and improve the number of plants in the overall population. Currently, 11 of the 18 known populations throughout the species' range are under Federal, State, municipal, or land trust protections offering indefinite protection from habitat conversion to other uses. The remaining 7 populations (approximately 47 percent of the total number of individuals) do not have formal commitments for the long-term beneficial management of rough popcornflower but are benefitting from voluntary management practices employed by land management agencies and private landowners.

Cumulative Effects

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and

replaces a standalone cumulative-effects analysis.

*Current Condition**Resiliency*

Resiliency, the ability of populations to withstand stochastic events, is commonly determined as a function of metrics such as population size, growth rate, or habitat quality and quantity. We evaluated the current resiliency of rough popcornflower populations based on the population size, habitat quantity, connectivity, habitat quality, management frequency, reproductive success, and the degree of protection afforded to each population (see tables 2 through 8, below). Populations with

over 5,000 mature plants were determined to be in high condition based on the downlisting criteria outlined in the species' recovery plan. Populations of over 1,000 plants were considered to be in medium condition, and those with under 200 plants were considered to be in low condition. We then assigned numerical values to each of the condition category rankings and added them together to arrive at an overall resiliency score of each rough popcornflower population, which we then parsed into high, moderate, and low categories (see table 9, below). A complete description of our analytical approach to current condition is available in the SSA report (USFWS 2021, pp. 34–37).

TABLE 2—POPULATION SIZE RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Population size (number of plants)	Number of populations in 2021	Number of populations in 2024
High ($\geq 5,000$)	13	12
Medium (1,000–4,999)	2	1
Low (1–999)	3	5

TABLE 3—HABITAT QUANTITY RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Habitat quantity (amount)	Number of populations in 2021	Number of populations in 2024
High (>500 m ² /5,382 ft ²)	7	8
Medium (76–500 m ² /818–5,382 ft ²)	3	6
Low (<76 m ² /818 ft ²)	8	4

TABLE 4—CONNECTIVITY RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Connectivity (proximity to next population) *	Number of populations in 2021	Number of populations in 2024
High (<950 m/3,117 ft)	11	No change reported.
Medium (950–2,000 m/3,117–6,562 ft)	3	No change reported.
Low (>2000 m/6,562 ft)	4	No change reported.

* Scores are not strictly distance-based if populations are separated by barriers such as development, roads, or expanses of unsuitable habitat.

TABLE 5—HABITAT QUALITY RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Habitat quality (presence of nonnative invasive species)	Number of populations in 2021	Number of populations in 2024
High (no invasive species)	5	2
Medium (1–2 invasive species)	8	11
Low (dominated by invasive species)	5	5

TABLE 6—MANAGEMENT FREQUENCY RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Management frequency (interval)	Number of populations in 2021	Number of populations in 2024
High (continuous, annual, or biennial)	10	No change reported.
Medium (3–5 years)	5	No change reported.

TABLE 6—MANAGEMENT FREQUENCY RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS—Continued

Management frequency (interval)	Number of populations in 2021	Number of populations in 2024
Low (>5 years)	3	No change reported.

TABLE 7—REPRODUCTIVE SUCCESS RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Reproductive success (measures)	Number of populations in 2021	Number of populations in 2024
High (>5,000 plants and 100 percent seed production)	15	11
Medium (3,000–5,000 plants, 75–99 percent seed production)	1	2
Low (<3,000 plants, 0–74 percent seed production)	2	5

TABLE 8—PROTECTED STATUS RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Individuals protected or managed status	Number of populations in 2021	Number of populations in 2024
Yes	11	No change reported.
No	7	No change reported.

TABLE 9—OVERALL RESILIENCY RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Overall resiliency	Number of populations in 2021	Number of populations in 2024
High	11	12
Moderate	3	1
Low	4	5

As shown above in table 9, at the time of the SSA report in 2021, 11 (61 percent) of the 18 rough popcornflower populations scored high for resiliency, 3 (17 percent) scored moderate, and 4 (22 percent) scored low. Changes in condition category rankings as a result of surveys conducted from 2021–2024 (USFWS 2022, entire; USFWS 2023a, entire; USFWS 2025, entire) resulted in overall resiliency rankings of 12 (67 percent) high, 1 (5 percent) moderate, and 5 (28 percent) low. Some changes in condition category rankings from 2021 to 2024 reflect variability in survey timing and optimal blooming for the rough popcornflower populations, which may be asynchronous. For example, some populations may reach optimal blooming in late May one year and mid-June in others, and surveys may not capture all populations at their peak. Additionally, one population (Red Rock) underwent some mowing and clearing that impacted the growing area at that site. Nevertheless, the overall condition results demonstrate relatively high resiliency across the range of the rough popcornflower.

Redundancy

Redundancy is a species' ability to withstand catastrophic events and is a function of the number and resilience of populations, as well as their distribution and connectivity. At the time of listing, there were eight known rough popcornflower populations. Currently, there are 18 known populations. Some of this increase is due to newly discovered populations; however, since the time of listing, habitat restoration, reintroductions, and habitat protection have collectively improved the status of the species. Of the 18 known populations, 12 populations score high for overall resiliency and are distributed across the range of the species, with 6 in the Sutherlin Creek recovery unit, 2 in the Yoncalla Creek recovery unit, 1 in the Calapooya recovery unit, and 3 in the Umpqua Management Area. The six populations with moderate or low resiliency contribute to the species' redundancy to a lesser degree and are distributed across the Calapooya Creek and Sutherlin Creek recovery units. The distribution of 12 populations with high resiliency across all 3 recovery units and the management area demonstrates

the species' ability to withstand catastrophic events.

Representation

Representation refers to the ability of a species to adapt to change, and is assessed using geographic, genetic, ecological, and niche diversity data. Ecological diversity and genetic variation based on habitat differences, differences in annual and biennial life histories, and differences in growth forms may be inferred from the rough popcornflower's distribution across different sub-watersheds. Multiple populations with high resiliency throughout the species' range, along with populations of lesser resiliency, facilitate the preservation of the genetic diversity present within each recovery unit. Although populations with fewer than 5,000 plants may have lower genetic variation, rough popcornflower's wide variety of possible pollinators (Amsberry and Meinke 2001, pp. 12–13) assists in gene transfer and could boost the genetic variation of these populations.

Natural and reintroduced rough popcornflower populations are

currently distributed in multiple subwatersheds across the species' historical range, and plants demonstrate diversity within and between populations, including different growth forms and flowering times. Additionally, rough popcornflower seeds do not all germinate every year, and a portion of the seed bank likely remains in the ground. The presence of a long-term seed bank allows rough popcornflower to persist through periods of adverse environmental conditions. In combination, these factors indicate that the species has the capacity to adapt to a variety of environmental conditions.

Future Condition

To assess the future viability of rough popcornflower, we considered the factors that will influence the species within the foreseeable future. We define the foreseeable future as 30 years, as we consider this a reasonable timeframe to make reliable predictions about the threats to this species and its response to those threats due to this plant's reproductive strategy as an annual or short-lived perennial. Our viability assessment is characterized in terms of the resiliency, redundancy, and representation of the species as projected under various future conditions that capture the range of plausible outcomes (Shaffer and Stein 2000 pp. 306–310; Wolf et al. 2015, entire; Smith et al. 2018, pp. 304, 306–307). We projected the viability of rough popcornflower from 2020 to 2050 under three plausible future scenarios based on potential trends with conservation partners, climate patterns, and population demographics. Scenario A represented improvements over current conditions. Scenario B represented the most likely conditions if current trends continue. Scenario C represented conditions that are worse than current conditions.

Scenario A, the upper plausible limit, assumes continued conservation support for the rough popcornflower including from private landowners throughout the species' range, as well as additional funding for outplanting and nonnative invasive vegetation control. Scenario B is the most likely scenario

for the rough popcornflower based on current Federal and State agency commitments, outplanting successes, the current ability to place conservation agreements, and species' population demographic trends. We discuss scenario B further below. Scenario C assumes diminished habitat conditions and a decreased level of management actions (e.g., mowing, manual or chemical control of nonnative invasive herbaceous plants, prescribed burning) from current levels, falling short of what is needed and resulting in the reduction of the species' resiliency, redundancy, and representation over the next 30 years. For further details on all three scenarios, see the SSA report (USFWS 2021, pp. 41–47).

We determined that rough popcornflower is expected to continue to be influenced by the factors that have historically influenced and are currently influencing the species, at rates most closely associated with scenario B. Therefore, scenario B represents the most likely conditions if current trends continue (USFWS 2021, pp. 44–45). In scenario B, we made several assumptions about ongoing conservation support within the foreseeable future. Several conservation partners (government agencies, nonprofit conservation organizations, academic institutions, and private landowners) have made significant contributions to recovery efforts for rough popcornflower. We assume that these partners will continue to collaborate and contribute conservation resources to rough popcornflower and its habitat based on current regulations and agency commitments, outplanting successes, and our ability to obtain conservation agreements. Continued outreach efforts are likely to support awareness of the species among private landowners and the public and to generate support for conservation. We also assume that development projects will continue to be evaluated by the Service, the Oregon Department of State Lands, and the ODA, and be modified to minimize or mitigate impacts to rough popcornflower and its habitats.

Under a continually increasing greenhouse gas emission scenario, Oregon's annual average temperature is

projected to increase by 2.8 degrees Celsius (°C)) (5 degrees Fahrenheit (°F)) by 2074 (Fleishman 2025, p. 7). In this emission scenario, the amount of annual precipitation is projected to be highly uncertain. Summers are expected to warm more than the annual average and are likely to become drier. Extreme heat and precipitation events are expected to become more frequent (Dalton et al. 2017, p. 8). The effects of climate change on rough popcornflower populations are expected to be relatively moderate. Most rough popcornflower plants are expected to adjust to warmer temperatures by dispersal of seeds to moister habitats (via ungulates, other mammals, or birds), flowering earlier, and shortening their flowering period (USFWS 2021, p. 42). Climate change may limit rough popcornflower's growing season and habitat as well as moisture availability, though the species would likely continue to maintain viability within the three recovery units and the introduced populations at the Umpqua Management Area (USFWS 2021, p. 45). Given differences in microsites and management across populations, we expect some populations may fare better than others under future conditions.

For species resiliency in Scenario B, we expect there will be a total of 20 rough popcornflower populations, increasing from the current total of 18 populations due to recovery efforts such as reintroductions. At least 10 of those populations are anticipated to be in protected areas (reserves), contain populations that meet or exceed 5,000 plants, and exhibit stable or increasing population counts in 7 out of 10 years (see table 10, below). In terms of redundancy, protected rough popcornflower populations are expected to continue to be distributed in all three recovery units. With a total of 20 populations widely distributed across the species' range, we do not anticipate a catastrophic event, such as extreme flooding, would impact all populations of rough popcornflower simultaneously. Thus, we find that the rough popcornflower will likely be able to withstand catastrophic events.

TABLE 10—FUTURE VIABILITY OF ROUGH POPCORNFLOWER UNDER A MODERATE FUTURE SCENARIO

Viability elements	Expected condition
Population Resilience	Protected populations (≥10) meet or exceed criterion of ≥5,000 individual stems and show stable or positive demographic trends. The total population number is 20. Stable or increasing population counts occur 7 out of 10 years.
Species Redundancy	Redundancy is provided by having 20 populations present across the range to withstand catastrophic events.

TABLE 10—FUTURE VIABILITY OF ROUGH POPCORNFLOWER UNDER A MODERATE FUTURE SCENARIO—Continued

Viability elements	Expected condition
Species Representation	20 populations, distributed across the range of the species, would provide genetic and ecological diversity for the species. No evidence of inbreeding depression.
Overall Viability	Moderate: The species is able to adapt to climate change, and species receives adequate monitoring to inform management needs. Species requires continued management.

For species representation, rough popcornflower populations are expected to be well distributed across all three recovery units and the Umpqua Management Area. We expect genetic diversity will likely be maintained in the foreseeable future, as future projections show at least 10 populations will likely exceed the effective population size necessary to sustain genetic diversity over time. An increase in connectivity due to larger populations will also reduce the likelihood of population isolation.

Collectively, our analysis of the resiliency, redundancy, and representation under this scenario indicates that the viability of the rough popcornflower is not likely to be significantly reduced over the next 30 years. However, some populations remain genetically isolated, and competition with nonnative invasive plants remains an ongoing threat to the species. Rough popcornflower also has the potential to be negatively impacted by climate change in the foreseeable future, primarily due to increased variability of precipitation leading to periods of prolonged drought interspersed with years of heavy rainfall.

Determination of Rough Popcornflower Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an “endangered species” as a species in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational

purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we found that the primary threats to rough popcornflower, since the time of listing, have been the destruction and/or alteration of habitat by development and hydrological changes (e.g., wetland fills, draining, construction), competition from nonnative invasive plant species, impacts due to climate change (e.g., winter flooding, drier summer soils, and decreased fruit production), and lack of regulatory mechanisms. The best available information does not indicate that overcollection (Factor B) or herbivory (Factor C) are threats to the viability of the rough popcornflower. Our current analysis also indicates that the habitat threats (Factor A) and threats from the inadequacy of regulatory mechanisms (Factor D) have decreased since the time of listing, while climate change and competitive exclusion from nonnative invasive plants (Factor E) will likely require ongoing monitoring and management.

Habitat-related threats (destruction, alteration, or both of habitat and competition from nonnative invasive plant species), identified as drivers of the rough popcornflower’s status, are still present on the landscape; however, their magnitude and scope have decreased from historical levels and have been offset by a variety of management and conservation measures by many conservation partners since the rough popcornflower was listed as an endangered species (see 65 FR 3866; January 25, 2000), and these conservation actions continue today (USFWS 2021, p. 25 and appendix 3). While there is still fluctuation in nonnative invasive plant species growth depending on factors such as changes to maintenance routines that include targeted herbicide application, mowing and clearing, improvements in habitat

management practices and extensive habitat restoration have been implemented, which have improved population resiliency and redundancy at several sites. Increased public awareness of the species has resulted in increased stewardship across lands with rough popcornflower populations and improved regulatory compliance. Greater understanding and compliance along with improvements in habitat management practices and extensive habitat restoration have helped ameliorate threats to the species, resulting in population increases and greater distribution. A majority of the rough popcornflower population sites (11 of 18) are protected by public ownership or managed to benefit the species; with these site protections and increased public knowledge of the species, compliance with regulatory mechanisms has increased significantly.

At the time of listing, rough popcornflower was known to exist in only 8 populations totaling 7,000 plants. There are currently 18 known populations totaling more than 2,000,000 plants. Although almost half (1,000,000) of the plants are within a single population, there are 17 other populations comprising more than 1,000,000 rough popcornflower plants distributed across the range of the species; 11 of these populations are considered protected or managed. Although the plants and populations are not distributed precisely as identified in downlisting criteria (USFWS 2019, pp. 4–6), the population size (both the number of plants and the physical area covered) in two of the three recovery units and the additional recovery management area exceed the target population size by unit/area. Our viability analysis determined that the species currently has high resiliency, good redundancy, and sufficient representation (USFWS 2021, pp. 32–41). Thus, after assessing the best scientific and commercial data available, we conclude that the rough popcornflower is not in danger of extinction throughout all of its range.

We therefore proceed with determining whether the rough popcornflower is likely to become

endangered within the foreseeable future throughout all of its range.

The best available information indicates that, at the species level, the most influential factors affecting rough popcornflower into the future are habitat-related threats (destruction, alteration, or both of habitat and competition from nonnative invasive plant species) (Factor A) and climate change (Factor E), which will likely cause more winter flooding, drier summer soils, and decreased fruit production. In our analysis of future viability (USFWS 2021, pp. 41–47), under the moderate (Scenario B) and better than expected (Scenario A) scenarios, we predict the species' resiliency, redundancy, and representation to be stable or increasing within the next 30 years. While a continuation of current conservation efforts as modeled under our moderate scenario is most likely, 7 of the 18 known populations (approximately 47 percent of the total number of plants) do not have formal commitments for long-term beneficial management of rough popcornflower and continued beneficial management is not assured.

Additionally, under our worse than expected scenario, we predict the species' resiliency, redundancy, and representation to diminish within the next 30 years. Although this scenario is considered the least likely to occur, diminished habitat conditions along with reduced management actions and agency commitments are plausible and would likely lead to long-term demographic declines, reductions in the number of populations, and reduced genetic diversity.

Thus, after assessing the best scientific and commercial data available, we conclude that the rough popcornflower is not in danger of extinction, but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity v. Everson*, 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the provision of the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (hereafter Final Policy; 79 FR 37578; July 1, 2014)

that provided that if the Service and National Marine Fisheries Service (together, the Services) determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered throughout a significant portion of its range.

Therefore, we proceed to evaluating whether the species is endangered throughout a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is "significant"; and (2) the species is in danger of extinction in that portion. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson*, we now consider whether the species is in danger of extinction throughout a significant portion of its range. In undertaking this analysis for rough popcornflower, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify portions of the range where the species may be endangered.

We evaluated the range of the rough popcornflower to determine if the species is in danger of extinction throughout any portion of its range. The range of a species can theoretically be divided in an infinite number of ways. We focused our analysis on portions of the species' range that may meet the Act's definition of an endangered species. For rough popcornflower, we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in other portions such that the species is in danger of extinction in that portion. We divided the range of the rough popcornflower in several ways (e.g., populations, recovery units) for the purposes of our viability analyses in the SSA report (Service 2021, entire). For the purpose of evaluating significant portion of the range, we divided the range into three recovery units (Sutherland Creek, Yoncalla Creek, and Calapooya Creek) that correspond to drainage basins within the Lower North Umpqua system and represent groups of populations which share phenotypic similarities and are potentially genetically similar to one another. This scale is appropriate for considering whether the species may be in danger of extinction in any portion of the range.

We examined the following threats: habitat loss and fragmentation, small population size, nonnative invasive plant encroachment, fire, and climate change, including cumulative effects. We considered the effects of these threats on the rough popcornflower within each of the three recovery units.

As discussed above, thanks in part to recovery efforts from multiple stakeholders, the rough popcornflower has increased to over 2,000,000 plants in 18 populations. In two of the three recovery units there are at least two populations that meet or exceed the resiliency criterion size of 5,000 individuals surpassing a patch size of 500 m² (5,382 ft²), indicating they have a high probability of persistence over the next 30 years. The remaining recovery unit has a population well over 5,000 individuals that does not yet meet the area requirement but is also expected to persist.

The rough popcornflower has a current distribution that is analogous to its historical range in all three recovery units (USFWS 2021, p. 39). Near-term threats are similar for all populations distributed throughout the recovery units. The rough popcornflower is a conservation reliant species, and in each recovery unit populations receive some form of habitat management in the form of mowing, grazing, prescribed burning, or nonnative invasive plant control to address the near-term threats (USFWS 2021, p. 38).

Given the distribution of resilient populations across recovery units, the uniformity of the near-term threats to the species within each unit and ongoing conservation measures addressing those threats, there is no one recovery unit that has a different status from its range-wide status. In summary, we found no portion of the rough popcornflower range where threats are impacting individuals differently from how they are affecting the species elsewhere in its range, or where the biological condition of the species differs from its condition elsewhere in its range such that the status of the species in that portion does not differ from any other portion of the species' range.

Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction throughout a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors v. U.S. Department of the Interior*, 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018)

and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy, including the definition of “significant” that those court decisions held were invalid.

Determination of Status

Based on the best scientific and commercial data available, we determine that the rough popcornflower no longer meets the Act’s definition of an endangered species but does meet the Act’s definition of a threatened species, because it is likely to become in danger of extinction within the foreseeable future throughout all of its range. Therefore, we are reclassifying the rough popcornflower from an endangered species to a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Once we have downlisted the rough popcornflower, conservation measures continue to be provided to species listed as threatened species under the Act including recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. As discussed above, we developed a strategy in our rough popcornflower recovery plan (USFWS 2003b and 2019a) to downlist the species by conserving populations throughout its range by augmenting existing populations, seeding, and through the use of formal habitat restoration agreements. In addition, section 7(a)(1) and 7(a)(2) responsibilities of Federal agencies remain.

Section 7 of the Act is titled, “Interagency Cooperation,” and it mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in

the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the federal action is likely to result in jeopardy or adverse modification.

Examples of discretionary actions for the rough popcornflower that may be subject to consultation procedures under section 7 are management of Federal lands administered by the BLM, as well as actions that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*)) or actions funded by Federal agencies, such as the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency. Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on Section 7 consultation and conference requirements.

Please let us know if you are interested in participating in recovery efforts for the rough popcornflower. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery implementation purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 9 of the Act provides a specific list of prohibitions for endangered species but does not provide these same prohibitions for threatened species. Instead, pursuant to section 4(d) of the Act, for any species listed as a threatened species, the Secretary must issue protective regulations that are “necessary and advisable to provide for the conservation of such species” (these are referred to as “4(d) rules”). Additional measures for the rough popcornflower are described below (see Protective Regulations Under Section 4(d) of the Act, below).

We may issue permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Service regulations governing permits for threatened plants are codified at 50 CFR 17.72, and general Service permitting regulations are codified at 50 CFR part 13. With regard to threatened plants, a permit may be issued for scientific purposes or for enhancing the propagation or survival of the species. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is the policy of the Services, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9 of the Act. To the extent possible, activities that will be considered likely to result in violation will also be identified in as specific a manner as possible. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the species. Although most of the prohibitions in section 9 of the Act apply to endangered species, sections 9(a)(1)(G) and 9(a)(2)(E) of the Act prohibit the violation of any regulation under section 4(d) pertaining to any threatened species of fish or wildlife, or threatened species of plant, respectively. Section 4(d) of the Act directs the Secretary to promulgate protective regulations that are necessary and advisable for the conservation of threatened species. As a result, when we list a species as a threatened species, to the extent possible, we identify activities that will or will not be considered likely to result in violation of the protective regulations under section 4(d) for that species.

At this time, we are unable to identify specific activities that will or will not be considered likely to result in violation of section 9 of the Act beyond what is already clear from the descriptions of prohibitions and exceptions established by protective regulation under section 4(d) of the Act.

Questions regarding whether specific activities would constitute violation of section 9 of the Act should be directed to the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Protective Regulations Under Section 4(d) of the Act

Background

As discussed in Available Conservation Measures, section 9 of the

Act provides a specific list of prohibitions for endangered species but does not provide these same prohibitions for threatened species. Instead, pursuant to section 4(d) of the Act, for any species listed as a threatened species, the Secretary must issue protective regulations that are “necessary and advisable to provide for the conservation of such species” (these are referred to as “4(d) rules”). Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as they deem necessary and advisable to provide for the conservation of species listed as threatened species. Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. With these two sentences in section 4(d), Congress delegated broad authority to the Secretary to determine what protections would be necessary and advisable to provide for the conservation of threatened species, and even broader authority to put in place any of the section 9 prohibitions, for a given species.

Courts have recognized the extent of the Secretary’s discretion under section 4(d) to develop regulations that are appropriate for the conservation of threatened species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section 4(d) that included limited prohibitions against takings (see *Alsea Valley Alliance v. Lautenbacher*, 2007 WL 2344927 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, “once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [them] with regard to the permitted activities for those species. [They] may, for example, permit taking, but not importation of such species, or [they] may choose to forbid both taking and importation but allow the transportation of such species” (H.R.

Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Under our section 4(d) authorities, we put in place protections intended to both prevent a threatened species from becoming an endangered species and to promote its recovery. Section 4(d) rules explain what is prohibited for a threatened species, thus making the activity unlawful without a permit or authorization under the Act for the prohibited activity unless otherwise excepted in the 4(d) rule and may also include affirmative requirements. Section 4(d) rules are therefore directly related to what actions may require permits in the future. As discussed in Available Conservation Measures, permits may be issued for purposes described in our threatened plant species permitting regulations at 50 CFR 17.72, including for recovery actions, conservation benefit agreements (previously referred to as candidate conservation agreements with assurances and safe harbor agreements), or habitat conservation plans. We may also except otherwise prohibited activities through a 4(d) rule itself, in which case threatened species permits would not be required for those activities. For example, there are two categories of exceptions that we frequently include in 4(d) rules, and these are for otherwise prohibited acts or forms or amounts of “take” that are: (1) unavoidable while conducting beneficial actions for the species, or (2) considered inconsequential (de minimis) to the conservation of the species. For otherwise prohibited take activities that require section 10 permits, programmatic approaches—such as general conservation plans and template habitat conservation plans—may be available as another way for project proponents to comply with take prohibitions or requirements applicable to one or more species while reducing the time that would otherwise be associated with developing individual permit applications. In addition, the Service and project proponents can reduce the need for such permits by developing standardized conservation measures that avoid the risk of “take.”

The provisions of this species’ protective regulations under section 4(d) of the Act are one of many tools that we will use to promote the conservation of the rough popcornflower. Nothing in 4(d) rules changes in any way the recovery planning provisions of section 4(f) of the Act or the consultation requirements under section 7 of the Act. As mentioned previously in Available Conservation Measures, Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any

action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. These requirements are the same for a threatened species regardless of what is included in a 4(d) rule.

Section 4(d) rules do not alter section 7 obligations, including the criteria for informal or formal consultations or the analytical process used for biological opinions or concurrence letters. Section 7 consultation is required for Federal actions that “may affect” a listed species regardless of whether take caused by the activity is prohibited or excepted by a 4(d) rule. For example, as with an endangered species, if a Federal agency determines that an action is “not likely to adversely affect” a threatened species, this will require the Service’s written concurrence (50 CFR 402.13(c)). Similarly, if a Federal agency determines that an action is “likely to adversely affect” a threatened species, the action will require formal consultation with the Service and the formulation of a biological opinion (50 CFR 402.14(a)). Because consultation obligations and processes are unaffected by 4(d) rules, we may consider developing tools to streamline future intra-Service and inter-Agency consultations for actions that result in forms of take that are not prohibited by the 4(d) rule (but that still require consultation). These tools may include consultation guidance, online consultation processes via the Service’s digital project planning tool (Information for Planning and Consultation; <https://ipac.ecosphere.fws.gov/>), template language for biological opinions, or programmatic consultations.

Provisions of the 4(d) Rule

Exercising the Secretary’s authority under section 4(d) of the Act, we have developed a rule that is designed to address the rough popcornflower’s conservation needs. As discussed previously in Summary of Biological Status and Threats, we have concluded that rough popcornflower is likely to become in danger of extinction within the foreseeable future primarily due to habitat loss and fragmentation, nonnative invasive plant encroachment, and impacts due to climate change (e.g., winter flooding, drier summer soils, and decreased fruit production). Section 4(d) requires the Secretary to issue such regulations as they deem necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include

among those protective regulations any of the prohibitions that section 9(a)(2) of the Act prescribes for endangered species (*In re: Polar Bear Endangered Species Act Listing and 4(d) Rule Litigation*, 818 F. Supp. 2d 214, 228 (D.D.C. 2011) (citing *Sweet Home Chapter of Cmty. for a Great Or. v. Babbitt*, 1 F.3d 1, 8 (D.C. Cir. 1993), *rev'd on other grounds*, 515 U.S. 687 (1995))). Our necessary and advisable determination includes consideration of conservation and economic impacts (*Kansas Natural Resources Coalition, et al. v. USFWS, et al.* No. 23–CV–00159–DC–RCG (W.D. Tex. 2025)). We explain below why we find that the prohibitions and exceptions in this final rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of rough popcornflower.

The protective regulations for rough popcornflower incorporate prohibitions from section 9(a)(2) to address the threats to the species. We include the following prohibitions of section 9(a)(2) of the Act, and implementing regulations codified at 50 CFR 17.61, which make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following acts with regard to any endangered plant: (1) import into, or export from, the United States; (2) remove and reduce to possession from areas under Federal jurisdiction; maliciously damage or destroy on any such area; or remove, cut, dig up, or damage or destroy on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law; (3) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity; or (4) sell or offer for sale in interstate or foreign commerce. These protective regulations include these prohibitions for the rough popcornflower because the rough popcornflower is likely to become endangered within the foreseeable future and putting these prohibitions in place will help to prevent declines and preserve the species' remaining populations.

As discussed above in Summary of Biological Status and Threats, habitat loss and fragmentation, nonnative invasive plant encroachment, and impacts due to climate change (*e.g.*, winter flooding, drier summer soils, and decreased fruit production), are affecting the status of the rough popcornflower. Almost 63,000 rough

popcornflower plants are known to occur on lands owned and managed by the BLM. Regulating activities on lands under Federal jurisdiction (*e.g.*, lands managed by BLM) and on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law through our application of 50 CFR 17.61(c)(1) would help reduce the severity of the threat of habitat loss and fragmentation. As discussed above, all federally listed plants in Oregon are also protected by State law under the Oregon Endangered Species Act (ORS 564.010–.994), and their protection and conservation are administered by the ODA. All State and municipal agencies, including City of Sutherlin, Douglas County, Douglas Soil and Water Conservation District, and ODOT must consult with ODA when a proposed action on land owned or leased by the State, or for which the State holds a recorded easement, has the potential to appreciably reduce the likelihood of the survival or recovery of any listed plant species. The 4(d) rule makes any known violation of these laws when removing, cutting, digging up, or damaging or destroying the species a violation of the Act.

In addition, we are regulating import, export, and intrastate or foreign commerce of rough popcornflower (50 CFR 17.61 (b), (d), and (e)). While collection and associated commerce of the species is not known to pose a threat to the species, regulating these activities will reduce the potential for this becoming a threat in the future. Collection of the species for ornamental purposes could exacerbate the ongoing threat to the species due to its limited range and small population size. These activities are currently regulated for rough popcornflower, and permits are currently available for these otherwise prohibited activities according to section 10 of the Act and regulations for endangered plants at 50 CFR 17.62. Should anyone wish to engage in these activities going forward, the permitting requirements at 50 CFR 17.72 are less than those currently required and we therefore anticipate reduced regulatory costs associated with these prohibitions.

The 4(d) rule will also provide for the conservation of the species by allowing exceptions that are intended to incentivize conservation actions or actions that are not expected to rise to the level that would have a negative impact (*i.e.*, would have only de minimis impacts) on the species' conservation.

Exceptions to the prohibitions include those set forth in 50 CFR 17.71(b). To further the conservation of the species,

any employee or agent of the Service, any other Federal land management agency, federally recognized Tribe, or a State conservation agency, who is designated by their agency or Tribe for such purposes, may, when acting in the course of official duties, remove and reduce to possession threatened plants from areas under Federal jurisdiction without a permit if such action is necessary to: (i) Care for a damaged or diseased specimen; (ii) dispose of a dead specimen; or (iii) salvage a dead specimen that may be useful for scientific study. Any removal and reduction to possession must be reported in writing to the Office of Law Enforcement, via contact methods listed at <https://www.fws.gov>, within 5 calendar days. The specimen may only be retained, disposed of, or salvaged under directions from the Office of Law Enforcement.

We recognize the special and unique relationship that we have with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we must cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by their agency for such purposes, will be able to conduct activities designed to conserve rough popcornflower that may result in otherwise prohibited activities without additional authorization.

In addition, any employee or agent of the Service, who is designated by their agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction rough popcornflower plants.

We recognize the beneficial and educational aspects of activities with seeds of cultivated plants, which generally enhance the propagation of the species and, therefore, would satisfy permit requirements under the Act. We intend to monitor the interstate and foreign commerce and import and export of these specimens in a manner that will not inhibit such activities,

providing the activities do not represent a threat to the survival of the species in the wild. In this regard, seeds of cultivated specimens would not be subject to the prohibitions above, provided that a statement that the seeds are of “cultivated origin” accompanies the seeds or their container (e.g., the seeds could be moved across State lines for purposes of seed banking or use for outplanting without additional regulations).

Finally, we may under certain circumstances issue permits to carry out one or more otherwise-prohibited activities, including those described above. The regulations that govern permits for threatened plants state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. A permit may be issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for botanical or horticultural exhibition, for educational purposes, or for other purposes consistent with the purposes and policy of the Act (50 CFR 17.72). As mentioned above, the permitting requirements for threatened species are less than those for endangered species. Additional statutory exemptions from the prohibitions are found in sections 9 and 10 of the Act.

The 4(d) rule provides for the conservation of rough popcornflower because it will regulate activities that pose a threat to the species or that may become a threat in the future. This 4(d) rule provides increased flexibilities in management for rough popcornflower through additional exceptions at 50 CFR 17.71(b) instead of current exceptions at 50 CFR 17.61(c)(2–4). The 4(d) rule also provides for reduced permitting requirements for otherwise prohibited activities through permitting regulations at 50 CFR 17.72 instead of requirements under section 10(c) of the Act and regulations at 50 CFR 17.62 (current permitting as an endangered species). Please see our November 25, 2025 “Consideration of Economic Impacts for the Proposed 4(d) Rule for the Rough Popcornflower” on <https://www.regulations.gov> for our consideration of economic impacts. The 4(d) rule’s increased flexibilities and reduced permitting requirements result in an overall reduction in any potential economic impacts due to these reduced regulatory requirements. Where there is a Federal nexus, the 4(d) rule does not change any obligations under section 7 of the Act. Therefore, after considering the conservation needs of the species and the economic impacts of the 4(d) rule, we have determined that the 4(d)

rule is necessary and advisable to provide for the conservation of the species.

Required Determinations

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; title II of Public Law 104–121, March 29, 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

While we do not conduct RFA analyses on our classification determinations under the Act, in accordance with recent caselaw (*Kansas Natural Resources Coalition, et al. v. USFWS, et al.* No. 23–CV–00159–DC–RCG (W.D. Tex. 2025)) we comply with RFA through consideration of conservation and economic impacts when promulgating 4(d) rules.

During the development of this final rule, we reviewed and evaluated all information submitted during the comment period on the proposed rule (89 FR 99811; December 11, 2024) that may pertain to our consideration of the probable impacts of the 4(d) rule. As discussed above, there are no new regulatory requirements due to the 4(d) rule. Prior to the effective date of this final rule, the rough popcornflower was an endangered species and all section 9(a)(2) prohibitions applied with limited exceptions. This final 4(d) rule provides increased flexibilities in management and reduced permitting requirements for the rough popcornflower. Please see our November 25, 2025 “Consideration of Economic Impacts for the 4(d) Rule for the Rough Popcornflower” on <https://www.regulations.gov> for our consideration of economic impacts. We certify that this 4(d) rule will not have a significant economic impact on a substantial number of small entities,

and a regulatory flexibility analysis is not required.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations and species-specific protective regulations promulgated concurrently with a decision to list or reclassify a species as threatened. The courts have upheld this position (e.g., *Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995) (critical habitat); *Center for Biological Diversity v. U.S. Fish and Wildlife Service.*, 2005 WL 2000928 (N.D. Cal. Aug. 19, 2005) (concurrent 4(d) rule)).

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951, May 4, 1994), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), the President’s memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation; 87 FR 74479, December 5, 2022), and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally-recognized Tribes and Alaska Native Corporations on a government-to-government basis. In accordance with Secretary’s Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribes will be affected by this rule because there are no Tribal lands or interests within or adjacent to rough popcornflower habitat.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov>

and upon request from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the

Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.12, in paragraph (h), amend the List of Endangered and Threatened Plants by revising an entry for “*Plagiobothrys hirtus*” in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
* <i>Plagiobothrys hirtus</i>	* Rough popcornflower.	* Wherever found	* T	* 91 FR [INSERT Federal Register PAGE WHERE THE DOCUMENT BEGINS], [5/19/2026; 50 CFR 17.73(k) ^{4d} .
*	*	*	*	*

■ 3. Amend § 17.73 by adding paragraph (k) to read as follows:

* * * * *

§ 17.73 Species-specific rules—flowering plants

* * * * *

(k) Threatened flowering plants—

(l) The prohibitions and exceptions in this paragraph (k) apply to the following species:

(i) *Plagiobothrys hirtus* (rough popcornflower)

(ii) Reserved.

(2) *Prohibitions.* The following prohibitions that apply to endangered plants also apply to the species identified under paragraph (k)(l). Except as provided under paragraph (k)(3) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.61(b) for endangered plants.

(ii) Remove and reduce to possession from areas under Federal jurisdiction, maliciously damage or destroy the species on any such area; or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law, as set forth at § 17.61(c)(1) for endangered plants.

(iii) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.61(d) for endangered plants.

(iv) Sale or offer for sale, as set forth at § 17.61(e) for endangered plants.

(3) *Exceptions from prohibitions.* In regard to the species identified in paragraph (k)(1) above, you may:

(i) Conduct activities as authorized by permit under § 17.72.

(ii) Remove and reduce to possession from areas under Federal jurisdiction, as set forth at § 17.71(b).

(iii) Engage in any act prohibited under paragraph (k)(2) of this section with seeds of cultivated specimens, provided that a statement that the seeds are of “cultivated origin” accompanies the seeds or their container.

* * * * *

Brian R. Nesvik,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2026–10045 Filed 5–18–26; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 231101–0256; RTID 0648–XF665]

Fisheries of the South Atlantic; 2026 Recreational Fishing Season Announcement for Blueline Tilefish in the South Atlantic

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

ACTION: Temporary rule; recreational fishing season.

SUMMARY: NMFS announces the 2026 recreational fishing season for blueline tilefish in South Atlantic Federal waters. Announcing the length of the recreational fishing season is the accountability measure (AM) for the recreational sector. For the 2026 fishing year, NMFS estimates that recreational landings of blueline tilefish will not reach the recreational annual catch limit (ACL) and therefore not close prior to the recreational fixed seasonal closure that begins on September 1, 2026. NMFS announces the season length for the recreational harvest of blueline tilefish in the South Atlantic to allow recreational fishermen to maximize their fishing opportunities while NMFS manages recreational harvest to protect the blueline tilefish resource.

DATES: This rule is effective from May 19, 2026 through December 31, 2026.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, 727–824–5305, mary.vara@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes blueline tilefish 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 and NMFS, approved by the Secretary of Commerce, and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Regulations at 50 CFR 622.193(z)(2) specify the recreational ACL for blueline

tilefish of 116,820 pounds or 52,989 kilograms, round weight, and the recreational AM. The recreational AM states that NMFS will project the length of the recreational fishing season for blueline tilefish based on catch rates from the previous fishing year and announce the end date of the recreational fishing season based on when NMFS projects the recreational ACL will be met. The fishing year for blueline tilefish is from January 1 through December 31, annually (50 CFR 622.7). However, the recreational sector for blueline tilefish is closed annually from January 1 through April 30, and from September 1 through December 31 (50 CFR 622.183(b)(7)). Data from the NMFS Southeast Fisheries Science Center informed NMFS' 2026 season length projection that recreational landings of blueline tilefish will not reach the recreational ACL during the 2026 fishing year. In 2026, there will not be an in-season closure based on the recreational AM being triggered during the open fishing season and the sector will remain open from May 1 through August 30. The recreational sector will then close as scheduled on September 1, 2026, in accordance with the annual closure period of September 1 through December 31 (50 CFR 622.183(b)(7)).

During the recreational closure, the bag and possession limits for blueline tilefish in or from South Atlantic Federal waters are zero. The next recreational fishing season for blueline tilefish begins on May 1, 2027.

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

Dated: May 15, 2026.

Kelly Denit,

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

[FR Doc. 2026–10042 Filed 5–18–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 260514–0235]

RIN 0648–BO06

Fisheries Off West Coast States; West Coast Salmon Fisheries; 2026 Specifications and Management Measures

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

ACTION: Final rule.

SUMMARY: Through this final rule, NMFS establishes fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for the season beginning May 16, 2026, until the effective date of the 2027 management measures which we expect to be May 16, 2027 (the 2026 ocean salmon fishing season), under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The fishery management measures include fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, harvest guidelines, possession and landing restrictions, and minimum lengths for salmon taken in the U.S. Exclusive Economic Zone (EEZ) off Washington, Oregon, and California. These measures are intended to prevent overfishing while achieving, on a continuing basis, the optimum yield from the fishery, to provide for the exercise of federally recognized fishing rights by West Coast Indian Tribes, to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement, and to apportion the ocean harvest reasonably among non-Indian commercial and recreational fisheries.

DATES: This final rule is effective from 0001 hours Pacific Daylight Time, May 16, 2026, until the effective date of the 2027 management measures, as published in the **Federal Register**, which we expect to be 0001 hours Pacific Daylight Time, May 16, 2027.

ADDRESSES: The documents cited in this document are available on the Pacific Fishery Management Council's (Council) website (<https://www.pcouncil.org>) and the NMFS West Coast Region (WCR) website (<https://www.fisheries.noaa.gov/action/2026-ocean-salmon-specifications-and-management-measures>).

FOR FURTHER INFORMATION CONTACT: Shannon Penna at 562–980–4239, Email: Shannon.Penna@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the EEZ (3–200 nautical miles (nmi); 5.6–370.4 kilometers (km)) off the coasts of Washington, Oregon, and California are managed under the Pacific Coast Salmon Fishery Management Plan (FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for developing and promulgating preseason specifications and management measures and making inseason adjustments to the management measures within limits set by the FMP by notification in the **Federal Register**.

Regulations at 50 CFR 660.408 govern the establishment of annual management measures, and regulations at 50 CFR 660.409 govern the implementation of inseason adjustments. This rule implements the management measures for the 2026 ocean salmon fishing season.

Process Used To Establish 2026 Management Measures

Ocean salmon fishery management measures are established via a collaborative process with the Council, States, Tribes, fishing industry participants, anglers, and the public. The Council announced its annual preseason management process for the 2026 ocean salmon fishing season in the **Federal Register** on December 30, 2025 (90 FR 61127). NMFS published an additional notice of opportunity to submit public comments on the 2026 ocean salmon fishery management measures in the **Federal Register** on February 17, 2026 (91 FR 7263). These notices announced the availability of key documents, the dates and locations of meetings and public hearings regarding determining the annual proposed and final modifications to ocean salmon fishery management measures, and instructions on how to comment on those measures. The agendas for the March and April Council meetings, which included the development of the salmon measures, were published in the **Federal Register** (91 FR 5926, February 10, 2026, and 91 FR 13591, March 20, 2026) and posted on the Council's website prior to the meetings.

In accordance with the FMP, the Council's Salmon Technical Team (STT) and economist prepared four reports, which were made available on the Council's website upon their completion. The first of the reports, "Review of 2025 Ocean Salmon Fisheries," was prepared in February when the first increment of scientific information necessary for crafting management measures for the 2026 ocean salmon fishing season became available. The first report summarizes biological and socio-economic data from the 2025 ocean salmon fisheries and assesses the performance of the fisheries with respect to the 2025 management objectives for salmon stocks and stock complexes, as well as provides historical information for comparison. The second report, issued March 2026, "Preseason Report I Stock Abundance Analysis and Environmental Assessment Part 1 for 2026 Ocean Salmon Fishery Regulations" (PRE I), provides the 2026 salmon stock abundance projections and analyzes

how the salmon stocks defined in the FMP and Council management goals would be affected if the 2025 management measures (the no-action alternative under the National Environmental Policy Act (NEPA)) were continued for the 2026 ocean salmon fishing season. The completion of PRE I is the initial step in developing and evaluating the full suite of preseason alternatives for the 2026 fishing season.

Following the completion of the first two reports, the Council met from March 3 to 9, 2026, to develop 2026 management alternatives for proposal to the public and consideration under NEPA. The Council proposed three alternatives for commercial and recreational fisheries management and three alternatives for treaty Indian fisheries management for analysis and public comment. Development of the alternatives considered the information in the first two Council reports as well as public comment received at that time and other available information. These alternatives consisted of various combinations of management measures designed to ensure that stocks of coho salmon and Chinook salmon meet conservation goals, to provide for ocean harvests of more abundant stocks, to provide reasonably sharing of harvest among ports and sectors, and to provide for the exercise of Indian treaty fishing rights. After the March Council meeting, the Council's STT and economist prepared a third report, "*Preseason Report II Proposed Alternatives and Environmental Assessment Part 2 for 2026 Ocean Salmon Fishery Regulations*" (PRE II), which analyzes the effects of the proposed 2026 ocean salmon fishing season management alternatives. In addition, a meeting between the U.S. and Canadian salmon managers provided additional forecast and harvest information related to southern U.S. stocks, including those that are part of the fisheries managed under the FMP.

The Council sponsored public hearings in person to receive testimony on the proposed alternatives on March 23, 2026, for Washington and California, and on March 24, 2026, for Oregon. In addition, the States of Washington, Oregon, and California sponsored meetings in various forums that also collected public testimony. The public also provided testimony at the March and April Council meetings and electronic submissions via the Council's electronic portal and <https://www.regulations.gov>.

Members of several federally recognized Tribes, including Tribes with treaty-reserved fishing rights, testified at the March and April Council

meetings. Additional tribal comments were submitted in writing. The Columbia River Treaty Tribes and the Confederated Tribes of the Colville Reservation expressed urgent concern that contemporary salmon runs have dwindled to small fractions of historic levels, failing to meet the spiritual, cultural, and subsistence needs of their people. While the tribes have invested heavily in habitat restoration, hatchery programs, and fish passage projects, they argue that they cannot bear the conservation burden alone and urged the Council to set conservative ocean fishery limits to ensure adequate upriver escapement. Beyond harvest allocations, the tribes identified systemic threats to salmon survival, including lethal river temperatures, high sedimentation, and intense predation by birds and non-native species. Furthermore, they highlighted emerging stressors such as climate change and the rapid growth of water-intensive data centers, which disrupt the electrical grid and further degrade critical aquatic environments.

The Council adopted its recommendations for submission to NMFS for the 2026 ocean salmon management measures at its April meeting. The Council's STT and economist then prepared a fourth report, "*Preseason Report III Analysis of Council-Adopted Management Measures for 2026 Ocean Salmon Fisheries*" (PRE III), which analyzes the environmental and socioeconomic effects of the Council's final recommendations (the Council's preferred alternative under NEPA). The Council transmitted the recommended management measures to NMFS on April 24, 2026, and published them on its website (<https://www.pcouncil.org>).

Under the FMP, the ocean salmon management cycle begins May 16 and continues through until the effective date of the 2027 management measures. This final rule is effective on May 16, 2026, consistent with the FMP, and governs the federally managed ocean salmon fisheries from that date until the effective date of the 2027 management measures, which we expect to be May 16, 2027. Fisheries in 2026 that were open prior to May 16, 2026, were governed by the final rule implementing the salmon fishery management measures for the 2025 ocean salmon fishing season (90 FR 20810, May 16, 2025; 90 FR 26943, June 25, 2025). Salmon fisheries that were scheduled to open before May 16, 2026, under the 2025 rule are:

- Commercial ocean salmon fisheries from the U.S./Canada border to the U.S./Mexico border;

- Recreational ocean salmon fisheries from Cape Falcon, OR, to Humbug Mountain, OR;

- Recreational ocean salmon fisheries from the Oregon/California border to the U.S./Mexico border; and

- Treaty Indian troll ocean salmon fisheries north of Cape Falcon.

Several fisheries scheduled to open between March 15, 2026, and May 15, 2026, were closed or modified through inseason action in response to updated salmon stock forecast information for 2026. Analysts included the impacts of all fisheries occurring between March 15, 2026, and May 15, 2026, in their assessment of the impacts of 2026 fisheries on individual stocks.

National Environmental Policy Act

The environmental assessment (EA) for this action comprises the documents described above (PRE I, PRE II, and PRE III), providing an analysis of environmental and socioeconomic effects under NEPA. The EA and its related Finding of No Significant Impact are posted on the NMFS WCR website (<https://www.fisheries.noaa.gov/west-coast/laws-policies/west-coast-salmon-harvest-nepa-documents>).

Resource Status

Stocks of Concern

The FMP requires that the fisheries be managed to meet escapement-based annual catch limits (ACLs), requirements to limit impacts on species listed under the Endangered Species Act (ESA), obligations of the Pacific Salmon Treaty (PST) between the United States and Canada, and other conservation and management objectives. In addition, all regulations must be consistent with other applicable laws, including Tribal treaties and other sources of law regarding Tribal fisheries. The ocean salmon fisheries managed under the FMP are mixed-stock fisheries, and NMFS and the State and Tribal managers use "weak stock" management to avoid exceeding limits for the stocks with the most constraining limits. Abundance forecasts for individual salmon stocks can vary significantly from one year to the next; therefore, the stocks that constrain the fishery in one year may differ from those that constrain the fishery in the next. For 2026, the stocks described below will constrain fisheries.

Fisheries south of Cape Falcon, Oregon, are limited in 2026 primarily by conservation concerns for Klamath River fall-run Chinook salmon (KRFC), Sacramento River fall-run Chinook salmon (SRFC), ESA-listed California Coastal (CC) Chinook salmon, and ESA-

listed Southern Oregon/Northern California Coast (SONCC) coho salmon.

Fisheries north of Cape Falcon are limited by conservation requirements for the natural spawning component of the ESA-listed lower Columbia River coho salmon (Lower Columbia Natural or LCN coho salmon) Evolutionarily Significant Unit (ESU), ESA-listed Oregon coast natural (OCN) coho salmon, and the ESA-listed lower Columbia River (LCR) natural tule Chinook salmon. Based on the most recent 3-year geometric means of spawning escapement (2022–2024), Queets River spring/summer Chinook salmon, which were designated as overfished in 2023, since 2024 has met the criteria for being classified as not overfished, rebuilding, and the stock will continue to be managed under the rebuilding plan until it is rebuilt. It was not a limiting stock in planning the 2026 ocean salmon fishing season.

The limitations imposed to protect these stocks are described below. The management measures for 2026 are designed to avoid exceeding these limitations.

KRFC (non-ESA-listed): KRFC were declared overfished in 2018. The most recent 3-year geometric mean of spawners of 34,093 (2023–2025) is above the minimum stock size threshold (MSST = 30,525); therefore, KRFC no longer meets the criteria for overfished status and is now considered not overfished-rebuilding. Fisheries will continue to be managed under the rebuilding plan adopted in 2020 consistent with the requirements of the MSA and the FMP (See 50 CFR 660.413(a)) until the stock is determined to be rebuilt.

The KRFC salmon stock has been managed under *de minimis* exploitation rates that apply when forecast escapement is below the level associated with maximum sustainable yield (S_{MSY}) since 2020. Under the rebuilding plan, which includes the harvest control rule for KRFC described in the FMP, the 2026 forecast allows only *de minimis* fishing this year, *i.e.*, a total allowable exploitation rate of 25 percent (including all ocean and river fisheries, including tribal fisheries). This limit will constrain fisheries south of Cape Falcon. The potential for critically low natural spawner abundance could be considered high based on the STT review of the factors in Section 3.3.6.1 of the Pacific Coast Salmon FMP (PFMC 2026[Pre-II]). The 2026 management measures are forecast to result in an escapement of 30,143 KRFC natural spawners, which is below the stock's MSST (30,525). A natural-area escapement of 30,143 adults would

represent the 18th lowest value over the past 48 years of data.

Environmental indicators for KRFC are consistent with low returns in 2026 and 2027. Removal of the four lower Klamath River dams has been completed, opening several hundred miles of new habitat, and restoration actions are underway. However, considerable uncertainty exists over how removal of the lower four Klamath River dams completed in 2024 might affect adult recolonization, spawning, and juvenile productivity.

SRFC (non-ESA-listed): The preliminary 2026 Sacramento Index (SI) forecast is 392,349, the highest since 2022. Application of this forecast to the SRFC harvest control rule results in a maximum allowable exploitation rate (ER) of 52 percent and a minimum hatchery and natural area escapement of 188,328 adults. However, cautious management is warranted this year given a number of factors, including the recent overfished status of the stock and relatively low returns that were below preseason expectations in recent years. SRFC was declared overfished in 2018. In 2021, NMFS declared the SRFC stock rebuilt because of increased escapements in 2019 and 2020. The adopted management measures result in a projected escapement of 211,143, which is well above the upper end of the conservation objective range of 122,000–180,000 combined hatchery and natural area adult spawners and above the Allowable Catch Limit of 188,328 spawners for the stock. Indicators for the SRFC return in 2026 are mixed, which lead the Council to design fisheries with the goal of ensuring escapement of at least 180,000 fish, the high end of the conservation objective in the FMP. On one hand, the 2026 forecast is the highest since 2022. The 2025 escapement exceeded expectations and was well above the escapement floor. The stock status is above the overfished threshold. On the other hand, escapements in the previous 5 years were projected to be above the escapement floor and generally fell well short of preseason projections even though fisheries were closed or severely constrained in 2023–2025. The pattern of low recent year escapements, combined with higher than anticipated exploitation rates, and over-forecasting remain a cause for concern for 2026. Habitat indicators for SRFC in 2026 are mixed, but jack returns to hatcheries in 2024 and 2025 were relatively strong.

Habitat indicators for the most recent brood years suggest outmigration flows were improved for SRFC, and early marine predation pressure may have been relatively low, but recent

outmigration temperatures were unfavorably warm. The Sacramento River experienced low flows and high temperatures in recent years associated with decades of frequent droughts and poor ocean conditions; these conditions have adversely affected the stock. Escapement of natural area spawners for this stock were also poor for much of the past decade, limiting the stocks' ability to take advantage when stream flows are favorable. Jack returns (immature Chinook salmon are a predictor of adult returns in the subsequent year) to hatcheries in 2024 and 2025 were stronger than in recent years suggesting stronger returns of SRFC in 2026. One note of caution is that thiamine levels in eggs from the 2024 and 2025 broods indicate high levels of deficiency that could cause upward of 25 percent egg-fry mortality in natural spawners.

SONCC coho salmon (ESA-listed threatened): The SONCC coho salmon ESU has been listed as threatened under the ESA since 1997. Conservation concerns for ESA-listed SONCC coho salmon will limit fisheries south of Cape Falcon in 2026. The SONCC coho salmon ESU consists of all naturally produced populations of coho salmon from coastal streams between Cape Blanco, OR, and Punta Gorda, CA, and limited artificial propagation programs. In April 2022, NMFS approved new harvest control rules for SONCC coho salmon that limit the total fishery (marine and freshwater) exploitation rate to 15 percent for all populations within the SONCC ESU except the Trinity River coho salmon population, which is limited to 16 percent. Coho salmon retention is not permitted in California ocean salmon fisheries. The management measures recommended by the Council for 2026 are consistent with these harvest control rules.

CC Chinook salmon (ESA-listed Threatened): The CC Chinook salmon ESU has been listed as threatened under the ESA since 1999. The ESU has been managed for a conservation objective consistent with the ESA consultation standard not to exceed a 16 percent age-4 ocean harvest rate (HR) on KRFC salmon. In 2024, following several years in which this standard was exceeded, NMFS approved a set of management measures to avoid further exceedances. 50 CFR 660.410(d). One of the measures is to apply a buffer on the consultation standard. The amount of the buffer is determined as follows: NMFS and the Council calculate the average percent error (defined as the difference between the preseason projected HR and the post-season estimated HR divided by the post-season estimated HR and

expressed as a percentage) averaged over the most recent 5 years and apply the average percent error to the consultation standard. Only positive percent error will be applied because the intent is to keep the post-season harvest rate below the conservation objective. For 2026, the percent error is 43.3 percent. Therefore the 2026 ocean salmon fisheries will be managed for a buffered pre-season age-4 KRFC harvest rate of 8.6 percent (*i.e.*, 16 percent age-4 KRFC ocean HR-(0.463*0.16 percent age-4 KRFC)) so as not to exceed the consultation standard of an age-4 KRFC HR of 16 percent. The management measures at 50 CFR 660.410(d) also require an allowable harvest level, landing and possession limits, a catch trigger, quick reporting and inseason management to ensure the fishery does not exceed the harvest rate. The 2024 biological opinion determined that authorization of the ocean salmon fishery in the EEZ through promulgation of regulations implementing the FMP, including the CC Chinook salmon conservation objective and implementation of the new management measures, would not jeopardize the CC Chinook salmon ESU.

LCR coho salmon (ESA-listed threatened): The LCR coho salmon ESU has been listed as threatened under the ESA since 2005. In 2015, NMFS conducted the most recent ESA section 7 consultation and issued a biological opinion regarding the effects of federal fisheries and fisheries in the Columbia River on LCR coho salmon. The opinion analyzed the use of a harvest matrix to manage impacts on LCR coho salmon. Management under the FMP is focused on LCN coho salmon, the natural component of the LCR coho salmon ESU. Under the matrix, the allowable harvest in a given year depends on indicators of marine survival and parental escapement that influence spawning in the current year. In 2026, federal ocean salmon fisheries and commercial and recreational salmon fisheries in state waters, including the mainstem Columbia River below Bonneville Dam, must be managed subject to a total exploitation rate limit on LCR coho salmon not to exceed 23 percent. In 2026, LCR coho salmon will constrain the salmon fisheries in the EEZ, particularly those north of Cape Falcon, such that, when combined with commercial and recreational fisheries in state marine waters and the mainstem Columbia River, the ESA requirement is met.

LCR Chinook salmon (ESA-listed threatened): The LCR Chinook salmon ESU comprises a spring component, a far-north migrating bright component,

and a tule component. The bright and tule components both have fall run timing. There are 21 separate populations within the tule component of this ESU. Unlike the spring or bright populations of the ESU, LCR tule populations are caught in large numbers in Federal fisheries off the southern U.S. West Coast, as well as fisheries to the north (Canada and Alaska) and in the Columbia River. Therefore, this component of the ESU is the one most likely to constrain Federal fisheries in the area between the U.S. Canada border and Cape Falcon. After accounting for anticipated impacts in northern fisheries and other fisheries that are outside the U.S. West Coast EEZ, these Federal fisheries are managed subject to an abundance-based management (ABM) framework that NMFS analyzed in a 2012 biological opinion. Applying the ABM framework to the 2026 preseason abundance forecast, the total LCR tule exploitation rate for all salmon fisheries is limited to a maximum of 41 percent. Fisheries will be constrained north of Cape Falcon in 2026 such that when combined with all other salmon fisheries in the ocean and the Columbia River below Bonneville Dam, the ESA requirement is met.

OCN coho salmon (ESA-listed threatened): OCN coho salmon is an aggregate coho salmon stock that largely corresponds to the Oregon coast coho salmon Evolutionarily Significant Unit (ESU) and is a component of the Oregon Production Index (OPI) area coho. OPI area coho production is dominated by hatchery coho salmon. Allowable fishery impacts on OCN coho salmon are determined annually using a matrix that considers parental escapement and OPI smolt-to-jack survival. The 2026 preseason prediction for OCN (river and lake systems combined) is 218,600 coho. Applying the harvest control matrix for 2026, the maximum allowable exploitation rate is a combined marine/freshwater exploitation rate not to exceed 30.0 percent.

Other Resource Issues

Southern Resident Killer Whale (SRKW) (ESA-listed endangered): The SRKW distinct population segment was listed under the ESA as endangered in 2005 (70 FR 69903, November 18, 2005). In 2021, NMFS approved Amendment 21 to the FMP (86 FR 51017, September 14, 2021), which establishes a Chinook salmon annual abundance management threshold below which specific measures to limit the effects of the ocean salmon fishery on Chinook salmon prey availability for SRKWs are implemented. These measures include time and area closures, a quota

limitation for the north of Cape Falcon management area, and temporal shifts in fishing. The forecast abundance compared with the Chinook salmon abundance threshold is reported annually in the above-referenced preseason reports as required by the FMP.

Because the pre-season estimate of the abundance of Chinook salmon in 2026 exceeds the threshold in the FMP, additional management measures are not required by the FMP, including amendment 21 (Preseason Report III; PFMC 2026).

ACLs (Annual Catch Limits) and Status Determination Criteria

ACLs are required for all stocks or stock complexes in the fishery that are not managed under an international agreement, listed under the ESA, or designated as hatchery stocks. An ACL is the level of annual catch of a stock or stock complex that serves as the basis for invoking accountability measures when certain conditions are met under the MSA (Section 3.3.5 of the FMP). For salmon stocks, ACLs are defined as levels of escapement, as explained further below. Under the FMP, ACLs are set for two Chinook salmon stocks, SRFC and KRFC, and one coho salmon stock, Willapa Bay natural coho salmon. The SFRC and KRFC salmon stocks are indicator stocks for the Central Valley Fall Chinook salmon complex and the SONCC Chinook salmon complex, respectively. The Far North Migrating Coastal Chinook salmon complex (FNMC) includes a group of Chinook salmon stocks that are caught primarily in fisheries north of Cape Falcon and other fisheries occurring north of the U.S./Canada border. No ACL is set for FNMC stocks because they are managed subject to provisions of the PST between the United States and Canada (the MSA provides an international exception from ACL requirements that applies to stocks or stock complexes subject to management under an international agreement, which NMFS defines by regulation “any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party” (50 CFR 600.310(h)(1)(ii)). Other Chinook salmon stocks caught in fisheries north of Cape Falcon are ESA-listed or hatchery-produced and are managed consistent with ESA consultations, hatchery goals, or the provisions of the PST. Willapa Bay natural coho salmon is the only coho salmon stock for which an ACL is set, as the other coho salmon stocks in the FMP are either ESA-listed, hatchery-produced, or managed under the PST.

ACLs for salmon stocks are escapement-based, which means they establish a number of adults that must escape the fisheries to return to the spawning grounds. ACLs are set based on the annual potential spawner abundance forecast and a fishing rate reduced to account for scientific uncertainty. In addition to ACLs, as described above, SRFC and KRFC have conservation objectives expressed in terms of escapement goals that were developed prior to the requirement for ACLs. Where the conservation objectives exceed the ACLs, the management measures are designed to achieve the conservation objectives. The surviving stock after fishery-related mortality is generally referred to as spawning escapement (S), and the proportion of the stock that succumbs to fishing-related mortality is generally referred to as the exploitation rate (F). These metrics constitute conservation objectives for FMP Stocks. In addition, F_{MSY} is the fishing mortality rate that would result in MSY , $S_{\text{acceptable biological catch (ABC)}}$ is the spawner escapement that is associated with the acceptable biological catch, and S_{OFL} is the spawning escapement associated with the overfishing limit (OFL).

For SRFC in 2025, $F_{MSY} = 0.58$. The SRFC F_{MSY} proxy of 0.58 was adopted in November 2024 following the 2024 Methodology Review. The OFL for SRFC is $S_{\text{OFL}} = 392,349 \times (1 - 0.58) = 164,787$. Because SRFC is a Tier-2 stock, $F_{\text{ABC}} = F_{MSY} \times 0.90 = 0.52$, and $F_{\text{ACL}} = F_{\text{ABC}}$. The ABC for SRFC is $S_{\text{ABC}} = 392,349 \times (1 - 0.52) = 188,328$, with $S_{\text{ACL}} = S_{\text{ABC}}$. The recommended management measures provide for a projected SRFC spawning escapement of 211,100.

For KRFC in 2025, $F_{MSY} = 0.71$, the value estimated from a stock-specific spawner-recruit analysis (STT 2005). The OFL for KRFC is $40,191 \times (1 - 0.71) = 11,655$. Because KRFC is a Tier-1 stock, $F_{\text{ABC}} = F_{MSY} \times 0.95 = 0.68$, and $F_{\text{ACL}} = F_{\text{ABC}}$. The ABC for KRFC is $S_{\text{ABC}} = 40,191 \times (1 - 0.68) = 12,861$, with $S_{\text{ACL}} = S_{\text{ABC}}$. The recommended management measures provide for a projected KRFC spawning escapement of 30,144.

For Willapa Bay natural coho salmon in 2025, $F_{MSY} = 0.74$, the value estimated from a stock-specific spawner-recruit analysis. The OFL for Willapa Bay natural coho salmon is $S_{\text{OFL}} = 35,153 \times (1 - 0.74) = 9,140$. Because Willapa Bay natural coho salmon are a Tier-1 stock, $F_{\text{ABC}} = F_{MSY} \times 0.95 = 0.70$, and $F_{\text{ACL}} = F_{\text{ABC}}$. The ABC for Willapa Bay natural coho salmon is $S_{\text{ABC}} = 35,153 \times (1 - 0.70) = 10,546$, with $S_{\text{ACL}} = S_{\text{ABC}}$. The recommended management

measures provide for a projected Willapa Bay natural coho salmon spawning escapement of 29,800.

In summary, the 2026 management measures are expected to result in escapements greater than required to meet the ACLs for all three stocks with defined ACLs.

Public Comments

The Council invited written comments on developing 2026 salmon management measures in their notice announcing public meetings and hearings (90 FR 61127, December 30, 2025). At its March meeting, the Council developed 3 alternatives for 2026 commercial and recreational salmon management measures, having a range of quotas, season structure, and impacts, as well as 3 alternatives for 2026 North of Cape Falcon Treaty Indian troll ocean salmon management measures. These alternatives are described in detail in PRE II. Subsequently, comments were taken at three public hearings held in March, staffed by representatives of the Council, NMFS, and the states. The Council received 329 written comments via their electronic portal and 8 oral comments on the 3 alternatives for the 2026 ocean salmon fisheries for consideration at the April Council meeting. The 3 public hearings were attended by a total of 158 people; 37 people provided oral comments. Comments came from individual fishers, fishing associations, fish buyers, processors, conservation organizations, and the general public. Written and oral comments addressed the 2026 management alternatives described in PRE II and generally expressed preferences for a specific alternative or for particular season structures. All written comments were made available via the Council's online briefing books for the March and April 2026 Council meetings. In addition to comments collected at the public hearings and those submitted directly to the Council, several people provided oral comments at the March and April 2026 Council meetings. Written and oral comments received were considered by the Council, which includes a representative from NMFS, in developing the recommended management measures transmitted to NMFS on April 23, 2026. NMFS also invited comments to be submitted directly to the Council or NMFS via the Federal Rulemaking Portal (<https://www.regulations.gov>) in a notice (91 FR 7263, February 17, 2026); NMFS received no comments via the Federal Rulemaking Portal.

Comments on alternatives for commercial salmon fisheries. Those

testifying on north of Cape Falcon commercial salmon fisheries at the Washington hearing supported the non-treaty quotas and season structure from Alternative I. Alternative I allows for time/area adjustments over quota reductions to meet conservation objectives. These commenters expressed support for inseason management as an invaluable tool to meet conservation objectives while allowing flexibility to attain the full quota. They highlighted higher projected ex vessel revenue under Alternative I compared to Alternative III and underscored the importance of the fishery to multigenerational fishing families and coastal communities. Those testifying on south of Cape Falcon commercial salmon fisheries at the Oregon hearing primarily supported Alternative I with some commenters interested in combining elements of Alternative I and III. Concerns were raised that the effort data being used may no longer reflect current participation levels in the fleet. In response, Oregon representatives noted that the most recently available data from active fishing seasons are used and that this issue is carefully considered by modelers. The written comments from California showed no single unified preference between the alternatives. Those testifying at the California hearing expressed their frustrations with reduced fishing days, harvest limits, and low weekly landing limits in the range of alternatives, stating that they do not provide enough opportunity to be profitable. They testified that landing limits also affect vessel operators differently based on vessel size; larger vessels have higher operating costs and more deck hands versus smaller vessels, so profitability is not the same across the fleet. They strongly urged the Council to provide a season that is economically viable.

Comments on alternatives for recreational fisheries. Those testifying on fishery management alternatives north of Cape Falcon favored Alternative I for the length of the season. They expressed their view that Alternative I would provide a better mid-June through September season, while Alternative III could reduce opportunity and cause economic hardship. Those commenting on fishery alternatives south of Cape Falcon in Oregon expressed support for Alternative I. The majority of comments from California supported fishing under a hybrid of Alternative I and Alternative III by adding the fall fishery in Alternative I to Alternative III. Appreciation was expressed for the opportunity provided in the 2025

season, and even though it was limited, the economic boost to the local ports and small businesses benefited the coastal communities.

The Council considered these comments in developing its final recommendation to allow fishing opportunities and meet community needs while also meeting conservation objectives and ACLs, and the requirements of other applicable laws. Additional comments were made regarding the fisheries that were not encompassed in the points made above. We respond to key comments below.

Comment 1: Comments were received from the Let Our Salmon Come Home campaign. These comments advocated for the Council to adopt positions and fisheries management alternatives that support ecosystems, watersheds, and communities that depend on salmon. They also advocated for more terminal vs. mixed-stock fisheries, encouraging the Council to engage with the Pacific Salmon Commission to constrain northern fisheries in the upcoming renegotiation of the PST Annex.

Response: This final rule is consistent with the MSA including the National Standards, the FMP, and other applicable laws including the ESA, PST, and tribal fishing rights. NMFS and the Council's regulatory jurisdiction under the MSA is limited to the EEZ off the U.S. West Coast—terminal area fisheries are managed by the states and tribes. The current PST Annex is relevant to this final rule as other applicable law; the renegotiation of the Annex is not relevant to this final rule.

Comment 2: The Golden Gate Fishermen's Association (GGFA), which represents sport fishing interests in California, expressed three primary concerns, which it indicated were generally in alignment with the positions of the Pacific Coast Federation of Fishermen's Associations, which represents commercial fishing interests in California. First, GGFA asserted that the alternatives for the 2026 ocean salmon season are unnecessarily restrictive, limiting the fleet's access and opportunities. The management measures rely on overly cautious management frameworks and precautionary assumptions and requirements that do not reflect actual, present-day environmental and fishing conditions. Second, the two models used to predict total harvest give different results and should be aligned with the stocks that are constraining the fishery to increase opportunity while remaining within conservation limits. The California ocean salmon fishery is a mixed-stock fishery, yet the models currently being used are not designed to

predict total harvest under mixed-stock conditions. Third, the current calculation of ocean harvest rates does not accurately reflect the California recreational fleet's conservation record. While the models include years where harvest exceeded thresholds, they failed to account for the 2 recent years when the recreational fishery was closed (2023–2024) and its limited opening in 2025.

Response: Although not all of the issues in the comment apply to the sport fishery for the referenced management framework, given the alignment of positions expressed in the comment, NMFS feels it is appropriate to respond to the full range of concerns.

First, 2026 is the first year of full implementation of the harvest management framework for the CC Chinook salmon stock, an ESA-listed species. The framework was adopted into regulation in 2024. It includes a variety of management measures (including a buffer on the consultation standard and landing and possession limits for the commercial fleet) designed to ensure the fishery does not exceed the ESA take limit for CC Chinook salmon. A buffer is applied to the conservation objective in order to account for error between the pre-season prediction and the post-season estimates of the harvest rate in the previous 5 years. The closer the fishery is to preseason expectations, the smaller the buffer. In 2026, applying the buffer to the conservation objective results in a pre-season ocean harvest rate of 8.6 percent for age-4 KRFC (increased from 7.7 percent in 2025). A total catch limit and landing and possession limits in the framework currently apply only to the commercial fleet, although the State of California is managing the recreational fishery under a harvest guideline to be precautionary. The buffered conservation objective applies to both the commercial and recreational fleets (*i.e.*, 8.6 percent in 2026). The framework was developed after the fishery exceeded the conservation objective for the CC Chinook salmon ESU from 2018 through 2022 by 88 percent on average despite updates to harvest management models intended to improve the predicted harvest rates in the ocean salmon fishery. Significantly higher than expected catch rates in the California commercial troll fishery and resulting higher than expected Chinook salmon catch were major contributors exceeding the ESA take limit for CC Chinook salmon in these years. The framework is intended to directly address the primary contributors to the exceedance of the limit and ensure the fishery stays within the limit in the

future. The framework also includes provisions that reduce constraints if the fishery performs within its anticipated impacts.

Second, there are two main harvest models: the Sacramento harvest model, which forecasts the number of SRFC that will be harvested in ocean fisheries, and the Klamath harvest model, which forecasts the number of KRFC that will be harvested. Both of these models are designed to forecast the total mixed-stock or all stock harvest by applying historical average proportions of SRFC and KRFC to the total harvest.

Between the two stocks considered, SRFC is much more abundant than KRFC in ocean fisheries, particularly in central and southern California. When the projected harvest is expanded by historical average proportions to determine the total all stock harvest, the Sacramento harvest model expands the forecast by approximately 10–20 percent while the Klamath harvest model requires an expansion of 92 percent. Because the Klamath model relies on such a large expansion factor, *i.e.*, expansion of stock specific model harvest projections by historical proportions to estimate the total harvest, the Sacramento harvest model is more accurate for the purpose of setting catch limits under the CC Chinook salmon framework.

Third, NMFS acknowledges the significant sacrifices made by the fishing industry over the last 3 years in response to low KRFC and SRFC abundances and uncertainty in abundance forecasts over the last 5–10 years. The CC Chinook salmon framework was developed to ensure that the harvest rates on CC Chinook salmon stay within the ESA limit. The regulatory framework is intentionally designed for the buffer on the ESA limit to decrease in future years if fishery performance proves to be consistent with the established conservation goals. In setting the harvest rate limit each year under the framework provisions, the performance of the fishery relative to the anticipated harvest rate is taken into account. NMFS considered the fishery performance in 2024 and 2025 in setting the 2026 harvest limit for CC Chinook salmon. Given past performance of the fishery, the uncertainty this year given the 3 years of closure for the commercial fleet and closure or significant constraint on the recreational fishery, precaution is warranted. For example, the 2025 recreational harvest guideline was exceeded by 25 percent.

NMFS remains committed to using the best available science to balance the long-term viability of the salmon fishery

with necessary conservation requirements.

2026 Specifications and Management Measures

The ocean harvest levels and management measures for the 2026 fisheries are designed to apportion the burden of protecting the weak stocks identified and discussed in PRE I reasonably among ocean fisheries and to provide harvest opportunity of natural and hatchery runs surplus to freshwater (or inside) fishery and spawning needs. Management measures in the area north of Cape Falcon were shaped to comply with the FMP objectives, including consultation standards, and take into consideration year-specific circumstances. The 2026 Chinook salmon total allowable catch (TAC) is slightly lower than the 2025 TAC due to slightly lower forecasted abundances of Columbia River fall Chinook salmon. The 2026 coho salmon TAC is increased compared to last year's TAC mainly due to higher abundance forecasts for Columbia River coho salmon stocks. Fisheries south of Cape Falcon will be heavily constrained by KRFC, CC Chinook salmon, and SONCC coho salmon. Based on the information provided in the four reports described above, the EA, and discussion at public meetings and taking into account public comments, NMFS concludes the recommended measures are consistent with the requirements of the MSA, the ESA, U.S. obligations to Indian Tribes with federally recognized fishing rights, and U.S. international obligations regarding Pacific salmon. Accordingly, NMFS, through this final rule, approves and implements the Council's recommendations.

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before mid-May of the same year. Therefore, this action also establishes the early season fisheries that open earlier than May 16, 2027. These early openings could be modified via inseason action depending on the 2027 abundance forecasts for the affected stocks. The commercial and recreational seasons are scheduled to open after May 15, 2026, as indicated in *Section 1. Commercial, Non-Indian, Troll Fishery Management Measures* and *Section 2. Recreational Fishery Management* of this final rule. The Treaty Indian ocean troll seasons will open in 2026 as indicated in *Section 3. Treaty Indian Management Measures*.

Sections 1, 2, and 3 below set out the final specifications and management measures for the commercial, recreational, and Treaty Indian ocean

salmon fisheries for 2026 and, as specified, for 2027. Section 4 provides requirements for halibut retention; Section 5 provides geographical landmarks; and Section 6 specifies notice procedures for inseason modifications. Those elements of the measures set forth in sections 1 through 3 that refer to fisheries implemented prior to May 16, 2026, were promulgated in our 2025 rule (90 FR 20810, May 16, 2025; 90 FR 26943, June 25, 2025), as modified by inseason action, and are included for information purposes and to provide continuity for the public across fishing seasons and for states adopting conforming regulations each May that refer to the Federal rule for the same year. Fish caught in the areas south of Point Arena between May 1, 2026, and the date on which this rule becomes effective, are counted towards the harvest limit of 83,000 described in this rule.

As discussed above, aspects of these measures may be adjusted through inseason action taken under 50 CFR 660.409, based on information that becomes available during the season. Harvest guidelines and vessel-based landing and possession limits will be considered inseason. Inseason action to close fisheries, modify season dates, or modify vessel-based landing and possession limits may be considered when total commercial harvest in this management area is approaching its harvest guideline.

Section 1. Commercial, Non-Indian Fishery Management Measures

Parts A, B, and C of this section contain the requirements for participation in the 2026 commercial, non-Indian, salmon troll fishery. Part A identifies fishing seasons and areas from north to south, the salmon species and catch or landing limits allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies other requirements, definitions, restrictions, and exceptions.

Inseason modifications of the regulations may be necessary to address conditions arising during the fishing season. See 50 CFR 660.409.

A. Season, Area, and Species Descriptions

North of Cape Falcon, OR

Spring Season

U.S./Canada Border to Cape Falcon

May 16 through the earlier of June 29 or the attainment of 37,300 Chinook salmon. If the Chinook salmon quota is exceeded, the excess will be deducted

from the summer all-salmon season described below.

Subarea guidelines are in place for the following areas:

U.S./Canada Border to Queets River

No more than 7,460 Chinook salmon.

Leadbetter Point to Cape Falcon

No more than 5,590 Chinook salmon.

Landing and possession limits are in place for the following subareas and will be evaluated weekly, inseason. Landing week is Thursday through Wednesday.

U.S./Canada Border to Queets River

May 16–20, 50 Chinook salmon per vessel per landing week.

Beginning May 21, 80 Chinook salmon per vessel per landing week.

Queets River to Leadbetter Point

May 16–20, 60 Chinook salmon per vessel per landing week.

Beginning May 21, 250 Chinook salmon per vessel per landing week.

Leadbetter Point to Cape Falcon

May 16–20, 50 Chinook salmon per vessel per landing week.

Beginning May 21, 80 Chinook salmon per vessel per landing week.

Open seven days per week. All salmon, except coho salmon.

In 2027, the season will open May 1, consistent with all preseason regulations in place in this area and subareas during May 16–June 29, 2026, including subarea salmon catch limits and vessel landing and possession limits.

Summer Season

U.S./Canada Border to Cape Falcon

July 1 through the earlier of September 30, the attainment of 18,700 Chinook salmon, or the attainment of 19,600 marked coho salmon.

Open 7 days per week. All salmon. All coho salmon must be marked with a healed adipose fin clip. No chum salmon retention north of Cape Alava, Washington, in August and September.

Landing and possession limit of 50 marked coho salmon per vessel per landing week. Landing week is Thursday through Wednesday.

Landing limits will be evaluated weekly, inseason.

For all commercial troll fisheries north of Cape Falcon: Mandatory closed areas include the Cape Flattery Control Zone, Salmon Troll Yelloweye Rockfish Conservation Area (YRCA), and Columbia Control Zone.

Vessels must land and deliver their salmon within 24 hours of any closure of this fishery. Vessels may not land fish

east of the Sekiu River or east of Tongue Point, Oregon.

During any single trip, only one side of the Leadbetter Point line may be fished.

Vessels fishing for or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll and/or salmon delivery license. For delivery to Washington ports south of Leadbetter Point, vessels must notify the Washington Department of Fish and Wildlife (WDFW) at 360-249-1215 prior to crossing the Leadbetter Point line with area fished, total Chinook salmon, coho salmon, and halibut catch aboard, and destination with approximate time of delivery.

Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver all species of fish within the area and south of Leadbetter Point, except that Oregon permitted vessels may also land all species of fish in Garibaldi, Oregon. Washington-permitted vessels may also land all species of fish north of Leadbetter Point. For delivery to Washington ports north of Leadbetter Point, vessels must notify WDFW at 360-249-1215 prior to crossing the Leadbetter Point line with area fished, total Chinook salmon, coho salmon, and halibut catch aboard, and destination with approximate time of delivery. Vessels in possession of salmon south of Leadbetter Point who are returning to port north of Leadbetter Point must offload all fish from the vessel prior to beginning a new fishing trip. All Chinook salmon caught north of Cape Falcon and being delivered by boat to Garibaldi, Oregon, must meet the minimum legal total length of 28 inches (71.1 centimeters (cm)) for Chinook salmon for south of Cape Falcon seasons unless the season in waters off Garibaldi, Oregon, have been closed for Chinook salmon retention for more than 48 hours.

Under state law, vessels must report their catch on a state fish receiving ticket. Oregon State regulations require all fishers landing salmon into Oregon from any fishery between Leadbetter Point, Washington, and Cape Falcon, Oregon, to notify the Oregon Department of Fish and Wildlife (ODFW) at least 1 hour prior to delivery by either calling 541-857-2546 or sending notification via email to OR.trollreport@odfw.oregon.gov. Notification shall include vessel name and number, number of salmon by species, port of landing, location of delivery, and estimated time of delivery.

Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at 360-249-1215 with area fished, total Chinook salmon, coho salmon, and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW at 360-249-1215 with area fished, total Chinook salmon, coho salmon, and halibut aboard, and destination.

Vessels fishing in a subarea north of Cape Falcon with a higher limit may transit through and land in a subarea with a lower limit. Prior to crossing the subarea line at Leadbetter Point or Queets River, vessels must notify WDFW at 360-249-1215 with the area fished, total Chinook salmon, coho salmon, and halibut catch aboard, and destination with approximate time of delivery.

South of Cape Falcon, Oregon

Cape Falcon to Humbug Mountain

April 14, 2026–May 15, 2026;

September 1–October 31.

Open 7 days per week. All salmon except coho salmon, except during the non-mark-selective coho salmon fishery as described below. All vessels fishing in the area must land their salmon in the state of Oregon.

Beginning September 1, all salmon until the earlier of September 30 or when a 7,000 non-mark-selective coho salmon quota is met. If the coho salmon quota is met prior to September 30, then all salmon except coho salmon season continues. No more than 100 coho salmon per vessel per landing week when retention allowed and no more than 100 Chinook salmon allowed per vessel per landing week (Thursday through Wednesday).

Oregon state regulations require all fishers landing coho salmon into Oregon from any fishery between Cape Falcon, Oregon, and Humbug Mountain to notify ODFW within at least 1 hour of delivery by either calling 541-857-2546 or sending notification via email to OR.trollreport@odfw.oregon.gov.

Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery.

In 2027, the season will open March 15 for all salmon except coho salmon. All vessels fishing in the area between Cape Falcon and Humbug Mountain must land their salmon in the state of Oregon. Gear restrictions are the same as in 2026 (identified below).

Cape Falcon to Heceta Bank Line

May 16–June 30;

July 16–July 31.

Open 7 days per week. All salmon except coho salmon. All vessels fishing in the area must land their salmon in Oregon.

In July, all vessels landing salmon south of the Heceta Bank Line are required to notify ODFW prior to crossing the Heceta Bank Line by either calling 541-857-2546 or sending notification via email to OR.trollreport@odfw.oregon.gov. Notification shall include vessel name and number, number of salmon by species and halibut aboard, port of landing and location of delivery, and estimated time of delivery.

In 2027, the season will open March 15 for all salmon except coho salmon. All vessels fishing in the area must land their salmon in the state of Oregon. Gear restrictions are the same as in 2026 (identified below).

Heceta Bank Line to Humbug Mountain

May 16–June 30.

Open 7 days per week. All salmon except coho salmon. All vessels fishing in the area must land their salmon in the state of Oregon.

In 2027, the season will open on March 15 for all salmon except coho salmon. All vessels fishing in the area must land their salmon in Oregon. Gear restrictions are the same as in 2026 (identified below).

Humbug Mountain to Oregon/California Border

April 14–30;

May 16–June 17.

Open 7 days per week. All salmon except coho salmon. All vessels fishing in the area must land their salmon in Oregon.

In 2027, the season will open on March 15 for all salmon except coho salmon. Gear restrictions are the same as in 2026 (identified below).

Oregon/California Border to Humboldt South Jetty (California Klamath Management Zone (KMZ))

Closed.

In 2027, the season will open May 1 under a 3,000 Chinook salmon quota. Landing and possession limit of 20 Chinook salmon per vessel per day. All salmon except coho salmon. All fish caught in this area must be landed within the area, within 24 hours of any closure of the fishery, and prior to fishing outside the area. Electronic fish tickets must be submitted within 24 hours of landing. KMZ closed.

Humboldt South Jetty to Latitude 40°10' N

Closed.

Latitude 40°10' N to Point Arena (Fort Bragg)

Closed.

In 2027, the season opens on May 1 for all salmon except coho salmon. Gear restrictions are the same as in 2022 (87 FR 29690, May 16, 2022). All salmon caught in this area must be landed within 24 hours of any closure of the fishery. Electronic fish tickets must be submitted within 24 hours of landing.

Point Arena to Pigeon Point (San Francisco)

May 1–6, 2026, and May 9–13, 2026;
May 16–20, May 23–29;
August 1–7, 13–16, 25–27.

Harvest limit of 83,000 Chinook salmon applicable to all open periods and management areas south of Point Arena from May through August. Landing limit of 160 Chinook salmon per vessel per open period applies across the combined management areas south of Point Arena. Possession limit of 160 Chinook salmon per vessel and open period.

All salmon except coho salmon. All fish caught in this area must be landed south of 40°10' N within 24 hours of any closure of the fishery. Electronic fish tickets must be submitted within 24 hours of landing.

38°02' N to Pigeon Point Subarea

September 4–8, 11–15, 18–22, 25–30.

Harvest limit of 20,000 Chinook salmon, applicable to all September open periods. Landing limit of 100 Chinook salmon per vessel per open period. Possession limit of 100 Chinook salmon per vessel per open period. All

salmon caught in this area must be landed within 24 hours of any closure of the fishery.

All salmon except coho salmon. All salmon caught in this area must be landed between Point Arena and Pigeon Point. Electronic fish tickets must be submitted within 24 hours of landing.

In 2027, the season opens May 1 for all salmon except coho salmon. Gear restrictions are the same as in 2026 (identified below). Electronic fish tickets must be submitted within 24 hours of landing.

Pigeon Point to the U.S./Mexico Border (Monterey)

May 1–6, 2026, and May 9–13, 2026;
May 16–20, 23–29;
June 3–8, 12–16, 26–30;
July 6–10, 20–24;
August 1–7, 13–16, 25–27.

Harvest limit of 83,000 Chinook salmon applicable to all open periods and management areas south of Point Arena from May through August. Landing limit of 160 Chinook salmon per vessel per open period applies across the combined management areas south of Point Arena. Possession limit of 160 Chinook salmon per vessel and open period.

All salmon except coho salmon. All salmon caught in this area must be landed south of 40°10' N lat. within 24 hours of any closure of the fishery. Electronic fish tickets must be submitted within 24 hours of landing.

In 2027, the season opens May 1 for all salmon except coho salmon. Gear restrictions are the same as in 2026 (identified below). Electronic fish

tickets must be submitted within 24 hours of landing.

For all commercial troll fisheries south of Cape Falcon:

When the fishery is closed from Humbug Mountain to the Oregon/California border and open south of the Oregon/California border, vessels with fish on board caught in the open area off California may seek temporary mooring in Brookings, Oregon, prior to landing in California only if such vessels first notify ODFW prior to crossing the Oregon/California border by either calling 541–857–2546 or sending notification via email to OR.trollreport@odfw.oregon.gov. Notification shall include vessel name and number, number of salmon by species, and estimated time of arrival.

California statutes require all salmon be made available to a CDFW representative for sampling immediately at the port of landing. Any person in possession of a salmon with a missing adipose fin shall, upon request by an authorized agent or employee of the CDFW, immediately relinquish the head of the salmon to the CDFW representative (California Fish and Game Code § 8226).

A person shall, upon request by an authorized agent or employee of the CDFW, immediately relinquish, at no charge, fish or parts of fish caught or landed in California to the department for the purpose of collecting a biological sample (California Fish and Game Code § 7711(a)).

B. Minimum Size (Total Length in Inches)

TABLE 1—MINIMUM SIZE LIMITS FOR SALMON IN THE 2026–2027 COMMERCIAL SALMON FISHERIES

	Chinook salmon		Coho salmon		Pink
	Total length	Head-off	Total length	Head-off	
Area (when open in 2026):					
North of Cape Falcon, OR	27	20.5	16	12	None.
Cape Falcon to Humbug Mountain	28	21.5	16	12	None.
Humbug Mountain to OR/CA border	28	21.5	.....	.....	None.
OR/CA border to Humboldt South Jetty	27	.....	.....	.....	
Latitude 40°10' N to Point Arena	27	.....	.....	.....	
Point Arena to Pigeon Point through August	27	.....	.....	.....	
Latitude 38°02' N to Pigeon Point, September	26	.....	.....	.....	
Pigeon Point to U.S./Mexico border	27	.....	.....	.....	
Area (when open in 2027):					
North of Cape Falcon, OR .....	.....	.....	.....	.....	
Cape Falcon to Humbug Mountain	28	.....	.....	.....	
Humbug Mountain to OR/CA border	28	.....	.....	.....	
OR/CA border to Humboldt South Jetty	27	.....	.....	.....	
Lat. 40°10'0" N to Point Arena	27	.....	.....	.....	
Point Arena to Pigeon Point	27	.....	.....	.....	
Latitude 38°02' N to Pigeon Point, September	27	.....	.....	.....	
Pigeon Point to U.S./Mexico border	27	.....	.....	.....	

Metric equivalents: 28.0 in = 71.1 cm, 27.0 in = 68.5 cm, 21.5 in = 54.6 cm, 20.5 in = 52.1 cm, 16.0 in = 40.6 cm, and 12.0 in = 30.5 cm.

C. Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance with Minimum Size or Other Special Restrictions

All salmon on board a vessel must meet the minimum size, landing/possession limit, and other special requirements for the area being fished and the area in which they are landed if the area is open or has been closed less than 48 hours for that species of salmon. Salmon may be landed in an area that has been closed for a species of salmon more than 48 hours only if they meet the minimum size, landing/possession limit, and other special requirements for the area in which they were caught. Salmon may not be filleted prior to landing.

Any person who is required to report a salmon landing by applicable state law must include on the state landing receipt for that landing both the number and weight of salmon landed by species. States may require fish landing/receiving tickets be kept on board the vessel for 90 days or more after landing to account for all previous salmon landings.

C.2. Gear Restrictions

a. Salmon may be taken only by hook and line using single point, single shank, barbless hooks.

b. Cape Falcon, Oregon, to the Oregon/California border: Prior to September 1, 2026, no more than four spreads are allowed per line. September 1 through October 31, 2026, no restrictions on number of spreads allowed per line.

c. Oregon/California border to U.S./Mexico border: No more than six lines are allowed per vessel, and barbless circle hooks are required when fishing with bait by any means other than trolling.

C.3. Gear Definitions

Trolling: Fishing from a boat or floating device that is making way by means of a source of power other than drifting by means of the prevailing water current or weather conditions.

Troll fishing gear: One or more lines that drag hooks behind a moving fishing vessel engaged in trolling. In that portion of the fishery management area off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Spread: A single leader connected to an individual lure and/or bait.

Circle hook: A hook with a generally circular shape and a point which turns

inward, pointing directly to the shank at a 90° angle.

C.4. Vessel Operation in Closed Areas with Salmon on Board

a. Except as provided under C.4.b below, it is unlawful for a vessel to have fishing gear in the water while in any area closed to fishing for a certain species of salmon while possessing that species of salmon; however, fishing for species other than salmon is not prohibited if the area is open for such species and no prohibited salmon are in possession.

b. When Genetic Stock Identification (GSI) samples will be collected in an area closed to commercial salmon fishing, the scientific research permit holder shall notify NOAA Office of Law Enforcement, USCG, CDFW, WDFW, ODFW, and Oregon State Police at least 24 hours prior to sampling and provide the following information: the vessel name, date, location, and time collection activities will be done. Any vessel collecting GSI samples in a closed area shall not possess any salmon other than those from which GSI samples are being collected. Salmon caught for collection of GSI samples must be immediately released in good condition after collection of samples.

C.5. Control Zone Definitions

a. Cape Flattery Control Zone—The area from Cape Flattery (48°23'00" N lat.) to the northern boundary of the U.S. EEZ; and the area from Cape Flattery south to Cape Alava (48°10'00" N lat.) and east of 125°05'00" W long.

b. Salmon Troll Yelloweye Rockfish Conservation Area—The area in Washington Marine Catch Area 3 from 48°00.00' N lat.; 125°14.00' W long. to 48°02.00' N lat.; 125°14.00' W long. to 48°02.00' N lat.; 125°16.50' W long. to 48°00.00' N lat.; 125°16.50' W long. and connecting back to 48°00.00' N lat.; 125°14.00' W long.

c. Grays Harbor Control Zone—The area defined by a line drawn from the Westport Lighthouse (46°53'18" N lat., 124°07'01" W long.) to Buoy #2 (46°52'42" N lat., 124°12'42" W long.) to Buoy #3 (46°55'00" N lat., 124°14'48" W long.) to the Grays Harbor north jetty (46°55'36" N lat., 124°10'51" W long.).

d. Columbia Control Zone—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N lat., 124°06'50" W long.) and the green lighted Buoy #7 (46°15'09" N lat., 124°06'16" W long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N lat., 124°03'07" W long. to its intersection

with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48" N lat., 124°05'20" W long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N lat., 124°04'05" W long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

e. Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38'48" N lat. (approximately 6 nmi (11 km) north of the Klamath River mouth); on the west by 124°23'00" W long. (approximately 12 nmi (22 km) off shore); and on the south by 41°26'48" N lat. (approximately 6 nmi (11 km) south of the Klamath River mouth).

f. Waypoints for the 40-fathom (73-meter) regulatory line from Cape Falcon to Humbug Mountain (50 CFR 660.71 (o)(12)–(62)), when in place.

C.6. Notification When Unsafe Conditions Prevent Compliance with Regulations

If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the USCG and receive acknowledgment of such notification prior to leaving the area. This notification shall include the name of the vessel, the port where delivery will be made, the approximate number of salmon (by species) on board, the estimated time of arrival, and the specific reason the vessel is not able to meet special management area landing restrictions.

In addition to contacting the USCG, vessels fishing south of the Oregon/California border must notify CDFW within 1 hour of leaving the management area by emailing LEDMarineNotifications@wildlife.ca.gov and providing the same information as reported to the USCG. All salmon must be offloaded within 24 hours of reaching port.

C.7. Incidental Pacific Halibut Harvest

Permit applications for incidental harvest for Pacific halibut during commercial salmon fishing must be submitted to and approved by NMFS.

a. Pacific halibut retained must be no less than 32 inches (81.3 cm) in total length, measured from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail, and must be landed with the head on.

b. During the salmon troll season, incidental harvest is allowed if quota is available. WDFW, ODFW, and CDFW will monitor landings. NMFS may make inseason adjustments to the landing restrictions to assure that the incidental harvest rate is appropriate for salmon and halibut availability, does not encourage target fishing on halibut, and does not increase the likelihood of exceeding the quota for this fishery, and NMFS may prohibit retention of halibut in the non-Indian salmon troll fishery if there is risk in exceeding the subquota for the salmon troll fishery or the non-Tribal commercial fishery allocation. Inseason adjustments will be announced on the NMFS hotline (phone: 800-662-9825 or 206-526-6667). See the most current Pacific Halibut Catch Share Plan for more details (91 FR 14464, March 25, 2026).

c. Incidental Pacific halibut catch regulations in the commercial salmon troll fishery adopted for 2026 prior to any 2026 inseason action will be in effect when incidental Pacific halibut retention opens on April 1, 2027.

d. Beginning May 16, 2026, through the end of the 2026 salmon troll fishery and beginning April 1, 2027, until modified through inseason action or superseded by the 2027 management measures, permit holders may land or possess no more than 1 Pacific halibut per 2 Chinook salmon, except 1 Pacific halibut may be possessed or landed without meeting the ratio requirement, and no more than 35 halibut may be possessed or landed per trip.

e. The C-shaped yelloweye rockfish conservation area is an area to be voluntarily avoided for salmon trolling. NMFS and the Council request salmon trollers voluntarily avoid this area in order to protect yelloweye rockfish. The area is defined in the Pacific Council Halibut Catch Sharing Plan in the North Coast subarea (Washington Marine Area 3), with the following coordinates in the order listed:

48°18' N lat.; 125°18' W long.;
48°18' N lat.; 124°59' W long.;
48°11' N lat.; 124°59' W long.;
48°11' N lat.; 125°11' W long.;
48°04' N lat.; 125°11' W long.;
48°04' N lat.; 124°59' W long.;
48°00' N lat.; 124°59' W long.;
48°00' N lat.; 125°18' W long.;
and connecting back to 48°18' N lat.;
125°18' W long.

C.8. Inseason Management

In addition to standard inseason actions or modifications:

a. Chinook salmon remaining from the May through June non-Indian commercial troll harvest guideline north of Cape Falcon may be transferred to the

July through September harvest guideline if the transfer would not result in exceeding preseason impact expectations on any stocks.

b. Chinook salmon remaining from May, June, and/or July non-Indian commercial troll quotas in the Oregon or California KMZ may be transferred to the Chinook salmon quota for the next open period if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. NMFS may transfer salmon between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the areas' representatives on the Council's Salmon Advisory Subpanel (SAS) and if the transfer would not result in exceeding preseason impact expectations on any stocks.

d. The Council will consider inseason recommendations for special regulations for any experimental fisheries annually in March; proposals must meet Council protocol and be received in November of the year prior.

e. If retention of unmarked coho salmon (adipose fin intact) is permitted by inseason action, the allowable coho salmon quota will be adjusted to ensure preseason projected impacts on all stocks is not exceeded.

f. Landing limits may be modified inseason to sustain season length and keep harvest within overall quotas.

g. Deviations from the allocation of allowable ocean harvest of coho salmon in the area south of Cape Falcon may be allowed to meet consultation standards for ESA-listed stocks (FMP 5.3.2). Therefore, if fisheries are constrained to meet ESA-conservation objectives, any rollovers resulting in a deviation from the south of Cape Falcon coho salmon allocation schedule would fall underneath this exemption.

h. Inseason action to modify California harvest limits, weekly landing limits, or open days will be considered when total harvest reaches 50 percent of the harvest limit, consistent with the Framework to Achieve Conservation Objectives for California Stocks of Chinook Salmon (CFR 660.410(d)(2)(ii)).

C.9. State Waters Fisheries

Consistent with Council management objectives:

a. The state of Oregon may establish additional late-season fisheries in state waters.

b. The state of California may establish limited fisheries in selected state waters.

c. Check state regulations for details.

C.10. For the purposes of California Fish and Game Code, Section 8232.5,

the definition of the KMZ for the ocean salmon season shall be that area from Humboldt Mountain, Oregon, to Latitude 40°10' N.

C.11. Latitudes for geographical reference of major landmarks along the West Coast are listed in section 5 of this final rule.

C.12. California 24-hour reporting requirements: Salmon harvested under quota or harvest limit regulations must be reported within 24 hours of landing via electronic fish tickets. Electronic fish tickets shall be completed at the time of the receipt, purchase, or transfer of fish, whichever occurs first, and shall contain the number of salmon landed. Once the transfer of fish begins, all fish aboard the vessel are counted as part of the landing. The electronic fish ticket is a web-based form submitted through the "E-Tix" application, managed by the Pacific States Marine Fisheries Commission and located at <https://etix.psmfc.org>.

Section 2. Recreational Fishery Management Measures

Parts A, B, and C of this section contain requirements for participation in the 2026 recreational ocean salmon fishery. Part A identifies fishing areas from north to south, the open seasons for the area, and the salmon species allowed to be caught during the seasons. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions, and exceptions. All measures are subject to inseason management. California statutes require all salmon be made available to a CDFW representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFW, shall immediately relinquish the head of the salmon to the department (California Code of Regulations Title 14 Section 1.73). A person shall, upon request by an authorized agent or employee of the California Department of Fish and Wildlife, immediately relinquish, at no charge, fish or parts of fish caught or landed in California to the department for the purpose of collecting a biological sample. (California Fish and Game Code § 7711(a)).

A. Season Description

North of Cape Falcon, Oregon

U.S./Canada border to Cape Alava (Neah Bay Subarea)

June 20 through the earlier of September 30 or attainment of 10,700 marked coho salmon subarea quota,

with a subarea guideline of 13,110 Chinook salmon.¹

Open 7 days per week. All salmon except coho salmon June 20 through June 30, 1 salmon per day per person. Beginning July 1, all salmon, 2 salmon per day per person. No chum salmon retention beginning August 1. All coho salmon must be marked with a healed adipose fin clip.

Beginning August 1, Chinook salmon non-retention east of the Bonilla-Tatoosh line during the federally-managed ocean fishery.

Cape Alava to Queets River (La Push Subarea)

June 20 through the earlier of September 30 or attainment of 2,680 marked coho subarea quota, with a subarea guideline of 2,200 Chinook salmon.

Open 7 days per week. All salmon except coho salmon June 20 through June 30, 1 salmon per day per person. Beginning July 1, all salmon, 2 salmon per day per person. No chum salmon retention beginning August 1. All coho salmon must be marked with a healed adipose fin clip.

Queets River to Leadbetter Point (Westport Subarea)

June 20 through the earlier of September 30 or attainment of 38,070 marked coho salmon subarea quota, with a subarea guideline of 21,910 Chinook salmon.

Open 7 days per week. All salmon except coho salmon, June 20 through June 28, 1 salmon per day per person. Beginning June 29, all salmon, 2 salmon per day per person, no more than 1 of which may be a Chinook salmon. All coho salmon must be marked with a healed adipose fin clip.

Leadbetter Point to Cape Falcon (Columbia River Subarea)

June 20 through the earlier of September 30 or attainment of 51,450 marked coho salmon subarea quota, with a subarea guideline of 16,780 Chinook salmon.

Open 7 days per week, all salmon, 2 salmon per day per person, no more than 1 of which may be a Chinook salmon. All coho salmon must be marked with a healed adipose fin clip.

Columbia Control Zone closed.

South of Cape Falcon

Cape Falcon to Oregon/California border

March 15, 2026–May 15, 2026;
May 16–August 31.

Open 7 days per week. All salmon except coho salmon except as provided below during the mark-selective coho salmon fishery, 2 salmon per day per person.

Mark-selective coho salmon fishery:

June 6 through the earlier of August 23 or attainment of a 47,600 marked coho salmon quota.

Open 7 days per week, 2 salmon per day per person. All retained coho salmon must be marked with a healed adipose fin clip.

Any remainder of the mark-selective coho salmon quota may be transferred inseason on an impact neutral basis to the September non-mark-selective coho salmon fishery from Cape Falcon to Humbug Mountain.

In 2027, the season will open March 15 for all salmon except coho salmon, 2 salmon per day per person.

Cape Falcon to Humbug Mountain

September 1–October 31.

Open 7 days per week. All salmon except coho salmon, except as provided below during the non-mark-selective coho salmon fishery, 2 salmon per day per person.

Non-mark-selective coho salmon fishery:

September 1 through the earlier of September 30 or attainment of a 27,500 non-mark-selective coho salmon quota.

Open 7 days per week. All salmon, 2 salmon per day per person.

For recreational fisheries from Cape Falcon to Humbug Mountain: Fishing in the Stonewall Bank yelloweye rockfish conservation area restricted to trolling only on days the all depth recreational halibut fishery is open (call the halibut hotline 1–800–662–9825 for specific dates)

Oregon/California Border to Latitude 40°10' N (California KMZ)

June 13–July 19;
August 1–31.

Inseason action may be taken to close open days when total harvest is approaching an area-specific harvest guideline of 3,900 Chinook salmon.

All salmon except coho salmon, 2 salmon per day per person.

Klamath Control Zone closed in August. See California statutes for additional closures adjacent to the Smith, Eel, and Klamath Rivers.

In 2027, the season opens May 1 for all salmon except coho salmon, 2

salmon per day per person. Same gear restrictions as 2026 (identified below).

Latitude 40°10' N to Point Arena (Fort Bragg)

June 13–July 19;
August 1–31.

Inseason action may be taken to close open days when total harvest is approaching an area-specific harvest guideline of 5,100 Chinook salmon.

All salmon except coho salmon, 2 salmon per day per person.

In 2027, the season opens on April 3 for all salmon except coho salmon, 2 salmon per day per person. Same gear restrictions as in 2026 (identified below).

Point Arena to Pigeon Point (San Francisco)

June 27–July 22;
August 1–31.

Inseason action may be taken to close open days when total harvest is approaching an area-specific harvest guideline of 34,900 Chinook salmon.

38°02' N to Pigeon Point Subarea

September 1–October 31.

Inseason action may be taken to close open days when total harvest is approaching an area-specific harvest guideline of 20,000 Chinook salmon applicable to the September and October open dates.

All salmon except coho salmon, 2 salmon per day per person.

In 2027, the season opens on April 3 for all salmon except coho salmon, 2 salmon per day per person. The same gear restrictions as in 2026 (identified below).

Pigeon Point to U.S./Mexico Border (Monterey)

April 11, 2026–May 15, 2026;
May 16–August 31.

Inseason action may be taken to close open days when total harvest is approaching an area-specific harvest guideline of 21,800 Chinook salmon.

All salmon except coho salmon, 2 salmon per day per person.

September 1–30.

Inseason action may be taken to close open days when total harvest is approaching a statewide harvest guideline of 20,000 Chinook salmon applicable to the September and October open dates.

In 2027, the season opens on April 3 for all salmon except coho salmon, 2 salmon per day per person. The same gear restrictions as in 2026 (identified below).

B. Minimum Size (Total Length in Inches)

¹ A subarea guideline is not a hard cap requiring closure when it is reached, but inseason action will be considered if the fishery is approaching the guideline.

TABLE 2—MINIMUM SIZE LIMITS FOR SALMON IN THE 2026–2027 RECREATIONAL SALMON FISHERIES

	Chinook salmon	Coho salmon	Pink salmon
Area (when open in 2026):			
North of Cape Falcon (Westport and Columbia River)	22.0	16.0	.....
North of Cape Falcon (Neah Bay and La Push)	24.0	16.0	.....
Cape Falcon to Humbug Mountain	24.0	16.0	.....
Humbug Mountain to Oregon/California border	24.0	16.0	.....
Oregon/California border to Latitude 40°10' N	20.0	.....	20.0
Latitude 40°10' N to Point Arena	20.0	.....	20.0
Point Arena to Pigeon Point	20.0	.....	20.0
Pigeon Point to U.S./Mexico border	20.0	.....	20.0
Area (when open in 2027):			
North of Cape Falcon (Westport and Columbia River) .....	.....	.....	.....
North of Cape Falcon (Neah Bay and La Push) .....	.....	.....	.....
Cape Falcon to Oregon/California border	24.0	.....	.....
Oregon/California border to Latitude 40°10' N	20.0	.....	.....
Latitude 40°10' N to Point Arena	20.0	.....	.....
Point Arena to Pigeon Point	24.0	.....	.....
Pigeon Point to U.S./Mexico border	24.0	.....	.....

Metric equivalents: 24.0 in = 61.0 cm, 22.0 in = 55.9 cm, 16.0 in = 40.6 cm.

C. Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance With Minimum Size and Other Special Restrictions

All salmon on board a vessel must meet the minimum size and other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size and other special requirements for the area in which they were caught. Salmon may not be filleted or salmon heads removed prior to landing.

Ocean boat limits: Off the coast of Washington, Oregon, and California, each fisher aboard a vessel may continue to use angling gear until the combined daily limits of Chinook salmon and coho salmon for all licensed and juvenile anglers aboard have been attained (additional state restrictions may apply).

C.2. Gear Restrictions

Salmon may be taken only by hook and line using barbless hooks. All persons fishing for salmon and all persons fishing from a boat with salmon on board must meet the gear restrictions listed below for specific areas or seasons.

a. U.S./Canada border to Point Conception, California: No more than one rod may be used per angler and no more than two single point, single shank, barbless hooks are required for all fishing gear.

b. Latitude 40°10' N to Point Conception, California: Single point, single shank, barbless circle hooks (see gear definitions below) are required when fishing with bait by any means other than trolling, and no more than

two such hooks shall be used. When angling with two hooks, the distance between the hooks must not exceed 5 inches (12.7 cm) when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). Circle hooks are not required when artificial lures are used without bait.

C.3. Gear Definitions

a. Recreational fishing gear: Off Oregon and Washington, angling tackle consists of a single line that must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington. Off California, the line must be attached to a rod and reel held by hand or closely attended; weights directly attached to a line may not exceed 4 pounds (1.8 kilograms (kg)). While fishing off California north of Point Conception, no person fishing for salmon, and no person fishing from a boat with salmon on board, may use more than one rod and line. Fishing includes any activity which can reasonably be expected to result in the catching, taking, or harvesting of fish.

b. Trolling: Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

c. Circle hook: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Control Zone Definitions

a. The Bonilla-Tatoosh Line: A line running from the western end of Cape

Flattery to Tatoosh Island Lighthouse (48°23'30" N lat., 124°44'12" W long.) to the buoy adjacent to Duntze Rock (48°24'37" N lat., 124°44'37" W long.), then in a straight line to Bonilla Point (48°35'39" N lat., 124°42'58" W long.) on Vancouver Island, British Columbia.

b. Columbia Control Zone: An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N lat., 124°06'50" W long.) and the green lighted Buoy #7 (46°15'09" N lat., 124°06'16" W long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N lat., 124°03'07" W long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48" N lat., 124°05'20" W long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N lat., 124°04'05" W long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

c. Stonewall Bank YRCA: The area defined by the following coordinates in the order listed:

44°37.46' N lat.; 124°24.92" W long.
44°37.46' N lat.; 124°23.63" W long.
44°28.71' N lat.; 124°21.80" W long.
44°28.71' N lat.; 124°24.10" W long.
44°31.42' N lat.; 124°25.47" W long.
and connecting back to 44°37.46' N lat.; 124°24.92" W long.

d. Klamath Control Zone: The ocean area at the Klamath River mouth bounded on the north by 41°38'48" N lat. (approximately 6 nmi (11 km) north

of the Klamath River mouth); on the west by 124°23'00" W long. (approximately 12 nmi (22 km) offshore); and, on the south by 41°26'48" N lat. (approximately 6 nmi (11 km) south of the Klamath River mouth).

e. Waypoints for the 40-fathom (73-meters) regulatory line from Cape Falcon to Humbug Mountain (50 CFR 660.71 (o)(12)–(62)), when in place.

C.5. Inseason Management

Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines, and season duration. In addition to standard inseason actions or modifications:

a. Actions could include modifications to bag limits or days open to fishing and extensions or reductions in areas open to fishing.

b. Coho salmon may be transferred inseason among recreational subareas north of Cape Falcon to help meet the recreational season duration objectives for each subarea after conferring with representatives of the affected ports and the Council's SAS recreational representatives north of Cape Falcon and if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. NMFS may transfer salmon between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the areas' representatives of the SAS and if the transfer would not result in exceeding preseason impact expectations on any stocks.

d. Fishery managers may consider inseason action modifying regulations restricting retention of unmarked

(adipose fin intact) coho salmon. To remain consistent with preseason expectations, any inseason action shall consider, if significant, the difference between observed and preseason forecasted (adipose-clipped) mark rates. Such a consideration may also include a change in bag limit of two salmon, no more than one of which may be a coho salmon.

e. Marked coho salmon quota remaining from the Cape Falcon to the Oregon/California Border: Recreational mark-selective coho salmon quota may be transferred inseason to the Cape Falcon to Humbug Mountain non-mark-selective recreational fishery if the transfer would not result in exceeding preseason impact expectations on any stocks.

f. Deviations from the allocation of allowable ocean harvest of coho salmon in the area south of Cape Falcon may be allowed to meet consultation standards for ESA-listed stocks (FMP 5.3.2). Therefore, any rollovers resulting in a deviation from the south of Cape Falcon coho salmon allocation schedule would fall underneath this exemption.

C.6. Vessel Operation in Closed Areas With Salmon on Board

a. Except as provided under C.6.b and C.6.c below, it is unlawful for a vessel to fish while in any area closed to fishing for a certain species of salmon while possessing that species of salmon; however, fishing for species other than salmon is allowed if the area is open for such species and no prohibited salmon are in possession.

b. It is unlawful to possess a salmon species within the Oregon KMZ when

the fishing for that salmon species is prohibited within the Oregon KMZ, regardless of where the salmon is harvested/caught.

c. It is unlawful to possess a salmon species within the California KMZ when the fishing for that salmon species is prohibited within the California KMZ, regardless of where the salmon is harvested/caught.

Section 3. Treaty Indian Management Measures

Parts A, B, and C of this section contain the requirements for participation in the 2026 Treaty Indian salmon fishery. All measures are subject to inseason management.

In 2027, the season will open May 1, consistent with all preseason regulations in place for Treaty Indian troll fisheries during May 16–June 30, 2026. Fish caught after May 1, 2027, will count against the 2027 Treaty Indian troll fisheries quota.

A. Season Descriptions

May 1 through the earlier of June 30 or attainment of the 22,500 Chinook salmon quota.

All salmon must be retained except coho salmon. If the Chinook salmon quota is exceeded, the excess will be deducted from the later all-salmon season.

July 1 through the earlier of a date in September, to be established in tribal regulations, or attainment of the 22,500 Chinook salmon quota or 42,500 coho salmon quota.

All salmon.

B. Minimum Size (Inches)

TABLE 3—MINIMUM SIZE LIMITS FOR SALMON IN THE 2026 TREATY INDIAN OCEAN SALMON FISHERIES

Area (when open)	Chinook salmon		Coho salmon		
	Total length	Head-off	Total length	Head-off	Pink
North of Cape Falcon	24.0	18.0	16.0	12.0	None.

C. Requirements, Definitions, Restrictions, or Exceptions

C.1. Tribe and Area Boundaries

All boundaries may be changed to include such other areas as may hereafter be authorized by a Federal court for that tribe's treaty fishery.

S'Klallam—Washington State Statistical Area 4B defined to include those waters of Puget Sound easterly of a line projected from the Bonilla Point light on Vancouver Island to the Tatoosh Island light, thence to the most westerly point on Cape Flattery and westerly of a line projected true north

from the fishing boundary marker at the mouth of the Sekiu River (Washington Administrative Code 220–301–030).

Makah—Washington State Statistical Area 4B and that portion of the Fishery Management Area (FMA) north of 48°02'15" N lat. (Norwegian Memorial) and east of 125°44'00" W long.

Quileute—A polygon commencing at Cape Alava, located at lat. 48°10'00" N, long. 124°43'56.9" W; then proceeding west approximately 40 nmi (74 km) at that latitude to a northwestern point located at lat. 48°10'00" N, long. 125°44'00" W; then proceeding in a southeasterly direction mirroring the

coastline at a distance no farther than 40 nmi (74 km) from the mainland Pacific coast shoreline at any line of latitude, to a southwestern point at lat. 47°31'42" N, long. 125°20'26" W; then proceeding east along that line of latitude to the Pacific coast shoreline at lat. 47°31'42" N, long. 124°21'9.0" W.

Hoh—A polygon commencing at the Pacific coast shoreline near the mouth of the Quillayute River, located at lat. 47°54'30" N, long. 124°38'31" W; then proceeding west approximately 40 nmi (74.08 km) at that lat. to a northwestern point located at lat. 47°54'30" N, long. 125°38'18" W; then proceeding in a

southeasterly direction mirroring the coastline at a distance no farther than 40 nmi (74.08 km) from the mainland Pacific coast shoreline, to a point located at lat. 47°31'42" N, long. 125°20'26" W, then proceeding east along that line of lat. approximately 10 nmi (18.52 km) to a point located at latitude 47°31'42" N, long. 125°5'48" W, then proceeding in a southeasterly direction mirroring the coastline at a distance no farther than 30 nmi (55.56 km) from the mainland Pacific coast shoreline to a point located at lat. 47°21'00" N, long. 125°2'52" W; then proceeding east along that line of lat. to the Pacific coast shoreline near the mouth of the Quinault River, located at lat. 47°21'00" N, long. 124°18'8" W.

Quinault—A polygon commencing at the Pacific coast shoreline near Destruction Island, located at lat. 47°40'06" N, long. 124°23'51.362" W; then proceeding west approximately 30 nmi (55.6 km) at that latitude to a northwestern point located at lat. 47°40'06" N, long. 125°08'30" W; then proceeding in a southeasterly direction mirroring the coastline no farther than 30 nmi (55.6 km) from the mainland Pacific coast shoreline at any line of latitude to a southwestern point at lat. 46°53'18" N, long. 124°53'53" W; then proceeding east along that line of latitude to the Pacific coast shoreline at lat. 46°53'18" N, long. 124°7'36.6" W.

C.2. Gear Restrictions

- a. Single point, single shank, barbless hooks are required in all fisheries.
- b. No more than eight fixed lines per boat.
- c. No more than four hand-held lines per person in the Makah area fishery (Washington State Statistical Area 4B and that portion of the FMA north of 48°02'15" N lat. (Norwegian Memorial) and east of 125°44'00" W long.)

C.3. Quotas

- a. The quotas include troll catches by the S'Klallam and Makah Tribes in Washington State Statistical Area 4B from May 1 through a date in September, to be established in tribal regulations.

C.4. Area Closures

- a. The area within a 6 nmi radius of the mouths of the Queets River (47°31'42" N. lat.) and the Hoh River (47°45'12" N. lat.) is closed to commercial fishing.
- b. A closure within 2 nmi of the mouth of the Quinault River (47°21'00" N. lat.) may be enacted by the Quinault Nation and/or the state of Washington and will not adversely affect the federal management regime.

C.5. Inseason Management: In addition to standard inseason actions or modifications already noted under the season description, Chinook salmon remaining from the May through June treaty-Indian ocean troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline on a fishery impact equivalent basis.

Section 4. Halibut Retention

Vessels participating in the commercial salmon non-Indian troll fishery in Area 2A that have obtained the appropriate permit may retain halibut caught incidentally during authorized periods in conformance with the Pacific Halibut Fisheries Catch Sharing Plan 2026 annual management measures (91 FR 14464, March 25, 2026). An ocean salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut but not both.

If the sub-quota for this fishery has not been harvested during the April-June portion of the salmon troll fishery, then incidental halibut harvest will be allowed in July and continue until the amount of halibut that was initially available as the quota for the non-Indian salmon troll fishery is taken or until the end of the season date for commercial halibut is determined by NMFS and implemented in the **Federal Register** (typically early October). If the landings are projected to exceed the 46,096 pounds (20,909 kg) preseason allocation to the salmon troll fishery or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to prohibit retention of halibut in the non-Indian salmon troll fishery.

Incidental halibut harvest regulations, including season dates, management measures, and TAC for each IPHC management area, are listed under C.7 of Section 1: Commercial Management Measures for 2026 Ocean Salmon Fisheries.

Section 5. Geographical Landmarks

Geographical landmarks referenced in this rule are at the following locations:

U.S./Canada border 49°00'00" N lat.
Cape Flattery, WA 48°23'00" N lat.
Cape Alava, WA 48°10'00" N lat.
Queets River, WA 47°31'42" N lat.
Leadbetter Point, WA 46°38'10" N lat.
Cape Falcon, OR 45°46'00" N lat.
South end Heceta Bank Line, OR 43°58'00" N lat.
Humbog Mountain, OR 42°40'30" N lat.
Oregon-California border 42°00'00" N lat.
Humboldt South Jetty, CA 40°45'53" N lat.

40°10' line (near Cape Mendocino, CA) 40°10'00" N lat.
Horse Mountain, CA 40°05'00" N lat.
Point Arena, CA 38°57'30" N lat.
Point Reyes, CA 37°59'44" N lat.
Point San Pedro, CA 37°35'40" N lat.
Pigeon Point, CA 37°11'00" N lat.
Point Sur, CA 36°18'00" N lat.
Point Conception, CA 34°27'00" N lat.
U.S./Mexico border 34°27'00" N lat.

Section 6. Inseason Notice Procedures

Notice of inseason management actions will be provided by a telephone hotline administered by the WCR, NMFS, 800-662-9825 or 206-526-6667, and by USCG Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF-FM and 1282 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be published in the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishers should monitor either the telephone hotline or USCG broadcasts for current information for the area in which they are fishing.

Classification

NMFS is issuing this rule pursuant to section 305(d) of the MSA. In a previous action taken pursuant to section 304(b), the regulations at 50 CFR 660.408 authorize NMFS to take this action under MSA section 305(d). These regulations are being promulgated under the authority of 16 U.S.C. 1855(d) and 16 U.S.C. 773(c).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This rule is not an Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866.

The Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement for prior notice and opportunity for public comment, as such procedures would be impracticable and contrary to the public interest. The annual salmon management cycle begins May 16 and continues through May 15 of the following year. The time frame of the preseason process for determining the annual modifications to ocean salmon fishery management measures depends on when the pertinent biological data are available. For the 2026 fishing regulations, the current stock abundance information was not available until February. Salmon stocks are managed to meet

annual spawning escapement goals or specific exploitation rates. Achieving either of these objectives requires designing management measures that are appropriate for the ocean abundance predicted for that year. These pre-season abundance forecasts, which are derived from previous years' observed spawning escapement, vary substantially from year to year and are not available until February because spawning escapement continues through the fall and early winter.

The planning and public review process associated with developing the regulations is initiated in February as soon as the forecast information becomes available. The process requires coordination of management actions of four states, numerous Indian Tribes, and the Federal government, as well as consideration of information from the Pacific Salmon Commission and Canadian managers whose fisheries harvest salmon stocks caught in PPMC fisheries. That information is not available until April 1 of each year. All of these entities have management authority over the stocks. This complex process includes the affected user groups as well as the general public. Providing the opportunity for prior notice and public comments on the measures through a proposed and final rulemaking process would require 30 to 60 days in addition to the 2-month period required for the development of the regulations. Delaying the implementation of annual fishing regulations, which are based on the current stock abundance projections, for an additional 30–60 days would require that fishing regulations for late May and June be set in the previous year, without the benefit of information regarding current stock abundance. Because a substantial amount of fishing normally occurs during late May and June, managing the fishery with measures developed using the prior year's data could have significant adverse effects on the managed stocks, including ESA-listed stocks, or could result in unnecessary limits on those fisheries if stocks are more abundant than in the prior year. Although salmon fisheries that open prior to May 16 are managed under measures developed the previous year (with some inseason modifications), relatively little harvest occurs during that period (*e.g.*, on average, 7 percent of commercial and recreational harvest occurred prior to May 16 during the years 2020 through 2024). Allowing regulations governing the much more substantial harvest levels normally associated with the late May and June salmon season to be

promulgated prior to the time the current year's stock abundance information is available would impair NMFS's ability to protect weak and ESA-listed salmon stocks and to provide harvest opportunities where appropriate. The choice of May 16 as the beginning of the regulatory season balances the need to gather and analyze the data needed to meet the management objectives of the FMP and the need to manage the fishery using the best available scientific information.

If the 2026 measures are not in place on May 16, salmon fisheries will not open as scheduled. This would result in lost fishing opportunities, negative economic impacts, and confusion for the public as the state fisheries adopt concurrent regulations that conform to the federal management measures.

In addition, these measures were developed with significant public input. As described above, 374 oral and written public comments were received and considered throughout the process of developing these management measures, most in association with two Council meetings open to the public and a number of public hearings. Based upon the above-described public comment already received and the need to have these measures effective on May 16, NMFS has concluded it would be impracticable and contrary to the public interest to provide an opportunity for prior notice and public comment under 5 U.S.C. 553(b)(B).

The Assistant Administrator for Fisheries also finds that good cause exists under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the date of effectiveness of this final rule. As previously discussed, essential data were not available until February, and management measures were not finalized until mid-April. These measures are essential to conserve threatened and endangered salmon stocks and other ESA-listed species affected by Council fisheries, rebuild overfished stocks, and to provide for the harvest of more abundant salmon stocks. Delaying the date of effectiveness of these measures by 30 days could compromise the ability of some stocks to attain their conservation objectives, preclude harvest opportunity, and negatively impact anticipated international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action and the requirements of the MSA.

To enhance the fishing industry's notification of these new measures and to minimize the burden on the regulated community required to comply with the new regulations, NMFS is announcing

the new measures over the telephone hotline (800–662–9825 or 206–526–6667) used for inseason management actions and is posting the regulations on its WCR website (<https://www.fisheries.noaa.gov/action/2026-ocean-salmon-specifications-and-management-measures>).

NMFS is also advising the States of Washington, Oregon, and California of the new management measures. These states announce the seasons for applicable state and federal fisheries through their own public notification systems.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule, and none has been prepared.

This action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been approved by the Office of Management and Budget (OMB) under control number 0648–0433. The current information collection approval expires on November 30, 2026. The public reporting burden for providing notifications if landing area restrictions cannot be met is estimated to average 15 minutes per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This final rule was developed after meaningful consultation with the Tribal representative on the Council, who has agreed with the provisions that apply to tribal vessels, and representatives of several Tribes participated in the Council meeting and provided testimony on the management measures.

Authority: 16 U.S.C. 773–773k; 1801 *et seq.*

Dated: May 14, 2026.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2026–09973 Filed 5–15–26; 4:15 pm]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 91, No. 96

Tuesday, May 19, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2026–0430]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the swine health protection program.

DATES: We will consider all comments that we receive on or before July 20, 2026.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov. Enter APHIS–2026–0430 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2026–0430, Regulatory Analysis and Development, PPD, APHIS, 5601 Sunnyside Ave., #AP760, Beltsville, MD 20705.

Supporting documents and any comments we receive on this docket may be viewed at regulations.gov or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except

holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the garbage feeding portion of the swine health protection program, contact Dr. Scott Kramer, Veterinary Medical Officer, Swine Health Center, Strategy and Policy, Veterinary Services, APHIS, 11200 Metro Airport Center Drive, Suite 140, Romulus, MI 48174; (614) 254–4522; scott.kramer@usda.gov. For information on the pseudorabies portion of the swine health protection program, contact Dr. Lynn Wachtman, Veterinary Medical Officer, Swine Health Center, Strategy and Policy, Veterinary Services, APHIS, 920 Main Campus Drive, Raleigh, NC 27606; (919) 855–7700; lynn.wachtman@usda.gov. For information on the information collection reporting process, contact Ms. Sheniqua Harris, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2528 or email APHIS.PRA@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Swine Health Protection.

OMB Control Number: 0579–0065.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (AHPA) of 2002 (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to prohibit or restrict the interstate movement of animals and animal products to prevent the dissemination within the United States of animal diseases and pests of livestock and to conduct programs to detect, control, and eradicate pests and diseases of livestock.

The Swine Health Protection Act (the Act) prohibits the feeding of garbage to swine intended for interstate movement or foreign commerce or that substantially affect such commerce unless the garbage has been treated to kill disease organisms. Untreated garbage is one of the primary media through which numerous infectious and communicable diseases can be transmitted to swine. The regulations promulgated under the Act in 9 CFR part 166 require that garbage intended to be fed to swine must be treated at a facility that holds a valid permit to treat

the garbage and must be treated in accordance with the regulations.

As part of its swine health protection program, APHIS conducts a pseudorabies (PRV) eradication program in cooperation with State governments, swine producers, swine shippers, herd owners, and accredited veterinarians. The program identifies PRV-affected swine, provides herd management techniques, and supports control, elimination, and eradication of PRV in commercial production herds. However, APHIS periodically finds infected swine when swine are exposed to feral swine or other swine that have had exposure to feral swine.

The regulations in 9 CFR parts 71 and 85 facilitate the PRV eradication program and general swine health by providing requirements for moving swine interstate within a swine production system. (A production system consists of separate farms that each specialize in a different phase of swine production such as sow herds, nursery herds, and finishing herds. These separate farms, all members of the same production system, may be located in more than one State.)

The regulations for the feeding of garbage to swine and for the PRV eradication program require the use of a number of information collection activities, including the completion of applications to operate garbage treatment facilities; an acknowledgement of the Swine Health Protection Act and implementing regulations; garbage treatment facility inspection; cancellation of license by State animal health officials; request for a hearing; cancellation of license by licensee; notification by licensee of sick or dead animals; notification by licensee of changes to name, address, or management; cooperative agreements, for States that issue garbage feeding licenses under Veterinary Services (VS) supervision but do not have primary enforcement responsibility; swine health protection program inspection summary; permit to move restricted animals; owner-shipper statement; certificate of veterinary inspection; accredited veterinarian's statement regarding embryo and semen shipments; identification for swine moving interstate; swine production system health plan; interstate movement report and notification; cancellation or withdrawal of a swine production

system health plan; appeal of cancellation of a swine production system health plan; shipment to slaughter seal; appraisal and indemnity claim form; report of net salvage proceeds; herd management plans; and recordkeeping.

We are requesting the Office of Management and Budget (OMB) to approve our use of the above listed information collection activities, as described, for an additional 3 years. APHIS has amended this information collection by removing VS Form 1–23, VS Form 1–24, and VS Form 1–27 and moving these activities to other information collections.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 1.696 hours per response.

Respondents: Owners/operators (licensees) of garbage treatment facilities, herd owners, food establishments, accredited veterinarians, and State animal health authorities.

Estimated annual number of respondents: 15,147.

Estimated annual number of responses per respondent: 72.

Estimated annual number of responses: 1,087,827.

Estimated total annual burden on respondents: 1,844,810 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 14th day of May 2026.

Kelly Moore,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2026–10014 Filed 5–18–26; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID: FSA–2026–0298]

Information Collection Request; Online Loan Application

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on a revision of a currently approved collection associated with an automated FSA Online Loan Application for Direct Loan Making Program. For Direct Loan Making Programs, the information collected is used in eligibility and feasibility determinations for loan making actions. Future releases of the FSA Online Loan Application will provide additional functionality and components for Direct Loan Making applications.

DATES: We will consider comments that we receive by July 20, 2026.

ADDRESSES: We invite you to submit comments in response to this notice. FSA prefers that the comments are submitted electronically through the Federal eRulemaking Portal, identified by Docket ID No. FSA–2026–0298, go to <http://www.regulations.gov> and search for docket ID FSA–2026–0298. Follow the online instructions for submitting comments.

All comments received will be posted without change and made publicly available on www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For specific questions related to the collection activities or to obtain a copy of the information collection request: For the Direct Loan Making Program please contact Matthew Christian; telephone: (423) 788–2007; email: matthew.christian@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice) or (844) 433–2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Title: Farm Loan Programs, Online Loan Application.

OMB Control Number: 0560–0317.

Expiration Date: November 30, 2026.

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

Abstract: FSA's Farm Loan Programs provide loans to family farmers to purchase real estate and equipment, and to finance agricultural production. In response to Executive Order 14058—Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government, FSA simplified the Direct Farm Loan application by reducing the number of forms required for completion of form FSA–2001, “Request for Direct Loan Assistance” from 29 pages to 13 pages. The simplified paper application was released in March 2023. In December 2023, FSA launched the FSA Online Loan Application (OLA) through which Farm Loan Program applicants desiring an automated application experience could submit requests for Direct Loan assistance. For the initial launch, the FSA OLA was only available to individual operators. FSA later expanded OLA in August 2024 to accept requests from informal entities, including married couples. In April 2026, further OLA expansion occurred to accept requests from legal entity applicants. As it relates to available loan types, OLA is only available for Farm Ownership Loans and Operating Loans requests. It is not available for Youth Loans, Emergency Loans, or the Indian Tribal Land Acquisition Loan Program. As it relates solely to the automated form FSA–2001 completed via the OLA experience, the burden hours were projected to decrease from the paper FSA–2001 “Request for Direct Loan Assistance” form due to the intuitive design of the online application software.

FSA is currently exploring broader IT Modernization efforts to enhance program delivery. As part of the broader IT modernization effort, the existing OLA platform may be incorporated into a new fully integrated lending platform for USDA. OMB review and approval will be required prior to implementation of any new online loan intake software.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response hours multiplied by the estimated total annual responses.

Type of Respondents: Individuals or households (informal entities), businesses (legal entities), or other for-profit farms.

Estimated Annual Number of Respondents: 668.

Estimated Number of Responses Per Respondent: 1.16.

Estimated Total Annual Responses: 775.

Estimated Average Time per Response: 1.49 hours.

Estimated Total Annual Burden on Respondents: 1,152 hours.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

William Beam,

Administrator, Farm Service Agency.

[FR Doc. 2026-10005 Filed 5-18-26; 8:45 am]

BILLING CODE 3411-E2-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

The Emergency Food Assistance Program; Availability of Foods for Fiscal Year 2026

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the surplus and purchased foods that the Department expects to make available for donation to States for use in providing nutrition assistance to the needy under The Emergency Food Assistance Program (TEFAP) in Fiscal Year (FY) 2026. The foods made available under this notice must, at the discretion of the State, be distributed to eligible recipient agencies (ERAs) for use in preparing meals and/or for distribution to households for home consumption.

FOR FURTHER INFORMATION CONTACT:

Farah Ahmad, Food Distribution Policy Branch, Policy Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION:

In accordance with the provisions set forth in the Emergency Food Assistance Act of 1983 (EFAA), 7 U.S.C. 7501, *et seq.*, and the Food and Nutrition Act of 2008, 7 U.S.C. 2036, the Department makes foods available to States for use in providing nutrition assistance to those in need through TEFAP. In accordance with section 214 of the EFAA, 7 U.S.C. 7515, funding for TEFAP foods is allocated among States according to a formula that accounts for poverty and unemployment levels within each State. Section 214(a)(1) of the Act requires that 60 percent of each State's allocation be based on the number of people with incomes below the poverty level within the State; and Section 214(a)(2) requires that the remaining 40 percent be equal to the percentage of the nation's unemployed persons within the State. State officials are responsible for establishing the network through which the foods will be used by ERAs in providing nutrition assistance to those in need and for allocating foods among those ERAs. States have full discretion in determining the amount of foods that will be made available to ERAs for use in preparing meals and/or for distribution to households for home consumption.

Surplus Foods

Surplus foods donated for distribution under TEFAP are Commodity Credit Corporation (CCC) foods purchased under the authority of section 416 of the Agricultural Act of 1949, 7 U.S.C. 1431 (section 416) and foods purchased under the surplus removal authority of section 32 of the Act of August 24, 1935, 7 U.S.C. 612c (section 32). The types of foods typically purchased under section 416 include dairy, grains, oils, and peanut products. The types of foods purchased under section 32 include meat, poultry, fish, vegetables, dry beans, juices, and fruits.

Approximately \$358 million in surplus foods acquired in FY 2025 are being delivered to States in FY 2026. Surplus foods currently scheduled for delivery in FY 2026 include apple products, apricots, asparagus, beans, blackberries, cherries, cranberries, dates, fish, grapes, hazelnuts, lentils, oranges, peaches, pears, pecans, pistachios, plums, raisins, raspberries, shrimp, and strawberries. Other surplus foods may be made available to TEFAP throughout

the year. The Department would like to point out that food acquisitions are based on changing agricultural market conditions; therefore, the availability of foods is subject to change.

Purchased Foods

In accordance with section 27 of the Food and Nutrition Act of 2008, 7 U.S.C. 2036, the Secretary is directed to purchase an estimated \$465.2 million worth of foods in FY 2026 for distribution through TEFAP.

For FY 2026, the Department anticipates purchasing the foods listed in the following table for distribution through TEFAP. The amounts of each item purchased will depend on the prices the Department must pay, as well as the quantity of each item requested by the States. Changes in agricultural market conditions may result in the availability of additional types of foods or the non-availability of one or more foods listed in the table.

FY 2026 USDA FOODS AVAILABLE LIST FOR THE EMERGENCY FOOD ASSISTANCE PROGRAM (TEFAP)

FRUITS:

Apples, Braeburn, Fresh
Apples, Empire, Fresh
Apples, Fuji, Fresh
Apples, Gala, Fresh
Apples, Granny Smith, Fresh
Apples, Red Delicious, Fresh
Apples, Fresh
Apple Juice, 100%, Unsweetened
Apple Slices, Unsweetened, Frozen (IQF)
Applesauce, Unsweetened, Canned (K)
Applesauce, Unsweetened, Cups, Shelf-Stable
Apricots, Halves, Extra Light Syrup, Canned
Blueberries, Highbush, Unsweetened, Frozen
Cherry Apple Juice, 100%, Unsweetened
Cranberry Apple Juice, 100%, Unsweetened
Cranberries, Dried, Individual Portion
Grape Juice, Concord, 100%, Unsweetened
Grapefruit Juice, 100%, Unsweetened
Fruit and Nut Mix, Dried
Mixed Fruit, Extra Light Syrup, Canned
Oranges, Fresh
Orange Juice, 100%, Unsweetened
Peaches, Freestone, Slices, Frozen
Peaches, Sliced, Extra Light Syrup, Canned
Pears, Bartlett, Fresh
Pears, Bosc, Fresh
Pears, D'Anjou, Fresh
Pears, Fresh
Pears, Extra Light Syrup, Canned (K)
Plums, Pitted, Dried
Raisins, Unsweetened, Individual Portion
Raisins, Unsweetened
Strawberries, Whole, Unsweetened, Frozen (IQF)

DAIRY:

**FY 2026 USDA FOODS AVAILABLE
LIST FOR THE EMERGENCY FOOD
ASSISTANCE PROGRAM (TEFAP)—
Continued**

Cheese, American, Reduced Fat, Loaves, Refrigerated
Cheese, Cheddar, Yellow, Shredded, Refrigerated
Cheese, Cheddar, Yellow, Chunks, Refrigerated
Milk, 1%, Shelf-Stable UHT
Milk, 1%, Individual Portion, Shelf-Stable UHT
Milk 1% Fresh
Milk, Skim, Fresh
Yogurt, High-Protein, Vanilla, Chilled (K)
Yogurt, High-Protein, Blueberry, Chilled (K)
Yogurt, High-Protein, Strawberry, Chilled (K)

VEGETABLES:

Beans, Green, Low-sodium, Canned (K)
Beans, Green, No Salt Added, Frozen
Carrots, Diced, No Salt Added, Frozen
Carrots, Sliced, Low-sodium, Canned
Corn, Whole Kernel, No Salt Added, Canned (K)
Corn, Cream Style, Low-sodium, Canned
Corn, Whole Kernel, No Salt Added, Frozen
Mixed Produce Box, Fresh
Mixed Vegetables, 7-Way Blend, Low-sodium, Canned
Peas, Green, Low-sodium, Canned
Peas, Green, No Salt Added, Frozen
Potatoes, Dehydrated Flakes
Potatoes, Round, Fresh
Potatoes, Russet, Fresh
Potatoes, Sliced, Low-sodium, Canned
Pumpkin, No Salt Added, Canned
Spaghetti Sauce, Low-sodium, Canned
Spinach, Low-sodium, Canned
Sweet Potatoes, Fresh
Tomato Juice, 100%, Low-sodium
Tomato Sauce, Low-sodium, Canned
Tomato Sauce, Low-sodium, Canned (K) (H)
Tomato Soup, Condensed, Low-sodium, Canned
Tomatoes, Diced, No Salt Added, Canned
Vegetable Soup, Condensed, Low-Sodium, Canned

LEGUMES:

Beans, Black, Low-sodium, Canned
Beans, Black, Dry
Beans, Black-eyed Pea, Low-sodium, Canned
Beans, Black-eyed Pea, Dry
Beans, Garbanzo, Canned (K)
Beans, Great Northern, Dry
Beans, Kidney, Light Red, Low-sodium, Canned
Beans, Kidney, Light Red, Dry
Beans, Lima, Baby, Dry
Beans, Pinto, Low-sodium, Canned
Beans, Pinto, Dry
Beans, Refried, Low-sodium, Canned
Beans, Vegetarian, Low-sodium, Canned
Lentils, Dry
Peas, Green Split, Dry

PROTEIN FOODS:

Alaska Pollock, Fillets, Frozen
Alaska Pollock, Whole Grain Breaded Fish Sticks, Frozen
Almonds, Natural, Whole, Shelled
Atlantic Haddock, Fillet, Frozen

**FY 2026 USDA FOODS AVAILABLE
LIST FOR THE EMERGENCY FOOD
ASSISTANCE PROGRAM (TEFAP)—
Continued**

Atlantic Ocean Perch, Fillet, Frozen
Atlantic, Pollock, Fillet, Frozen
Beef, Canned/Pouch
Beef, Fine Ground, 85% Lean/15% Fat, Frozen
Beef Stew, Canned/Pouch
Catfish, Fillets, Farm-Raised, Frozen
Catfish, Filets, Wild-Caught, Frozen
Chicken, Boneless Breast, Frozen
Chicken, Canned
Chicken, Drumsticks, Frozen
Chicken, Pouch
Chicken, Split Breast, Frozen
Chicken, Whole, Frozen
Eggs, Fresh
Egg Mix, Dried
Peanut Butter, Smooth
Peanut Butter, Smooth (K)
Peanut Butter, Smooth, Individual Portion
Peanuts, Roasted, Unsalted
Pork, Canned/Pouch
Pork, Ham, Frozen
Pork, Chops, Boneless, Frozen
Salmon, Pink, Canned
Salmon, Pink, Canned (K)
Turkey, Deli Breast, Sliced, Frozen
Walnut, Pieces

GRAINS:

Bakery Mix, Low-fat (K)
Cereal, Ready-to-Eat
Cereal, Wheat Farina, Enriched
Crackers, Unsalted
Cornmeal, Yellow
Flour, All Purpose, Enriched, Bleached
Flour, White Whole Wheat (WG)
Grits, Corn, White
Grits, Corn, Yellow
Oats, Rolled, Quick Cooking (WG)
Pasta, Egg Noodles
Pasta, Macaroni, Enriched
Pasta, Macaroni (WG)
Pasta, Macaroni and Cheese
Pasta, Rotini (WG)
Pasta, Spaghetti, Enriched
Pasta, Spaghetti (WG)
Rice, Brown, Long-Grain, Parboiled (WG)
Rice, Medium Grain
Rice, Long Grain
Tortillas, Frozen (WG)

OILS:

Oil, Vegetable

OTHER:

Soup, Cream of Chicken, Condensed, Reduced Sodium
Soup, Cream of Mushroom, Condensed, Reduced Sodium

KEY:

H—Halal Certification Required
K—Kosher Certification Required
IQF—Individually Quick Frozen
UHT—Ultra-High Temperature Pasteurization
WG—Whole Grain

Patrick A. Penn,

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

[FR Doc. 2026-10016 Filed 5-18-26; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF COMMERCE

**National Telecommunications and
Information Administration**

First Responder Network Authority

**Public Combined Board and Board
Committees Meeting**

AGENCY: First Responder Network Authority (FirstNet Authority), National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

ACTION: Announcement of meeting.

SUMMARY: The FirstNet Authority Board will convene an open public meeting of the Board and Board Committees.

DATES: June 2, 2026; 1:00 p.m. to 2:00 p.m. Eastern Daylight Time (EDT); Coral Gables, Florida.

ADDRESSES: The public meeting will be held at the Hyatt Regency Coral Gables in the Venetian Ballroom at 50 Alhambra Plaza, Coral Gables, Florida, 33134. All expected attendees are asked to provide notice of intent to attend by sending an email to BoardRSVP@Firstnet.gov. Members of the public may listen to the meeting and view the presentation by joining from the Microsoft Teams meeting link: <https://teams.microsoft.com/join/21911765521621?p=fGtqS0eto1Mz6CZlp2>.

Meeting ID: 219 117 655 216 21.

Passcode: LU68w6Lw.

If you experience technical difficulty, contact the FirstNet Authority Customer Support Service Desk at CCSD@FirstNet.gov. Teams link and information can also be found on the FirstNet Authority website ([FirstNet.gov](https://firstnet.gov)).

FOR FURTHER INFORMATION CONTACT:

General information: Jennifer Watts, (571) 665-6178, Jennifer.Watts@FirstNet.gov.

Media inquiries: Ryan Oremland, (571) 665-6186, Ryan.Oremland@FirstNet.gov.

SUPPLEMENTARY INFORMATION:

Background: The Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. 1401 *et seq.*) (Act) established the FirstNet Authority as an independent authority within NTIA. The Act directs the FirstNet Authority to ensure the building, deployment, and operation of a nationwide interoperable public safety broadband network. The FirstNet Authority Board is responsible for making strategic decisions regarding the operations of the FirstNet Authority.

Matters to be Considered: The FirstNet Authority will post a detailed agenda for the Combined Board and

Board Committees Meeting on *FirstNet.gov* prior to the meeting. The agenda topics are subject to change. Please note that the subjects discussed by the Board and Board Committees may involve commercial or financial information that is privileged or confidential, or other legal matters affecting the FirstNet Authority. As such, the Board may, by majority vote, close the meeting only for the time necessary to preserve the confidentiality of such information, pursuant to 47 U.S.C. 1424(e)(2).

Other Information: The public Combined Board and Board Committees Meeting is accessible to people with disabilities. Individuals requiring accommodations are asked to notify Jennifer Watts at (571) 665–6178 or email: Jennifer.Watts@FirstNet.gov before the meeting.

Records: The FirstNet Authority maintains records of all Board proceedings. Minutes of the Combined Board and Board Committees Meeting will be available on *FirstNet.gov*.

Dated: May 14, 2026.

Jennifer Watts,

Board Secretary, First Responder Network Authority.

[FR Doc. 2026–09955 Filed 5–18–26; 8:45 am]

BILLING CODE 3510-TL-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–123]

Certain Corrosion Inhibitors From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

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

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

DATES: Applicable May 19, 2026.

FOR FURTHER INFORMATION CONTACT: Walter Ankner, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–3874.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 2021, the U.S. Department of Commerce (Commerce) published the *Order* on corrosion inhibitors from China.¹ On February 2, 2026, Commerce published the notice of initiation of the first sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(c).²

On February 17, 2026, Commerce received a notice of intent to participate in this review from Wincom Inc. (the domestic interested party), within the deadline specified in 19 CFR 351.218(d)(1)(i).³ The domestic party claims that it has interested party status within the meaning of section 771(9)(C) of the Act as a manufacturer in the United States of the domestic like product.⁴

On March 4, 2026, Commerce received an adequate substantive response from the domestic interested party, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁵ Commerce did not receive a substantive response from either the Government of China or a respondent interested party to this proceeding. On March 27, 2026, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁶ As a result, Commerce conducted an expedited (120-day) sunset review of the *Order*, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Scope of the Order

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

¹ See *Certain Corrosion Inhibitors from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders*, 86 FR 14869 (March 19, 2021) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 91 FR 3399 (February 2, 2026).

³ See Domestic Interested Party's Letter, “Five-Year (“Sunset”) Review Of Antidumping & Countervailing Duty Orders On Corrosion Inhibitors from People's Republic of China: Notice Of Intent To Participate In Sunset Reviews,” dated February 17, 2026.

⁴ *Id.* at 2.

⁵ See Domestic Interested Party's Letter, “Five-Year (“Sunset”) Review Of Countervailing Duty Order On Corrosion Inhibitors from China: Domestic Interested Party Substantive Response,” dated March 4, 2026 (Substantive Response).

⁶ See Commerce's Letter, “Sunset Reviews Initiated February 2, 2026,” dated March 27, 2026.

⁷ See Memorandum, “Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Certain Corrosion Inhibitors from the

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of subsidization and the countervailable subsidy rates likely to prevail if the *Order* were to be revoked, is contained in the accompanying Issues and Decision Memorandum.⁸ A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at <https://access.trade.gov>. In addition, complete versions of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/frnotices>.

Final Results of Sunset Review

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

Company	Net-countervailable subsidy rate (percent <i>ad valorem</i>)
Jiangyin Delian Chemical Co., Ltd. (Delian)	96.29
Nantong Botao Chemical Co., Ltd. (Botao)	64.18
CAC Shanghai Chemical Co., Ltd	239.21
Jiangyin Gold Fuda Chemical Co., Ltd	239.21
Xinji Xi Chen Re Neng Co., Ltd	239.21
All Others	80.58

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders is hereby requested. Failure to comply with the regulations and terms of an

People's Republic of China,” dated concurrently with, and hereby adopted by, this notice.

⁸ *Id.*

APO is a violation which is subject to sanction.

Notification to Interested Parties

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

Dated: May 14, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for
Antidumping and Countervailing Duty
Operations.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. History of the Order
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
 2. Net Countervailable Subsidy Rates Likely to Prevail
 3. Nature of the Subsidies
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2026–10006 Filed 5–18–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2023–2024

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Shanghai Yueda Nails Co., Ltd., a.k.a. Shanghai Yueda Nails Industry Co., Ltd. (Shanghai Yueda) and Shanghai Yueda Nails (Chuzhou) Ltd. (Chuzhou Yueda) (collectively, Yueda Nails), an exporter of certain steel nails (nails) from the People's Republic of China (China), sold subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) August 1, 2023, through July 31, 2024.

DATES: Applicable May 19, 2026.

FOR FURTHER INFORMATION CONTACT:

Matthew Lipka or Hannah Lee, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7976 or (202) 482–1216 respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2026, Commerce published the *Preliminary Results* of the 2023–2024 administrative review of the antidumping Order on nails from China in the **Federal Register** and invited parties to comment.¹ We received no comments from interested parties on the *Preliminary Results*, and thus we have made no changes to the *Preliminary Results*. Accordingly, no decision memoranda accompany this **Federal Register** notice, and the *Preliminary Results* are hereby adopted as these final results. Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The current deadline for the final results of this review is May 28, 2026.

Scope of the Order

The products covered by the Order are nails from China. For a full description of the scope of the Order, see the *Preliminary Results* PDM.

China-Wide Entity

As stated in the *Preliminary Results*, because no party requested a review of the China-wide entity, the entity is not under review and the China-wide entity's rate, i.e., 118.04 percent, is not subject to change.²

Final Results of Administrative Review

For the company subject to this review, which established its eligibility for a separate rate, Commerce determines that the following estimated weighted-average dumping margin exists for the period from August 1, 2023, through July 31, 2024:

¹ See *Certain Steel Nails from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission, in Part, of Antidumping Duty Administrative Review; 2023–2024*, 91 FR 3707 (January 28, 2026) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM); see also *Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China*, 73 FR 44961 (August 1, 2008) (*Order*).

² See *Preliminary Results*, 91 FR at 3708.

³ In the *Preliminary Results*, we determined that Shanghai Yueda and Chuzhou Yueda comprise a single entity. As no parties challenged this determination, we continue to determine that these companies comprise a single entity for these final results. See Memorandum, “Preliminary Affiliation and Single Entity Determination,” dated January 16, 2026.

Exporter	Weighted-average dumping margin (percent)
Shanghai Yueda Nails Co., Ltd., a.k.a. Shanghai Yueda Nails Industry Co., Ltd./Shanghai Yueda Nails (Chuzhou) Ltd. ³	28.28

Disclosure

Normally, Commerce discloses to interested parties the calculations of the final results of an administrative review within five days of a public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we made no changes from the *Preliminary Results*, there are no calculations to disclose.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Pursuant to 19 CFR 351.212(b)(1), for Yueda Nails, we calculated customer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for each customer's examined sales and the total entered value of the sales. Where a customer-specific assessment rate is zero or *de minimis* (i.e., less than 0.5 percent), the entries by that customer will be liquidated without regard to antidumping duties. For entries of subject merchandise during the POR produced by Yueda Nails for which they did not know their merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the China-wide rate if there is no rate for the intermediate company or companies involved in the transaction. The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.⁴

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the

⁴ See section 751(a)(2)(C) of the Act.

assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for Yueda Nails, the cash deposit rate will be equal to the weighted-average dumping margin listed in the table above; (2) for previously examined Chinese and non-Chinese exporters not listed above that received a separate rate in a prior completed segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.*, 118.04 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the

regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

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

Dated: May 13, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2026–10004 Filed 5–18–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–122]

Certain Corrosion Inhibitors From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order

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

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on certain corrosion inhibitors (corrosion inhibitors) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping, at the levels indicated in the "Final Results of Sunset Review" section of this notice.

DATES: Applicable May 19, 2026.

FOR FURTHER INFORMATION CONTACT: Ryan Wallace, Trade Agreements Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–7805.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 2021, Commerce published the *Order* in the **Federal Register**.¹ On February 2, 2026, Commerce published the notice of initiation of this first sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930 (the Act).²

On February 17, 2026, Commerce received a timely and complete notice of

intent to participate in the sunset review for domestic interested parties within the deadline specified in the 19 CFR 351.218(d)(1)(i).³ The domestic interested party claimed the interested party status within the meaning of section 771(9)(C) of the Act as a manufacturer of the domestic like product.⁴ On February 20, 2026, Commerce notified the U.S. International Trade Commission (ITC) that it had received a notice of intent to participate from the domestic interested parties.⁵

On March 4, 2026, pursuant to 19 CFR 351.218(d)(3)(i), domestic interested parties filed a timely and adequate substantive response.⁶ Commerce did not receive a substantive response from any respondent interested party. On March 27, 2026, Commerce notified the ITC that it did not receive a substantive response from any respondent interested parties.⁷ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting an expedited (120-day) sunset review of the *Order*.

Scope of the Orders

The product covered by this *Order* is corrosion inhibitors from China. For the full description of the scope of the *Order*, see the Issues and Decision Memorandum.⁸

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *Order* and the magnitude of the margins likely to prevail if the *Order* were to be revoked, is provided in the accompanying Issues and Decision Memorandum.⁹ A list of

³ See Domestic Interested Party's Letter, "Five Year ('Sunset') Review of Antidumping & Countervailing Duty Orders on Corrosion Inhibitors from People's Republic of China: Notice of Intent to Participate in Sunset Reviews," dated February 17, 2026.

⁴ *Id.* at 2.

⁵ See Commerce's Letter, "Sunset Reviews Initiated on February 2, 2026," dated February 20, 2026.

⁶ See Domestic Interested Party's Letter, "Five-Year ('Sunset') Review of Antidumping Duty Order on Corrosion Inhibitors from The People's Republic of China: Domestic Interested Party Substantive Response," dated March 4, 2026 (Substantive Response).

⁷ See Commerce's Letter, "Sunset Reviews Initiated on February 2, 2026," dated March 27, 2026.

⁸ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Antidumping Duty Order on Certain Corrosion Inhibitors from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice.

⁹ *Id.*

¹ See *Certain Corrosion Inhibitors from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders*, 86 FR 14869 (March 19, 2021) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 91 FR 4499 (February 2, 2026).

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

Final Results of Sunset Review

Pursuant to sections 751(c)(1), 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 277.90 percent.

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: May 14, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping

2. Magnitude of the Margins of Dumping Likely to Prevail
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2026–10007 Filed 5–18–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF772]

Fisheries of the Caribbean; Southeast Data, Assessment, and Review; Public Meeting

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of webinar.

SUMMARY: The Southeast Data Assessment and Review (SEDAR) 103 assessment process of Caribbean Alternate Assessment Methods will consist of a Development Workshop, a series of Assessment Webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 103 Data Webinar 5 will be held from 1 p.m. until 4 p.m. EST June 17, 2026.

ADDRESSES:

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405. <https://www.sedarweb.org>.

Meeting address: The SEDAR 103 Data Webinar 5 will be held via webinar. The webinar is open to members of the public. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

FOR FURTHER INFORMATION CONTACT: Emily Ott, SEDAR Coordinator; (843) 302–8434. Email: Emily.Ott@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with the National Marine Fisheries Service and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the SEDAR process. SEDAR is a participatory process for developing, evaluating and reviewing information used for fisheries management advice. This multi-step process for determining the status of

fish stocks in the Southeast Region may include (1) a Data stage, and (2) an Assessment stage, and (3) a Review stage. Each stage produces a report summarizing decisions made during that stage. A final stock assessment report is produced at the end of a SEDAR process documenting data sets used, model configurations and the opinions from the independent peer review. Participants for SEDAR projects are appointed by the Gulf, South Atlantic, and Caribbean Fishery Management Councils and National Marine Fisheries Service Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants may include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations; International experts; and staff of Councils, Commissions, and state and Federal agencies.

The items of discussion in the SEDAR 103 Data Webinar 5 are as follows: Pacific Islands and analytical methods. Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: May 14, 2026.

Rey Israel Marquez,

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

[FR Doc. 2026–09968 Filed 5–18–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Notice of Intent To Prepare a Supplemental Programmatic Environmental Impact Statement for the Coral Reef Conservation Program and To Solicit Public Input**

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of intent; request for written comments.

SUMMARY: NOAA announces its intent to prepare a supplemental Programmatic Environmental Impact Statement (PEIS) in accordance with the National Environmental Policy Act (NEPA) for its Coral Reef Conservation Program (CRCP). The CRCP conducts and funds activities throughout parts of the United States, including Florida, Hawai'i, Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa. The CRCP funds monitoring activities and occasional research within the Gulf of America and the U.S. Pacific Remote Island Area, and provides technical support and capacity-building in targeted international regions, including the wider Caribbean, Micronesia, and the Coral Triangle. The supplemental PEIS will address the environmental impacts of new coral reef conservation and restoration activities and expanded methods to be conducted by the CRCP.

DATES: Written comments must be received at the appropriate address (see **ADDRESSES**) on or before June 18, 2026.

ADDRESSES: You may submit comments on this notice by either of the following methods:

- **Federal e-Rulemaking Portal:** Go to <https://www.regulations.gov/docket/NOAA-NOS-2026-1618>. Click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Please direct written comments to Liz Fairey (liz.fairey@noaa.gov), NOAA Office of Habitat Conservation, 1315 East-West Highway, Silver Spring, Maryland 20910.

All relevant comments received are part of the public record. Comments that are not related to the supplemental PEIS for the CRCP, or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered. NOAA will accept anonymous comments (enter N/A in the required fields to remain

anonymous). All personally identifiable information, (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Liz Fairey, NOAA's Office of Habitat Conservation, 1315 East-West Highway, Silver Spring, Maryland 20910, liz.fairey@noaa.gov, (301) 427-8632.

SUPPLEMENTARY INFORMATION: CRCP supports activities that are funded and carried out under the Coral Reef Conservation Act (16 U.S.C. 6401 *et seq.*) to protect, conserve, and restore the nation's coral reefs by maintaining healthy ecosystem functions while promoting the wise management and sustainable use to benefit local communities and the nation. In July 2020, NOAA published the NOAA Coral Reef Conservation Program's Final Programmatic Environmental Impact Statement (PEIS; coast.noaa.gov/data/docs/compliance/crcp-feis.pdf). The PEIS assesses a suite of potential environmental impacts of NOAA-funded coral reef conservation and restoration activities implemented through its existing framework for implementing the CRCP, which is consistent with obligations under the Coral Reef Conservation Act. The PEIS has been reevaluated and continues to be valid for the activities described within, but new activities and expanded methods are being implemented due to advances in science, changes in restoration methods, and changes in circumstances. Therefore, NOAA will draft a supplemental PEIS to assess the environmental impacts of these new and expanded activities.

NOAA continues to implement the CRCP across four of its line offices (National Ocean Service, Oceanic and Atmospheric Research, National Marine Fisheries Service, and National Environmental Satellite Data Information Service) and in coordination with other Federal agencies, state and local agencies, private conservation organizations, and research and academic institutions. The CRCP supports research and monitoring to gather data on the existence and condition of coral reef ecosystems to support conservation, management, and restoration efforts. The CRCP also supports coral and watershed restoration activities, along with other activities to reduce physical impacts to coral reefs. The projects implemented or funded under the CRCP vary in terms of their size, complexity, geographic location, and level of Federal

involvement; they often benefit diverse coral species, habitats, and ecosystem types. A significant amount of this support is administered through grants and cooperative agreements. The CRCP prioritizes activities based on available funding and the responsiveness of priorities to the National Coral Reef Resilience Strategy as well as jurisdictional needs.

In the supplemental PEIS, CRCP will include new actions and expanded methods that incorporate the latest scientific advances and new solutions needed to respond to shifting ocean conditions and emerging threats, such as coral disease and invasive species. Thus, these new activities undertaken and funded by the CRCP, and their potential effects on the environment, will be analyzed in the supplemental PEIS. These activities include:

- Expanding coral collection activities to include the collection of whole coral colonies for use in research activities; for coral nursery broodstock and restoration activities; for rescue during disease outbreaks and thermal events; and for preservation in gene banks.
- Expanding coral nursery activities to include more support for ex-situ/land-based coral nurseries including expansion, maintenance, and herbivore co-culturing.
- Expanding coral restoration activities to include larger restoration areas approximately the size of two basketball courts (1,000 m² or 3,280 ft²), to incorporate broader application of selectively bred (e.g., assisted gene flow to improve genetic diversity) or preconditioned corals (e.g., stress hardening to improve resistance to ocean conditions); and to add additional site preparation techniques, such as stabilization of loose coral and rubble and installing three-dimensional structures to improve survival of outplanted corals.
- Expanding ecosystem intervention activities to include the propagation and release of additional herbivores (e.g., fish and snails) for algae control; additional methods to manage unwanted invasive and nuisance species (e.g., soft corals); and activities to increase coral larval settlement (e.g., playing natural sounds on reefs).
- Expanding activities to address temporary shifts in ocean conditions (e.g., thermal events and disease outbreaks) by the temporary evacuation of corals to ex-situ facilities; moving coral nurseries to deeper, cooler waters; shading of priority corals; and in-situ coral feeding.

- Expanding watershed restoration activities to include in-situ mangrove nursery operations and restoration.

The evaluation within the original PEIS based on a broad range of potential impacts that could result from implementation of all activities, rather than a site-specific analysis. The actual environmental effects are evaluated by tiered site-specific, project-level review. In preparing the supplemental PEIS, NOAA will continue to use the tiered environmental decision-making framework established in the original PEIS to ensure compliance with other statutes protecting natural resources.

Alternatives

NOAA will analyze four program-level alternatives:

- No-Action Alternative: This reflects the “status quo” operations of the CRCP as described in the original PEIS, without the implementation of the new actions and expanded methods mentioned above.

- Alternative One: This alternative reflects the continued operation of the CRCP, but would eliminate in-water activities that restore viable coral populations (e.g., in-water coral restoration and intervention techniques) and the activities that reduce physical impacts to coral reefs (e.g., marine debris removal and installation of buoys).

- Alternative Two: This alternative continues the operation of the CRCP, including the in-water coral restoration and intervention activities and reduction of physical impacts to coral reef ecosystems that support restoring viable coral populations (i.e., the no-action alternative), and requires the implementation of discretionary conservation and mitigation measures. This alternative would include the new actions and expanded methods mentioned above.

- Alternative Three: This is the agency’s preferred alternative, which reflects the “status quo” operations of the CRCP as described in the original PEIS, with the addition of the new actions and expanded methods mentioned above.

Public Comment

We begin this NEPA process by soliciting input from the public and interested parties on environmental impacts and relevant information, studies, or analyses with respect to the CRCP’s new and expanded activities to be considered in the supplemental PEIS. Specifically, this scoping process is intended to accomplish the following objectives:

- Invite affected Federal, State, and local agencies, as well as other interested persons, to participate in the supplemental PEIS process.

- Identify potential significant environmental impacts, issues, or substantial new circumstances to be analyzed in the supplemental PEIS.

- Identify and eliminate issues determined to be insignificant or addressed in other documents.

- Identify related environmental documents being prepared.

- Identify other environmental review and consultation requirements.

The official scoping period starts on May 19, 2026. Please visit the NOAA CRCP web page for additional information regarding the program: <https://coralreef.noaa.gov/>.

Authority: The preparation of the supplemental PEIS for NOAA’s CRCP will be conducted in accordance with the requirements of NEPA and NOAA’s policies and procedures for compliance with NEPA.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2026–09969 Filed 5–18–26; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF775]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notification; availability of a proposed evaluation and pending determination for public comment.

SUMMARY: Notice is hereby given that NMFS has received five Hatchery and Genetic Management Plans (HGMPs) for hatchery programs rearing and releasing fall-run Chinook salmon, coho salmon, and fall-run chum salmon in the Puyallup River basin. The plan describes five hatchery programs operated by the Washington Department of Fish and Wildlife (WDFW) and the Puyallup Tribe of Indians (PTI) as co-managers. This notice provides an opportunity to comment on a Proposed Evaluation and Pending Determination (PEPD) document on implementing the proposed hatchery programs and associated findings.

DATES: Comments must be received no later than 5 p.m. Pacific time on June 18, 2026.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2026–1585, by electronic submission:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type NOAA–NMFS–2026–1585 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Comments received after June 18, 2026 may not be considered.

The document available for public comment is available on the internet at: <https://www.fisheries.noaa.gov/action/five-hatchery-and-genetic-management-plans-puyallup-river-basin>.

The HGMPs are available online concurrently while the comment period for the PEPD is open at: <https://www.puyalluptribe-nsn.gov/member-services/tribal-natural-resources/fisheries/> (PTI Programs) and <https://wdfw.wa.gov/fishing/management/hatcheries/hgmp#comment> (WDFW programs).

FOR FURTHER INFORMATION CONTACT:

Molly Gorman, (206) 526–6114, molly.gorman@noaa.gov.

SUPPLEMENTARY INFORMATION:

Endangered Species Act (ESA)-Listed Species Covered in This Notice

- Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally and artificially propagated;
- Puget Sound Steelhead (*Oncorhynchus mykiss*): threatened, naturally and artificially propagated.

Background

The term “take” is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any

such conduct. The ESA prohibits the take of endangered salmonids and, pursuant to ESA section 4(d), ESA regulations can be extended to prohibit the take of threatened salmonids. However, NMFS may make exceptions to the take prohibitions for hatchery programs that are approved by NMFS under the limits on the prohibitions outlined in 50 CFR 223.203(b). The operators, WDFW collaborating with tribal co-manager PTI, have submitted five HGMPs to NMFS pursuant to NMFS' Limit 6 of the 4(d) Rule of the ESA for hatchery activities in the Puyallup River basin, Washington. The PEPP is NMFS' initial determination for how the HGMPs address the criteria in 50 CFR 223.203(b)(5).

The hatchery programs under review are designed to help meet adult fish loss mitigation responsibilities, off-setting adverse impacts to natural-origin salmon abundances that historically sustained tribal, commercial, and recreational fisheries. These hatchery programs are intended to contribute to fulfilling federal trust responsibilities toward tribes with rights guaranteed through treaties, as affirmed in *United States v. Washington* (1974), by contributing to the recovery of ESA-listed salmon. Included in the HGMP is research and monitoring activities to study the effect of the programs on the recovery of Puget Sound Chinook salmon and Puget Sound steelhead.

Classification

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as deemed necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) Rule regulations (50 CFR 223.203(b)) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the regulations do not apply to actions undertaken in compliance with a plan developed jointly by a state and a tribe and determined by NMFS to be in accordance with the salmon and steelhead 4(d) Rule (65 FR 42422, July 10, 2000).

(Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*)

Dated: May 15, 2026.

Jennifer Leigh Quan,

*Regional Administrator, West Coast Region,
National Marine Fisheries Service.*

[FR Doc. 2026-10003 Filed 5-18-26; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XF774]

Marine Mammals; File No. 29621

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that NMFS' Marine Mammal Laboratory, 7600 Sand Point Way NE, Seattle, WA 98118 (Responsible Party: Nancy Friday, Ph.D.), has applied in due form for a permit to conduct research on northern fur seals (*Callorhinus ursinus*).

DATES: Written comments must be received on or before June 18, 2026.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the "Features" box on the Applications and Permits for Protected Species home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 29621 from the list of available applications. These documents are also available upon written request via email to NMFS.Pr1Comments@noaa.gov.

Written comments on this application should be submitted via email to NMFS.Pr1Comments@noaa.gov. Please include File No. 29621 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to NMFS.Pr1Comments@noaa.gov. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Shasta McClenahan, Ph.D., (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests a research permit to investigate population status and trends, demographics, health, disease, and foraging ecology of northern fur seals. Northern fur seals may be taken annually from the Eastern

Pacific stock in Alaska, including by capture and handle, harassment, unintentional disturbance, ground and aerial surveys, observation, photograph/video, capture/handling, and collection of scat/spew. Samples may be salvaged from pinnipeds found dead, received from subsistence harvested animals, and exported for analysis. During capture and handling, animals may receive drug administration, external instruments, marks, biological sampling, measured and weighed. Up to 4 unintentional mortalities of northern fur seals annually, not to exceed 13 over the life of the permit, are also requested. Steller sea lions (*Eumetopias jubatus*) from the endangered western Distinct Population Segment and harbor seals (*Phoca vitulina*) may be unintentionally disturbed annually during research.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 15, 2026.

Shannon Bettridge,

Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2026-09999 Filed 5-18-26; 8:45 am]

BILLING CODE 3510-22-P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2024-0039]

Extension of the Date by Which Neck Floats Must Be Tested and Certified Subject to the Submission of Samples

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of extension of date of testing and certification of neck floats.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) is announcing that the Commission is extending, by 60 days, the date by which manufacturers (including importers) of neck floats must comply with the third party testing and certification requirements for children's products under the Consumer Product Safety Act (CPSA). The extension is being provided because the

Commission has determined that there is an insufficient number of third party conformity assessment bodies accredited by the Commission to permit testing and certification of neck floats by the effective date of June 15, 2026. To be eligible for this extension, manufacturers (including importers) must submit a sample of the finished product, intended for sale, to the Commission. This extension for third party testing and certification does not apply to any other requirements of the neck float final rule. All neck floats within the scope of the neck float final rule must be sold in compliance with all other requirements of that rule as of June 15, 2026, the effective date of the final rule.

DATES: For eligible manufacturers or importers who have submitted a sample to the Commission, the date after which neck floats must be tested by third party conformity assessment bodies accredited by the Commission to assess conformity with the CPSC regulations for neck floats is extended until August 16, 2026.

FOR FURTHER INFORMATION CONTACT: Matthew Dreyfus, Acting Associate Executive Director, Directorate of Laboratory Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301-987-2094; email: MDreyfus@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 2025, the Commission published a final rule amending the mandatory toy safety standard in 16 CFR part 1250 to establish additional performance requirements and revised labeling requirements for neck floats to address fatal hazards associated with those products. 90 FR 58096. The neck floats rule will be codified at 16 CFR 1250.5 and be effective on June 15, 2026.

In the final rule, the Commission also amended CPSC's list of notice of requirements (NORs) to include the neck floats rule, also effective June 15, 2026. 90 FR 58134; 16 CFR 1112.15(b). Products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Under section 14(a)(2) of the CPSA, certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third

party conformity assessment body. 15 U.S.C. 2063(a)(2). The Commission's rule at 16 CFR part 1112 establishes requirements for CPSC acceptance of third party conformity assessment bodies (laboratories) to test for conformance with a children's product safety rule in accordance with section 14(a)(2) of the CPSA. Part 1112 will list the NOR for neck floats at 16 CFR 1112.15(b)(32)(v), as Safety Standard for Toys: Requirements for Neck Floats, upon the effective date of the rule.

Pursuant to the final rule, laboratories applying for CPSC-acceptance as a third party conformity assessment body to test to the new requirements for neck floats are required to meet the third party conformity assessment body accreditation requirements in Part 1112. A laboratory that meets the requirements to be a CPSC-accepted third party conformity assessment body for the neck floats rule can apply to CPSC to have 16 CFR 1250.5 included in its scope of accreditation as reflected on the CPSC website at: www.cpsc.gov/labsearch.

Currently, there are no third party conformity assessment bodies approved by CPSC to test to the neck float requirements in 16 CFR 1250.5. As such, there are currently no CPSC-accepted third party conformity assessment bodies that can test neck floats for compliance, which would allow manufacturers or importers to obtain third party certification of those products to the requirements for neck floats in 16 CFR 1250.5.

II. Statutory Authority To Provide a 60-Day Extension

The CPSA requires children's product manufacturers to submit sufficient samples of a product, or samples that are identical in all material respects to such product for compliance testing by a CPSC-accepted third party conformity assessment body. 15 U.S.C. 2063(a)(2). In addition, based on passing test results from that testing, manufacturers must issue a children's product certificate. *Id.* That requirement applies to any children's product manufactured more than 90 days after the Commission has established and published notice of the requirements. *Id.* 2063(a)(3)(A).

The CPSA also states that if the Commission determines that an insufficient number of third party conformity assessment bodies have been accredited to permit certification for a children's product safety rule, the Commission may extend the deadline for certification to the rule by not more than 60 days. 15 U.S.C. 2063(a)(3)(F). Regardless of whether a product is

compliant with the testing and certification requirements, the children's product in question still must comply with all other applicable CPSC requirements. *Id.* at 2063(h).

III. Extension of the Date by Which Neck Floats Must Be Tested and Certified

At this time, there are no CPSC-accepted third party conformity assessment bodies that have been accredited to certify neck floats to the requirements in 16 CFR 1250.5. Therefore, the Commission is exercising its discretion pursuant to 15 U.S.C. 2063(a)(3)(F) to provide a 60-day extension to comply with the testing and certification requirements in the final rule to eligible manufacturers and importers subject to the following conditions. To be eligible for the 60-day extension to comply with the third party testing and certification requirements for neck floats, manufacturers (including importers) must first submit a sample of the finished product, intended for sale, to the Commission. See 15 U.S.C. 2076(f). To submit a sample, please coordinate with CPSC by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**. A sample of the product, intended for sale, must first be submitted to CPSC before a manufacturer or importer is eligible for this extension.

The extension is effective on June 15, 2026 and will extend the compliance date for the testing and certification requirements from June 15, 2026, to August 16, 2026. Accordingly, manufacturers of a neck float subject to 16 CFR 1250.5 must have sufficient samples of any such product, or samples that are identical in all material respects to such product, that is manufactured after August 16, 2026, tested by a third party conformity assessment body accredited to do so by the Commission. Further, for neck floats manufactured after August 16, 2026, the manufacturer must issue a certificate of compliance with 16 CFR 1250.5 based on that testing.

The 60-day extension of compliance for third party testing does not apply to any other requirements of the final rule. All neck floats within the scope of these regulations must be sold in compliance with the specified requirements in 16 CFR 1250.5 as of June 15, 2026, the effective date of the final rule. In addition, except for the dates that are adjusted by 60 days in this notice, all provisions of the NOR published on

December 15, 2025, 90 FR 58096, remain in effect.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2026-09977 Filed 5-18-26; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2026-SCC-0496]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of Management (OM), Department of Education (ED).

ACTION: Notice.

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

DATES: Interested persons are invited to submit comments on or before June 18, 2026.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting "Department of Education" under "Currently Under Review," then check the "Only Show ICR for Public Comment" checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the "View Information Collection (IC) List" link. Supporting statements and other supporting documentation may be found by clicking on the "View Supporting Statement and Other Documents" link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact data@ed.gov.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance

the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery
OMB Control Number: 1880-0542.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public:

Individuals and Households. *Total Estimated Number of Annual*

Responses: 450,000.

Total Estimated Number of Annual Burden Hours: 225,000.

Abstract: This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs.

Ross Santy,

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

[FR Doc. 2026-09988 Filed 5-18-26; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2026-SCC-0265]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Perkins Loan Program Regulations and General Provisions Regulations

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

ACTION: Notice.

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

DATES: Interested persons are invited to submit comments on or before June 18, 2026.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this

link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting "Department of Education" under "Currently Under Review," then check the "Only Show ICR for Public Comment" checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the "View Information Collection (IC) List" link. Supporting statements and other supporting documentation may be found by clicking on the "View Supporting Statement and Other Documents" link.

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

SUPPLEMENTARY INFORMATION: 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: Federal Perkins Loan Program Regulations and General Provisions Regulations.

OMB Control Number: 1845-0019.

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

Respondents/Affected Public: Private Sector; Individuals and Households; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 11,616,710.

Total Estimated Number of Annual Burden Hours: 6,247,152.

Abstract: This is a request by the Department of Education (Department) for continued approval of the reporting, disclosure and records maintenance requirements that are contained in the Student Assistance General Provisions regulations, the Federal Perkins Loan program, the Federal Work-Study program, and the Federal Supplemental Educational Opportunity Grant program. The Department is seeking an extension of the currently approved information collection 1845-0019.

There has been no change to the regulatory or statutory requirements.

Ross Santy,

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

[FR Doc. 2026–09983 Filed 5–18–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Crescent Junction Uranium Mill Tailings Repository: Trespassing on Department of Energy Property

AGENCY: Department of Energy.

ACTION: Notice of designation of Crescent Junction Uranium Mill Tailings Repository property as off-limits area.

SUMMARY: The Department of Energy (DOE) hereby defines the legal description of the Crescent Junction Uranium Mill Tailings Repository property, located in Grand County, Utah, as an off-limits area, making it a Federal crime for unauthorized persons to enter into or upon the property.

FOR FURTHER INFORMATION CONTACT:

Ryan Johnson, Lead Security Specialist, DOE Environmental Management Consolidated Business Center at (513) 446–1162 or ryan.johnson@emcbc.doe.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 229 of the Atomic Energy Act of 1954 (42 U.S.C. 2278a), as implemented by 10 CFR part 860; section 104 of the Energy Reorganization Act of 1974 (42 U.S.C. 5814); and section 301 of the Department of Energy Organization Act (42 U.S.C. 7151), DOE hereby gives notice that the Crescent Junction Uranium Mill Tailings Repository property is designated as an Off-Limits Area and prohibits the unauthorized entry and the unauthorized introduction of weapons or dangerous materials, as provided in 10 CFR 860.3 and 860.4, into or upon the Crescent Junction Uranium Mill Tailings Repository property.

In accordance with 10 CFR part 860, it is a federal crime under 42 U.S.C. 2278a for unauthorized persons to enter into or upon the Crescent Junction Uranium Mill Tailings Repository. If unauthorized entry into or upon these properties is into an area enclosed by a fence, wall, floor, roof or other such structural barrier, conviction for such unauthorized entry may result in a fine not to exceed \$100,000 or imprisonment for not more than one year, or both. If unauthorized entry into or upon the properties is into an area not enclosed

by a fence, wall, floor, roof, or other such structural barrier, conviction for such unauthorized entry may result in a fine of not more than \$5,000.

Description of the site being designated as an off-limits area is as follows:

T. 21 S., R. 19 E.,

Sec. 22, S $\frac{1}{2}$, excluding SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 23, S $\frac{1}{2}$, excluding S $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, and W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 26, the land lying North of the railroad right-of-way, excluding W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 27, the land lying North of the railroad right-of-way, excluding N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, and E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.

The area described contains approximately 936 acres in Grand County, Utah. The area is located north of Interstate 70 approximately 3 miles west of the town of Thompson Springs, Utah.

Notices stating the pertinent prohibitions of 10 CFR 860.3 and 860.4 and penalties of 10 CFR 860.5 will be posted at all entrances of said area and at intervals along its perimeter as provided in 10 CFR 860.6.

Signing Authority

This document of the Department of Energy was signed on May 14, 2026, by Timothy J. Walsh, Assistant Secretary for Environmental Management, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 15, 2026.

Treena V. Garrett,

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

[FR Doc. 2026–09985 Filed 5–18–26; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Update on Reimbursement for Costs of Remedial Action at Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of acceptance of title X claims during fiscal year (FY) 2026.

SUMMARY: This Notice announces the Department of Energy's (DOE) acceptance of claims in FY 2026 from eligible uranium and thorium processing site licensees for reimbursement under Title X of the Energy Policy Act of 1992. The FY 2026 DOE Office of Environmental Management's (EM) Congressional Budget Request included \$5.115 million for the Title X Uranium and Thorium Reimbursement Program. The identical \$5.115 million appropriated is now available for reimbursement.

DATES: The closing date for the submission of FY 2026 Title X claims is July 1, 2026. DOE will review claims for eligibility and claims will be processed for payment together with any eligible unpaid approved claim balances from prior years, based on availability of funds from congressional appropriations. If the total approved claim amounts exceed the available funding, the approved claim amounts will be reimbursed on a prorated basis. All reimbursements are subject to the availability of funds from congressional appropriations.

ADDRESSES: Claims must be submitted by certified or registered mail, return receipt requested, to Mary Young, U.S. Department of Energy, Office of Legacy Management, 2597 Legacy Way, Grand Junction, Colorado 81503. Two copies of the claim should be included with each submission. In addition to the mailed hardcopies, claims may be submitted electronically to Mary.Young@lm.doe.gov.

FOR FURTHER INFORMATION CONTACT:

Amie Robinson, Title X Program Lead at (240) 243–5550 or email: amie.robinson@em.doe.gov.

SUPPLEMENTARY INFORMATION: DOE published a final rule under 10 CFR part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. DOE amended the final rule on June 3, 2003, (68 FR 32955) to adopt several technical and administrative amendments (*e.g.*,

statutory increases in the reimbursement ceilings). Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites. The eligible licensees incurred these costs to remediate byproduct material, generated as an incident of sales to the United States Government of uranium or thorium that was extracted or concentrated from ores processed primarily for their source material contents. To be reimbursable, costs of remedial action must be for work that is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the Department of the Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Pub. L. 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Signing Authority

This document of the Department of Energy was signed on May 14, 2026, by Amie Robinson, Title X Program Lead, Office of Waste Disposal, Office of Environmental Management, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE.

For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 15, 2026.

Treena V. Garrett,

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

[FR Doc. 2026–09986 Filed 5–18–26; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10939–003]

Secesh United, LLC; Notice of Application for Conduit Exemption Amendment Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Amendment of Conduit Exemption.
- b. *Project No.:* 10939–003.
- c. *Date filed:* April 14, 2025 and supplemented on March 10, 2026.
- d. *Applicant:* Secesh United, LLC.
- e. *Name of Project:* Zena Creek Ranch Hydroelectric Project.
- f. *Location:* The project is located on an existing diversion of water from Zena Creek in Valley County, Idaho.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.
- h. *Applicant Contact:* James B. Adkins, P.O. Box 16, Yellowpine, ID 83677, phone (208) 382–4336.
- i. *FERC Contact:* Selina Sumi, (202) 502–6892 or selina.sumi@ferc.gov.
- j. *Cooperating agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).
- k. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed as supplements to the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is

shortened to 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the issuance date of this notice. Deadline for filing comments, motions to intervene, and protests: June 15, 2026 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/doc-sfiling/ecomment.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include the docket number P–10939–003. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* The exemptee proposes to replace the existing penstock and upgrade the generating unit. The following modifications to the project are proposed: (1) a connection to a 6-inch diameter water supply pipeline; (2) a new 6-foot wide, 12-foot long powerhouse constructed adjacent to the old powerhouse and containing two Scott Hydro Turbines rated at 1,500 watts each and producing an average annual output of 2 megawatt-hours; and (3) a tailrace connecting to the existing tailrace and a pipeline for irrigation use. The proposed changes are due to the exemptee modernizing their irrigation

system, which is outside the Commission's jurisdiction.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; and (3) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

q. 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: May 14, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-09996 Filed 5-18-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. HB02-26-1-000, HB12-26-2-000]

Notice of Application for Approval of Headwater Benefits Agreement Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Energy Keepers, Incorporated
Public Utility
District No. 1 of Chelan County, Washington
NorthWestern Corporation
Public Utility District No. 1 of Pend Oreille County, Washington
Avista Corporation
Public Utility District No. 2 of Grant County, Washington
City of Seattle, Washington
Public Utility District No. 1 of Douglas County, Washington
Portland General Electric Company
Eugene Water and Electric Board

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Headwater Benefits Agreement.

b. *Docket Nos:* HB02-26-1-000 and HB12-26-2-000.

c. *Date Filed:* April 28, 2026.

d. *Applicants:* Energy Keepers, Incorporated; Public Utility District No. 1 of Chelan County, Washington; NorthWestern Corporation; Public Utility District No. 1 of Pend Oreille County, Washington; Avista Corporation; Public Utility District No. 2 of Grant County, Washington; City of Seattle, Washington; Public Utility District No. 1 of Douglas County, Washington; Portland General Electric Company; and Eugene Water and Electric Board.

e. *Name of Projects:* Séliš Ksanka Qúispé Project No. 5, Rock Island Project No. 943, Thompson Falls Project No. 1869, Box Canyon Project No. 2042, Clark Fork Project No. 2058, Priest Rapids Project No. 2114, Boundary Project No. 2144, Rocky Reach Project No. 2145, Wells Project No. 2149, Willamette Falls Project No. 2233, and Leaburg-Walterville Project No. 2496.

f. *Location:* The projects are located in the Columbia and Willamette River Basins in Montana, Idaho, Washington, and Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r, 18 CFR 11.14(a)(1) (2025); and 18 CFR 385.602 (2025).

h. *Applicant Contact:* Jeff Winmill, Strategic Counsel, Regulatory Affairs City of Seattle, 700 5th Ave., Suite 3200, Seattle, WA 98104, (206) 684-5267, jeff.winmill@seattle.gov.

i. *FERC Contact:* Jeremy Jessup, (202) 502-6779, Jeremy.Jessup@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests:* June 15, 2026 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include the docket numbers HB02-26-1-000 and HB12-26-2-000. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicants filed an Interim Agreement for Calculation of Headwater Benefits (Settlement Agreement) for the Columbia and Willamette River Basins pursuant to 18 CFR 11.14(a), which provides that owners of downstream and headwater projects may negotiate a settlement for headwater benefits charges, and that such settlements must be filed with the Commission for its approval, according to the provisions of 18 CFR 385.602, which governs submission of settlement offers. The Settlement Agreement will be for a period of up to five years, beginning

August 1, 2026, and effectively serves as an extension of the previous settlement between the parties contained in Section 13 of the 1997 Pacific Northwest Coordination Agreement. The purpose of the Settlement Agreement is to provide the applicants with additional time to develop a longer-term arrangement.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital

letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; and (3) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

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: May 14, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026-09995 Filed 5-18-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14680-012]

New England Hydropower Company, LLC; Notice of Effectiveness of Withdrawal of Application for Amendment of Exemption

On February 27, 2025, and supplemented September 26, 2025, New England Hydropower Company, LLC (exemptee), filed an application for an amendment of exemption for the Natick Pond Hydroelectric Project No. 14680. On April 27, 2026, the exemptee filed a

request to withdraw its amendment application.

No motion in opposition to the request for withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,¹ the withdrawal of the application became effective on May 12, 2026, and this proceeding is hereby terminated.

(Authority: 18 CFR 2.1)

Dated: May 14, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026-09997 Filed 5-18-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: May 21, 2026, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426. Open to the public.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* *Note*—Items listed on the agenda may be deleted without further notice.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's website at <https://elibrary.ferc.gov/eLibrary/search> using the eLibrary link.

1136TH—MEETING

[Open; May 21, 2026; 10:00 a.m.]

Item No.	Docket No.	Company
Administrative		
A-1	AD26-1-000	Agency Administrative Matters.
A-2	AD26-2-000	Customer Matters, Reliability, Security and Market Operations.
A-3	AD06-3-000	Market Update.
Electric		
E-1	EL26-39-000	<i>Gaston Green Acres Solar, LLC and Bethel NC Hwy 11 Solar, LLC v. PJM Interconnection, L.L.C.</i>
E-2	EL25-92-000	<i>McKenzie Electric Cooperative, Inc. v. Basin Electric Power Cooperative.</i>
E-3	ER22-24-004	System Energy Resources, Inc.
E-4	EL24-6-001	Gregory and Beverly Swecker.

¹ 18 CFR 385.216(b) (2025).

1136TH—MEETING—Continued

[Open; May 21, 2026; 10:00 a.m.]

Item No.	Docket No.	Company
E-5	ER26-407-001	Southwest Power Pool, Inc.
E-6	ER23-272-000	Avangrid Renewables, LLC.
E-7	ER22-2316-000	bp Energy Company.
E-8	ER23-309-000	Tucson Electric Power Company.
E-9	ER23-271-000, ER23-271-001	Arizona Public Service Company.
Gas		
G-1	RM96-1-044	Standards for Business Practices of Interstate Natural Gas Pipelines.
Hydro		
H-1	P-2101-192	Sacramento Municipal Utility District.
Certificates		
C-1	RM25-12-001	Revisions to the Blanket Certificate Program.
C-2	CP25-208-002	Interstate Natural Gas Association of America.
C-3	CP26-6-000	West Texas Gas Utility, LLC.
	CP26-7-000, CP26-8-000	Texas Pipeline Exports, LLC.
C-4	CP26-142-000	Port Arthur Pipeline, LLC.
C-5	CP25-533-000, CP11-1-000, CP04-379-002.	Pine Prairie Energy Center, LLC.

A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502-8680 or email customer@ferc.gov if you have any questions.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters but will not be telecast.

CONTACT PERSON FOR MORE INFORMATION:
Debbie-Anne A. Reese, Secretary,
Telephone (202) 502-8400.

For a recorded message listing items Stricken from or added to the meeting, call (202) 502-8627.

Issued: May 14, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026-10041 Filed 5-15-26; 4:15 pm]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RM93-11-000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Notice of Annual Change in the Producer Price Index for Finished Goods

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The Commission bases the index system, found at 18 CFR 342.3, on the annual change in the Producer Price Index for Finished Goods (PPI-FG), minus zero point five percent (PPI-FG - 0.55%). The Commission determined in an Order Establishing Index Level,¹ issued April 24, 2026, that PPI-FG - 0.55% is the appropriate oil pricing index factor for pipelines to use for the five-year period commencing July 1, 2026.

The regulations provide that the Commission will publish annually an index figure reflecting the final change in the PPI-FG after the Bureau of Labor Statistics publishes the final PPI-FG in May of each calendar year. The annual average PPI-FG index figures were 257.7 for 2024 and 262.8 for 2025.²

¹ *Five-Year Rev. of the Oil Pipeline Index*, 195 FERC ¶ 61,062 (2026).

² Bureau of Labor Statistics (BLS) publishes the final figure in mid-May of each year. This figure is publicly available at <http://www.bls.gov/ppi/>

Thus, the percent change (expressed as a decimal) in the annual average PPI-FG from 2024 to 2025, minus 0.55%, is positive 0.014290.³ Oil pipelines must multiply their July 1, 2025, through June 30, 2026 index ceiling levels by positive 1.014290⁴ to compute their index ceiling levels for July 1, 2026, through June 30, 2027, in accordance with 18 CFR 342.3(d). For guidance in calculating the ceiling levels for each 12-month period beginning January 1, 1995,⁵ see *Explorer Pipeline Company*, 71 FERC ¶ 61,416, at n.6 (1995).

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 this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the eLibrary link. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number

home.htm. To obtain the BLS data, go to the "PPI Data" menu across the top of the screen, click "Databases," and click on "Top Picks" of the Commodity Data including "headline" FD-ID indexes (Producer Price Index—PPI). At the next screen, under the heading "PPI Commodity Data," select the box, "Finished goods—WPUFD49207," then scroll to the bottom of this screen and click on Retrieve data.

³ $[262.8 - 257.7] / 257.7 = 0.019790 - 0.0055 = 0.014290$.

⁴ $1 + 0.014290 = 1.014290$.

⁵ For a listing of all prior multipliers issued by the Commission, see the Commission's website, <https://www.ferc.gov/general-information-1/oil-pipeline-index>.

field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of the Commission's website during normal business hours. For assistance, please contact the Commission's Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (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.reference.room@ferc.gov.

Dated: May 14, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-09998 Filed 5-18-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG26-239-000.

Applicants: Hart Solar Partners, LLC.

Description: Hart Solar Partners, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 5/13/26.

Accession Number: 20260513-5180.

Comment Date: 5 p.m. ET 6/3/26.

Docket Numbers: EG26-240-000.

Applicants: BdPU Solar Nightfall, LLC.

Description: BdPU Solar Nightfall, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 5/14/26.

Accession Number: 20260514-5099.

Comment Date: 5 p.m. ET 6/4/26.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-1944-015; ER10-2051-017; ER23-944-014; ER10-1942-049; ER10-2042-058; ER17-696-037; ER14-2931-015; ER10-1941-025; ER19-1127-015; ER10-2043-017; ER10-2029-019; ER10-2041-017; ER18-1321-010; ER10-2040-017; ER20-1939-008; ER10-1938-052; ER10-2036-018; ER13-1407-020; ER10-1934-051; ER10-1893-051; ER10-3051-056; ER10-2985-055; ER10-3049-056; ER10-1885-025; ER10-1888-025; ER10-1889-015; ER10-1884-025; ER25-3284-002; ER10-1883-025; ER10-1878-025; ER10-3260-017; ER10-1877-015; ER20-1699-013; ER10-1895-015;

ER10-1873-025; ER10-1875-025; ER10-1876-026; ER10-1870-015; ER10-1871-016; ER11-4369-036; ER16-2218-037; ER24-15-005; ER12-1987-023; ER10-1947-026; ER12-2645-018; ER10-1863-017; ER10-1862-051; ER12-2261-024; ER10-1865-023; ER10-1858-015; ER13-1401-015; ER10-2044-017; ER12-2178-020; ER14-2144-011; ER12-2311-019; ER10-2179-036; ER16-2194-006; ER10-2192-047; ER13-1536-031; ER17-2201-006; ER10-1020-026; ER11-2056-024; ER10-2178-047; ER10-1078-026; ER14-1524-011; ER10-1080-026; ER10-1081-027; ER10-3308-029; ER15-2293-005; ER14-2145-010; ER10-2180-030; ER12-2201-019; ER11-2011-028; ER11-2009-028; ER11-3989-024; ER10-2181-038; ER10-2182-037; ER16-2708-005.

Applicants: Exelon West Medway II, LLC, R.E. Ginna Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC, Michigan Wind 2, LLC, Michigan Wind 1, LLC, Harvest Windfarm, LLC, Harvest II Windfarm, LLC, Handsome Lake Energy, LLC, Fourmile Wind Energy, LLC, Fair Wind Power Partners, LLC, Criterion Power Partners, LLC, Exelon Wyman, LLC, Exelon West Medway, LLC, Constellation Power Source Generation, LLC, Exelon New Boston, LLC, Constellation NewEnergy, Inc., Constellation Mystic Power, LLC, Exelon Framingham, LLC, Exelon FitzPatrick, LLC, Constellation Energy Generation, LLC, Constellation Energy Commodities Group Maine, LLC, Clinton Battery Utility, LLC, Calvert Cliffs Nuclear Power Plant, LLC, Beebe Renewable Energy, LLC, Beebe 1B Renewable Energy, LLC, AV Solar Ranch 1, LLC, Zion Energy LLC, Westbrook Energy Center, LLC, TBG Cogen Partners, South Point Energy Center, LLC, Russell City Energy Company, LLC, Power Contract Financing, L.L.C., Pine Bluff Energy, LLC, Pastoria Energy Facility L.L.C., Otay Mesa Energy Center, LLC, O.L.S. Energy-Agnews, Inc., Nova Power, LLC, North American Power Business, LLC, North American Power and Gas, LLC, Morgan Energy Center, LLC, Nissequogue Cogen Partners, Los Esteros Critical Energy Facility, LLC, Los Medanos Energy Center LLC, Metcalf Energy Center, LLC, KIAAC Partners, Johanna Energy Center, LLC, Hermiston Power, LLC, Granite Ridge Energy, LLC, Goose Haven Energy Center, LLC, Gilroy Energy Center, LLC, First State Generation, LLC, Geysers Power Company, LLC, CPN Bethpage 3rd Turbine, Inc., Creed Energy Center, LLC, Delta Energy Center, LLC,

Champion Energy Services, LLC, Champion Energy Marketing LLC, Champion Energy, LLC, CES Marketing X, LLC, CES Marketing IX, LLC, CCFC Sutter Energy, LLC, Calpine Vineland Solar, LLC, Calpine Power America—CA, LLC, Calpine Northeast Development, LLC, Calpine New Jersey Generation, LLC, Calpine Mid-Merit II, LLC, Calpine Mid Merit, LLC, Calpine Mid-Atlantic Marketing, LLC, Calpine Mid-Atlantic Generation, LLC, Calpine King City Cogen, LLC, Calpine Gilroy Cogen, L.P., Calpine Fore River Energy Center, LLC, Calpine Energy Solutions, LLC, Calpine Energy Services, L.P., Calpine Construction Finance Co., L.P., Calpine Community Energy, LLC, Calpine Bethlehem, LLC, Bethpage Energy Center 3, LLC.

Description: Notice of Non-Material Change in Status of Bethpage Energy Center 3, LLC, et al.

Filed Date: 4/30/26.

Accession Number: 20260430-5685.

Comment Date: 5 p.m. ET 5/21/26.

Docket Numbers: ER14-153-012;

ER10-2742-018; ER16-517-007; ER20-1641-006.

Applicants: Southern Illinois Generation Company, LLC, Shelby County Energy Center, LLC, Tilton Energy, LLC, Gibson City Energy Center, LLC.

Description: Notice of Non-Material Change in Status of Gibson City Energy Center, LLC, et al.

Filed Date: 4/28/26.

Accession Number: 20260428-5309.

Comment Date: 5 p.m. ET 5/19/26.

Docket Numbers: ER16-1714-002;

ER16-1891-002; ER14-1439-009; ER23-2265-001; ER25-1360-002.

Applicants: TrailStone Energy Marketing, LLC, Engelhart CTP Energy Marketing, LLC, TrailStone Energy Marketing, LLC, TrailStone Power, LLC, Engelhart CTP (US) LLC, Engelhart CTP (US) LLC.

Description: Notice of Non-Material Change in Status of Engelhart CTP (US) LLC, et al.

Filed Date: 4/30/26.

Accession Number: 20260430-5684.

Comment Date: 5 p.m. ET 5/21/26.

Docket Numbers: ER21-51-000.

Applicants: BP Energy Company.

Description: Refund Report: Refund Recoupment Report to be effective N/A.

Filed Date: 5/14/26.

Accession Number: 20260514-5032.

Comment Date: 5 p.m. ET 6/4/26.

Docket Numbers: ER25-2637-002.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2026-05-14 Further Compliance Filing—Congestion Revenue Allocation in EDAM to be effective 5/1/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5108.
Comment Date: 5 p.m. ET 6/4/26.
Docket Numbers: ER26–1294–002.
Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2026–05–14 Further Compliance Filing—Amdt to Support DAME/EDAM to be effective 5/1/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5115.
Comment Date: 5 p.m. ET 6/4/26.
Docket Numbers: ER26–1853–001.
Applicants: Midcontinent

Independent System Operator, Inc.
Description: Tariff Amendment: 2026–05–14_SA 4703 NIPSCO-Mammoth South Sub FCA (AF2–133) to be effective 3/12/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5151.
Comment Date: 5 p.m. ET 6/4/26.

Docket Numbers: ER26–2244–000.
Applicants: Hillsboro Solar, LLC.
Description: Supplement to Hillsboro Solar, LLC submits tariff filing per 35.12: Market-Based Rate Tariff.

Filed Date: 5/6/26.
Accession Number: 20260506–5162.
Comment Date: 5 p.m. ET 5/27/26.

Docket Numbers: ER26–2525–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 4872 Colt Grid Surplus GIA to be effective 7/14/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5000.
Comment Date: 5 p.m. ET 6/4/26.

Docket Numbers: ER26–2526–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 4876 Balko Energy Storage Surplus Interconnection GIA to be effective 7/14/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5007.
Comment Date: 5 p.m. ET 6/4/26.

Docket Numbers: ER26–2527–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): ISO-NE/NEPOOL; Revisions to ISO-NE/NYISO Coordination Agreement to be effective 7/14/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5025.
Comment Date: 5 p.m. ET 6/4/26.

Docket Numbers: ER26–2528–000.
Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3954R2 Huckleberry Solar GIA to be effective 4/29/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5034.
Comment Date: 5 p.m. ET 6/4/26.
Docket Numbers: ER26–2529–000.
Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3977R2 Salt Branch Solar GIA to be effective 5/5/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5068.
Comment Date: 5 p.m. ET 6/4/26.
Docket Numbers: ER26–2530–000.
Applicants: Midcontinent

Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2026–05–14_SA 4187 Duke Energy IN-Galea Springs SPV 2nd Rev GIA (J1388) to be effective 5/11/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5078.
Comment Date: 5 p.m. ET 6/4/26.
Docket Numbers: ER26–2531–000.
Applicants: Glacier Wind 1, LLC.

Description: Compliance filing: Notice of Succession and Amendments to MBR Tariffs to Reflect Name Changes to be effective 5/15/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5100.
Comment Date: 5 p.m. ET 6/4/26.

Docket Numbers: ER26–2532–000.
Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA SA No. 8012; Queue Position #AF2–361 to be effective 7/14/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5102.
Comment Date: 5 p.m. ET 6/4/26.

Docket Numbers: ER26–2533–000.
Applicants: Glacier Wind 2, LLC.
Description: Compliance filing: Notice of Succession and Amendments to MBR Tariffs to Reflect Name Changes to be effective 5/15/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5104.
Comment Date: 5 p.m. ET 6/4/26.
Docket Numbers: ER26–2534–000.
Applicants: Cheyenne Light, Fuel and Power Company.

Description: § 205(d) Rate Filing: Filing of First Amended and Restated LGIA with Enbridge Solar (Cowboy II), LLC to be effective 4/30/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5107.
Comment Date: 5 p.m. ET 6/4/26.
Docket Numbers: ER26–2535–000.
Applicants: Power Watch, LLC.

Description: Compliance filing: Notice of Succession and Amendments to MBR Tariffs to Reflect Name Changes to be effective 5/15/2026.

Filed Date: 5/14/26.

Accession Number: 20260514–5109.
Comment Date: 5 p.m. ET 6/4/26.
Docket Numbers: ER26–2536–000.
Applicants: Rim Rock Wind, LLC.
Description: Compliance filing: Notice of Succession and Amendments to MBR Tariffs to Reflect Name Changes to be effective 5/15/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5111.
Comment Date: 5 p.m. ET 6/4/26.
Docket Numbers: ER26–2537–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Shortleaf Solar LGIA Amendment Filing to be effective 5/6/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5118.
Comment Date: 5 p.m. ET 6/4/26.
Docket Numbers: ER26–2538–000.
Applicants: Avista Corporation.
Description: § 205(d) Rate Filing: Avista Corp—LTF PTP Agreement FERC RS T–1278 NextEra to be effective 4/8/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5134.
Comment Date: 5 p.m. ET 6/4/26.
Docket Numbers: ER26–2539–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: 2026–05–14—ARLGN—FSA—786—0.0.0 to be effective 5/15/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5148.
Comment Date: 5 p.m. ET 6/4/26.
Docket Numbers: ER26–2540–000.
Applicants: Duke Energy Carolinas, LLC, Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii): DEF-Modifications to Formula Rate to be effective 6/1/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5153.
Comment Date: 5 p.m. ET 6/4/26.
Docket Numbers: ER26–2541–000.
Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: NYISO 205: Proposed Revisions to the ISO–NE/NYISO Coordination Agreement to be effective 7/14/2026.

Filed Date: 5/14/26.
Accession Number: 20260514–5165.
Comment Date: 5 p.m. ET 6/4/26.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES26–50–000.
Applicants: Indianapolis Power & Light Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Indianapolis Power & Light Company.

Filed Date: 5/13/26.

Accession Number: 20260513-5190.

Comment Date: 5 p.m. ET 6/3/26.

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: May 14, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-09994 Filed 5-18-26; 8:45 am]

BILLING CODE 6717-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0573; FR ID 346720]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written comments should be submitted on or before July 20, 2026. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501-3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060-0573.

Title: Application for Franchise Authority Consent to Assignment or

Transfer of Control of Cable Television Franchise, FCC Form 394.

Form Number: FCC Form 394.

Type of Review: Extension of a currently approved collection.

Respondents: Business of other for-profit entities; State, local or Tribal government.

Number of Respondents and Responses: 2,000 respondents; 1,000 responses.

Estimated Time per Response: 1-5 hours.

Frequency of Response: Third Party Disclosure Requirement.

Total Annual Burden: 7,000 hours.

Total Annual Costs: \$750,000.

Needs and Uses: FCC Form 394 is a standardized form that is completed by cable operators in connection with the assignment and transfer of control of cable television systems. On July 23, 1993, the Commission released a Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92-264, FCC 93-332, Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions. Among other things, this Report and Order established procedures for use of the FCC Form 394.

Federal Communications Commission.

Aleta Bowers,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2026-09991 Filed 5-18-26; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket ID OCC-2026-0562]

Uniform Financial Institutions Rating System

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice and request for comment.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) is requesting comment on proposed revisions to the Uniform Financial Institutions Rating System (UFIRS), commonly referred to as the CAMELS rating system. The proposal would strengthen the link between CAMELS ratings and a financial institution's safety and soundness by focusing component and composite ratings on factors that materially affect an institution's financial condition and risk profile, and by improving the transparency of CAMELS ratings.

DATES: Comments must be received by August 17, 2026.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title “Uniform Financial Institutions Rating System” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov:* Go to <https://regulations.gov/>. Enter Docket ID OCC–2026–0562 in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments please click on “Commenter’s Checklist.” For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email regulationshelpdesk@gsa.gov.

- *Mail:* Executive Secretary, Federal Financial Institutions Examination Council, L. William Seidman Center, Mailstop: E–2035–c, 3501 Fairfax Drive, Arlington, VA 22226–3550.

- *Hand Delivery/Courier:* Executive Secretary, Federal Financial Institutions Examination Council, L. William Seidman Center, Mailstop: E–2035–c, 3501 Fairfax Drive, Arlington, VA 22226–3550.

Instructions: You must include “FFIEC” as the agency name and Docket ID OCC–2026–0562 in your comment. In general, all comments received will be entered into the docket and published on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

- *Viewing Comments Electronically—Regulations.gov:* Go to <https://regulations.gov/>. Enter Docket ID OCC–2026–0562 in the Search Box and click “Search.” Click on the “Documents” tab and then the document’s title. After clicking the document’s title, click the “Document Comments” tab. Comments can be viewed and filtered by clicking

on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Documents” tab. Click on the “Sort By” drop-down on the right side of the screen or the “Refine Documents Results” options on the left side of the screen checking the “Supporting & Related Material” checkbox. For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email regulationshelpdesk@gsa.gov. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FOR FURTHER INFORMATION CONTACT:

Board: Division of Supervision and Regulation: Anna Lee Hewko, Associate Director, (202) 250–1577, Todd Vermilyea, Senior Advisor, (202) 604–7418, Morgan Lewis, Manager, (202) 407–5093, Ryan Engler, Senior Financial Institution Policy Analyst, (202) 868–0565; *Legal Division:* Jay Schwarz, Deputy Associate General Counsel, (202) 452–2970, David Cohen, Counsel, (202) 452–5259, Vivien Lee, Attorney, (202) 452–2029, Daniel Parks, Attorney, (771) 210–7183.

CFPB: Supervision Division: David Thomas, Senior Counsel, (202) 435–9040, david.thomas@cfpb.gov.

FDIC: Division of Risk Management Supervision: Suzanne Clair, Associate Director (Capital Markets), (703) 254–0454, SClair@FDIC.gov; Brittany Audia, Chief, Exam Support Section, (703) 254–0801, BAudia@fdic.gov; *Legal Division:* Nefretete Smith, Supervisory Counsel, (202) 898–6851, NefSmith@FDIC.gov; Lauren Whitaker, Counsel, (202) 898–3872, lwhitaker@fdic.gov; Maureen Murat, Senior Attorney, (202) 898–7143, mmurat@fdic.gov.

NCUA: Office of Examination and Insurance: Simon Hermann, Senior Credit Specialist, shermann@ncua.gov; or Julie Decker, Risk Officer, jdecker@ncua.gov at (703) 518–6360; *Office of General Counsel:* Ian Mareenna, Associate General Counsel for Regulations and Legislation, imareenna@ncua.gov; or Gira Bose, Staff Attorney, gbose@ncua.gov; at (703) 518–6540; National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

OCC: Chief National Bank Examiner Office: Heather Gilmore, Lead Expert, (202) 215–7760, heather.gilmore@occ.treas.gov; Caroline Stuart, Analyst to the Deputy Comptroller, (202) 649–8412, caroline.stuart@occ.treas.gov; *Chief Counsel’s Office:* Marjorie Dieter, Counsel, (202) 649–5490, marjorie.dieter@occ.treas.gov.

SLC: Mary Beth Quist, Senior Vice President—Bank Supervision, 202–728–5722, mbquist@csbs.org; Legal: Matt Lambert, Deputy General Counsel, 202–407–7130, mlambert@csbs.org.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Financial Institutions Examination Council Act of 1978 (“FFIEC Act”) authorizes the FFIEC¹ to prescribe principles and standards for the federal examination of financial institutions and to make recommendations to promote consistency and coordination in the supervision of institutions.² Pursuant to this authority, the FFIEC developed and recommended adoption of the UFIRS in 1979.³ The UFIRS is a comprehensive supervisory rating system used by Federal and State supervisory agencies (together, “supervisory agencies”) for evaluating the safety and soundness of financial institutions⁴ on a uniform basis and for identifying those institutions requiring special attention or concern.⁵ The supervisory agencies use the UFIRS to, among other purposes, monitor the severity of problems that financial institutions may be experiencing, determine the level of supervisory concern that is warranted, and monitor aggregate trends in the condition of financial institutions.

The 1979 UFIRS established a uniform framework to evaluate a

¹ The agencies represented on the FFIEC are the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB), plus a State Liaison Committee (SLC) representing state agencies. The SLC consists of five representatives from state regulatory agencies that supervise financial institutions. The representatives are appointed for two-year terms. The SLC Chairman, a voting member of the Council, is elected by the SLC members for a one-year term and can be re-elected for additional terms. The functions of the Council include establishing principals and standards, making recommendations regarding supervisory matters and adequacy of supervisory tools, and developing a uniform reporting system.

² 12 U.S.C. 3301 *et seq.*

³ See Circular No. 79–191 (Nov. 29, 1979) “Uniform Rating System,” available at https://fraser.stlouisfed.org/files/docs/historical/frbdl/circulars/frbdallas_circ_19791129_no79-191.pdf.

⁴ The term “financial institution” as used in this “Supplementary Information” section refers to those insured depository institutions whose primary Federal supervisory agency is represented on the FFIEC and includes Federally supervised commercial banks, savings and loan associations, mutual savings banks, and credit unions. Federal and State supervisory agencies may choose to adopt the UFIRS when evaluating other types of supervised organizations.

⁵ Because the CFPB does not examine the institutions it supervises for safety and soundness, the CFPB does not use the UFIRS.

financial institution's financial condition, compliance with laws and regulations, and overall operating soundness.⁶ In 1996, the FFIEC revised the UFIRS to, among other changes, include a sixth component rating addressing sensitivity to market risks, place greater emphasis on risk management practices, and require examiners to consider an institution's size, complexity, and risk profile when evaluating each component rating.⁷

Under the current UFIRS, each financial institution is assigned CAMELS component and composite ratings on a scale of 1 to 5, with 1 being the highest rating. The composite rating is assigned based on an evaluation and rating of six essential components of an institution's financial condition and operations: Capital Adequacy, Asset Quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk. The ratings assigned under UFIRS can have several implications for financial institutions.⁸

Given the importance of the UFIRS framework and the many changes that have occurred in the banking industry and in supervisory practices since the rating system was updated in 1996, the FFIEC conducted a review of the framework to inform the proposed changes. The review considered a wide body of relevant academic literature, which indicates that CAMELS ratings contain important information about the overall condition of financial institutions, including information that is not readily available from balance sheet metrics or other publicly available materials. For a specific discussion of some of the literature, see Section IV. Expected Effects. The FFIEC review also considered existing industry commentary related to the application of CAMELS ratings. An observation from industry is that the Management rating has been overweighted relative to other CAMELS components in determining the composite rating. The supervisory agencies analyzed CAMELS ratings from 2000 to 2025 and found that while composite and component ratings generally move together, their correlation can vary significantly over

time. The supervisory agencies' analysis suggested that the Management component has been the most influential factor in determining composite ratings, particularly in recent years.

II. Proposed Changes to the UFIRS

Following the FFIEC's review of the UFIRS framework, the agencies are proposing to retain the basic framework of the existing rating system, with certain modifications to the composite and component rating definitions and evaluation factors. Specifically, the proposed revisions would emphasize factors that materially affect an institution's financial condition and risk profile. The proposal would emphasize consideration of material financial risks over concerns related to policies, procedures, and documentation, thus helping to ensure that ratings accurately reflect the issues most likely to impact safety and soundness. The proposed changes would also improve transparency by more clearly articulating expectations for financial institutions. These updates would improve the effectiveness of the UFIRS as a supervisory tool and increase the public's confidence in supervisors' assessment of the banking system. Additionally, certain of the proposed changes would also be responsive to comments received from the Economic Growth and Regulatory Paperwork Reduction Act public notices and public outreach meetings.⁹

This section summarizes the proposed changes to the UFIRS. The text of the proposed UFIRS can be found in Appendix A of this Supplementary Information.

A. Remove "Special Consideration" Given to the Management Rating in the Composite Rating

The current UFIRS framework states that the Management component is given "special consideration" when assigning a composite rating. The proposal would remove the sentence directing examiners to give "special consideration" to the Management component in the composite rating.

Although the effectiveness of a financial institution's board of directors and management is an important aspect of its overall safety and soundness, the current language could be interpreted as diminishing the relative importance of the non-Management components in the

determination of composite ratings. Removing the "special consideration" given to the Management component in assigning composite ratings would ensure that supervisors take a more balanced approach that appropriately considers all component ratings. This would result in a composite rating that better reflects a financial institution's overall financial condition and risk profile.

B. Changes to the Management Component Rating

The FFIEC proposes to make several changes to the Management component's evaluation factors and rating definitions. The proposed changes to the evaluation factors limit the Management component's evaluation factors to the most material aspects of risk management, helping to strengthen the link between supervisory ratings and safety and soundness. Specifically, the proposal would remove factors related to: "Management depth and succession," "Responsiveness to recommendations from auditors and supervisory authorities," and "Demonstrated willingness to serve the legitimate banking needs of the community," to focus on the most material aspects of risk management. The factor related to the overall performance of the institution and its risk profile would be removed to limit redundancy, since it would be addressed through the composite and other component ratings.

The proposed changes to the Management component rating definitions include establishing a material financial risk threshold for assigning Management ratings of 3 or worse based on risk management weaknesses. Institutions would generally receive such ratings only when risk management practices result in material financial risk to the institution. Institutions that have unreliable financial or regulatory reporting, have failed to safeguard assets, or are in significant noncompliance with law or regulation may also be assigned a Management component rating of 3 or worse. These proposed revisions would better align the severity of Management ratings with the risk to the institution's safety and soundness.

C. Treatment of Specialty Review Findings

Under the current UFIRS framework, supervisory findings from specialty reviews¹⁰ are often incorporated into

¹⁰ Specialty review areas include Compliance (e.g., Consumer Compliance, Bank Secrecy Act/

⁶ See Circular No. 79-191 (Nov. 29, 1979) "Uniform Rating System," at 1, available at https://fraser.stlouisfed.org/files/docs/historical/frbdal/circulars/frbdallas_circ_19791129_no79-191.pdf.

⁷ See 61 FR 37472 (July 18, 1996) and 61 FR 67021 (Dec. 19, 1996).

⁸ For example, under the BHC Act and the National Bank Act, a financial institution's UFIRS composite and Management component ratings are relevant to its "well managed" status, which may, among other benefits, allow the institution to engage in certain expansionary activities without prior approval from regulators. See 12 U.S.C. 1841(o)(9), 12 U.S.C. 24a(g)(6).

⁹ Public Law 104-208, Div. A, Title II, section 2222, 110 Stat. 3009-414, (1996) (codified at 12 U.S.C. 3311). See also Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 89 FR 99,751 (Dec. 11, 2024).

the Management component rating and can contribute to ratings downgrades even when they do not reflect material financial risks to the institution. The proposal would clarify that these specialty review findings would influence the CAMELS composite and component ratings to the extent that the findings impact a financial institution's overall financial condition, represent material financial risks, or reflect significant noncompliance with laws and regulations. The proposed changes to the influence of specialty review findings would promote component and composite ratings that better reflect material financial risks.

D. Revisions to Composite Rating Definitions

The current UFIRS framework includes a definition for composite ratings 1 through 5 to provide supervisors with specific considerations that should drive the determination of a financial institution's composite rating. The proposal would make changes to composite rating definitions to align with the broader approach of ensuring that the UFIRS focuses on an institution's financial condition and risk profile, with emphasis on material financial risks. Specifically, the proposal would revise the composite 1 and 2 definitions to clarify that financial institutions with these ratings have strong or satisfactory financial performance, respectively, and only minor or moderate risk management weakness. The proposal would change the composite 3 definition to state that financial institutions that receive this rating should exhibit less than satisfactory financial performance or inadequate risk management practices that result in material financial risk to the institution. Institutions that exhibit significant noncompliance with laws and regulations may also be assigned a 3 rating. The proposal would also change the definition of a composite rating of 4 to state that financial institutions that receive this rating should exhibit "deficient" financial performance. Risk management weaknesses that do not result in observable deterioration of financial condition or material financial risk would not alone support a composite rating of 4 or worse. Finally, the proposal would state that firms rated a composite 5 should exhibit critically deficient financial performance. By establishing clearer thresholds for these

ratings, the proposal would help ensure that ratings of 3 or worse are more fully supported by evidence of weaknesses that materially impact the safety and soundness of the institution.

E. Clarifying Language on Risk Management

Under the current UFIRS framework, the component descriptions and evaluation factors include broad language regarding the "ability of management to identify, measure, monitor, and control" risks. The proposal would remove broad language within Capital Adequacy, Asset Quality, Earnings, Liquidity and Sensitivity to Market Risk components and, where appropriate, would focus on more specific risk management factors relevant to an assessment of a given component. For example, the proposal would replace the Liquidity component's evaluation factor referencing the "capability of management to properly identify, measure, monitor, and control the institution's liquidity position, including the effectiveness of funds management strategies, liquidity policies, management information systems, and contingency funding plans," to instead consider "the effectiveness of funds management practices, including contingency funding plans and cash flow forecasting." Similarly, the proposal would replace the Capital Adequacy component's evaluation factor concerning "the ability of management to address emerging needs for additional capital" to instead include consideration of "the institution's effectiveness in maintaining capital levels commensurate with its risk profile and strategic priorities through a range of economic conditions."¹¹ The Management component's description would continue to reference the effectiveness of the board of directors and management, in their respective roles, to identify, measure, monitor, and control material financial risks associated with an institution's activities; however, the Management component's evaluation factors would also be revised in the proposed framework to enhance specificity and measurability.

¹¹ The proposal would similarly specify risk management practices in the asset quality component rating (the "effectiveness of risk monitoring practices and timely collection of problem assets"); the earnings component rating (the "effectiveness of budgeting and income and expense forecasting"); and the sensitivity to market risk component rating (the "adequacy of market risk measurement and control practices given the institution's scale and activities").

The effectiveness of a financial institution's risk management is an important aspect of its overall safety and soundness and its supervisory ratings. Increasing the specificity of component evaluation factors related to risk management would help to ensure that risk management factors that are most impactful to financial condition and risk profile are accurately reflected in the CAMELS ratings. The proposed changes would also clarify for financial institutions what specific risk management practices are relevant to each component, thereby increasing transparency.

F. Clarifying Evaluation Factors

The current UFIRS framework states that component ratings will be based on "but not limited to" an assessment of a specific set of evaluation factors unique to each component. The proposed framework would remove the "but not limited to" language from all of the CAMELS components' descriptions and replace it with a general paragraph, applicable to all components, that would allow for additional evaluation factors to be considered only if warranted by exceptional circumstances or evolving business practices. Under the proposal, the consideration of additional evaluation factors must be critical to the assessment of an institution's financial condition or risk profile with emphasis on material financial risks. The proposal sets an explicit expectation that examiners would document and explain the rationale for inclusion of such additional factors. This proposed revision would provide greater certainty to and transparency around the rating evaluation factors that would be considered in the assessment.

The proposal would also modify certain evaluation factors to improve clarity around the scope of supervisory evaluations. For example, the proposal would revise the Capital Adequacy component to clarify that risks related to contingent liabilities would be considered in the evaluation factors. The proposal would also revise the Earnings component's evaluation factors to clarify that a financial institution's funding costs and earnings exposure to commodity prices would be considered. Additionally, the proposal would amend the Sensitivity to Market Risk component to explicitly include an evaluation of recent net interest income performance in response to the interest rate environment, expectations for net interest income based on the balance sheet position, and exposure to interest rate volatility. More clearly defining the CAMELS components' evaluation

factors would help to further standardize evaluations and better ensure that examiners and financial institutions prioritize issues that materially affect an institution's financial condition and risk profile. The proposed revisions would also improve the transparency of the UFIRS by establishing clearer expectations for financial institutions with respect to the specific evaluation factors that influence ratings and examination outcomes.

G. Improving Consistency, Structure, and Approach to Ratings Definitions

The current framework includes a description of the ratings, 1 through 5, for each component; however, they differ in language, structure, and level of detail. The proposal would introduce more consistent terminology and a more streamlined structure, focusing on the financial condition and risk management aspects of the CAMELS component rating definitions, where applicable. For example, the proposal would use the terms "strong," "satisfactory," "less than satisfactory," "deficient," and "critically deficient" to describe financial condition. For descriptions of risk management practices, the proposal would use the terms "effective," "adequate," "inadequate," and "deficient." Specific descriptions of risk management practices would be removed from the 5 ratings for all but the Management component. These proposed changes would introduce more consistent terminology and structure to these descriptions to better articulate the degree of deterioration in financial condition and/or risk management practices required to support a given composite or component rating. Such changes would also improve transparency of the framework by establishing clearer expectations for financial institutions.

H. Modernizing and Conforming Framework Language

The FFIEC proposes to modernize and conform language throughout the framework and to update terminology to reflect current industry standards and accounting practices. For example, references to "allowances for loan and lease losses" (ALLL) would be replaced with "allowances for credit losses" (ACL) to conform with the Current Expected Credit Losses (CECL) accounting standard adopted under U.S. GAAP in 2023. The proposal would also remove all references to reputation risk,

consistent with the policies of the Board, OCC, FDIC, and NCUA.¹²

Modernizing and conforming the framework's language would improve clarity, precision, and accessibility for institutions of all sizes, facilitating more effective risk management and supervisory communication.

III. Request for Comments

The FFIEC requests comment on the proposed changes to the rating system. In addition, the FFIEC invites comments on the following questions:

1. To what extent would the proposed revisions enhance the effectiveness of UFIRS as a supervisory tool for evaluating the safety and soundness of financial institutions? Should the framework be modified to further strengthen the link between supervisory ratings and safety and soundness, and if so, how?

2. To what extent do the proposed revisions appropriately balance consideration of an institution's financial condition and risk profile when assigning ratings? Should the CAMELS composite or component rating definitions and/or evaluation factors be adjusted in other ways to balance consideration of financial condition and risk profile when evaluating an institution's safety and soundness? If so, how?

3. To what extent should the agencies consider "evolving business practices" in determining additional evaluation factors that are critical to an assessment of an institution's financial condition or risk profile with emphasis on material financial risks? What should the agencies consider as "evolving business practices"?

4. How should compliance with laws and regulations be considered within the composite and component ratings? To what extent is the proposal's consideration of compliance with laws and regulations in the composite and Management component ratings appropriately calibrated? What are the advantages and disadvantages of differentiating between issues that present material financial risks and those that do not? To what extent should the UFIRS framework account for the type, severity, frequency, and/or management's role with respect to a violation of law or regulation and/or the violation's connection to material financial risk?

¹² The Board, OCC, FDIC and NCUA recently issued proposals or final rules to remove the consideration of reputation risk from their supervisory frameworks; See 91 FR 9499 (February 26, 2026); 91 FR 18279 (April 10, 2026); 90 FR 48409 (October 21, 2025).

5. The proposal limits inclusion of specialty review findings in the UFIRS framework to those that impact an institution's overall financial condition or pose material financial risk. What threshold of findings should warrant specialty review findings to be included in the component and composite ratings? To what extent should specialty review findings specifically influence the Management rating?

6. In addition to the proposed changes to rating evaluation factors and definitions, to what extent should the framework set the expectation that an institution's composite rating bears a close relationship with the CAMELS component ratings, with no single component rating driving the composite rating? What are the advantages and disadvantages of the framework setting forth the explicit expectation that if one component rating is driving the composite rating, additional justification is needed?

7. To what extent should the framework set the expectation that the Management rating reflects the institution's management and overall financial condition and material financial risk, and therefore it should be rare, and additional justification would be needed for Management to be rated less than satisfactory when all other components are satisfactory? What would be the advantages and disadvantages of setting such an expectation?

8. To what extent should the Management component's evaluation factors directly consider whether compensation is excessive? What would be the advantages and disadvantages of limiting the evaluation factor to the avoidance of self-dealing and conflicts of interest? What other factors, if any, should be considered that address misaligned incentives and principal-agent risks?

9. To what extent should the Management component's evaluation factors consider whether directors and management are affected by, or susceptible to, dominant influence or concentration of authority?

10. Do proposed framework changes to the Management component rating effectively limit consideration of a single finding when assigning multiple ratings? To what extent could inclusion of compliance with laws and regulations within the Management rating result in the redundant consideration of a single noncompliance issue?

11. To what extent does the additional specificity in the rating definitions and evaluation factors for the Sensitivity to Market Risk rating improve clarity of supervisory expectations? Are there

ways to further refine the evaluation factors and ratings definitions to better reflect how interest rates, foreign exchange rates, commodity prices, or other financial instrument prices can affect a financial institution's earnings or capital?

IV. Expected Effects

If adopted, the proposal would require the supervisory agencies to implement the proposed revisions described above into the process for assigning CAMELS ratings. The following sections discuss qualitatively some benefits and costs of the proposal, relative to a baseline in which the UFIRS framework that is currently applied to institutions under the supervision of the agencies remains unchanged.

A. Benefits to Institutions

The proposal, if adopted, would pose two types of benefits to supervised institutions: (1) more efficient use of management time and resources, and (2) more transparency in supervisory expectations of institutions. The expected benefits of the proposed revisions derive, in part, from focusing supervision on factors that materially impact an institution's financial condition and risk profile. This should support financial institutions in addressing their material risks in a more efficient and effective manner relative to the baseline, potentially enhancing their safety and soundness and contributing to the safety and soundness of the banking system overall. The proposed framework's reduced focus on process-related issues that do not pose material financial risk and narrowing of the deficiencies within the scope of the Management criteria, may allow institutions to reallocate resources.

Further, under the proposed framework, financial institutions with strong financial metrics and risk profiles would likely be issued satisfactory CAMELS ratings. Research suggests that CAMELS ratings significantly affect lending behavior and bank performance, after attempting to control for some other factors, with downgraded banks exhibiting substantially lower loan growth (Kupiec et al., 2017).¹³ During the financial crisis, small banks that experienced ratings downgrades expanded commercial and industrial loans and commercial real estate loans less than banks maintaining healthy

ratings (Kiser et al., 2016).¹⁴ To the extent that ratings downgrades owing to process-related issues that are immaterial to an institution's financial condition have historically constrained financial institutions' willingness or ability to engage in expansionary activities including lending, the new framework could support increased credit availability. Also, an overemphasis on process-related immaterial issues could have allowed material financial risks to not be appropriately reflected in the ratings under the current framework.

Additionally, the proposed changes would provide clearer supervisory expectations for financial institutions, potentially reducing compliance costs and uncertainty while maintaining desired supervisory outcomes. Institutions devote significant time and effort to meeting the expectations of supervisors. Ratings function through three key channels: as a communication tool conveying supervisory assessments, as a direct risk mitigant through regulatory restrictions, and as a broad incentive mechanism affecting bank behavior (Bergin & Stiroh, 2021).¹⁵ If expectations and guideposts are unclear, a financial institution's cost of compliance may rise as it attempts to understand the factors on which ratings will be based. Research comparing supervisory and market assessments of bank performance highlights the distinct value that clear supervisory ratings provide to financial institution management in understanding the true financial condition of the institution (Berger et al., 1998).¹⁶ The proposed framework seeks to provide clearer expectations and stronger signals around supervisory ratings, which could help lower compliance costs without reducing the efficacy of the supervisory process.

B. Costs to Institutions

Because the proposed framework would shift the focus toward factors that materially affect an institution's financial condition and risk profile, there could be potential costs if the shift generates unintended consequences. For instance, a financial institution's

management may deprioritize certain risk management practices if those practices are not drivers of CAMELS ratings or perceived to be directly linked to material financial risk. To the extent that the proposal, if adopted, delayed the remediation of a risk that subsequently becomes material to the financial condition of the institution, such institutions could incur higher costs to deal with the risk and could also incur losses. Long-term, effective control of material financial risks requires sustained investment and improvement in risk management systems.

Although unlikely, revisions to the set of evaluation factors and ratings definitions may diminish the information content of ratings or miscalibrate ratings outcomes, potentially putting the financial condition of institutions at risk of future deterioration, thereby also potentially increasing the risk of loss to institutions. Although the agencies expect that the intended reform to the CAMELS rating system will improve outcomes, research suggests that the current formulation of supervisory ratings has been more informative about bank failure than balance sheet metrics alone (Correia et al., 2025)¹⁷ and thus contains important information about the financial condition of depository institutions. However, as previously discussed, the agencies believe that the proposed changes to the framework will strengthen the link between ratings and safety and soundness. As such, the agencies expect the costs discussed above would be modest and believe that the benefits of the proposed revisions justify the potential costs.

V. Regulatory Analysis

In the interest of full and fair participation of the public, and in order to give the public an opportunity to comment on the proposal, the FFIEC is publishing this proposed recommendation for notice and comment.

A. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies¹⁸ to use plain language in all proposed and final rules published after January 1, 2000.¹⁹ Although this

¹⁴ Elizabeth K. Kiser, Robin A. Prager, and Jason R. Scott, "Supervisory Ratings and the Contraction of Bank Lending to Small Businesses," Federal Reserve Board Finance and Economics Discussion Series (2012).

¹⁵ James Bergin and Kevin Stiroh, "Why Do Supervisors Rate Banking Organizations?" Economic Policy Review, Vol 27(3) (2021).

¹⁶ Allen N. Berger, Sally M. Davies, and Mark J. Flannery, "Comparing Market and Supervisory Assessments of Bank Performance: Who Knows What When?" (1998), <https://ssrn.com/abstract=121651>.

¹⁷ Ricardo Correia, Stephan Luck, and Emil Verner, "Failing Banks" The Quarterly Journal of Economics. Vol. 141(1), pp. 147–204 (2026).

¹⁸ See 12 U.S.C. 4809(c) (cross-referencing "Federal banking agency" as defined in 12 U.S.C. 1813); 12 U.S.C. 1813 (defining "Federal banking agency" as the OCC, the Board, and the FDIC).

¹⁹ Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

¹³ Paul Kupiec, Yan Lee and Claire Rosenfeld, "Does Bank Supervision Impact Bank Loan Growth?" Journal of Financial Stability, Vol. 28, pp. 29–48 (2017).

proposed recommendation is not a rule, the Federal banking agencies, under the auspices of the FFIEC, have sought to present the proposed recommendation in a simple and straightforward manner and invite comment on the use of plain language. For example:

- Have the Federal banking agencies organized the material to suit your needs? If not, how could they present the proposed recommendation more clearly?
- Are the requirements in the proposed recommendation clearly stated? If not, how could the proposed recommendation be more clearly stated?
- Does the proposed recommendation contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed recommendation easier to understand? If so, what changes would achieve that?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What other changes can the Federal banking agencies incorporate to make the proposed recommendation easier to understand?

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA),²⁰ the agencies may not conduct or sponsor, and 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. This proposed recommendation would not involve any new, or revise any existing, collections of information pursuant to the PRA. Consequently, no information will be submitted to the OMB for review.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.²¹ This requirement applies to any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553 of Title 5.²² Although the RFA does not apply to this proposed recommendation, the relevant agencies have undertaken a preliminary analysis. The agencies do not believe that this proposed recommendation would have

a significant economic impact on a substantial number of small entities. The proposed recommendation would not impose any obligations on supervised institutions and would not require supervised institutions to take any action in response.

D. Unfunded Mandates Reform Act²³

The Unfunded Mandates Reform Act of 1995 (UMRA) generally requires an agency, in connection with any general notice of proposed rulemaking, to consider whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (\$187 million as adjusted annually for inflation).²⁴ Pursuant to section 202 of the UMRA,²⁵ if a proposed rule meets this UMRA threshold, the agency would need to prepare a written statement that includes, among other things, a cost-benefit analysis of the proposal. Although the UMRA does not apply to this proposed recommendation, the OCC has undertaken a preliminary analysis. This proposed recommendation imposes no new mandates—and thus no direct costs—on supervised institutions. Accordingly, the proposed recommendation would not result in an expenditure of \$187 million or more annually by State, local, and tribal governments, or by the private sector.

E. NCUA Analysis on Executive Order 13132 on Federalism²⁶

Executive Order 13132 encourages certain regulatory 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. This proposed recommendation would apply to all federally insured credit unions, including state-chartered credit unions. This scope is set by statute. The NCUA works cooperatively with state regulatory agencies on all supervisory matters and will continue to do so. The NCUA expects that any effect on states or on the distribution of power and responsibilities among the various levels of government will be minor. The NCUA welcomes comments on ways to eliminate, or at least minimize, any potential impact in this area.

²³ The Unfunded Mandates Reform Act applies to the OCC and is not applicable to the other FFIEC agencies.

²⁴ 2 U.S.C. 1531 *et seq.*

²⁵ *Id.* at 1532.

²⁶ This applies to the NCUA and is not applicable to the other FFIEC agencies.

F. NCUA Assessment of Federal Regulations and Policies on Families²⁷

The NCUA has determined that this proposed recommendation would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999. The proposed recommendation relates to supervision of federally insured credit unions, and any effect on family well-being is expected to be indirect.

G. Executive Orders 12866 and 14192

Executive Order 12866, as amended, directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits.²⁸ This proposed recommendation was drafted and reviewed in alignment with Executive Order 12866. Within OMB, the Office of Information and Regulatory Affairs (OIRA) has determined that this proposed recommendation is a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the draft proposed recommendation was submitted to OIRA for review. As noted in other sections of the **SUPPLEMENTARY INFORMATION** of this document, the agencies have assessed the costs and benefits of this proposed recommendation and have made a reasoned determination that the benefits of the proposed changes to the UFIRS framework justify the minimal costs on supervised institutions.

The proposed recommendation would streamline the UFIRS framework and clarify the link between CAMELS ratings and safety and soundness by focusing component and composite ratings on factors that materially affect a financial institution’s financial condition and risk profile. The agencies have experience in conducting examinations of the safety and soundness of supervised institutions, and supervised institutions have an existing mandate to operate in a safe and sound manner.

Executive Order 14192 further requires that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations. The revisions to the framework, if finalized as proposed, are not expected to accrue any new

²⁰ 44 U.S.C. 3501 *et seq.*

²¹ See 5 U.S.C. 553, 603, 604 and 605.

²² 5 U.S.C. 601

²⁷ This applies to the NCUA and is not applicable to the other FFIEC agencies.

²⁸ E.O. 12866, 58 FR 51,735 (1993).

incremental costs under Executive Order 14192.²⁹

Appendix A: Proposed Text of the Uniform Financial Institutions Rating System

Uniform Financial Institutions Rating System

The Uniform Financial Institutions Rating System (UFIRS) was adopted by the Federal Financial Institutions Examination Council (FFIEC)³⁰ on November 13, 1979, and updated on December 20, 1996.³¹ Over the years, the UFIRS has generally proven to be an effective internal supervisory tool for evaluating the soundness of financial institutions³² on a uniform basis and for identifying those institutions requiring special attention or concern.³³

The UFIRS evaluates the safety and soundness of a financial institution through an assessment of the institution's overall financial condition and its risk profile, with emphasis on material financial risks. The UFIRS considers the institution's financial condition, measured in terms of Capital Adequacy, Asset Quality, Earnings, Liquidity, and Sensitivity to Market Risk. The UFIRS also evaluates the effectiveness of an institution's risk management relative to its risk profile, including its ability to identify, measure, monitor, and control its risks.

The FFIEC has identified ways to further clarify the UFIRS system to strengthen the link between supervisory ratings and safety and soundness. Specifically, the revised UFIRS retains the basic framework of the existing rating system but emphasizes factors that materially affect an institution's financial condition and risk profile.

These updates will improve the effectiveness of UFIRS as a supervisory tool and increase the public's confidence in supervisors' assessment of the banking system.

The UFIRS takes into consideration certain safety and soundness related factors that are common to all institutions. Under this system, the FFIEC member entities endeavor to ensure that all financial institutions are evaluated in a comprehensive and uniform manner, and that supervisory attention is appropriately focused on the financial institutions exhibiting material financial weaknesses or risks.

The UFIRS also serves as a useful vehicle for identifying problem or deteriorating financial institutions, as well as for categorizing institutions with deficiencies in particular component areas. Further, the rating system assists Congress in following safety and soundness trends and in assessing the aggregate strength and soundness of the financial industry. As such, the UFIRS assists the FFIEC member entities in fulfilling their collective mission of maintaining stability and public confidence in the nation's financial system.

Overview

Under the UFIRS, each financial institution is assigned a composite rating that measures its overall financial condition and risk profile, with emphasis on material financial risks. The composite rating is based on an evaluation and rating of six essential components of an institution's safety and soundness. These components are Capital Adequacy, Asset Quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk. Evaluations of the components take into consideration the institution's size and sophistication, the nature and complexity of its activities, and its risk profile.

Composite and component ratings are assigned based on a 1 to 5 numerical scale. A 1 indicates the highest rating, the strongest performance and risk management practices, and the least degree of supervisory concern, while a 5 indicates the lowest rating, the weakest performance, and, therefore, the highest degree of supervisory concern.

The composite rating generally bears a close relationship to the component ratings assigned. Each component rating is based on a rigorous assessment of the evaluation factors comprising that component. In the revised framework, financial condition and material financial risks are the predominant considerations when making rating determinations. When assigning a

composite rating, some components may be given more weight than others depending on the institution's overall financial condition and risk profile with emphasis on material financial risks. Assigned composite and component ratings are disclosed to the institution's board of directors and senior management.

Foreign Branch and specialty review findings and ratings are considered when assigning composite and component ratings under the UFIRS to the extent that they impact an institution's overall financial condition or pose material financial risk.³⁴ For institutions that primarily engage in trust activities (such as trust banks), Trust examination findings and ratings generally reflect the institution's overall financial condition or material financial risks, and examination conclusions are taken into consideration when assigning composite and component ratings under the UFIRS.

The following two sections of this document contain the composite rating definitions, and the descriptions and definitions for the six component ratings.

Composite Ratings

Composite ratings are based on a careful evaluation of an institution's financial condition and risk profile with emphasis on material financial risks. The six key components used to assess an institution are: Capital Adequacy, Asset Quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk. The composite ratings are defined as follows:

Composite 1

Financial institutions in this group are sound in every respect and generally have components rated 1 or 2. These institutions exhibit strong financial performance. Risk management weaknesses are minor. These institutions are in substantial compliance with laws and regulations. As a result, these institutions give no cause for supervisory concern.

Composite 2

Financial institutions in this group are fundamentally sound and generally no component rating should be more severe than 3. These institutions exhibit satisfactory financial performance. Any risk management weaknesses are moderate and generally do not result in

²⁹ E.O. 14192, 90 FR 9065 (2025).

³⁰ The agencies represented on the Federal Financial Institutions Examination Council (FFIEC) are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau. The chair of the State Liaison Committee serves as the sixth member of the Council.

³¹ The 1996 revision to UFIRS included the addition of a sixth component addressing sensitivity to market risks, the explicit reference to the quality of risk management processes in the management component, and the identification of risk elements within the composite and component rating descriptions. The NCUA adopted the sixth component rating in 2021, which went into effect in 2022.

³² For purposes of this rating system, the term "financial institution(s)" refers to those insured depository institutions whose primary Federal supervisory agency is represented on the FFIEC, and includes Federally supervised commercial banks, savings and loan associations, mutual savings banks, and credit unions.

³³ Because the CFPB does not examine the institutions it supervises for safety and soundness, the CFPB does not use the UFIRS.

³⁴ Specialty review areas include Compliance (for example, Consumer Compliance, Bank Secrecy Act/Anti-Money Laundering), Community Reinvestment, Government Security Dealers, Information Systems, Municipal Security Dealers, Transfer Agent, and Trust.

material financial risk to the institution. These institutions are in substantial compliance with laws and regulations. There are no material safety and soundness concerns and, as a result, the supervisory response is informal and limited.

Composite 3

Financial institutions in this group exhibit some degree of supervisory concern and generally no component rating should be more severe than 4. These institutions exhibit less than satisfactory financial performance or inadequate risk management practices that result in material financial risk to the institution. There may be significant noncompliance with laws and regulations. These financial institutions require more than normal supervision, which may include formal or informal enforcement actions. Failure appears unlikely, however, given the overall strength and financial capacity of these institutions.

Composite 4

Financial institutions in this group generally exhibit a significant degree of supervisory concern. These institutions exhibit deficient financial performance. Any risk management weaknesses range from severe to critically deficient. There may be significant noncompliance with laws and regulations that represents material financial risk. Close supervisory attention is required, which means, in most cases, formal enforcement action is necessary to address the problems. Institutions in this group pose a risk of loss to the Deposit Insurance Fund or Share Insurance Fund. Failure is a distinct possibility if the problems and weaknesses are not satisfactorily addressed and resolved.

Composite 5

Financial institutions in this group exhibit the highest degree of supervisory concern. These institutions exhibit critically deficient financial performance. Immediate outside financial or other assistance is needed for the institution to be viable. Ongoing supervisory attention is necessary. Institutions in this group pose a significant risk of loss to the Deposit Insurance Fund or Share Insurance Fund, and failure is highly probable.

Component Ratings

Each of the component rating descriptions is divided into three sections: an introductory paragraph; a list of the evaluation factors that relate to that component; and a description of each numerical rating for that

component. Generally, component ratings are determined by the specific evaluation factors listed in the following sections; however, exceptional circumstances or evolving business practices could give rise to additional evaluation factors that are critical to an assessment of an institution's financial condition or risk profile with emphasis on material financial risks. If any factor beyond those listed is considered when assigning a supervisory rating, examiners should document and explain the factor. The evaluation factors for each component rating are in no particular order of importance.

Capital Adequacy

The Capital Adequacy rating reflects a financial institution's ability to maintain sufficient capital to absorb unexpected losses from credit, market, and other risk exposures. An institution is expected to maintain capital commensurate with the nature and extent of risks to the institution. The types and quantity of risk in an institution's activities determine whether it may be appropriate to maintain capital at levels above required regulatory minimums to appropriately support on- and off-balance sheet exposures. Capital Adequacy is rated based on an assessment of the following evaluation factors:

- The level and quality of capital and the institution's overall financial condition.
- The institution's effectiveness in maintaining capital levels commensurate with its risk profile and strategic priorities through a range of economic conditions.
- The nature, trend, and volume of problem assets, and the adequacy of allowances for credit losses and other asset valuation allowances.
- Balance sheet composition, including the nature and amount of intangible assets, market risks, credit risks, concentration risks, and risks associated with other material activities.
- Risks posed by off-balance sheet activities and contingent liabilities.
- The quality and strength of earnings, and the reasonableness of capital distributions relative to the institution's financial condition and material financial risks.
- Access to other sources of capital, including capital markets and support provided by a sponsor, parent, or holding company.

Ratings

1. A rating of 1 indicates a strong capital level relative to the institution's risk profile.

2. A rating of 2 indicates a satisfactory capital level relative to the institution's risk profile.

3. A rating of 3 indicates a less than satisfactory level of capital that does not fully support the institution's risk profile. The rating indicates a need for improvement, even if the institution's capital level exceeds minimum regulatory requirements.

4. A rating of 4 indicates a deficient level of capital. Viability of the institution may be threatened, but failure does not appear imminent. Assistance from shareholders or other external sources of financial support may be required.

5. A rating of 5 indicates a critically deficient level of capital such that the institution's viability is threatened. Immediate assistance from shareholders or other external sources of financial support is required.

Asset Quality

The Asset Quality rating reflects the quantity of existing and potential credit risks associated with a financial institution's loan and investment portfolios, foreclosed or repossessed assets, and other assets, as well as off-balance sheet exposures. The evaluation of asset quality includes the adequacy of allowances for credit losses and the exposure to obligor, issuer, borrower, or other counterparty defaults. Asset Quality is rated based on an assessment of the following evaluation factors:

- The effectiveness of credit underwriting and administration practices.
- The level, distribution, severity, and trend of problem, adversely classified, nonaccrual, restructured, modified, delinquent, and nonperforming assets for on- and off-balance sheet transactions.
- The adequacy of allowances for credit losses and other asset valuation allowances.
- The credit risk arising from or reduced by off-balance sheet transactions, such as unfunded commitments, unused lines of credit, and credit derivatives.
- The diversification and quality of the loan and investment portfolios.
- The financial risk arising from asset concentrations.
- The extent of securities underwriting activities and exposure to counterparties in trading activities.
- The adequacy of loan and investment policies and practices.
- The effectiveness of risk monitoring practices and timely collection of problem assets.

Ratings

1. A rating of 1 indicates strong asset quality and effective credit underwriting and administration practices. Any weaknesses are minor in nature and risk exposure is modest in relation to allowances for credit losses and capital protection. Asset quality in such institutions is of minimal supervisory concern.

2. A rating of 2 indicates satisfactory asset quality and adequate credit underwriting and administration practices. The level and severity of problem or adversely classified assets and any other weaknesses warrant a limited level of supervisory attention. Risk exposure is commensurate with allowances for credit losses and capital protection.

3. A rating of 3 indicates less than satisfactory asset quality or inadequate credit underwriting or administration practices. Trends may be stable or indicate deterioration in asset quality or an increase in risk exposure. The level and severity of problem or adversely classified assets, other weaknesses, and risks require an elevated level of supervisory attention.

4. A rating of 4 indicates deficient asset quality or credit underwriting or administration practices. The levels of risk and problem or adversely classified assets are significant, inadequately controlled, and subject the institution to potential losses that may threaten its viability.

5. A rating of 5 indicates critically deficient asset quality that presents an imminent threat to the institution's viability.

Management

The Management rating reflects the effectiveness of a financial institution's board of directors and management, in their respective roles, to identify, measure, monitor, and control the material financial risks associated with the institution's activities. Sound risk management practices are demonstrated through effective board of directors and senior management oversight; risk management policies, practices, and limits; audits, internal controls, and recordkeeping; and risk monitoring and management information systems. Management is rated based on an assessment of the following evaluation factors:

- The level and quality of oversight by the board of directors and management.
- The effectiveness of the board of directors and management, in their respective roles, to plan for and respond to risks that may arise from changing

business conditions or the initiation of new activities or products.

- The effectiveness of controls addressing the operations and risks of significant activities.
- The accuracy, timeliness, and effectiveness of management information and risk monitoring systems.
- The adequacy of audits, internal controls, and recordkeeping to promote effective operations and reliable financial and regulatory reporting, safeguard assets, and ensure compliance with laws and regulations.
- Compliance with laws and regulations.
- The extent that directors and management are affected by, or susceptible to, dominant influence or concentration of authority.
- Avoidance of excessive compensation, self-dealing, and conflicts of interest.

Ratings

1. A rating of 1 indicates strong risk management practices relative to the institution's size, complexity, and risk profile. All material financial risks are consistently and effectively identified, measured, monitored, and controlled.

2. A rating of 2 indicates satisfactory risk management practices relative to the institution's size, complexity, and risk profile. In general, material financial risks are adequately identified, measured, monitored, and controlled. Minor weaknesses may exist but are not material.

3. A rating of 3 indicates risk management practices including internal controls, audit, or recordkeeping, that are less than satisfactory, resulting in material financial risk to the institution. This rating also applies to institutions that have unreliable financial or regulatory reporting, have failed to safeguard assets, or are in significant noncompliance with law or regulation. The capabilities of management or the board of directors may be insufficient for the type, size, or condition of the institution.

4. A rating of 4 indicates deficient risk management practices, resulting in material financial risk to the institution. The level of problems and risk exposure is excessive. Immediate action is required to preserve the soundness of the institution. Replacing or strengthening management or the board may be necessary.

5. A rating of 5 indicates critically deficient risk management practices, resulting in material financial risk to the institution. Problems and significant risks now threaten the continued

viability of the institution. Replacing or strengthening management or the board of directors is likely necessary.

Earnings

The Earnings rating reflects the quality, quantity, and trend of a financial institution's earnings. Earnings can be adversely affected by excessive or inadequately managed credit risk, which may result in loan losses and require additions to allowances for credit losses. Earnings can also be adversely affected by excessive market risk, which may unduly expose an institution's earnings to volatility in interest rates. The quality of earnings may be diminished by undue reliance on extraordinary gains, nonrecurring events, or favorable tax effects. In addition, future earnings can be adversely affected by high current or future funding and operating expenses relative to revenues, poorly executed business strategies, or other poorly managed risks. Earnings are rated based on an assessment of the following evaluation factors:

- The level of earnings, including trends and stability.
- The ability to provide for adequate capital through retained earnings.
- The quality and sources of earnings.
- The level of funding costs and noninterest expenses relative to the institution's business model.
- The effectiveness of budgeting and income and expense forecasting.
- The adequacy of provisions to maintain allowances for credit losses and other asset valuation allowances.
- The earnings exposure to market risk such as interest rate, foreign exchange, commodity price, or other financial instrument price risks.

Ratings

1. A rating of 1 indicates strong earnings. Earnings are more than sufficient to support operations and maintain adequate capital and allowances for credit losses considering asset quality, growth, and other factors affecting the quality, quantity, and trend of earnings.

2. A rating of 2 indicates satisfactory earnings. Earnings are sufficient to support operations and maintain adequate capital and allowances for credit losses considering asset quality, growth, and other factors affecting the quality, quantity, and trend of earnings. Earnings that are relatively static, or experiencing a decline, may still receive a 2 rating.

3. A rating of 3 indicates less than satisfactory earnings. Earnings may not fully support operations or provide for the accretion of capital and allowances

for credit losses in relation to the institution's overall condition, growth, and other factors affecting the quality, quantity, and trend of earnings.

4. A rating of 4 indicates deficient earnings. Earnings are insufficient to support operations and maintain appropriate capital and allowances for credit losses. Institutions so rated may be characterized by erratic fluctuations in net income or net interest margin, the development of significant negative trends, nominal or unsustainable earnings, intermittent losses, or a substantive drop in earnings from prior years.

5. A rating of 5 indicates critically deficient earnings. A financial institution with earnings rated 5 is experiencing losses that represent a distinct threat to its viability through the erosion of capital.

Liquidity

The Liquidity rating reflects the current level and prospective sources of liquidity compared to funding needs. In general, funds management practices should ensure that a financial institution is able to maintain sufficient liquidity to meet its financial obligations in a timely manner. Practices should reflect the institution's ability to manage unplanned changes in funding sources, as well as react to changes in market conditions that affect the institution's ability to quickly liquidate assets with minimal loss. Liquidity should also be maintained at a reasonable cost and without undue reliance on funding sources that may not be available in the event of financial stress or adverse changes in market conditions. Contingency funding plans should enable an institution to effectively navigate funding shortfalls or stress events and include operationalized and confirmed access to reliable funds providers. Liquidity is rated based on an assessment of the following evaluation factors:

- The adequacy of liquidity sources compared to present and future needs, and the institution's ability to meet liquidity needs through a range of economic conditions without adversely affecting its operations or financial condition.
- The availability of assets that are readily convertible to cash without undue loss.
- Access to reliable external or contingent funding sources, particularly to address potential liquidity shortfalls.
- The level of funding diversification or funding concentrations, both on- and off-balance sheet.

- The degree of reliance on short-term or less stable funding sources to fund longer-term assets.

- The trend and stability of deposits.³⁵

- The ability to pledge, sell, or securitize assets.

- The effectiveness of funds management practices, including contingency funding plans and cash flow forecasting.

Ratings

1. A rating of 1 indicates strong liquidity levels and effective funds management practices. The institution has reliable access to sufficient sources of funds on favorable terms to meet present, anticipated, and contingent liquidity needs. Any identified weaknesses in funds management practices are minor in nature.

2. A rating of 2 indicates satisfactory liquidity levels and adequate funds management practices. The institution has access to sufficient sources of funds on reasonable terms to meet present, anticipated, and contingent liquidity needs. Modest weaknesses may be evident in funds management practices.

3. A rating of 3 indicates less than satisfactory liquidity levels or inadequate funds management practices. Institutions rated 3 may lack ready access to funds on reasonable terms to meet present, anticipated, or contingent liquidity needs, or may evidence significant weaknesses in funds management practices.

4. A rating of 4 indicates deficient liquidity levels or funds management practices. Institutions rated 4 may not have or be able to obtain a sufficient volume of funds on reasonable terms to meet liquidity needs.

5. A rating of 5 indicates critically deficient liquidity levels that threaten the continued viability of the institution. Institutions rated 5 require immediate external financial assistance to meet maturing obligations or other liquidity needs.

Sensitivity to Market Risk

The Sensitivity to Market Risk rating reflects the degree to which changes in interest rates, foreign exchange rates, commodity prices, or other financial instrument prices can adversely affect a financial institution's earnings or capital. When evaluating this component, the primary consideration is the level, trend, measurement, and control of market risk relative to an institution's capital and earnings. For many institutions, the primary source of

market risk arises from nontrading positions and their sensitivity to changes in interest rates. Foreign operations and trading activities can also be a significant source of market risk in some institutions. Sensitivity to Market Risk is rated based on an assessment of the following evaluation factors:

- The sensitivity of the institution's earnings or capital to adverse changes in interest rates, foreign exchange rates, commodity prices, or other financial instrument prices.

- Recent net interest income performance in response to the interest rate environment, and expectations for net interest income based on the balance sheet position and exposure to interest rate volatility.

- Measures of the long-term sensitivity of exposure to interest rate volatility on the institution's net economic value.

- The adequacy of market risk measurement and control practices given the institution's scale and activities.

- The degree to which assets, liabilities, and off-balance sheet exposures are appropriately aligned considering their potential impact on earnings and capital, as well as other risk mitigation strategies, such as hedging.

- The effectiveness of managing embedded options risk in assets and liabilities.

- The nature and complexity of interest rate risk exposure arising from nontrading positions.

- The nature and complexity of market risk exposure arising from foreign operations and trading activities.

Ratings

1. A rating of 1 indicates that sensitivity to market risk is well controlled, and market risk management practices are effective. There is minimal potential that the earnings performance or capital position will be adversely affected by market risk.

2. A rating of 2 indicates that sensitivity to market risk is satisfactorily controlled, and market risk management practices are adequate. There is only moderate potential that the earnings performance or capital position will be adversely affected by market risk.

3. A rating of 3 indicates that control of market risk sensitivity is less than satisfactory or market risk management practices are inadequate. There is an elevated potential that the earnings performance or capital position will be adversely affected by market risk.

4. A rating of 4 indicates that control of market risk sensitivity or market risk

³⁵ Deposits include credit union share accounts, if applicable.

management practices is deficient. There is high potential that the earnings performance or capital position will be adversely affected by market risk.

5. A rating of 5 indicates that control of market risk sensitivity is critically deficient and the level of market risk taken by the institution is an imminent threat to its viability.

Dated at Washington, DC, this 14 day of May 2026.
Federal Financial Institutions Examination Council.

Amol B. Vaidya,
Executive Secretary.

[FR Doc. 2026-09944 Filed 5-18-26; 8:45 am]

BILLING CODE 7535-01-6714-01-6210-01-4810-33-4810-AM;P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: May 28, 2026 at 10:00 a.m. ET

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1-202-599-1426, Code: 462 484 163#; or via web: <https://www.frtib.gov/>.

FOR FURTHER INFORMATION CONTACT:
James Kaplan, Director, Office of External Affairs, (202) 864-7150.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the April 28, 2026, Board Meeting Minutes
2. Approval of the November 6, 2025, ETAC Meeting Minutes
3. Monthly Reports
 - (a) Participant Report
 - (b) Investment Report
 - (c) Legislative Report
4. Quarterly Reports
 - (d) Metrics
5. Annual Financial Audit Presentation
6. Office of Participant Experience Office Update

Closed Session

7. Information Covered under 5 U.S.C. 552b(c)(9)(B).

Authority: 5 U.S.C. 552b(e)(1).

Dated: May 15, 2026.

Dharmesh Vashee,
General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2026-09976 Filed 5-18-26; 8:45 am]

BILLING CODE 6760-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP); Notice of Charter Re-Establishment

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Committee management; Withdrawal of notice of committee charter renewal; Notice of committee charter re-establishment.

SUMMARY: Pursuant to the Public Health Service Act, as amended, and the Federal Advisory Committee Act, as amended, the Centers for Disease Control and Prevention (CDC) announces the re-establishment of the Advisory Committee on Immunization Practices (ACIP). A notice of committee charter renewal for the ACIP, which was published in the **Federal Register** on April 6, 2026, is hereby withdrawn. In this document, the CDC also announces the determination that the re-establishment of the ACIP is necessary and in the public interest in connection with the Department of Health and Human Services' (HHS) performance of its duties.

FOR FURTHER INFORMATION CONTACT:

ACIP Secretariat, Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21-12, Atlanta, Georgia 30329-4027. Email: ACIP@cdc.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. 1001 *et seq.*), CDC is providing notice of the re-establishment of the charter of the ACIP, CDC, HHS. This charter is being re-established for a two-year period.

Withdrawal of previously published notice: The notice of charter renewal published on April 6, 2026 (91 FR 17279) is hereby withdrawn due to an administrative error in meeting the revised public notification timing requirements under the revised Federal Advisory Committee Act regulations, as amended in December 2025 (41 CFR 102-3.65). As a result, the charter lapsed and the committee must be re-established.

Public Interest Determination

Pursuant to 41 CFR 102-3.60(a), to establish, renew, reestablish, or merge a discretionary (agency discretion) advisory committee, an agency must first consult with the General Services

Administration's Committee Management Secretariat (the Secretariat) and, as part of the consultation, provide a written public interest determination approved by the head of the agency to the Secretariat with a copy to the Office of Management and Budget. In addition, pursuant to 41 CFR 102-3.35, an agency shall follow the same consultation process and document in writing the same determination of need before creating a subcommittee under a discretionary committee that is not made up entirely of members of a parent advisory committee.

Information on the following factors for the committee is provided to the Secretariat to demonstrate that re-establishing the committee is in the public interest:

1. *Annual budget:* Estimated annual costs for operating the Committee, including (i) Federal personnel (3) and other Federal internal costs are \$1,080,340; (ii) proposed compensation and travel expense payments for up to 19 members is \$42,750; and (iii) reimbursable costs are \$83,106.

2. If applicable, the total dollar value of grants expected to be recommended during the fiscal year, \$0.

3. Criteria for selecting members to ensure the committee has the necessary expertise and fairly balanced membership: To identify nominees capable of maintaining fairly balanced membership who collectively represent a balanced range of scientific, clinical, and public health expertise relevant to the ACIP's mission to advise and provide recommendations to the CDC Director on vaccines and immunizations, CDC conducts broad outreach using multiple channels. Outreach is designed to reach interested parties, as appropriate to the Committee's function, and stakeholders likely to possess the expertise and perspectives identified above. Outreach priorities may change as vacancies arise and as the Committee's agenda evolves.

In conducting outreach and screening candidates, the Designated Federal Officer (DFO) as well as the ACIP Secretariat assess current and anticipated Committee needs based on the charter, the active work plan, upcoming vacancies, and any identified gaps in expertise or perspectives. Consideration is given to geographic diversity, diversity of relevant work settings, and the need for balanced expertise across clinical medicine, immunization practice, immunology, infectious diseases, epidemiology, biostatistics and data analysis, vaccine safety and effectiveness evaluation, health economics, public health implementation, health systems and

program operations, special populations, and consumer and community perspectives.

The DFO, in collaboration with the ACIP Secretariat, solicits candidate names through multiple channels, which may include:

- Publication of nomination notices in the **Federal Register**;
- Information and application procedures on the ACIP website at <https://www.cdc.gov/acip/apply-for-membership/index.html>, including a continuous nomination process throughout the year;
- Announcements and application information at ACIP meetings and webcasts;
- Outreach to professional associations, public health organizations, academic institutions, state, local, Tribal, and territorial partners, health systems, and consumer or community organizations, as appropriate to address identified expertise gaps or community perspectives;
- Recommendations from current or former Committee members, CDC subject matter experts, and other knowledgeable sources, as appropriate; and
- Targeted outreach, when needed, to identify nominees with expertise relevant to special populations, implementation in diverse settings, or other emerging needs reflected in the Committee's work.

Members, including the Chair and Vice Chair, shall be selected by the HHS Secretary and shall be invited to serve for overlapping terms of up to four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of that term. A member may serve 180 days after the expiration of that member's term if a successor has not taken office.

4. List of all other Federal advisory committees of the agency:

- Advisory Board on Radiation and Worker Health
- Advisory Committee for the Elimination of Tuberculosis
- Advisory Committee on Breast Cancer in Young Women
- Advisory Committee to the Director, CDC
- Board of Scientific Counselors, National Center for Injury Prevention and Control
- Lead Exposure and Prevention Advisory Committee
- Mine Safety and Health Research Advisory Committee
- National Committee on Vital and Health Statistics

- World Trade Center Health Program Scientific/Technical Advisory Committee

5. Justification that the information or advice provided by the Federal advisory committee or subcommittee is not available from another Federal advisory committee, another Federal Government source, or any other more cost-effective and less burdensome source: The ACIP has been given statutory roles under subsections 1928(c)(2)(B)(i) and 1928(e) of the Social Security Act (42 U.S.C. 1396s(c)(2)(B)(i) and 1396s(e)) and subsection 2713(a)(2) of the Public Health Service Act (42 U.S.C. 300gg-13(a)(2)). In accordance with Section 1928 of the Social Security Act, the ACIP shall establish and periodically review and, as appropriate, revise the list of vaccines for administration to children and adolescents eligible to receive vaccines through the Vaccines for Children (VFC) Program, along with schedules regarding the appropriate dose and dosing interval, and contraindications to administration of the pediatric vaccines. The Secretary, and as delegated the CDC Director, shall use the list established by the ACIP for the purpose of the purchase, delivery, and administration of pediatric vaccines in the VFC Program. Further, under provisions of the Affordable Care Act (Section 2713 of the Public Health Service Act, as amended), immunization recommendations of the Committee that have been adopted by the Director of the CDC must be covered by applicable health plans. Therefore, the advice provided by the ACIP is not available from another Federal advisory committee or Federal Government source, or any other more cost-effective and less burdensome source.

6. Explanation of why the committee/subcommittee is essential to the conduct of agency business: The Secretary, HHS, and by delegation the Director, CDC, are authorized under Section 311 and Section 317 of the Public Health Service Act, [42 U.S.C. 243 and 42 U.S.C. 247b], as amended, to assist states and their political subdivisions to assist in the prevention and control of communicable diseases and to support related public health activities. The ACIP provides advice and recommendations to the CDC Director on the use of vaccines and immunization program strategies to inform clinical practice and public health action. The Committee convenes scientific and medical experts to evaluate the best available evidence regarding vaccine safety, efficacy, effectiveness, and implementation. ACIP shall provide advice and guidance

regarding the use of vaccines and related immunobiologic agents for the control of vaccine-preventable diseases in the United States, including identifying areas where additional data or evaluation would inform future recommendations. Recommendations made by ACIP are reviewed by the CDC Director and, if adopted, become official CDC and HHS recommendations and may be published in the *Morbidity and Mortality Weekly Report* (MMWR).

In conclusion, this public interest determination documents that re-establishing the committee is in the public interest, essential to the conduct of agency business, and that the information to be obtained is not already available through another advisory committee or source within the Federal Government.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2026-10012 Filed 5-18-26; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Title V Maternal and Child Health Services Block Grant to States Program: Guidance and Forms for the Title V Application/Annual Report, OMB No. 0915-0172—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget

(OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than July 20, 2026.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA Information Collection Clearance Officer, Room 13N82, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call Samantha Miller, the HRSA Information Collection Clearance Officer, at (301) 443-3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Title V Maternal and Child Health Services Block Grant to States Program: OMB No. 0915-0172—Revision

Abstract: The Title V Maternal and Child Health (MCH) Services Block Grant to States Program is authorized by Sections 501–509 of Title V of the Social Security Act (42 U.S.C. 701–709). HRSA is updating the *Title V Maternal and Child Health Services Block Grant to States Program: Guidance and Forms for the Title V Application/Annual Report* (Guidance). This Guidance is used

annually by the 50 states and nine jurisdictions (the District of Columbia, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands; hereafter referred to as “state”) in applying for Block Grants under Title V of the Social Security Act and in preparing the required Annual Report. The updates being proposed by HRSA for this edition of the Guidance continue to support the federal-state partnership that is supported by the Title V MCH Services Block Grant and the state’s role in developing a 5-Year Action Plan that addresses its individual priority needs.

Updates to this edition of the Guidance are editorial and technical revisions based on feedback from the states in using the Guidance and Forms since January 2024. Specific updates include the following:

(1) Minor editorial corrections and clarifications to Form 7, Form 10, and Form 12 instructions and the Glossary.

(2) Updates to the short and long titles of the National Performance Measures to improve title accuracy and fulfill Government Accountability Office recommendations to align the National Performance Measures with other HRSA program measures.

Need and Proposed Use of the Information: Each year, all states are

required to submit an Application/Annual Report for federal funds for their Title V MCH Services Block Grant to States Program to HRSA (Sections 505(a) and 506(a)(1) of Title V of the Social Security Act). In addition, the state MCH Services Block Grant programs are required to conduct a state-wide, comprehensive needs assessment every 5 years. The information and instructions for the preparation and submission of this Application/Annual Report are contained in the Guidance.

Likely Respondents: Likely respondents are state MCH agencies and other MCH stakeholders.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Application and Annual Report without Five-Year Needs Assessment Summary	59	1	59	116	6,844
Total	59	.....	59	.....	6,844

The burden estimates presented in the table above are based on previous burden estimates and consultation with a few states. States will use the updated edition of the Guidance to prepare and submit the fiscal year (FY) 2028, FY 2029, and FY 2030 Applications/FY 2026, FY 2027, and FY 2028 Annual Reports, which will not contain the 5-Year Needs Assessment Summary. States will submit the next 5-Year Needs Assessment Summary in 2030, as part of the FY 2031 Application/FY 2029 Annual Report.

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency’s

functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2026-09979 Filed 5-18-26; 8:45 am]

BILLING CODE 4165-15-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; The Division of Independent Review Application Reviewer Recruitment Form, OMB No. 0915-0295—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. 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 June 18, 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: The Division of Independent Review Application Reviewer Recruitment Form, OMB No. 0915-0295—Revision.

Abstract: HRSA's Division of Independent Review (DIR) is responsible for administering the review of eligible applications submitted for grants under HRSA competitive announcements. DIR ensures that the objective review process is independent, efficient, effective, economical, and complies with the applicable statutes, regulations, and policies. Applications are reviewed by subject matter experts knowledgeable in health and public health disciplines for which support is requested. Review findings are advisory to HRSA programs responsible for making award decisions.

This ICR is for continuation of a web-based data collection system, the Reviewer Recruitment Module (RRM), used to gather critical reviewer information. The RRM uses standardized categories of information in drop down menu format for data such as the following: degree, specialty, occupation, work setting, and affiliations with organizations and institutions that serve special populations (in select instances). Some program regulations require that objective review panels contain consumers of health services. Other demographic data may be voluntarily provided by a potential reviewer. Defined data elements assist HRSA in finding and selecting expert reviewers for objective review committees.

HRSA maintains a roster of approximately 9,000 qualified individuals who have actively served on HRSA objective review committees. The web based RRM simplifies reviewer registration entry using a user-friendly Graphical User Interface with a few data drop down menu choices, a search engine that supports key word queries in the actual resume or Curriculum Vitae text, and permits reviewers to access and update their information at will and as needed. The RRM is 508 compliant and accessible by the general public via a link on the HRSA "Grants" internet site, or by keying the RRM URL into their browser. The RRM is accessible using any of the commonly used internet browsers.

The only change to the collection is updating two questions about reviewer attributes (*i.e.*, past/current affiliation or characteristics, and demographic information) for compliance with administration priorities.

A 60-day notice was published in the **Federal Register** on January 29, 2026, vol. 91, No. 19; pp. 3896-3897. There were no public comments.

Need and Proposed Use of the Information: HRSA currently uses the RRM to collect information from individuals who wish to volunteer as objective review committee participants for the agency's discretionary and competitive grant or cooperative

agreement funding opportunities. The RRM provides HRSA with an effective search and communication functionality with which to identify and contact qualified potential reviewers. The RRM has an enhanced search and reporting capability to help DIR ensure that the HRSA reviewer pool has the necessary skills, education, and qualifications to meet the ever-evolving need for qualified reviewers. If HRSA identifies either an expertise or demographic that is under-represented in the RRM pool, HRSA is able to recruit specifically to address those needs. Expertise is always the primary determinant in selecting potential reviewers for any specific grant review; no reviewer is required to provide demographic information to join the reviewer pool or be selected as a reviewer for any competition.

Likely Respondents: All HRSA reviewers must possess the technical skill and ability to access the internet on a secure desktop laptop, or touch pad, and either a land line or Voice Over internet Protocol capability to participate in HRSA objective review committees. Reviewers are professionals with expertise and experience consistent with the HRSA mission. Certain legislation requires HRSA programs to include consumers of specific health care services in the objective review committee.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
New reviewer	700	1	700	0.333	233
Updating reviewer information	9,000	1	9,000	0.166	1,494
Total	9,700	.....	9,700	.....	1,727

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2026-09978 Filed 5-18-26; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974; System of Records

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), HHS is establishing a new system of records, 09-15-0070, "Graduate Medical Education (GME) Full-Time Equivalent (FTE) Resident Assessment Records," to be maintained by, and on behalf of, HRSA. The system of records will contain records about medical and dental residents training in children's hospitals and teaching health centers, which are used to justify the number of residents counted in calculating GME reimbursement payments to the hospitals and health centers and avoid duplicative reimbursements.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is effective May 19, 2026, with the exception of the routine uses described below, which are effective June 18, 2026. Please submit any comments on the notice, including the routine uses, by June 18, 2026.

ADDRESSES: The public should submit written comments, identified by Privacy Act System of Records number 09-15-0070, by email to PrivacyAct@hrsa.gov or by mail to HRSA Privacy Act Office, Office of Planning, Analysis, and Evaluation, 5600 Fishers Lane, 13N82, Rockville, MD 20852. Comments will be made available by request to the email or physical address above.

FOR FURTHER INFORMATION CONTACT:

General questions about the system of records may be submitted to Samantha Miller, HRSA Privacy Act Office, Office of Planning, Analysis, and Evaluation, 5600 Fishers Lane, 13N82, Rockville, MD 20852, email: PrivacyAct@hrsa.gov and 301-443-3983.

SUPPLEMENTARY INFORMATION: HRSA administers the Children's Hospitals Graduate Medical Education (CHGME) Payment Program and Teaching Health Center Graduate Medical Education (THCGME) Payment Program, which make payments to children's hospitals and teaching health centers that operate GME programs. The Programs' authorities require that payments be calculated based in part on the number of FTE residents in the children's hospitals' and teaching health centers' approved residency training programs. See 42 U.S.C. 256e(c) and 256h(c). Further, the Programs' authorities require a yearly reconciliation, *i.e.*, a yearly determination of any changes to the number of residents reported by a children's hospital or teaching health center in its application, to determine the final amount payable each year. See 42 U.S.C. 256e(e)(3) and 256h(f). HRSA engages a contractor to assist with this determination, which is referred to as the GME FTE Resident Assessment.

To obtain information needed to perform the GME FTE Resident Assessment, the HRSA contractor compiles and maintains records about individuals who are medical and dental residents in participating children's hospitals and teaching health centers. These records are retrieved by the residents' personal identifiers and therefore constitute a "system of records" as defined by the Privacy Act at 5 U.S.C. 552a(a)(5). This system of records, titled "Graduate Medical Education (GME) Full-Time Equivalent (FTE) Resident Assessment Records," is more fully described in this Privacy Act System of Records Notice.

As required by 5 U.S.C. 552a(r), the Department has submitted a report on the proposed system of records to the Office of Management and Budget, the House Committee on Oversight and Government Reform, and the Senate Committee on Homeland Security and Governmental Affairs.

SYSTEM NAME AND NUMBER:

Graduate Medical Education (GME) Full-Time Equivalent (FTE) Resident Assessment Records, 09-15-0070.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of the agency component responsible for the system of records is: Division of Medicine and Dentistry, Bureau of Health Workforce, HRSA, 5600 Fishers Lane, Rockville, MD 20857. The contractor maintaining the system of records on behalf of HRSA is currently Integrity Management Services, Inc., located at 5911 Kingstowne Village Parkway, Suite 210, Alexandria, VA 22315.

SYSTEM MANAGER(S):

Contracting Officer's Representative, Division of Medicine and Dentistry, Bureau of Health Workforce, HRSA, 5600 Fishers Lane, Rockville, MD 20857.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authorities for maintaining the system are 42 U.S.C. 256e (section 340E of the Public Health Service Act) and 42 U.S.C. 256h (section 340H of the Public Health Service Act).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system of records is to enable HRSA to carry out the CHGME Payment Program authorized by 42 U.S.C. 256e and the THCGME Program authorized by 42 U.S.C. 256h. Records about medical and dental residents will be used to determine any changes to the number of residents reported by participating children's hospitals and teaching health centers in their applications to determine the final amount of GME reimbursement payable to each hospital and health center. To assist with this determination, which is referred to as the GME FTE Resident Assessment, HRSA engages a contractor ("fiscal intermediary"). Records will be used to assess the accuracy of the number of FTE residents reported (including ensuring that no residents are counted as more than one FTE resident) and to resolve discrepancies identified in the number of FTE residents reported. Records may also be used for program evaluation activities, such as conducting audits; establishing or verifying information provided by or about residents; and combating fraud, waste, or abuse of CHGME or THCGME funds. Other secondary purposes for which the records may be used are to enable HRSA to assist federal or state agency officials who carry out federal GME programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will pertain to medical and dental residents training at children's hospitals participating in the CHGME Payment Program and teaching health

centers participating in the THCGME Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system stores information about residents' rotational training assignments and years completed in residency. Categories of records include, for each resident: identifying information (e.g., name and Social Security number of the resident); type of residency program in which the individual participates and the number of years the resident has completed in all types of residency programs; dates the resident is assigned to the hospital and any hospital-based providers; dates the resident is assigned to other hospitals, or other freestanding providers, and any non-provider setting during the cost reporting period, if any; name of the medical, osteopathic, dental, or podiatric school from which the resident graduated and the date of graduation; documentation concerning foreign medical school graduation date and certification date, if the resident is a foreign medical graduate; name of the employer (e.g., hospital, university, corporation) paying the resident's salary; percentage of time spent working in any area of the hospital complex or in a non-provider setting under agreement with the hospital for GME; and start and end dates assigned to the hospital and any hospital-based providers (assignment periods) during the children's hospital's or teaching health center's cost reporting period, the start and end dates assigned to any non-hospital or non-provider setting in connection with approved residency programs (assignment periods) during the children's hospital's or teaching health center's cost reporting period, and the full-time or part-time percentage during each assignment period.

RECORD SOURCE CATEGORIES:

Information in the records is obtained from participating children's hospitals or teaching health centers, which provide it on forms approved under Office of Management and Budget (OMB), including OMB control no. 0915-0247, if the children's hospital or teaching health center does not file a Medicare cost report with the Centers for Medicare & Medicaid Services (CMS). The system also includes records originally received by CMS on OMB-approved forms under OMB control no. 0938-0050, which are obtained from CMS if the children's hospital or teaching health center files a Medicare cost report with CMS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to other disclosures which are authorized directly in the Privacy Act at 5 U.S.C. 552a(b), these routine uses, published pursuant to 5 U.S.C. 552a(b)(3), specify circumstances under which records from this system of records may be disclosed to parties outside HHS without the consent of the individual to whom the records pertain:

- *Routine Use 1:* Records may be disclosed to HHS contractors (including fiscal intermediaries) or other entities (including consultants, researchers and support personnel) that have been engaged by HHS to assist in carrying out functions relating to the purposes of this system of records and require access to the records in order to assist HHS. Such functions include but are not limited to: performing the FTE Resident Assessment; conducting audits; establishing or verifying information provided by or about residents; and combating fraud, waste, or abuse of CHGME or THCGME funds. The contractors, subcontractors, or other entities as defined in 5 U.S.C. 552a(m)(1) will be prohibited from using or disclosing the records for any purpose other than the purpose(s) specified by HRSA, to comply with the Privacy Act of 1974, as amended, enforced through Federal Acquisition Regulation Subpart 24.1 and required to return or destroy all records as specified by HRSA.

- *Routine Use 2:* HHS contractors or HRSA may disclose records to children's hospitals participating in the CHGME Payment Program and teaching health centers participating in the THCGME Program, if such records relate to individuals training in the hospital's or teaching health center's residency program, to facilitate compliance with CHGME Payment Program or THCGME Program requirements.

- *Routine Use 3:* When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, HRSA may disclose the record to the appropriate agency or public authority responsible for enforcing, investigating or prosecuting such violation (including but not limited to Federal, Tribal, State, local, or foreign agencies or public authorities), if the information disclosed is relevant to the responsibilities of the agency or public authority.

- *Routine Use 4:* Records may be disclosed to the Department of Justice or to a court or other adjudicative body in litigation or other proceedings when any of the following is a party to the

proceedings or has an interest in the proceedings and, by careful review, the agency determines that the records are both relevant and necessary to the proceedings: (a) HHS or any component thereof; or (b) any employee of HHS in the employee's official capacity; or (c) any employee of HHS in the employee's individual capacity where the Department of Justice or HHS has agreed to represent the employee; or (d) the United States Government.

- *Routine Use 6:* Records may be disclosed to appropriate agencies, entities, and persons when: (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

- *Routine Use 7:* Records may be disclosed to another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in: (1) responding to a suspected or confirmed breach; or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored electronically in the system maintained by the HRSA contractor or subcontractor assisting with the GME FTE Resident Assessment. Contractors or subcontractors operating this system to collect, access and store records must obtain an Authority to Operate meeting security and privacy requirements in accordance with the Federal Information Security Modernization Act (44 United States Code 101), National Institute of Standards and Technology Special Publication 800-53, OMB Circular A-130, OMB Memoranda (17-12, 03-22), the Federal Risk and Authorization Management Program, Federal Information Processing Standards Publication 199, and HHS and HRSA applicable regulations and policies.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the subject individual's name or Social Security number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The GME FTE Resident Assessment Records are currently unscheduled and will be retained indefinitely until authorized for disposition under a schedule approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

HHS, HHS contractors, and subcontractors having access to the records have been trained in the Privacy Act and information security requirements. HHS, contractors, and subcontractor employees who maintain records in this system or have access to the records in the system are required to not release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access in accordance with applicable law. This system will conform to all applicable Federal laws and regulations and Federal, HHS, and HRSA policies and standards as they relate to information security and data privacy. Measures to prevent unauthorized disclosures of GME FTE Resident Assessment records are implemented as appropriate for each location or form of storage and for the types of records maintained. Safeguards conform to the HHS Information Security and Privacy Program, <https://www.hhs.gov/ocio/securityprivacy/index.html>. Site(s) implement personnel and procedural safeguards such as the following:

- *Authorized Users:* Access is strictly limited to authorized HHS and contractor personnel whose duties require such access (*i.e.*, who have a valid, business need-to-know).

- *Administrative Safeguards:* Administrative controls include the completion of a Security Assessment and Authorization package and a Privacy Impact Assessment for information technology systems used to maintain the records, and mandatory completion of annual HRSA Information Security and Privacy Awareness training for personnel authorized to access the records. The Security Assessment and Authorization package consists of a Security Categorization, e-Authentication Risk Assessment,

System Security Plan, evidence of Security Control Testing, Plan of Action and Milestones, Contingency Plan, and evidence of Contingency Plan Testing. When the agency engages an outside contractor to support design, development, or operation of the system of records, the applicable Privacy Act Federal Acquisition Regulation clauses are inserted in solicitations and contracts.

- *Physical Safeguards:* Controls to secure the data and protect electronic records, buildings, and related infrastructure against threats associated with their physical environment include and/or HHS Personnel Security Clearance of HRSA employees, contractors, and subcontractors and the use of the HHS Personal Identity Verification card. Access to the restricted office area containing the rooms where records are stored is controlled through the use of limited access proximity cards. Only authorized users have access to these cards. Individuals who enter the restricted area without a limited access proximity card are under escort at all times. During regular business hours, rooms in this restricted area are unlocked but entry is controlled by on-site personnel. Rooms where records are stored are locked when not in use. Records are kept under the direct control of the System Manager, authorized federal employees, and/or delegated contractors and subcontractors. Contractor interaction with this system of records will occur on-site and no electronic records will be allowed to be removed from the GME FTE Resident Assessment System unless authorized. All authorized users of personal information in connection with the performance of their jobs will be required to protect information from public view and from unauthorized personnel entering an unsupervised area/office.

- *Technical Safeguards:* Electronic media are kept on secure servers or computer systems. Controls are employed to minimize the possibility of unauthorized access, use, or dissemination of the data in the system. They include user identification, password protection, firewalls, virtual private network, encryption, intrusion detection system, common access cards, smart cards, biometrics, and public key infrastructure. Computer records are accessible only through a series of code or keyword commands available from and under the direct control of the System Manager, authorized federal employees or delegated contractors and/or subcontractors. These records are secured by a multi-level security system which is capable of controlling access to

the individual data field level. Persons having access to the computer database can be restricted to a confined application which permits only a narrow "view" of the data.

RECORD ACCESS PROCEDURES:

An individual seeking access to records about an individual in this system of records must submit a written access request to either the System Manager (see above "System Manager(s)" section), the HRSA Privacy Act Office (see above "ADDRESSES" section), or the HHS FOIA/Privacy Act Public Access web portal at <https://www.foia.gov/agency-search.html?id=8ea3cba7-f377-40b9-b3cc-0b608c21342e&type=component>. The request must contain the requester's (subject individual's) name, address, date of birth, and signature, and should also provide a reasonable description of the contents of the record being sought. To verify the requester's identity, the requester's signature must be notarized, or the request must include the requester's written certification that the requester is the person the requester claims to be and that the requester understands that the knowing and willful request for or acquisition of records pertaining to an individual from an agency under false pretenses is a criminal offense subject to a fine of up to \$5,000. An individual may request that copies of the records be sent to them, or direct that the records be sent to a third party in accordance with the individual's signed, written consent (a pre-existing power of attorney may qualify as such a consent), or request an appointment to review the records in person (including with a person of their choosing, if they provide written authorization for agency personnel to discuss the records in that person's presence). An individual may also request an accounting of disclosures that have been made of records about them, if any. A court-appointed guardian for a subject individual who requests access to the individual's record must, in addition to verifying the individual's identity, verify the guardian's relationship to the individual and the guardian's own identity.

CONTESTING RECORD PROCEDURES:

Individuals (or their court-appointed guardians, if applicable) may seek to amend a record about them in this system of records by submitting a written amendment request to the System Manager (see above "System Manager(s)" section). The request must contain the same information required for an access request and must include verification of the requester's (and, if

applicable, the guardian's) identity in the same manner required for an access request. In addition, the request must reasonably identify the record, specify the information being contested, state the corrective action sought and the reason(s) for requesting the correction, and include supporting documentation to show how the record is inaccurate, incomplete, untimely, or irrelevant. Only information that is factually inaccurate, incomplete, untimely, or irrelevant may be contested.

NOTIFICATION PROCEDURES:

Individuals (or their court-appointed guardians, if applicable) who wish to know if this system of records contains records about them must submit a written notification request to the System Manager (see above "System Manager(s)" section). The request must contain the same information required for an access request and must include verification of the requester's (and, if applicable, the guardian's) identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2026-10017 Filed 5-18-26; 8:45 am]

BILLING CODE 4160-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria

AGENCY: Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; 27th Public Meeting of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that a virtual meeting is scheduled to be held for the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB); the main focus of the meeting is to solicit feedback from council members on the 2026-2031 National Action Plan on Combating Antibiotic Resistant Bacteria. The meeting will be open to the public

as a live streamed event on hhs.gov/live. Written public comments will be accepted prior to the meeting until close of business on Friday, June 19, 2026. All members of the public who wish to provide public comment must do so by submitting written public comment to CARB@hhs.gov. Additional information about the meeting can be obtained at <http://www.hhs.gov/paccarb>.

DATES: The meeting is scheduled to be held on January 16, 2026, from 12:30 to 3:30 ET (times are tentative and subject to change). The confirmed times and agenda items for the meeting will be posted on the website for the PACCARB at <http://www.hhs.gov/paccarb> when this information becomes available.

The meeting will be live streamed and can be accessed through a live webcast on the day of the meeting at hhs.gov/live. Additional information on this meeting will be posted at least one week prior to the meeting at: <http://www.hhs.gov/paccarb>.

FOR FURTHER INFORMATION CONTACT:

Sarah McClelland, M.P.H., Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, Email: CARB@hhs.gov.

SUPPLEMENTARY INFORMATION: The Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB), established by Executive Order 13676, is continued by Section 505 of Public Law 116-22, the Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019 (PAHPAIA). Activities and duties of the PACCARB are governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92-463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

The PACCARB shall advise and provide information and recommendations to the Secretary of Health and Human Services (Secretary) regarding programs and policies intended to reduce or combat antibiotic-resistant bacteria that may present a public health threat and improve capabilities to prevent, diagnose, mitigate, or treat such resistance. The PACCARB shall function solely for advisory purposes.

Such advice, information, and recommendations may be related to improving: the effectiveness of antibiotics; research and advanced research on, and the development of, improved and innovative methods for combating or reducing antibiotic resistance, including new treatments,

rapid point-of-care diagnostics, alternatives to antibiotics, including alternatives to animal antibiotics, and antimicrobial stewardship activities; surveillance of antibiotic-resistant bacterial infections, including publicly available and up-to-date information on resistance to antibiotics; education for health care providers and the public with respect to up-to-date information on antibiotic resistance and ways to reduce or combat such resistance to antibiotics related to humans and animals; methods to prevent or reduce the transmission of antibiotic-resistant bacterial infections; including stewardship programs; and coordination with respect to international efforts in order to inform and advance the United States capabilities to combat antibiotic resistance.

The focus of the June 16, 2026, meeting is to provide input and information to the federal, Inter-Agency Combating Antibiotic-Resistant Bacteria Task Force (Task Force) as they develop the next five-year iteration of the CARB National Action Plan 2026-2031. The meeting will be discussion based, as the council members will respond to and deliberate on specific questions from the Task Force on each goal of the CARB National Action Plan.

Members of the public are invited to written provide comment, especially on the next iteration of the CARB National Action Plan. The deadline for submitting written public comment will be extended and remain open until close of business on Friday, June 19, 2026. All written public comment must be submitted to CARB@hhs.gov. The meeting agenda will be posted on the PACCARB website at <http://www.hhs.gov/paccarb> when it has been finalized. All agenda items are tentative and subject to change. Instructions regarding attending the meeting virtually will be posted at least one week prior to the meeting at: <http://www.hhs.gov/paccarb>. All public comments received via email prior to close of business on Friday, June 19, 2026 will be provided to the PACCARB and Task Force members.

Dated: May 14, 2026.

Sarah McClelland,

Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health.

[FR Doc. 2026-09987 Filed 5-18-26; 8:45 am]

BILLING CODE 4150-44-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Reproductive, Perinatal and Pediatric Health.
Date: June 4, 2026.

Time: 10:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.
Contact Person: Sheila Pirooznia, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–9350, sheila.pirooznia@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Therapeutics and Drug Development.

Date: June 22, 2026.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.
Contact Person: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, Bethesda, MD 20892, 301–451–0131, ltopol@mail.nih.gov.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Gene Regulation in Cancer Study Section.

Date: June 22–23, 2026.
Time: 9:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.
Contact Person: Manzoor A. Zarger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 6208, Bethesda, MD 20892, (301) 435–2477 zargerma@csr.nih.gov.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Immune Mechanisms of Hypersensitivity and Allergy Study Section.

Date: June 23, 2026.
Time: 9:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.
Contact Person: Deanna C. Bublitz, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4005, deanna.bublitz@nih.gov.

Name of Committee: Applied Therapeutics for Cancer Integrated Review Group; Mechanisms of Cancer Therapeutics B Study Section.

Date: June 24, 2026.
Time: 8:30 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.
Contact Person: Maria Dolores Arjona Mayor, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 806D, Bethesda, MD 20892, (301) 827–8578, dolores.arjonamayor@nih.gov.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Biochemical and Cellular Oncogenesis Study Section.

Date: June 24, 2026.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.
Contact Person: Jian Cao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–5902, caojn@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Medical Imaging Research.

Date: June 24, 2026.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.
Contact Person: Debanjan Goswami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Office 810–G, Bethesda, MD 20892, (301) 451–1587, debanjan.goswami@nih.gov.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review

Group; Pathophysiology of Eye Disease—2 Study Section.

Date: June 24–25, 2026.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.
Contact Person: Barbara Susanne Mallon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–8992, mallonb@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR'S: Proteostasis and Protein Aggregation in Neurodegeneration (PPAN).

Date: June 24–25, 2026.
Time: 9:00 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.
Contact Person: Jennifer Kielczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, jennifer.kielczewski@nih.gov.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Drug and Biologic Therapeutic Delivery Study Section.

Date: June 24, 2026.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.
Contact Person: Janice Duy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3139, janice.duy@nih.gov.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Healthcare and Health Disparities Study Section.

Date: June 24, 2026.
Time: 9:00 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.
Contact Person: Tara R. Earl, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007C, Bethesda, MD 20817, (301) 402–6857, earltr@mail.nih.gov.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Molecular and Cellular Neuropharmacology Study Section Molecular and Cellular Neuropharmacology Study Section.

Date: June 24–25, 2026.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1009–E, Bethesda, MD 20892, (301) 435–5999, bbuzas@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 15, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–10021 Filed 5–18–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Advisory Council, August 6, 2026, 01:00 a.m. to August 6, 2026, 05:00 p.m., National Institute of Health, Rockledge II, Bethesda, MD 20892 which was published in the **Federal Register** on May 14, 2026, 91 FRN 27354.

The National Heart, Lung, and Blood Institute, Sleep Disorders Research Advisory Board meeting is being amended to change the meeting format from Hybrid to Virtual. The meeting is open to the public.

Dated: May 14, 2026.

Denise M. Santeufemio,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–10019 Filed 5–18–26; 8:45 am]

BILLING CODE 4165–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Early Career Reviewer Program Online Application and Vetting System (Center for Scientific Review)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the Center for Scientific Review (CSR) National Institutes of Health will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Hope Cummings, Project Clearance Liaison, Center for Scientific Review, NIH, Room 907–M, 6701 Rockledge Drive, Bethesda, Maryland, 20892 or call non-toll-free number (301) 402–4706 or Email your request, including your address to: hope.cummings@nih.gov.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on March 5, 2026, pages 10812–10813 (91 FR 10812) and allowed 60 days for public comment. Two public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Center for Scientific Review (CSR), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or

after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Early Career Reviewer Program Online Application and Vetting System—0925–0695, Extension—expiration date 06/30/2026, Center for Scientific Review (CSR), National Institutes of Health (NIH).

Need and Use of Information Collection: The Center for Scientific Review (CSR) is the portal for NIH grant applications and their review for scientific merit. Our mission is to see that all NIH grant applications receive fair, independent, expert, and timely reviews—free from inappropriate influences—so NIH can fund the most promising research. To accomplish this goal, Scientific Review Officers (SRO) form study sections consisting of scientists who have the technical and scientific expertise to evaluate the merit of grant applications. Study section members are generally scientists who have established independent research programs as demonstrated by their publications and their grant award experiences.

The CSR Early Career Reviewer program was developed to identify and train qualified scientists who are early in their scientific careers and who have not had prior CSR review experience. The goals of the program are to expose these early career scientists to the peer review experience so that they become more competitive as applicants as well as to enrich the existing pool of NIH reviewers. Currently, the online application software, the Early Career Reviewer Application and Vetting System, is accessed online by applicants to the Early Career Reviewer Program who provide information such as their name, contact information, a description of their areas of expertise, their study section preferences, and their professional Curriculum Vitae. This Information Collection Request (ICR) is to extend the Early Career Reviewer Application and Vetting System for an additional 3 years. The ICR also includes an increase in the number of burden hours to respondents due to a rise in the number of program applications since the last approval period.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total

estimated annualized burden hours are 620.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Research scientists	1488	1	25/60	620
Total	1488	1488	.....	620

Dated: May 15, 2026.

Hope M. Cummings,
Project Clearance Liaison, Center for
Scientific Review (CSR), National Institutes
of Health.

[FR Doc. 2026–10022 Filed 5–18–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Liver Cirrhosis Clinical Center Network (U01/U24).

Date: June 16, 2026.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Charlene J. Repique, Ph.D., MS, Scientific Review, Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 451–3638, charlene.repique@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Circuit Disorders, Plasticity and Neuronal Injury.

Date: June 22–23, 2026.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, Bethesda, MD 20892, 301–760–8207, schauweckerpe@csr.nih.gov.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group Human Complex Mental Function Study Section.

Date: June 22, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Joanna Szczepanik, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000D, Bethesda, MD 20892, (301) 827–2242, szczepaj@csr.nih.gov.

Name of Committee: Cell Biology Integrated Review Group Cellular Mechanisms in Aging and Development Study Section.

Date: June 23, 2026.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Beverly Ann Doran, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–0597, beverly.doran@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nervous System Development and Repair.

Date: June 23, 2026.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Jacek Topczewski, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002A1, Bethesda, MD 20892, (301) 594–7574, topczewskij2@csr.nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroscience of Interoception and Chemosensation Study Section.

Date: June 23, 2026.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Myongsoo Matthew Oh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011F, Bethesda, MD 20892, (301) 435–1042, ohmm@csr.nih.gov.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetics of Health and Disease Study Section.

Date: June 23, 2026.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Christopher Payne, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 2208, Bethesda, MD 20892, 301–402–3702, christopher.payne@nih.gov.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Physical Activity, Caregiving, and Chronic Disease Management.

Date: June 23–24, 2026.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Lindsey Lee Page, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–5712, lindsey.page@nih.gov.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated

Review Group Biochemistry and Biophysics of Membranes Study Section.

Date: June 23, 2026.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Irina V. Nesmelova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-6496, irina.nesmelova@nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Learning, Memory and Decision Neuroscience Study Section.

Date: June 23–24, 2026.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496-9223, Ana.Olariu@nih.gov.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Member Conflict: Musculoskeletal Sciences.

Date: June 23, 2026.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 237-9931, ansaria@csr.nih.gov.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Health Services Research for Alzheimers Disease and Related Dementias.

Date: June 23, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Sandhya Sanghi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496-2879, sandhya.sanghi@nih.gov.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group Innate Immunity B Study Section.

Date: June 23–24, 2026.

Time: 10:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Bakary Drammeh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805–P, Bethesda, MD 20892, (301) 435-0000, drammehbs@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 14, 2026.

Denise M. Santeufemio,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–09947 Filed 5–18–26; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Center for Advancing Translational Sciences Advisory Council, May 21, 2026, 01:00 p.m. to May 22, 2026, 05:00 p.m., National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, Room 1E32/1E34, Rockville, MD, 20892 which was published in the **Federal Register** on April 20, 2026, 91 FR 21011.

Amendment to move the closed session to July 16, 2026 due to delays in summary statements and to add additional open session for Director's report and concept clearance on May 21, 2026. The meeting is partially closed to the public.

Dated: May 14, 2026.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–09948 Filed 5–18–26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Motor Function, Speech and Rehabilitation Study

Section, June 04, 2026, 09:00 a.m. to June 05, 2026, 06:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on May 04, 2026, 91 FR 23997 Doc No. 2026–08638.

This meeting is being amended to change the meeting time from 9:00 a.m.–6:00 p.m. to 10:00 a.m.–2:00 p.m. The meeting is closed to the public.

Dated: May 14, 2026.

Denise M. Santeufemio,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–09946 Filed 5–18–26; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2026–0043]

Cooperative Research and Development Agreement: Modified Low Size and Weight High-Power Microwave Effector for Non-Compliant Vessel and Counter Uncrewed Surface Vessel Operations

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments.

SUMMARY: The Coast Guard is announcing its intent to enter into a Cooperative Research and Development Agreement (CRADA) with Lockheed Martin Corporation to develop a small size, low weight, high-power microwave (HPM) effector for stopping non-compliant vessels (NCV), to include personal watercraft (PWC), and small uncrewed surface vessels (USV). The Coast Guard is seeking public comment on this proposed partnership and potential involvement from other parties. In addition, the Coast Guard also invites other potential non-Federal participants, who have the interest and capability to bring similar contributions to this type of research, to consider submitting proposals for consideration in similar CRADAs.

DATES: Your comments and related material must reach the Coast Guard on or before June 18, 2026.

ADDRESSES: You may submit comments identified by docket number USCG–2026–0043 using the Federal portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of intent, call or email Matthew Lees, Principal Investigator, Defense and Safety Systems Program, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2600, email Research@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

C2 Command and Control
 CRADA Cooperative Research and Development Agreement
 DE Directed Energy
 DHS Department of Homeland Security
 HPM High-Power Microwave
 LSaW Low Size and Weight
 NSWC-DD Naval Surface Warfare Center—Dahlgren Division
 POC Proof of Concept
 PWC Personal Watercraft
 TOI Target of Interest
 TTP Tactics, Techniques, and Procedures
 USV Uncrewed Surface Vessel
 U.S.C.G. United States Coast Guard
 U.S.C. United States Code

II. Background and Purpose

The Coast Guard is investigating the use of DE to augment its drug and human trafficking interdiction missions. HPM has a desired effect of being able to temporarily stop an engine or support electronics of a target of interest (TOI), enabling safer boarding and less logistical costs. Current HPM technologies have significant size, weight, and power requirements that can inhibit their widespread use on smaller craft. Through this POC, the Coast Guard seeks to investigate the modification of an HPM effector that has the size, weight, and power requirements that would facilitate integration on small boats and PWC.

III. Public Participation and Request for Comments

We request public comments on this notice. Although we do not plan to respond to comments in the **Federal Register**, we will respond directly to commenters and may modify our proposal in light of comments.

We encourage you to submit comments in response to this notice of inquiry through <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2026–0043 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. In your submission, please include the docket number for this notice of inquiry and provide a reason for each suggestion or recommendation. If your material

cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION**

CONTACT section of this document for alternate instructions. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

IV. Discussion

CRADAs are authorized under 15 U.S.C. 3710a.¹ A CRADA promotes the transfer of technology to the private sector for commercial use, as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding.

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with procurement contracts, grants, and other types of agreements.

Under the proposed CRADA, the U.S. Coast Guard Research and Development Center (R&D Center) will collaborate with one non-Federal participant. Together, the R&D Center and the non-Federal participant will model physical changes to the HPM effector to ensure that its changes will produce effects desired by both parties. If the model provides positive results, modification to the physical system will be performed. After being modified, the system will then be tested in a variety of environments, such as an anechoic chamber, testing pool, or pier-side, in both a stand-alone configuration or integrated on a Coast Guard small boat or PWC asset. Testing will be conducted against targets of interest for the Coast Guard, to include PWC, outboard engines, and small USVs.

This is a technology assessment effort. The goal for this CRADA is to work with an industry partner to develop a HPM

effector that can be easily integrated on a Coast Guard small boat or PWC. This could include the following:

1. Provide modeling and simulation of HPM effector modifications.

2. Provide HPM effectors for modification.

3. Develop targeting software and C2 system.

4. Assist with data analysis for testing.

5. Attend test events.

We anticipate that the Coast Guard’s contributions under the proposed CRADA will include the following:

1. Provide staff with the expertise to support the tasks.

2. Provide resources and travel for the Coast Guard staff that support this CRADA.

3. Write a test plan in collaboration with the non-Federal participant.

4. Secure ranges, test facilities, and assets.

5. Secure approvals for field test events, per test plans, as appropriate.

6. Provide sufficient crew, planning, and coordination to execute the testing in accordance with the agreed upon test plan.

7. Provide targets of interest for effector to be tested against.

8. Ship the necessary parts, tools, and equipment to facilitate testing or operational evaluations.

9. Coordinate participating USCG units and government stakeholders.

10. Execute agreed upon test plan.

11. Write a report in collaboration with the non-Federal participant.

We anticipate that the non-Federal participant’s contributions under the proposed CRADA will include the following:

1. Provide staff with the expertise to support the tasks.

2. Provide HPM effectors and related equipment for modification and testing.

3. Provide all support resources, including travel, for non-Federal participant’s staff who support this CRADA, if required.

4. Review test plan.

5. Provide the technology, technical data, and other technical considerations for any systems to be utilized under this CRADA.

6. Provide the technical data for all equipment, including dimensions, weight, power requirements, and other technical considerations for non-Federal participant’s components to be utilized under this CRADA.

7. Assist with installation of equipment required to perform testing, if required.

8. Provide any specific training, along with mutually agreed-upon technical support, to the joint test team evaluating the technology.

¹ The statute confers this authority on the head of each Federal agency. The Secretary of DHS’s authority is delegated to the Coast Guard and other DHS organizational elements by DHS Delegation No. 0160.1, para. II.B.34.

9. Provide any specific training to those Coast Guard members evaluating the technology.

10. Provide mutually agreed upon resources required to execute the test plan, as required.

11. Write a report in collaboration with the R&D Center.

The Coast Guard reserves the right to select for CRADA participants all, some, or no proposals submitted for this CRADA. The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals and any other material submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and be no more than five single-sided pages (excluding cover page, Department of Defense Form 1494 (DD 1494), and Department of Defense (DoD) Joint Frequency Allocation-to-Equipment process (JF-12)). The Coast Guard will select proposals at its sole discretion based on:

1. How well they communicate an understanding of and ability to meet, the proposed CRADA's goal; and
2. How well they address the following criteria:
 - a. Technical capability to support the non-Federal party contributions described; and
 - b. Resources available for supporting the non-Federal party contributions described.

Currently, the Coast Guard is considering Lockheed Martin Corporation for participation in this CRADA. This consideration is based on the fact that Lockheed Martin Corporation manufactures and develops an HPM effector that has a size, weight, and required power that could potentially, with modification, be used on Coast Guard small boats and PWC. However, we do not wish to exclude other viable participants from this or similar CRADAs in the future.

Special consideration will be given to small business firms or consortia, and preference will be given to business units located in the United States. This notice is issued under the authority of 5 U.S.C. 552(a).

Dated: May 13, 2026.

M.P. Chien,

Captain, Commanding Officer, U.S. Coast Guard Research and Development Center.
[FR Doc. 2026-09975 Filed 5-18-26; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Revised Date for the 2026 Trade and Cargo Security Summit

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revised date for the 2026 Trade and Cargo Security Summit.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) has postponed the 2026 Trade and Cargo Security Summit (TCSS) in Dallas, TX, from April 28–30, 2026, to September 8–10, 2026. The 2026 TCSS will be open for the public to attend in person or via webinar. The 2026 TCSS will feature CBP personnel, members of the trade community, and members of other government agencies in panel discussions on CBP's role in international trade initiatives and programs. Members of the international trade and transportation communities and other interested parties are encouraged to attend.

DATES: Tuesday, September 8, 2026 (opening remarks and general sessions, 8:00 a.m.–5:00 p.m. CDT), Wednesday, September 9, 2026 (breakout sessions, 8:00 a.m.–5:00 p.m. CDT), and Thursday, September 10, 2026 (breakout sessions, 8:00 a.m.–12:30 p.m. CDT).

ADDRESSES: The 2026 Trade and Cargo Security Summit will be held at the Hyatt Regency Dallas at 300 Reunion Boulevard, Dallas, TX 75207. Directional signage will be displayed throughout the event space for registration, the sessions, and the exhibits.

Registration: Registration opened on Wednesday, February 11, 2026, at 12:00 p.m. (EST). Registration to attend in person will close on August 27, 2026, at 4:00 p.m. (EDT). Registration to attend virtually via webcast will close on September 6, 2026, at 4:00 p.m. (EDT). Registration information may be found on the event web page at <https://inevent.com/en/USCustomsandBorderProtection-1686596630/90-2026TCSSSummit-11160-1763664859/hotsite.php>. All registrations must be made online and will be confirmed with payment by credit card only. The registration fee to attend in person is \$328.00 per person. The registration fee to attend virtually via webcast is \$28.00 per person. Interested parties are requested to register immediately as space is limited. Members of the public who are pre-registered to attend and later need to cancel, may do so by using the link from

their confirmation email or by sending an email to TCSS@cbp.dhs.gov. Please include your name and confirmation number with your cancellation request. Cancellation requests made after Friday, August 21, 2026, will not receive a refund.

FOR FURTHER INFORMATION CONTACT: Mrs. Daisy Castro, Office of Trade Relations, U.S. Customs and Border Protection, at (202) 344-1440 or at TCSS@cbp.dhs.gov. The most current 2026 TCSS information can be found at <https://inevent.com/en/USCustomsandBorderProtection-1686596630/90-2026TCSSSummit-11160-1763664859/hotsite.php>.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please contact Mrs. Daisy Castro, Office of Trade Relations, U.S. Customs and Border Protection, at (202) 344-1440 or at TCSS@cbp.dhs.gov, as soon as possible.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection previously announced that the 2026 Trade and Cargo Security Summit would be held in April in Dallas, TX. (91 FR 8016, February 19, 2026). This document announces that CBP has postponed the 2026 Trade and Cargo Security Summit (TCSS) in Dallas, TX, from April 28–30, 2026, to September 8–10, 2026. The format of the 2026 TCSS will consist of general sessions on the first day and breakout sessions on the second and third days. The 2026 TCSS will feature panels composed of CBP personnel, members of the trade community, and representatives from other government agencies. The panel discussions will address various topics of interest to the trade community. The 2026 TCSS agenda will be posted on the CBP website: <https://inevent.com/en/USCustomsandBorderProtection-1686596630/90-2026TCSSSummit-11160-1763664859/hotsite.php>.

Hotel accommodations have been made available at the Hyatt Regency Dallas at 300 Reunion Boulevard, Dallas, TX 75207. Hotel room block reservation information can be found on the event web page at <https://inevent.com/en/USCustomsandBorderProtection-1686596630/90-2026TCSSSummit-11160-1763664859/hotsite.php>.

Christopher J. Siepmann,

Executive Director, Office of Trade Relations.
[FR Doc. 2026-09981 Filed 5-18-26; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Docket ID FEMA–2026–0002; Internal Agency Docket No. FEMA–B–2556]

Proposed Flood Hazard Determinations for Gaston County, North Carolina, and Incorporated Areas

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed notice concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth, Special Flood Hazard Area boundary or zone designation, or regulatory floodway (herein after referred to as proposed flood hazard determinations) on the Flood Insurance Rate Maps and, where applicable, in the supporting Flood Insurance Study reports for Gaston County, North Carolina, and Incorporated Areas.

DATES: This withdrawal is effective May 19, 2026.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–2556, to David N. Bascom, Acting Director, Engineering and Modeling Division, National Flood Insurance Program, Resilience, FEMA, 400 C Street SW, Washington, DC 20472, or (email) david.bascom@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: David N. Bascom, Acting Director, Engineering and Modeling Division, National Flood Insurance Program, Resilience, FEMA, 400 C Street SW, Washington, DC 20472, or (email) david.bascom@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: On October 2, 2025, FEMA published a proposed notice at 90 FR 47788, proposing flood hazard determinations for Gaston County, North Carolina, and Incorporated Areas. FEMA is withdrawing the proposed notice for this county because Gaston County requires a revised flood map before it can move forward in the mapping process. FEMA intends to publish a Notice of Proposed Flood Hazard Determinations for Gaston County in the **Federal Register** followed by a notice in the affected community's local newspaper in the near future.

(Authority: 42 U.S.C. 4104; 44 CFR 67.4.)

Elizabeth Asche,

Assistant Administrator, Federal Insurance Directorate, Resilience, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2026–09945 Filed 5–18–26; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Docket ID FEMA–2026–0034]

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers, Notice of Adjustment to FY 2027 Arrangement

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS).

ACTION: Notice; correction.

SUMMARY: On May 5, 2026, FEMA published a notice of the Fiscal Year (FY) 2027 Financial Assistance/Subsidy Arrangement (Arrangement) for private property insurers interested in participating in the NFIP's Write Your Own Program. The notice stated that the FY 2027 Arrangement's effective date was October 1, 2026. To be effective on that date, the FY 2027 Arrangement was required to be published on April 1, 2026. Because of the lapse in DHS appropriations, FEMA was unable to publish on April 1, 2026. Therefore, FEMA is changing the effective date of the FY 2027 Arrangement to be December 1, 2026.

FOR FURTHER INFORMATION CONTACT: Karolyn Kiss, Federal Insurance Directorate (FID), Resilience, FEMA, 400 C St. SW, Washington, DC 20472 (mail); (202) 646–3140 (phone); or karolyn.kiss@fema.dhs.gov (email).

SUPPLEMENTARY INFORMATION:**Correction**

In FR Doc. 2026–08728, beginning on page 24262 in the **Federal Register** of Tuesday, May 5, 2026, the following corrections are made:

On page 24262, in the third column, in the first paragraph under III. FY 2027 Arrangement, “October 1, 2026” is corrected to read “December 1, 2026.”

On page 24263, in the first column, in the first paragraph under Article II. Commencement and Termination,

“October 1, 2026” is corrected to read “December 1, 2026.”

Elizabeth A. Asche,

Assistant Administrator for Federal Insurance Directorate, Resilience Federal Emergency Management Agency.

[FR Doc. 2026–09957 Filed 5–18–26; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF THE INTERIOR**Geological Survey**

[Docket No. USGS–ECO–2026–0002; OMB Control Number 1028–0136; GX26MR00UTCWD00]

Agency Information Collection Activities; Nonindigenous Aquatic Species eDNA Data Submission Forms

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the U.S. Geological Survey (USGS) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 20, 2026.

ADDRESSES: You may submit comments by one of the following methods:

■ *Internet:* <https://www.regulations.gov>. Search for and submit comments on Docket No. USGS–ECO–2026–0002.

■ *U.S. Mail:* USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR), please contact Matthew Neilson by email at mneilson@usgs.gov, or by telephone at +1 352–517–4091. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA of 1995 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it

displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

- (4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: America is under siege by many harmful non-native species of plants, animals, and microorganisms. More than 6,500 nonindigenous species are now established in the United States, posing risks to native species, valued ecosystems, and human and wildlife health. These invaders extract a huge cost, an estimated \$120 billion per year, to mitigate their harmful impacts. The current annual environmental, economic, and health-related costs of invasive species exceed those of all other natural disasters combined.

Through its Invasive Species Program (<http://www.usgs.gov/ecosystems/>), the USGS plays an

important role in federal efforts to combat invasive species in natural and semi-natural areas through early detection and assessment of newly established invaders; monitoring of invading populations; and improving understanding of the ecology of invaders and factors in the resistance of habitats to invasion. The USGS provides the tools, technology, and information supporting efforts to prevent, contain, control, and manage invasive species nationwide. To meet user needs, the USGS also develops methods for compiling and synthesizing accurate and reliable data and information on invasive species for inclusion in a distributed and integrated web-based information system.

As part of the USGS Invasive Species Program, the Nonindigenous Aquatic Species (NAS) database (<http://nas.er.usgs.gov/>) functions as a repository and clearinghouse for occurrence information on nonindigenous aquatic species from across the United States. It contains locality information on approximately 1,480 species of vertebrates, invertebrates, and vascular plants introduced since 1850. Taxa include foreign species as well as those native to North America that have been transported outside of their natural range. The NAS website provides immediate access to new occurrence records through a real-time interface with the NAS database. Visitors to the website can use a set of predefined queries to obtain lists of species according to state or hydrologic basin of interest. Fact sheets, distribution maps, and information on new occurrences are continually posted and updated. Dynamically generated species distribution maps show the spatial accuracy of the locations reported, population status, and links to more information about each report.

Environmental DNA (eDNA) comprises genetic material that has been sloughed, excreted, or otherwise released into the environment and can be detected in water, soil, and air. For aquatic organisms, this includes skin, excrement, mucus, saliva, blood, and gametes. Collection of environmental samples can be screened for the presence of eDNA, allowing for the detection of low-density organisms before detectability by traditional sampling methods. The combination of traditional specimen sightings and eDNA detections can provide more complete species distribution records and significantly improve the ability to respond quickly to new invasions as part of an early detection rapid response

(EDRR) system. Working with interagency eDNA experts, the NAS database has used a consensus method to identify and develop community data standards for integrating eDNA detection data.

Title of Collection: Nonindigenous Aquatic Species eDNA Data and Metadata Submission Forms.

OMB Control Number: 1028–0136.

Form Number: None.

Type of Review: Renewal of a currently approved collection.

Respondents/Affected Public: Federal, State, and local government employees, and university personnel.

Total Estimated Number of Annual Respondents: We estimate approximately 25 total respondents annually.

Total Estimated Number of Annual Responses: We estimate a total of 35 responses annually.

Estimated Completion Time per Response: We estimate up to 90 minutes (1.5 hours) per response.

Total Estimated Number of Annual Burden Hours: We estimate a total of 52.5 annual burden hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Brian D Kimbrell,

Federal Register Liaison, U.S. Department of the Interior, Office of the Chief Information Officer.

[FR Doc. 2026–09954 Filed 5–18–26; 8:45 am]

BILLING CODE 4388–11–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[Docket No. USGS–2026–0100;
GX26GG009950000]

Call for Nominations for the Scientific Earthquake Studies Advisory Committee

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Call for nominations.

SUMMARY: The Department of the Interior is seeking nominations to serve on the Scientific Earthquake Studies Advisory Committee (SESAC). The SESAC advises the Director of the U.S.

Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program (NEHRP).

DATES: All nominations must be received no later than June 18, 2026.

ADDRESSES: Send nominations electronically to ghayes@usgs.gov or by mail to Dr. Gavin Hayes, U.S. Geological Survey, U.S. Department of the Interior, PO Box 25046, MS-966, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dr. Gavin Hayes, U.S. Geological Survey, U.S. Department of the Interior, PO Box 25046, MS-966, Denver, Colorado 80225, ghayes@usgs.gov, 303-374-4449

SUPPLEMENTARY INFORMATION: The SESAC conducts its operations in accordance with the provisions of the Federal Advisory Committee Act. The SESAC provides recommendations and advice to the Director of the USGS (Director), and functions solely as an advisory body. The SESAC advises the Director on matters relating to USGS's participation in the NEHRP, including the USGS's roles, goals, and objectives within the NEHRP, its capabilities and research needs, guidance on achieving major objectives, and establishing and measuring performance goals.

The SESAC includes up to 10 members not employed by the Federal Government, who are qualified in the seismic sciences and other appropriate fields involved in national earthquake research activities. Selection of individuals for the SESAC will be based solely on established records of distinguished service, and the Director will ensure that a reasonable cross-section of views and expertise is represented. Members are appointed as a special Government employees (SGEs) and will be required, prior to appointment, to file a Confidential Financial Disclosure Report in order to avoid involvement in real or apparent conflicts of interest. You may find a copy of the Confidential Financial Disclosure Report at the following website: <https://www.doi.gov/ethics/special-government-employees/financial-disclosure>. Additionally, after appointment, members appointed as SGEs will be required to meet applicable financial disclosure and ethics training requirements. Please contact 202-208-7960 or DOI_Ethics@sol.doi.gov with any questions about the ethics requirements for members appointed as SGEs.

In selecting individuals to serve on the SESAC, the Director will seek and give due consideration to recommendations from the National Academy of Sciences, professional

societies, and other appropriate organizations. SESAC members are appointed for staggered terms up to 3 years to ensure continuity. Nominations received through this call may be used to fill future vacancies on the SESAC. Nominations will be reviewed by the USGS, and additional information may be requested from nominees. Final selection and appointment of SESAC members will be made by the Director.

The SESAC meets approximately 1–2 times per year. SESAC members will serve without compensation, but travel and per diem costs will be provided by the USGS. The USGS will also provide necessary support services to the SESAC. SESAC meetings are open to the public.

Nominations may come from individuals, employers, associations, professional organizations, or other geospatial organizations. Nominations should include a resume or curriculum vitae providing an adequate description of the nominee's qualifications sufficient for the USGS to make an informed decision regarding meeting the membership requirements of the SESAC and permit the nominated person to be contacted. Nominations may optionally include supporting letters from employers, associations, professional organizations, and/or other organizations.

Additional information about the SESAC and the nomination process is posted on the SESAC web page.

Authority: 5 U.S.C. Ch. 10.

Brian D Kimbrell,

Federal Register Liaison, Office of the Chief Information Officer, U.S. Department of the Interior.

[FR Doc. 2026-09974 Filed 5-18-26; 8:45 am]

BILLING CODE 4338-11-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A2407-014-004-065516, #O2509-014-004-125222.0; LLMT: PO#4820002691]

Notice of Intent To Prepare an Environmental Impact Statement for Production Site Development in the National Petroleum Reserve in Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Naval Petroleum Reserves Production Act of 1976, as amended (NPRPA), the Bureau of Land Management (BLM) Alaska State Office intends to prepare

an Environmental Impact Statement (EIS) to evaluate the environmental effects of a rulemaking that the BLM expects to initiate to streamline the authorization of the construction and operation of qualifying production sites and authorization of associated rights-of-way in the National Petroleum Reserve in Alaska (NPR-A). The rulemaking will establish pre-defined criteria for defined and repeatable common activities with similar environmental effects that, when met by an applicant, will result in streamlined permitting for qualifying production sites. By this notice, the BLM announces the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public-scoping process for the EIS. The BLM requests that the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information and studies by July 6, 2026. To afford the BLM the opportunity to consider comments in the EIS, please ensure your comments are received prior to the close of the 45-day scoping period.

ADDRESSES: You may submit comments related to the NPR-A Production Site EIS by any of the following methods:

- *Website:* <http://eplanning.blm.gov> (NEPA number: DOI-BLM-AK-0000-2026-0012-EIS).
- *Email:* NPR-A_ProductionSite_EIS@blm.gov.
- *Mail:* BLM, Alaska State Office, Attention—NPR-A Production Site EIS, 222 West 7th Avenue, #13, Anchorage, AK 99513-7599.

Documents pertinent to this proposal may be examined online at <https://eplanning.blm.gov> (NEPA Number: DOI-BLM-AK-0000-2026-0012-EIS) and at the BLM Alaska State Office Public Information Center, 222 West 7th Avenue, #13, Anchorage, AK 99513-7599.

FOR FURTHER INFORMATION CONTACT:

Serena Sweet at NPR-A_ProductionSite_EIS@blm.gov, 907-271-5960.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The NPR-A consists of approximately 23 million acres on the North Slope of Alaska, administered by the BLM. Congress

established the primary statutory framework for the NPR–A through the Naval Petroleum Reserves Production Act of 1976, Public Law 94–258, 42 U.S.C. 6501 *et seq.* (NPRPA), which transferred administrative jurisdiction over the Petroleum Reserve from the Secretary of the Navy to the Secretary of the Interior and redesignated it as the National Petroleum Reserve in Alaska. Motivated in part by the 1968 discovery of oil at Prudhoe Bay and rising energy prices following the 1973 oil embargo, Congress enacted the NPRPA to accelerate exploration of an area that at the time remained largely unexplored and almost completely undeveloped. Congress recognized that assessing the oil and gas potential of the NPR–A was vital to the national interest, while also directing the Secretary to consider wildlife and other surface values within the context that the area be managed primarily for oil and gas activities. In 1980, Congress amended the NPRPA through the Department of the Interior Appropriations Act for Fiscal Year 1981 to direct the Secretary to conduct an expeditious program of competitive leasing of oil and gas in the NPR–A, while providing for such conditions, restrictions, and prohibitions as the Secretary deems appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the Reserve. That legislation also exempted management of the NPR–A from FLPMA’s land use planning and wilderness review requirements, reflecting Congress’s intent to dedicate management of the area to the primary purpose of oil and gas leasing and development, with access as a necessary component of that purpose. The NPRPA is thus a dominant-use statute, and BLM is required to manage the NPR–A primarily for oil and gas leasing, exploration, development, and production, while retaining discretion to protect environmental, fish and wildlife, and historical or scenic values within the Reserve to the extent consistent with that overriding purpose.

While much of the Petroleum Reserve remains relatively undeveloped, interest has steadily increased in recent decades based on technical improvements and new discoveries. Greater Mooses Tooth 1 and 2, and the Willow project, which is currently under construction, have all been permitted in the past 15 years. It is expected that, over time, development will proliferate incrementally from the oil and gas infrastructure currently permitted within the Petroleum Reserve. Given the remoteness of the area, seasonal restrictions on development, and the high cost of development,

development currently relies heavily on a hub-based approach, with (like Willow, Alpine, Pikka, and other historical North Slope developments) anchor fields hosting central processing facilities and one or more connected sites hosting production infrastructure.

Across Federal oil and gas provinces in the United States, the NPR–A is unique in terms of statutory framework, stakeholders and inhabitants, geography, geology, remoteness, climate, and types of feasible development. This has generally contributed to a relatively expansive project-by-project approach to NEPA compliance, with numerous EISs and Environmental Assessments having been completed for individual permitting actions. This piecemeal approach to permitting is not just inefficient, it fails to provide private industry with a stable and predictable regulatory framework for the BLM’s permitting decisions in the NPR–A. Predictability is especially important in the NPR–A, where seasonal restrictions and severe weather can constrain when oil and gas companies can pursue authorized construction and operations.

On May 12, 2026, the Alaska Oil and Gas Association (AOGA), on behalf of its member companies, submitted to the Secretary of the Interior, a “Petition for Rulemaking to Create a Development Permit Program in the National Petroleum Reserve in Alaska.” (“Petition”). The Petition (available at the ePlanning web address noted above) requests that the BLM amend its regulations at 43 CFR part 3160 to create a new program governing the authorization and construction of production sites and the authorization of associated rights-of-way in the NPR–A with regulatory modifications provided at Appendix A (the “Requested Rule”). Per the Petition:

The intent of the Requested Rule is to create a uniform and efficient permit approval process that sets and maintains appropriate environmental protections and mitigation measures for production sites, as well as the associated right-of-way for pipelines and access roads. Projects under the proposed regulations would be limited to projects that meet certain specifications common to existing production sites in the NPR–A and adjacent lands. . . . The project components of common NPR–A production sites include gravel pads, gravel access roads, pipelines, supporting facilities and ancillary infrastructure.

The BLM is giving this Petition prompt consideration. To achieve greater efficiency and predictability in its permitting process, the BLM expects

to initiate a rulemaking proposing a rule that may reflect the Requested Rule in the Petition, in whole or in part, to streamline its review and approval process and avoid unnecessary, duplicative, and burdensome project-by-project permitting procedures. The type of production site development contemplated by the rulemaking and that will be analyzed in this EIS has already been repeatedly and extensively analyzed by the BLM in multiple plan or project-specific EISs and decisions, including for Alpine Satellite Development Plan (2004), Greater Mooses Tooth 1 development (2014), Greater Moose’s Tooth 2 development (2018), multiple iterations of the area-governing Integrated Activity Plan, or IAP (latest 2020 EIS), and the Willow Master Development Plan (2023). With this record to stand on and historically high interest in development within the NPR–A, there is an opportunity to reduce duplication in permitting analysis, enhance regulatory certainty for future permitting actions in the area, and streamline agency processes and timelines through a NEPA analysis, and a rulemaking providing streamlined permitting procedures.

Taking an areawide approach to permitting certain defined and repeatable types of infrastructure is not new. It is envisioned and encouraged by the NEPA, supported by the Department of the Interior NEPA Handbook, and has long been relied upon as a means of reducing and eliminating unnecessary and duplicative NEPA analyses.

Purpose and Need for the Proposed Action

The purpose of the proposed action is to streamline permitting procedures for the authorization of the construction and operation of qualifying production sites in the NPR–A, which include infrastructure necessary to allow the production and transportation to market of Federal oil and gas resources in the NPR–A. Additionally, the BLM is preparing the EIS in response to AOGA’s May 12, 2026, petition for rulemaking described above. The need for Federal action (*i.e.*, issuance of authorizations) is established by BLM’s responsibilities under various Federal statutes, including the NPRPA (as amended) and the Federal Land Policy and Management Act as well as various Federal responsibilities of cooperating agencies under other statutes, including the Clean Water Act (CWA). Under the NPRPA, BLM is required to conduct an expeditious program of competitive oil and gas leasing and development in the NPR–A (42 U.S.C. 6506a). BLM is required to respond to future

leaseholder requests for authorizations for production sites and related authorizations in order to develop and produce petroleum in the NPR–A. The analysis in the EIS will inform and support the establishment of a streamlined framework, codified in regulation via a companion rulemaking process, for permitting this infrastructure when it is similar to existing infrastructure in the area, and is demonstrated by the applicant to meet a certain set of pre-defined criteria.

The Proposed Action also advances U.S. energy policy and U.S. policy for resource development in Alaska. As set forth in E.O. 14154, *Unleashing American Energy* (Jan. 20, 2025), the Department of the Interior and other agencies must “undertake all available efforts to eliminate delays within their respective permitting processes, including through, but not limited to, the use of general permitting and permit by rule.” As explained in E.O. 14153, *Unleashing Alaska’s Extraordinary Resource Potential* (Jan. 20, 2025), it is the policy of the United States to “efficiently and effectively maximize the development and production of the natural resources located on both Federal and State lands within Alaska” and “expedite the permitting and leasing of energy and natural resources projects in Alaska.”

Preliminary Proposed Action and Alternatives

The Proposed Action is a rulemaking to amend the regulations at 43 CFR part 3160 to establish a criteria-based framework for streamlined permitting of the construction and operation of qualifying production sites and associated infrastructure in the NPR–A, authorized under the NPRPA. The rulemaking will establish pre-defined criteria that, when met by an applicant, will result in streamlined permitting for qualifying production sites. The expected production, associated infrastructure and required resources to construct and operate these production sites would be consistent with the development scenarios of the hypothetical reasonably foreseeable development scenarios analyzed in the 2020 IAP EIS.

The EIS may also consider additional alternatives to ensure compliance with FLPMA, the NPRPA, and other applicable Federal law, which could include such criteria as varying numbers of production sites, evaluating production sites clustered in various areas of the NPR–A, and additional monitoring and enforcement provisions.

The BLM welcomes comments on all preliminary alternatives as well as suggestions for additional alternatives.

Summary of Expected Impacts

The EIS will evaluate potential environmental effects of the proposed rulemaking and alternatives, including the construction and operation of qualifying production sites and associated infrastructure, and the reasonably foreseeable effects on resources and issues such as: subsistence resources and uses; wildlife and habitat, including caribou, polar bear, migratory birds, and fish; surface water, wetlands, and permafrost; air quality; noise; cultural and historic resources; visual resources, and socioeconomic conditions.

Schedule for the Decision-Making Process

The BLM may provide an additional opportunity for public participation during the NEPA process in conjunction with the rulemaking. The Final EIS and Record of Decision are anticipated to accompany the final rule late in 2026 or early in 2027.

Public Scoping Process

This notice of intent initiates the scoping period. The specific date(s) and location(s) of any scoping meetings will be announced in advance through the project website page at <https://eplanning.blm.gov> (NEPA Number: DOI–BLM–AK–0000–2026–0012–EIS).

Nature of Decision To Be Made

The objective of this analysis is to support a rulemaking process to amend the BLM regulations at 43 CFR part 3160, which, if adopted, will promote the orderly and efficient use of Federal lands in the NPR–A for oil and gas production, subject to conditions and restrictions that mitigate adverse effects on surface resources and subsistence activities.

Additional Information

The BLM will utilize and coordinate the NEPA process to help support compliance with applicable requirements under the Endangered Species Act (16 U.S.C. 1536), Section 810 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3120), and Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of Section 106. The information about historic and cultural resources and threatened and endangered species within the area potentially affected by the proposed

project will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Alaska Native Tribes and Alaska Native Corporations in accordance with Executive Order 13175, BLM Manual Section 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with Alaska Native Tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: Naval Petroleum Reserves Production Act of 1976, as amended, 42 U.S.C. 6501 *et seq.*; Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1701 *et seq.*; National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*)

Kevin J. Pendergast,
State Director, Alaska.

[FR Doc. 2026–10020 Filed 5–18–26; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7159; NPS–WASO–NAGPRA–NPS0042795; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Army Corps of Engineers, Tulsa District, Tulsa, OK, and Sam Noble Oklahoma Museum of Natural History, Norman, OK

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Army Corps of Engineers, Tulsa District (USACE), and Sam Noble Oklahoma Museum of Natural History (SNOMNH)

have completed an inventory of human remains and associated funerary objects and have determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after June 18, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Jacqueline Rodgers, U.S. Army Corps of Engineers, Tulsa District, 2488 East 81st Street, Tulsa, OK 74137, email jacqueline.rodgers@usace.army.mil and Deanna Byrd, NAGPRA Program Coordinator, Sam Noble Oklahoma Museum of Natural History, 2401 Chautauqua Avenue, Norman, OK 73072, email byrdie@ou.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the USACE and Sam Noble Oklahoma Museum of Natural History, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, 66 individuals have been identified. The 44,112 associated funerary objects are 18 ash samples, two axes, 3,644 pieces of baked clay, one bone bead, one bone hair pin, one bone pendant, 735 ceramic sherds, 175 charcoal samples, one crinoid bead, 328 lots of faunal remains, one glass shard, 100 groundstones, 92 fragments of hematite, 37,994 flaked lithics, one mud dobber nest, 188 fragments of nutshell, 238 lithic points, one polished stone, three quartz crystals, 10 seed samples, four shaped ceramics, 241 lots of shell, 57 soil samples, 140 turtle shell fragments, 26 worked bone, and one worked shell in addition to eight lots of groundstone, 33 lots of ceramics, 46 lots of lithics, four lots of unworked faunal, 13 lots of worked faunal, two lots of quartz crystal, two lots of beads, and one lot of ash. The human remains and funerary objects described above were removed from the Wann site 34LF27, a black midden/burial mound representative of the Fourche Maline Phase of the Woodland archaeological period located in LeFlore County, Oklahoma. The site

was first excavated in 1940 by the WPA and supervised by Phil Newkumet with the University of Oklahoma. After USACE acquired the property, collections were made on the southern half of the site to supplement the WPA investigations during 1974–1975 and 1977–1978 archaeological surveys and data recoveries at Wister Lake. Collections made after USACE acquired the property in the 1960s are under the control of USACE, collections made prior to USACE acquiring the property are under control of Sam Noble Oklahoma Museum of Natural History. In order to make all ancestors and associated funerary objects recovered from this site available for repatriation concurrently, this notice is being submitted cooperatively by the USACE and Sam Noble Oklahoma Museum of Natural History.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The USACE and Sam Noble Oklahoma Museum of Natural History have determined that:

- The human remains described in this notice represent the physical remains of 66 individuals of Native American ancestry.
- The 44,112 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representatives identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or

an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after June 18, 2026. If competing requests for repatriation are received, the USACE and Sam Noble Oklahoma Museum of Natural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The USACE and Sam Noble Oklahoma Museum of Natural History are responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: May 12, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–10029 Filed 5–18–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7169; NPS–WASO–NAGPRA–NPS0042807; PPWOCRADNO–PCU00RP14.R50000]

Notice of Intended Repatriation: Ball State University, Muncie, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Ball State University intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after June 18, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Chyan Gilaspy, Ball State University, Applied Anthropology Laboratories, 2000 W Riverside Avenue, Muncie, IN 47306, email NAGPRA@bsu.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The

determinations in this notice are the sole responsibility of the Ball State University and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of two cultural items have been requested for repatriation. The two objects of cultural patrimony are described as one felt hat and one beaded pouch. These items are represented by catalog numbers 1985.022.000 (beaded pouch) and 2018.052.001 (felt hat). In 1985, a private donor gifted a beaded pouch listed as “North American Sub-Arctic, probably Athabascan” to the Ball State University Art Gallery (now David Owsley Museum of Art). There is no information on how the donor acquired the item. In 2018, a private donor bequeathed what was described as a “Tlingit Cloth Hat” to the institution. The donor reported purchased the item in South Dakota in 1979. The institution has no information about the presence of any potentially hazardous substances used to treat any of the cultural items. However, testing of other cultural items in the collection have been positive for potentially hazardous substances.

Determinations

The Ball State University has determined that:

- The two objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Chickaloon Native Village.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after June 18, 2026. If competing requests for repatriation are received, the Ball State University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Ball State University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: May 12, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–10032 Filed 5–18–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7164; NPS–WASO–NAGPRA–NPS0042800; PPWOCRADNO–PCU00RP14.R50000]

Notice of Inventory Completion: Northern Shenandoah Valley Chapter of the Archaeological Society of Virginia, Stephens City, VA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Northern Shenandoah Valley Chapter (NSVC) of the Archaeological Society of Virginia (ASV), has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after June 18, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Jennifer Kennedy, NSVC ASV, 874 Fairview Avenue, Apt 3, Indiana, PA 15701, email jenkennedy220@gmail.com.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the NSVC ASV and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, 16 individuals have been identified. The 36 associated funerary objects are pipes, bone beads, shell beads, shells. This notice provides an abstract of information contained in the inventory for the Kagey Collection, which includes human remains representing a minimum of 16 individuals and 36 associated funerary objects derived from multiple archaeological sites (n = 10) in the Shenandoah Valley of Virginia. The collection is under the possession and control of the Northern Shenandoah Valley Chapter of the Archaeological Society of Virginia and was assembled as a private collection in the 1960s and subsequently deeded to the Chapter in 2019. Based on the available evidence, including geographical location and Traditional Knowledge provided through consultation, cultural affiliation has been reasonably identified with the Monacan Indian Nation, Eastern Shawnee Tribe of Oklahoma, and the Shawnee Tribe. No known hazardous substances were used to treat the human remains or associated funerary objects.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The NSVC ASV has determined that:

- The human remains described in this notice represent the physical remains of 16 individuals of Native American ancestry.

- The 36 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- There is a connection between the human remains and associated funerary objects described in this notice and the Eastern Shawnee Tribe of Oklahoma; Monacan Indian Nation; and the Shawnee Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after June 18, 2026. If competing requests for repatriation are received, the NSVC ASV must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The NSVC ASV is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: May 12, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–10035 Filed 5–18–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7168; NPS–WASO–NAGPRA–NPS0042806; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum of Natural History has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after June 18, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to June Carpenter, NAGPRA Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, email jcarpenter@fieldmuseum.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Field Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, four individuals have been identified. No associated funerary objects are present. The human remains are hair clippings belonging to four individuals, identified with the tribal designation “Ogallala” (Field Museum catalog numbers 193211.5, 193211.9, 193212.2, and 193212.3). Field Museum staff believe they were collected under the direction of Franz Boas and Frederick Ward Putnam for the 1893 World's Columbian Exposition in Chicago. The hair clippings were accessioned into the Field Museum's collection in 1939. No information regarding the individual's name, sex, age, or geographic location has been found. There is no known presence of any potentially hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The Field Museum has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- There is a connection between the human remains described in this notice and the Oglala Sioux Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after June 18, 2026. If competing requests for repatriation are received, the Field Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Field Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: May 12, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–10024 Filed 5–18–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7166; NPS–WASO–NAGPRA–NPS0042803; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Hood Museum of Art, Dartmouth College, Hanover, NH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Hood Museum of Art, Dartmouth intends to repatriate certain cultural items that meet the definition of sacred objects and that have a known lineal descendant.

DATES: Repatriation of the cultural items in this notice may occur on or after June 18, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Jami C. Powell, Associate Director of Curatorial Affairs & Curator of Indigenous Art, Hood Museum of Art, 6 East Wheelock Street, Hanover, NH 03755, email hood.NAGPRA@dartmouth.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Hood Museum of Art, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of two cultural items have been requested for repatriation. The two sacred objects are an ulu and cutting board. The ulu and cutting board were made by Kivetoruk James Moses (Inupiaq) in Shishmaref, AK for his wife, Bessie Aden Ahgupuk Moses. The objects were purchased from Kivetoruk J. Moses in the 1950s by author and naturalist Sally Carrighar while conducting research in the Arctic. Both pieces were donated by Carrighar to Dartmouth's collection in 1966.

Determinations

The Hood Museum of Art has determined that:

- The two sacred objects described in this notice are specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

- MaryJane Litchard is connected to the cultural items described in this notice.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after June 18, 2026. If competing requests for repatriation are received, the Hood Museum of Art must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request

and not competing requests. The Hood Museum of Art is responsible for sending a copy of this notice to all requestors and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: May 12, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-10030 Filed 5-18-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7162; NPS-WASO-NAGPRA-NPS0042798; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Repatriation: Los Rios Community College District, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Los Rios Community College District (LRCCD) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after June 18, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Jamey Nye, Los Rios Community College District, 1919 Spanos Ct., Arden-Arcade, CA 95825, email nagpra@losrios.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of LRCCD, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of four cultural items have been requested for repatriation. The four unassociated funerary objects are one bone whistle, one steatite dish fragment, and one faunal bone fragment that were

removed from Bennett Mound (CA-SAC-16), Sacramento County, CA, and one abalone ornament that was removed from King Brown Mound (CA-SAC-29), Sacramento County, CA. The unassociated funerary object from King Brown Mound (CA-SAC-29), Sacramento County, CA, was removed by either Jeremiah B. Lillard or Franklin Fanega in 1931, 1933, or 1940. The three unassociated funerary objects from the Bennett Site (CA-SAC-16) were removed sometime in or around 1932 by Jeremiah B. Lillard. The unassociated funerary objects were part of the Lillard Collection at Sacramento City College which were later transferred to American River College, both campuses within the Los Rios Community College District.

Determinations

LRCCD has determined that:

- The four unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after June 18, 2026. If competing requests for repatriation are received, LRCCD must determine the most appropriate requestor prior to

repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. LRCCD is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: May 12, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–10023 Filed 5–18–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7167; NPS–WASO–NAGPRA–NPS0042804; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Kansas State Historical Society, Topeka, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Kansas State Historical Society (KSHS) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after June 18, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Dr. Nicole Klarmann, Kansas State Historical Society, 6425 SW 6th Avenue, Topeka, KS 66615–1099, email kshs.nagpra@ks.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the KSHS, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, four individuals have been identified from an unknown county in Missouri (UBS 1992–13). The two associated funerary objects are a chert flake and a pottery sherd. Provenience is limited for these remains and objects, however, they were said to come from a medical collection of a physician.

Human remains representing, at least, one individual have been identified from an unknown county in Missouri (UBS 2024–12). No associated funerary objects are present. These remains were identified as human hair during consultation and appear to be a chain for a pocket watch.

A total of 12 associated funerary objects have been identified from an unknown county in Missouri (UBS 2001–17). They include bone/shell beads and a non-human bone fragment. The objects were taken from a gravesite on the bluffs of the Missouri River near St. Louis in the late 1800s or early 1900s.

To our knowledge, no known hazardous substances were used to treat any of the human remains or associated funerary objects.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The KSHS has determined that:

- The human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- The 14 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after June 18, 2026. If competing requests for repatriation are received, the KSHS must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The KSHS is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: May 12, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–10034 Filed 5–18–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7161; NPS–WASO–NAGPRA–NPS0042797; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: City of Palmdale, Palmdale, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the City of Palmdale intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after June 18, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Brenda Magana, City of Palmdale, 38250 Sierra Highway, Palmdale, CA 93550, email bmagana@cityofpalmdaleca.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the

National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the City of Palmdale, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 3,774 cultural items have been requested for repatriation. Between 1995 and 1998, the cultural items were removed during the Elizabeth Lake Road Improvement Project, in Los Angeles County. The City of Palmdale served as the overall project proponent. Petra Resources, Inc. provided archaeological and paleontological services for several phases of the project.

The 1,029 lots of objects of cultural patrimony are faunal bone fragments, fire-affected rocks, flaked stone artifacts, groundstone artifacts, groundstone beads, groundstone pendants, hammerstones, historic items, modified bone, organic ecofacts, shell beads, stone ecofacts, botanical samples, C14 samples, faunal samples, and pollen samples. The cultural items were removed from CA-LAN-953 during work initially started as part of CEQA mitigation for the Ritter Ranch development, which was never completed.

The three lots of objects of cultural patrimony are C14 samples. The cultural items were removed from CA-LAN-954.

The 1,370 lots of objects of cultural patrimony are flaked stone artifacts, groundstone artifacts, groundstone pendants, historic items, modified bone, organic ecofacts, pigment, shell beads, shell ecofacts, soil samples, stone ecofacts, botanical samples, C14 samples, faunal samples, and pollen samples. The cultural items were removed from CA-LAN-959 during work initially started as part of CEQA mitigation for the Ritter Ranch development, which was never completed.

The one lot of objects of cultural patrimony are flaked stone artifacts. The cultural items were removed from CA-LAN-1335 during test investigations for the Ritter Ranch Entry Construction.

The two lots of objects of cultural patrimony are botanical samples. The cultural items were removed from CA-LAN-1552.

The 78 lots of objects of cultural patrimony are flaked stone artifacts, groundstone artifacts, and hammerstones. The cultural items were

removed from CA-LAN-2311 during testing conducted prior to road construction during the Elizabeth Lake Road realignment.

The 117 lots of objects of cultural patrimony are faunal bone fragments, flaked stone artifacts, groundstone artifacts, historic items, and stone ecofacts. The cultural items were removed from CA-LAN-2346 during construction of the Amargosa Creek Dam (Detention Basin).

The 366 lots of objects of cultural patrimony are flaked stone artifacts, groundstone artifacts, groundstone beads, hammerstones, pigment, soil samples, stone ecofacts, botanical samples, and faunal samples. The cultural items were removed from CA-LAN-2552 during testing conducted prior to road construction during the Elizabeth Lake Road realignment.

The 496 lots of objects of cultural patrimony are flaked stone artifacts, groundstone artifacts, groundstone pendants, hammerstones, stone ecofacts, botanical samples, and faunal samples. The cultural items were removed from CA-LAN-2587 during Elizabeth Lake Road construction activities.

The 281 lots of objects of cultural patrimony are flaked stone artifacts, groundstone artifacts, hammerstones, stone ecofacts, botanical samples, and pollen samples. The cultural items were removed from CA-LAN-2588 during Elizabeth Lake Road construction activities.

The 30 lots of objects of cultural patrimony are flaked stone artifacts, groundstone artifacts, groundstone beads, and shell ecofacts. The cultural items were removed from CA-LAN-ELR during monitoring at the Amargosa Creek Bridge and the realignment of Elizabeth Lake Road.

The presence of any potentially hazardous substances being used to treat the cultural items prior to CDPR acquiring the items is unknown. Unless state above, all of the cultural items are housed at the Antelope Valley Indian Museum.

Determinations

The City of Palmdale has determined that:

- The 3,773 objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Yuhaaviatam of San Manuel Nation (previously listed as San Manuel Band of Mission Indians, California).

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after June 18, 2026. If competing requests for repatriation are received, the City of Palmdale must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The City of Palmdale is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: May 12, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-10025 Filed 5-18-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7170; NPS-WASO-NAGPRA-
NPS0042805; PPWOCRADN0-
PCU00RP14.R50000]

Notice of Inventory Completion: Kansas State Historical Society, Topeka, KS

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Kansas State Historical Society (KSHS) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects

and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after June 18, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Dr. Nicole Klarmann, Kansas State Historical Society, 6425 SW 6th Avenue, Topeka, KS 66615–1099, email ksks.nagpra@ks.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the KSHS, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual have been identified from Buchanan County, MO (UBS 2023–21). The two associated funerary objects are a non-human bone and burned clay. Human remains and objects were removed from a farm in Sugar Lake, MO in 1893 by George Remsburg. The records are unclear but it is likely that he gave the remains and objects to KSHS around 1893. To our knowledge, no known hazardous substances were used to treat the human remains or associated funerary objects.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The KSHS has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The two objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Kaw Nation, Oklahoma and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after June 18, 2026. If competing requests for repatriation are received, the KSHS must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The KSHS is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: May 12, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–10026 Filed 5–18–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7160; NPS–WASO–NAGPRA–NPS0042796; PPWOCRADNO–PCU00RP14.R50000]

Notice of Inventory Completion: Illinois State Museum, Springfield, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Illinois State Museum has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after June 18, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Brooke M. Morgan, Illinois State Museum Research & Collections Center, 1011 East Ash Street, Springfield, IL 62703, email brooke.morgan@illinois.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Illinois State Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing at least two individuals have been reasonably identified. The two associated funerary objects are one limestone pipe and one lot of ornaments. The remains were removed from Rose Mound Group East (11SC1074) in Schuyler County, IL, in 1960 by a local veterinarian. They were donated to the Illinois State Museum in 1968.

Based on the information available, human remains representing at least three individuals have been reasonably identified. The one associated funerary object is a Madison projectile point. The remains were removed from Rose Mound Group East (11SC1074) in Schuyler County, IL, in 1999. They were transferred to the Illinois State Museum in 1999 under the Illinois Human Remains Protection Act.

Based on the information available, human remains representing at least two individuals have been reasonably identified. No associated funerary objects are present. The remains were removed from the Frederick site (11SC11) in Schuyler County, IL, prior to 1960 and accessioned by the Illinois State Museum in 1960.

Based on the information available, human remains representing at least three individuals have been reasonably identified. No associated funerary objects are present. The remains were removed from the Frederick site (11SC11) in Schuyler County, IL, prior to 1967 and were previously part of the Don Dickson Pathology Collection. They

transferred to the Illinois State Museum in 1967.

Based on the information available, human remains representing at least four individuals have been reasonably identified. The three associated funerary objects are one lot of ceramics, one burned animal bone, and one deer antler headdress. The remains were removed from the Frederick site (11SC11) in Schuyler County, IL, between 1960–1962 and donated to the Illinois State Museum in 1991.

Based on the information available, human remains representing at least eight individuals have been reasonably identified. No associated funerary objects are present. The remains were removed from the Rebman site (11SC13) in Schuyler County, IL, between 1975–1980 and donated to the Illinois State Museum in 2007.

Based on the information available, human remains representing at least 10 individuals have been reasonably identified. The one associated funerary object is one lot of shell. The remains were removed from an undetermined mound location in Schuyler County, IL, between 1975–1980 and donated to the Illinois State Museum in 2007.

To our knowledge, potentially hazardous substances were not used to treat any of the above listed human remains or associated funerary objects.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The Illinois State Museum has determined that:

- The human remains described in this notice represent the physical remains of 32 individuals of Native American ancestry.
- The seven objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community,

Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Kickapoo Traditional Tribe of Texas; Little River Band of Ottawa Indians, Michigan; Match-E-Be-Nash-She-Wish Band of Pottawatomis (previously listed as Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians of Michigan); Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Bois Forte Band (Nett Lake); Fond du Lac Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Omaha Tribe of Nebraska; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; The Osage Nation; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Winnebago Tribe of Nebraska.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any Indian Tribe not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a culturally affiliated Indian Tribe.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after June 18, 2026. If competing requests for repatriation are received, the Illinois State Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Illinois State Museum is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: May 12, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–10033 Filed 5–18–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7165; NPS–WASO–NAGPRA–NPS0042801; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Wisconsin Oshkosh, Oshkosh, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Wisconsin Oshkosh (UWO) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after June 18, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Adrienne Frie, University of Wisconsin Oshkosh, 800 Algoma Boulevard, Oshkosh, WI 54901, email friea@uwosh.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UWO, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, two individuals have been identified. The individuals were removed from the Bartz Mound Group (47–CT–0017), Calumet County, WI. UWO has possession of individuals and items that were removed from this site as part of an archaeological survey in the 1980s. There are 13 associated funerary objects from the Bartz Mound Group. The 13 associated funerary objects are three lots of faunal remains; one floral sample; one lot of undecorated grit tempered body sherds; one lot decorated grit tempered rim sherds; one lot kaolin pipe; three lots of lithics; one lot of undecorated shell tempered body sherds; and two lots of soil.

Human remains representing, at least, one individual have been identified. The individual was removed from the Bartz Village site (47–CT–0019), Calumet County, WI. UWO has possession of an individual and items that were removed from this site as part of an archaeological survey in the 1960s. There are 30 associated funerary objects from the Bartz Village site. The 30 associated funerary objects are one bone awl; three lots of faunal remains; three lots of decorated grit tempered body sherds; three lots of undecorated grit tempered body sherds; three lots of decorated grit tempered rim sherds; three lots of undecorated grit tempered rim sherds; one kaolin pipe; six lots of lithics; one lot of grit tempered body sherds (missing); two lots of lithics (missing); one lot of shell (missing); two lots of undecorated shell tempered body sherds; and one lot of soil.

Human remains representing, at least, one individual have been identified. The individual was removed from the Wagner site (47–CT–0102), Calumet County, WI. UWO has possession of an individual and items there were removed from this site as part of an archaeological survey in 1984. There are 23 associated funerary objects from the Wagner site. The 23 associated funerary objects are four lots of faunal remains; one lot of undecorated grit tempered body sherds; two lots of kaolin pipes; five lots of lithics; four lots of post-contact pottery; one round iron nail; two lots of undecorated shell tempered body sherds; one smoothed mammal bone; and three lots of square iron nails.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location of the human remains and associated funerary objects described in this notice.

Determinations

UWO has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- The 66 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa

Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-E-Be-Nash-She-Wish Band of Pottawatomi (previously listed as Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan); Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Oglala Sioux Tribe; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St.

Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after June 18, 2026. If competing requests for repatriation are received, UWO must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. UWO is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: May 12, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–10028 Filed 5–18–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7163; NPS–WASO–NAGPRA–NPS0042799; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The Wistar Institute of Anatomy and Biology, Philadelphia, PA

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Wistar Institute of Anatomy and Biology has

completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after June 18, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to Jeffrey Blair, The Wistar Institute of Anatomy and Biology, 3601 Spruce Street, Philadelphia, PA 19103, email jblair@wistar.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Wistar Institute of Anatomy and Biology, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual has been identified. No associated funerary objects are present. The human remains included in the updated inventory consist of one cranium. There are no written records relating to the provenance, date or geographical location of origin, acquisition history, cultural affiliation or the presence of any potentially hazardous substances used to treat the remains.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The Wistar Institute of Anatomy and Biology has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a connection between the human remains described in this notice and the Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma, and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be

sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after June 18, 2026. If competing requests for repatriation are received, the Wistar Institute of Anatomy and Biology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Wistar Institute of Anatomy and Biology is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: May 12, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-10031 Filed 5-18-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N7158; NPS-WASO-NAGPRA-NPS0042794; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Chugach National Forest, Anchorage, AK

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Chugach National Forest intends to carry out the disposition of an object of cultural patrimony removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the cultural item in this notice may occur on or after June

18, 2026. If no claim for disposition is received by May 19, 2027, the cultural item in this notice will become unclaimed cultural item.

ADDRESSES: Send written claims for disposition of the cultural item in this notice to Jennifer K. Youngblood, Forest Supervisor, Chugach National Forest, Supervisor's Office, 161 E1st Avenue, Door 8, Anchorage, AK 99501, email jennifer.k.youngblood@usda.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Chugach National Forest, and additional information on the cultural item in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

One item has been requested. The object of cultural patrimony is a dugout canoe. The canoe, constructed from a single tree, measures approximately 15 and 1/2 feet long and was removed from the Chugach Census Area in Alaska on November 12, 2025.

Determinations

The Chugach National Forest has determined that:

- The one object of cultural patrimony described in this notice has ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- The Native Village of Chenega has priority for disposition of the cultural item described in this notice.

Claims for Disposition

Written claims for disposition of the cultural item in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by May 19, 2027, the cultural item in this notice will become unclaimed cultural item. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows that they have priority for disposition.

Disposition of the cultural item in this notice may occur on or after June 18, 2026. If competing claims for disposition are received, the Chugach National Forest must determine the most appropriate claimant prior to disposition. Claims for joint disposition of the cultural item are considered a single claim and not competing claims. The Chugach National Forest is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: May 12, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–10027 Filed 5–18–26; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–776–779 (Fifth Review)]

Certain Preserved Mushrooms from Chile, China, India, and Indonesia; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (“the Act”) to determine whether revocation of the antidumping duty orders on certain preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: May 8, 2026.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (202–205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for

this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On May 8, 2026, the Commission determined that the domestic interested party group response to its notice of institution (91 FR 4622, February 2, 2026) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.¹ Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act (19 U.S.C. 1675(c)(3)).²

For further information concerning the conduct of these reviews and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on June 16, 2026. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission’s rules.

Written submissions.—As provided in § 207.62(d) of the Commission’s rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,³ and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before 5:15 p.m. on June 23, 2026, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by June 23, 2026. However, should the Department of Commerce

¹ A record of the Commissioners’ votes, the Commission’s statement on adequacy, and any individual Commissioner’s statements will be available from the Office of the Secretary and at the Commission’s website.

² Commissioner David S. Johanson voted to conduct full reviews.

³ The Commission has found the response submitted on behalf of Giorgio Foods, Inc. and L.K. Bowman Co., a division of Hanover Foods Corporation, to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

(“Commerce”) extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce’s final results is three business days after the issuance of Commerce’s results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s *Handbook on Filing Procedures*, available on the Commission’s website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission’s procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission’s rules.

By order of the Commission.

Issued: May 15, 2026.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2026–09984 Filed 5–18–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–463 and 731–TA–1159 (Third Review)]

Oil Country Tubular Goods From China; Determinations

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that revocation of the antidumping and countervailing duty orders on oil country tubular goods from China would be likely to lead to

¹ The record is defined in § 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on November 3, 2025 (90 FR 55167, December 1, 2025) and determined on March 6, 2026 that it would conduct expedited reviews (91 FR 18004, April 9, 2026).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on May 15, 2026. The views of the Commission are contained in USITC Publication 5739 (May 2026), entitled *Oil Country Tubular Goods from China: Investigation Nos. 701-TA-463 and 731-TA-1159 (Third Review)*.

By order of the Commission.

Issued: May 15, 2026.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2026-10002 Filed 5-18-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1447]

Certain Drug Products Containing C-Type Natriuretic Peptide Variants, and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Amending the Complaint and Notice of Investigation

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 an initial determination ("ID") (Order No. 45) of the presiding Chief administrative law judge ("Chief ALJ") granting complainant's unopposed motion to amend the complaint and notice of investigation to reflect respondent Ascendis Pharma, Inc.'s corporate name change to Ascendis Pharma, LLC.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Link, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3103. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS)

at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 8, 2025, based on a complaint filed by BioMarin Pharmaceutical Inc. of Novato, CA ("Complainant"). 90 FR 19532-33 (May 8, 2025). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain drug products containing C-type natriuretic peptide variants and components thereof by reason of infringement of claims 15-20, and 31-48 of RE'267 patent. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation named as respondents: Ascendis Pharma, Inc. of Palo Alto, California; Ascendis Pharma A/S of Hellerup, Denmark; Ascendis Pharma Growth Disorders A/S of Hellerup, Denmark (collectively "Ascendis"); and Wacker Biotech GmbH of Jena, Germany. *Id.* The Office of Unfair Import Investigations ("OUII") is participating in the investigation. *Id.*

On September 12, 2025, the Commission determined not to review Order No. 15 granting Complainant's motion to amend the complainant and notice of investigation to add Bachem Ag as an additional respondent. *See* Order No. 15 (Aug. 14, 2025), *unreviewed by Comm'n* Notice (Sept. 12, 2025), 90 FR 44843 (Sept. 17, 2025).

On March 23, 2026, the Commission determined not to review an initial determination (Order No. 36) terminating from the investigation claims 15-22, 31, 33, 35-40, 42, 44, and 45-48 of the RE'267 patent, with claims 21-22 having been asserted for domestic industry purposes only. *See* Order No. 36 (Mar. 3, 2026), *unreviewed by Comm'n* Notice (Mar. 23, 2026).

On April 14, 2026, Complainant filed a motion to amend the amended complaint and notice of investigation to reflect respondent Ascendis Pharma, Inc.'s corporate name change to Ascendis Pharma, LLC. No responses to the motion were filed.

On April 27, 2026, the ALJ issued the subject ID (Order No. 45), granting

Complainant's unopposed motion to amend the amended complaint and notice of investigation. No petitions for review of the ID were filed.

The Commission has determined not to review the subject ID. The notice of investigation is amended to reflect respondent Ascendis Pharma, Inc.'s corporate name change to Ascendis Pharma, LLC.

The Commission vote for this determination took place on May 15, 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: May 15, 2026.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2026-10010 Filed 5-18-26; 8:45 am]

BILLING CODE 7020-02-P

NUCLEAR REGULATORY COMMISSION

[Docket No. M70-7033-ML; ASLBP No. 26-992-01-ML-BD02]

Global Laser Enrichment, LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to the Commission's regulations, *see, e.g.*, 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

GLOBAL LASER ENRICHMENT, LLC (Paducah Laser Enrichment Facility)

Global Laser Enrichment, LLC (GLE) has applied for a license to possess and use special nuclear material for the purpose of constructing and operating a uranium enrichment facility in McCracken County, Kentucky. The requested license would authorize the facility to re-enrich depleted uranium hexafluoride tails and enrich natural-grade uranium hexafluoride to a maximum of 8-weight percent uranium-235 via laser-based isotope separation technology.

Because GLE is seeking authorization to construct a uranium enrichment facility, pursuant to Section 193 of the Atomic Energy Act, as amended (42 U.S.C. 2243), and 10 CFR 70.23a, an uncontested mandatory hearing will be conducted following completion of the NRC staff's safety evaluation and

environmental review of GLE's license application. *See* 91 FR 11,092, 11,093 (Mar. 6, 2026). A Board will conduct that hearing. *See id.*

The Board is comprised of the following Administrative Judges:

Emily I. Krause, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Dr. David A. Smith, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Dr. Arielle J. Miller, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Rockville, Maryland.

Dated: May 14, 2026.

Edward R. Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2026-09949 Filed 5-18-26; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2026-244 and K2026-242; MC2026-245 and K2026-243; MC2026-246 and K2026-244; MC2026-247 and K2026-245]

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:* May 22, 2026.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are

negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)-(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests. The comment due date discussed below does not apply to Section III proceedings (Docket Nos. MC2026-245 and K2026-243; MC2026-246 and K2026-244; MC2026-247 and K2026-245).

II. Public Proceeding(s)

1. *Docket No(s):* MC2026-244 and K2026-242; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 114 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 14, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* May 22, 2026.

III. Summary Proceeding(s)

1. *Docket No(s):* MC2026-245 and K2026-243; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM-GA Contract 989, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 14, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

2. *Docket No(s):* MC2026-246 and K2026-244; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM-GA Contract 990, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 14, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

3. *Docket No(s):* MC2026-247 and K2026-245; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM-GA Contract 991, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 14, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

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).

This Notice will be published in the **Federal Register**.

Danielle LeFlore,
Legal Assistant.

[FR Doc. 2026–10001 Filed 5–18–26; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreements

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing requests with the Postal Regulatory Commission to add certain Priority Mail Express International, Priority Mail International & First-Class

Package International Service contracts to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* May 19, 2026.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

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.
5/13/2026	PMEI, PMI & FCPIS 113	MC2026–240	K2026–239
5/14/2026	PMEI, PMI & FCPIS 114	MC2026–244	K2026–242

Documents are available at www.prc.gov.

Colleen Hibbert-Kapler,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2026–10000 Filed 5–18–26; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105490; File No. 4–618]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Between Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., NYSE Texas, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., Long-Term Stock Exchange, Inc., MEMX LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Investors Exchange LLC, Miami International Securities Exchange, LLC, MIAx PEARL, LLC, MIAx Emerald, LLC, MIAx Sapphire, LLC, The Nasdaq Stock Market LLC, Nasdaq Texas LLC, Nasdaq PHLX LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., Long-Term Stock Exchange, Inc., 24X National Exchange LLC, Green Impact Exchange, LLC, MX2 LLC and Texas Stock Exchange LLC Concerning Covered Regulation NMS and Consolidated Audit Trail Rules

May 14, 2026.

Notice is hereby given that the Securities and Exchange Commission (“Commission”) has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),¹ approving and declaring effective an amendment to the plan for

allocating regulatory responsibility (“Plan”) filed on April 21, 2026, pursuant to Rule 17d–2 of the Act,² by Cboe BZX Exchange, Inc. (“BZX”), Cboe BYX Exchange, Inc. (“BATS Y”), BOX Exchange LLC (“BOX”), Cboe Exchange, Inc. (“Cboe”), Cboe C2 Exchange, Inc. (“C2”), NYSE Texas, Inc. (“Texas”), Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX”), Financial Industry Regulatory Authority, Inc. (“FINRA”), Long-Term Stock Exchange, Inc. (“LTSE”), MEMX LLC (“MEMX”), Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”), Nasdaq MRX, LLC (“MRX”), Investors Exchange LLC (“IEX”), Miami International Securities Exchange, LLC (“MIAX”), MIAX PEARL, LLC (“MIAX PEARL”), MIAX Emerald, LLC (“MIAX Emerald”), MIAX Sapphire, LLC (“MIAX Sapphire”), The Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq Texas LLC (“Texas”), Nasdaq PHLX LLC (“PHLX”), NYSE National, Inc. (“NYSE National”), New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), NYSE Arca, Inc. (“NYSE Arca”), 24X National Exchange LLC (“24X”), Green Impact Exchange, LLC (“GIX”), MX2 LLC (“MX2”), and Texas Stock Exchange LLC (“TXSE”) (each, a “Participating Organization,” and, together, the “Participating Organizations” or the “Parties”). This Agreement amends and restates the agreement by and among the Participating Organizations approved by the Commission on November 20, 2025.³

² 17 CFR 240.17d–2.

³ See Securities Exchange Act Release No. 104232, 90 FR 53405 (November 25, 2025).

¹ 15 U.S.C. 78q(d).

I. Introduction

Section 19(g)(1) of the Act,⁴ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.⁵ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.⁸ Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁹ When an SRO has been named as a common member’s DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO’s obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common

member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.¹⁰ Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On December 3, 2010, the Commission approved the SRO participants’ plan for allocating regulatory responsibilities pursuant to Rule 17d–2.¹¹ On October 29, 2015, the Commission approved an amended plan that added Regulation NMS Rules 606, 607, and 611(c) and (d) and added additional Participating Organizations that are options markets to the Plan.¹² On August 11, 2016, the Commission approved an amended plan that added IEX and ISE Mercury as Participating Organizations.¹³ On February 2, 2017, the Commission approved an amended plan that added MIAx PEARL as a Participating Organization.¹⁴ On February 4, 2019, the Commission approved an amended plan that added MIAx Emerald as a Participating Organization and reflected name changes of certain Participating Organizations.¹⁵ On July 25, 2019, the Commission approved an amended plan

that added LTSE as a Participating Organization and reflected name changes of certain Participating Organizations.¹⁶ On March 12, 2020, the Commission approved an amended plan that added Rule 613 under the Act and the rules of each Participating Organization related to Rule 613 listed on Exhibit A to the Plan, and reflected the name change of Nasdaq PHLX, Inc. to Nasdaq PHLX LLC.¹⁷ On June 10, 2020, the Commission approved a proposed amendment to the Plan to add MEMX as a Participant to the Plan.¹⁸ On August 1, 2024, the Commission approved a proposed amendment to the Plan to add MIAx Sapphire as a Participant to the Plan.¹⁹ On July 11, 2025, the Commission approved a proposed amendment to the Plan to add 24X as a Participant to the Plan.²⁰ On November 20, 2025, the Commission approved a proposed amendment to the Plan to add GIX as a Participant to the Plan.²¹

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are members of more than one Participating Organization.²² The Plan provides for the allocation of regulatory responsibility according to whether the covered rule pertains to NMS stocks or NMS securities. For covered rules that pertain to NMS stocks (*i.e.*, Rules 607, 611, and 612), FINRA serves as the “Designated Regulation NMS Examining Authority” (“DREA”) for common members that are members of FINRA and assumes certain examination and enforcement responsibilities for those members with respect to specified Regulation NMS rules. For common members that are not members of FINRA, the member’s DEA serves as the DREA and “Designated CAT Surveillance Authority” (“DCSA”), provided that the DEA exchange operates a national securities exchange or facility that trades NMS stocks and the common member is a member of such exchange or facility. Section 2(c) of the Plan contains a list of principles that are applicable to the allocation of common members in cases not specifically addressed in the Plan. An exchange that does not trade NMS

¹⁶ See Securities Exchange Act Release No. 86470, 84 FR 37363 (July 31, 2019).

¹⁷ See Securities Exchange Act Release No. 88366, 85 FR 15238 (March 17, 2020).

¹⁸ See Securities Exchange Act Release No. 89042, 85 FR 36450 (June 16, 2020).

¹⁹ See Securities Exchange Act Release No. 100636, 89 FR 64517 (August 7, 2024).

²⁰ See Securities Exchange Act Release No. 103443, 90 FR 32038 (July 16, 2025).

²¹ See Securities Exchange Act Release No. 104232, 90 FR 53405 (November 25, 2025).

²² The proposed 17d–2 Plan refers to these members as “Common Members.”

⁴ 15 U.S.C. 78s(g)(1).

⁵ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

¹¹ See Securities Exchange Act Release No. 63430, 75 FR 76758 (December 9, 2010).

¹² See Securities Exchange Act Release No. 76311, 80 FR 68377 (November 4, 2015).

¹³ See Securities Exchange Act Release No. 78552, 81 FR 54905 (August 17, 2016).

¹⁴ See Securities Exchange Act Release No. 79928, 82 FR 9814 (February 8, 2017).

¹⁵ See Securities Exchange Act Release No. 85046, 84 FR 2643 (February 7, 2019).

stocks would have no regulatory authority for covered Regulation NMS rules pertaining to NMS stocks. For covered rules that pertain to NMS securities, and thus include options (*i.e.*, Rule 606, Rule 613 and the SRO Covered CAT Rules), the Plan provides that the DREA will be the same as the DREA for the rules pertaining to NMS stocks and will serve as the DCSA. For common members that are not members of an exchange that trades NMS stocks, the common member would be allocated according to the principles set forth in Section 2(c) of the Plan.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the “Covered Rules”) that lists the federal securities laws, rules, and regulations, for which the applicable DREA would bear examination and enforcement responsibility, and for which the applicable DCSA would bear surveillance, investigation, and enforcement responsibility, under the Plan for common members of the Participating Organization and their associated persons.

Specifically, the applicable DREA assumes examination and enforcement responsibility, and the applicable DCSA assumes surveillance, investigation, and enforcement responsibility, relating to compliance by common members with the Covered Rules. Covered Rules do not include the application of any rule of a Participating Organization, or any rule or regulation under the Act, to the extent that it pertains to violations of insider trading activities, because such matters are covered by a separate multiparty agreement under Rule 17d–2.²³ Under the Plan, Participating Organizations retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving their own marketplace.²⁴

III. Proposed Amendment to the Plan

On April 21, 2026, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to add MX2 and TXSE as Participants to the Plan and to reflect the name change of Nasdaq BX, Inc. to Nasdaq Texas, LLC.

The text of the proposed amended 17d–2 Plan is as follows (additions are *italicized*; deletions are in [brackets]):

* * * * *

Agreement for the Allocation of Regulatory Responsibility for the Covered Regulation NMS and Consolidated Audit Trail Rules pursuant to § 17(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78q(d), and Rule 17d–2 Thereunder

This agreement (the “Agreement”) by and among Cboe BZX Exchange, Inc. (“Cboe BZX”), Cboe BYX Exchange, Inc. (“Cboe BYX”), BOX Exchange LLC (“BOX”), Cboe Exchange, Inc. (“Cboe Options”), Cboe C2 Exchange, Inc. (“Cboe C2”), NYSE Texas, Inc. (“NYSE Texas”), Cboe EDGA Exchange, Inc. (“Cboe EDGA”), Cboe EDGX Exchange, Inc. (“Cboe EDGX”), Financial Industry Regulatory Authority, Inc. (“FINRA”), MEMX LLC (“MEMX”), Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”), Nasdaq MRX, LLC (“MRX”), Investors Exchange LLC (“IEX”), Miami International Securities Exchange, LLC (“MIAX”), MIAX PEARL, LLC (“MIAX PEARL”), MIAX Emerald, LLC (“MIAX Emerald”), MIAX Sapphire, LLC (“MIAX Sapphire”), The Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq [BX] Texas, Inc. (“[BX] Nasdaq Texas”), Nasdaq PHLX LLC (“PHLX”), NYSE National, Inc. (“NYSE National”), New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), NYSE Arca, Inc. (“NYSE Arca”), Long-Term Stock Exchange, Inc. (“LTSE”), 24X National Exchange LLC (“24X”), [and] Green Impact Exchange, LLC (“GIX”), MX2 LLC (“MX2”) and Texas Stock Exchange LLC (“TXSE”) (each, a “Participating Organization,” and, together, the “Participating Organizations”), is made pursuant to § 17(d) of the Securities Exchange Act of 1934 (the “Act” or “SEA”), 15 U.S.C. 78q(d), and Rule 17d–2 thereunder, which allow for plans to allocate regulatory responsibility among self-regulatory organizations (“SROs”). Upon approval by the Securities and Exchange Commission (“Commission” or “SEC”), this Agreement shall amend and restate the agreement by and among the Participating Organizations approved by the SEC on [July 11, 2025] November 20, 2025.

Whereas, the Participating Organizations desire to: (a) foster cooperation and coordination among the SROs; (b) remove impediments to, and foster the development of, a national market system; (c) strive to protect the interest of investors; (d) eliminate duplication in their examination and enforcement of (i) SEA Rules 606, 607, 611, 612 and 613 (the “Covered Regulation NMS Rules”) and (ii) rules of each Participating Organization related to SEA Rule 613 listed on Exhibit A

hereto (“SRO Covered CAT Rules,” together with the Covered Regulation NMS Rules, collectively, the “Covered Rules”) and (e) eliminate duplication in their surveillance, examination, investigation and enforcement of SEA Rule 613 and the SRO Covered CAT Rules;

Whereas, the Participating Organizations are interested in allocating regulatory responsibilities with respect to broker-dealers that are members of more than one Participating Organization (the “Common Members”) relating to the examination and enforcement of the Covered Rules and the surveillance, examination, investigation and enforcement of SEA Rule 613 and the SRO Covered CAT Rules; and

Whereas, the Participating Organizations will request regulatory allocation of these regulatory responsibilities by executing and filing with the SEC this plan for the above stated purposes pursuant to the provisions of § 17(d) of the Act, and Rule 17d–2 thereunder, as described below.

Now, therefore, in consideration of the mutual covenants contained hereafter, and other valuable consideration to be mutually exchanged, the Participating Organizations hereby agree as follows:

1. Assumption of Surveillance Responsibility. The Designated CAT Surveillance Authority (the “DCSA”) shall assume surveillance, investigation and enforcement responsibility relating to compliance by Common Members with SEA Rule 613 and the SRO Covered CAT Rules listed on Exhibit A (“Surveillance Responsibility”). Included in the Surveillance Responsibility assumed hereunder the DCSA shall perform investigations and enforcement resulting from reports and metrics concerning potentially non-compliant CAT reporting generated by the Plan Processor for the National Market System Plan Governing the Consolidated Audit Trail and as provided for in the Monitoring CAT Reporter Compliance Policy (dated August 13, 2019 and as amended from time to time) relating to Common Members. FINRA shall serve as DCSA for Common Members that are members of FINRA. The DREA allocated below shall serve as DCSA for Common Members that are not members of FINRA.

2. Assumption of Examination Responsibility. The Designated Regulation NMS Examining Authority (the “DREA”) shall assume examination and enforcement responsibilities relating to compliance by Common

²³ See Securities Exchange Act Release No. 103913 (September 9, 2025), 90 FR 44267 (September 12, 2025) (File No. 4–566) (notice of filing and order approving and declaring effective an amendment to the insider trading 17d–2 plan).

²⁴ See paragraph 3 of the Plan.

Members with the Covered Rules to which the DREA is allocated responsibility ("Examination Responsibility"). A list of the Covered Rules is attached hereto as Exhibit A.

a. For Covered Regulation NMS Rules Pertaining to "NMS stocks" (as defined in Regulation NMS) (*i.e.*, Rules 607, 611 and 612): FINRA shall serve as DREA for Common Members that are members of FINRA. The Designated Examining Authority ("DEA") pursuant to SEA Rule 17d-1 shall serve as DREA (and accordingly as DCSA as provided in paragraph 1 above) for Common Members that are not members of FINRA, provided that the DEA operates a national securities exchange or facility that trades NMS stocks and the Common Member is a member of such exchange or facility. For all other Common Members, the Participating Organizations shall allocate Common Members among the Participating Organizations (other than FINRA) that operate a national securities exchange that trades NMS stocks based on the principles outlined below and the Participating Organization to which such a Common Member is allocated shall serve as the DREA for that Common Member. (A Participating Organization that operates a national securities exchange that does not trade NMS stocks has no regulatory responsibilities related to Covered Regulation NMS Rules pertaining to NMS stocks and will not serve as DREA for such Covered Regulation NMS Rules.)

b. For Covered Regulation NMS Rules Pertaining to "NMS securities" (as defined in Regulation NMS) (*i.e.*, Rule 606 and Rule 613) and the SRO Covered CAT Rules listed on Exhibit A hereto, the DREA shall be the same as the DREA for Covered Regulation NMS Rules pertaining to NMS stocks (and shall serve as the DCSA in paragraph 1 above). For Common Members that are not members of a national securities exchange that trades NMS stocks and thus have not been appointed a DREA under paragraph a., the Participating Organizations shall allocate the Common Members among the Participating Organizations (other than FINRA) that operate a national securities exchange that trades NMS securities based on the principles outlined below and the Participating Organization to which such a Common Member is allocated shall serve as the DREA for that Common Member with respect to Covered Regulation NMS Rules pertaining to NMS securities. The allocation of Common Members to DREAs (including FINRA) and accordingly to serve as DCSA in

paragraph 1 above for all Covered Rules is provided in Exhibit B.

c. For purposes of this paragraph 2, any allocation of a Common Member to a Participating Organization other than as specified in paragraphs a. and b. above shall be based on the following principles, except to the extent all affected Participating Organizations consent to one or more different principles and any such agreement to different principles would be deemed an amendment to this Agreement as provided in paragraph 24:

i. The Participating Organizations shall not allocate a Common Member to a Participating Organization unless the Common Member is a member of that Participating Organization.

ii. To the extent practicable, Common Members shall be allocated among the Participating Organizations of which they are members in such a manner as to equalize, as nearly as possible, the allocation among such Participating Organizations.

iii. To the extent practicable, the allocation will take into account the amount of NMS stock activity (or NMS security activity, as applicable) conducted by each Common Member in order to most evenly divide the Common Members with the largest amount of activity among the Participating Organizations of which they are a member. The allocation will also take into account similar allocations pursuant to other plans or agreements to which the Participating Organizations are party to maintain consistency in oversight of the Common Members.¹

iv. The Participating Organizations may reallocate Common Members from time-to-time and in such manner as they deem appropriate consistent with the terms of this Agreement.

v. Whenever a Common Member ceases to be a member of its DREA (including FINRA), the DREA shall promptly inform the Participating Organizations, who shall review the matter and reallocate the Common Member to another Participating Organization.

vi. The DEA or DREA (including FINRA) may request that a Common Member be reallocated to another Participating Organization (including the DEA or DREA (including FINRA)) by giving 30 days written notice to the Participating Organizations.

¹ For example, if one Participating Organization was allocated responsibility for a particular Common Member pursuant to a separate Rule 17d-2 Agreement, that Participant Organization would be assigned to be the DREA of that Common Member, unless there is good cause not to make that assignment.

The Participating Organizations shall promptly consider such request and, in their discretion, may approve or disapprove such request and if approved, reallocate the Common Member to such Participating Organization.

vii. All determinations by the Participating Organizations with respect to allocations shall be by the affirmative vote of a majority of the Participating Organizations that, at the time of such determination, share the applicable Common Member being allocated; a Participating Organization shall not be entitled to vote on any allocation related to a Common Member unless the Common Member is a member of such Participating Organization.

d. The Participating Organizations agree that they shall conduct meetings among them as needed for the purposes of ensuring proper allocation of Common Members and identifying issues or concerns with respect to the regulation of Common Members. To promote consistency in connection with regulation of Common Members, the Participating Organizations further agree to conduct meetings to discuss the overarching principles as to how Covered Rules, in particular SEA Rule 613 and the SRO Covered CAT Rules, should be surveilled, examined, investigated and enforced. On an ongoing basis, the Participating Organizations agree to consult with and solicit input from the Participating Organizations regarding their surveillance, examination, investigation and enforcement programs regarding SEA Rule 613 and the SRO Covered CAT Rules. In particular, FINRA will consult with Participating Organizations prior to finalizing its disposition and sanctions guidelines with respect to violations of SEA Rule 613 and the SRO Covered CAT Rules. Further, in the period preceding the full implementation of CAT for equities and options securities, FINRA will consult with other Participating Organizations prior to finalizing dispositions other than no further action that involve their Common Members.

e. By signing this Agreement, the Participating Organizations hereby certify that the list of SRO Covered CAT Rules listed on Exhibit A hereto are correct and are identical or substantially similar to each other.

f. Each year following the commencement date of operation of this Agreement, or more frequently if required by changes in any of the SRO Covered CAT Rules, each Participating Organization shall submit an updated list of SRO Covered CAT Rules to FINRA for review which shall (1) add

SRO Covered CAT Rules not included in the current list of SRO Covered CAT Rules that are substantially similar to each other; (2) delete SRO Covered CAT Rules included in the current list that are no longer substantially similar; and (3) confirm that the remaining rules on the current list of SRO Covered CAT Rules continue to be substantially similar. FINRA shall review each Participating Organization's annual certification and confirm whether FINRA agrees with the submitted certified and updated list of SRO Covered CAT Rules. The DREA/DCSA shall not have Regulatory Responsibility for any provision in a SRO Covered CAT Rule provision requiring a member of a Participating Organization to provide notice, reports or any other filings directly to a Participating Organization.

3. Scope of Responsibility. Notwithstanding anything herein to the contrary, it is explicitly understood that the terms "Surveillance Responsibility" and "Examination Responsibility" (collectively referred to herein as the "Regulatory Responsibility") do not include any responsibilities beyond those concerning the Covered Rules, and each of the Participating Organizations shall retain full responsibility for, examination, surveillance and enforcement with respect to trading activities or practices involving its own marketplace unless otherwise allocated pursuant to a separate Rule 17d-2 Agreement. The allocation of DCSA Responsibility to a Participating Organization shall not limit another Participating Organization's ability to utilize data from the Consolidated Audit Trail to perform examination, surveillance, investigative, enforcement or other regulatory work concerning potential or identified violations of statutes or rules other than the SRO Covered CAT Rules.

4. No Retention of Regulatory Responsibility. The Participating Organizations do not contemplate the retention of any responsibilities with respect to the regulatory activities being assumed by the DREA/DCSA under the terms of this Agreement. Nothing in this Agreement will be interpreted to prevent a DREA/DCSA from entering into Regulatory Services Agreement(s) to perform its Regulatory Responsibility.

5. No Charge. A DREA/DCSA shall not charge Participating Organizations for performing the Regulatory Responsibility under this Agreement.

6. Applicability of Certain Laws, Rules, Regulations or Orders. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule, or order

is inconsistent with one or more provisions of this Agreement, the statute, rule, or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

7. Customer Complaints. If a Participating Organization receives a copy of a customer complaint relating to a DREA's/DCSA's Regulatory Responsibility as set forth in this Agreement, the Participating Organization shall promptly forward to such DREA/DCSA a copy of such customer complaint. It shall be such DREA's/DCSA's responsibility to review and take appropriate action in respect to such complaint.

8. Parties to Make Personnel Available as Witnesses. Each Participating Organization shall make its personnel available to the DREA/DCSA to serve as testimonial or non-testimonial witnesses as necessary to assist the DREA/DCSA in fulfilling the Regulatory Responsibility allocated under this Agreement. The DREA/DCSA shall provide reasonable advance notice when practicable and shall work with a Participating Organization to accommodate reasonable scheduling conflicts within the context and demands as the entity with ultimate regulatory responsibility. The Participating Organization shall pay all reasonable travel and other expenses incurred by its employees to the extent that the DREA/DCSA requires such employees to serve as witnesses, and provide information or other assistance pursuant to this Agreement.

9. Sharing of Work-Papers, Data and Related Information.

a. Sharing. A Participating Organization shall make available to the DREA/DCSA information necessary to assist the DREA/DCSA in fulfilling the Regulatory Responsibility assumed under the terms of this Agreement. Such information shall include any information collected by a Participating Organization in the course of performing its regulatory obligations under the Act, including information relating to an on-going disciplinary investigation or action against a member, the amount of a fine imposed on a member, financial information, or information regarding proprietary trading systems gained in the course of examining a member ("Regulatory Information"). This Regulatory Information shall be used by the DREA/DCSA solely for the purposes of fulfilling the DREA's/DCSA's Regulatory Responsibility.

b. No Waiver of Privilege. The sharing of documents or information between

the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

10. Special or Cause Examinations and Enforcement Proceedings. Nothing in this Agreement shall restrict or in any way encumber the right of a Participating Organization to conduct special or cause examinations of a Common Member, or take enforcement proceedings against a Common Member as a Participating Organization, in its sole discretion, shall deem appropriate or necessary.

11. Dispute Resolution Under this Agreement.

a. Negotiation. The Participating Organizations will attempt to resolve any disputes through good faith negotiation and discussion, escalating such discussion up through the appropriate management levels until reaching the executive management level. In the event a dispute cannot be settled through these means, the Participating Organizations shall refer the dispute to binding arbitration.

b. Binding Arbitration. All claims, disputes, controversies, and other matters in question between the Participating Organizations to this Agreement arising out of or relating to this Agreement or the breach thereof that cannot be resolved by the Participating Organizations will be resolved through binding arbitration. Unless otherwise agreed by the Participating Organizations, a dispute submitted to binding arbitration pursuant to this paragraph shall be resolved using the following procedures:

(i) The arbitration shall be conducted in a city selected by the DREA/DCSA in which it maintains a principal office or where otherwise agreed to by the Participating Organizations in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof; and

(ii) There shall be three arbitrators, and the chairperson of the arbitration panel shall be an attorney. The arbitrators shall be appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

12. Limitation of Liability. As between the Participating Organizations, no Participating Organization, including its respective directors, governors, officers, employees and agents, will be liable to any other Participating Organization, or its directors, governors,

officers, employees and agents, for any liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except: (a) as otherwise provided for under the Act; (b) in instances of a Participating Organization's gross negligence, willful misconduct or reckless disregard with respect to another Participating Organization; or (c) in instances of a breach of confidentiality obligations owed to another Participating Organization. The Participating Organizations understand and agree that the regulatory responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by any Participating Organization to any other Participating Organization with respect to any of the responsibilities to be performed hereunder. This paragraph is not intended to create liability of any Participating Organization to any third party.

13. SEC Approval.

a. The Participating Organizations agree to file promptly this Agreement with the SEC for its review and approval. FINRA shall file this Agreement on behalf, and with the explicit consent, of all Participating Organizations.

b. If approved by the SEC, the Participating Organizations will notify their members of the general terms of the Agreement and of its impact on their members.

14. Subsequent Parties; Limited Relationship. This Agreement shall inure to the benefit of and shall be binding upon the Participating Organizations hereto and their respective legal representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended or shall: (a) confer on any person other than the Participating Organizations hereto, or their respective legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, (b) constitute the Participating Organizations hereto partners or participants in a joint venture, or (c) appoint one Participating Organization the agent of the other.

15. Assignment. No Participating Organization may assign this Agreement without the prior written consent of the DREAs/DCSAs performing Regulatory Responsibility on behalf of such Participating Organization, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that any

Participating Organization may assign the Agreement to a corporation controlling, controlled by or under common control with the Participating Organization without the prior written consent of such Participating Organization's DREAs/DCSAs. No assignment shall be effective without Commission approval.

16. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

17. Termination. Any Participating Organization may cancel its participation in the Agreement at any time upon the approval of the Commission after 180 days written notice to the other Participating Organizations (or in the case of a change of control in ownership of a Participating Organization, such other notice time period as that Participating Organization may choose). The cancellation of its participation in this Agreement by any Participating Organization shall not terminate this Agreement as to the remaining Participating Organizations.

18. General. The Participating Organizations agree to perform all acts and execute all supplementary instruments or documents that may be reasonably necessary or desirable to carry out the provisions of this Agreement.

19. Written Notice. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, or by a comparable means of electronic communication to each Participating Organization entitled to receipt thereof, to the attention of the Participating Organization's representative at the Participating Organization's then principal office or by email.

20. Confidentiality. The Participating Organizations agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations under this Agreement, provided, however, that each Participating Organization may disclose such documents or information as may be required to comply with applicable regulatory requirements or requests for information from the SEC. Any Participating Organization

disclosing confidential documents or information in compliance with applicable regulatory or oversight requirements will request confidential treatment of such information. No Participating Organization shall assert regulatory or other privileges as against the other with respect to Regulatory Information that is required to be shared pursuant to this Agreement.

21. Regulatory Responsibility. Pursuant to Section 17(d)(1)(A) of the Act, and Rule 17d-2 thereunder, the Participating Organizations request the SEC, upon its approval of this Agreement, to relieve the Participating Organizations which are participants in this Agreement that are not the DREA or DCSA as to a Common Member of any and all responsibilities with respect to the matters allocated to the DREA or DCSA pursuant to this Agreement for purposes of §§ 17(d) and 19(g) of the Act.

22. Governing Law. This Agreement shall be deemed to have been made in the State of New York, and shall be construed and enforced in accordance with the law of the State of New York, without reference to principles of conflicts of laws thereof. Each of the Participating Organizations hereby consents to submit to the jurisdiction of the courts of the State of New York in connection with any action or proceeding relating to this Agreement.

23. Survival of Provisions. Provisions intended by their terms or context to survive and continue notwithstanding delivery of the regulatory services by the DREA/DCSA and any expiration of this Agreement shall survive and continue.

24. Amendment.

a. This Agreement may be amended to add a new Participating Organization, provided that such Participating Organization does not assume regulatory responsibility, by an amendment executed by all applicable DREAs/DCSAs and such new Participating Organization. All other Participating Organizations expressly consent to allow such DREAs/DCSAs to jointly add new Participating Organizations to the Agreement as provided above. Such DREAs/DCSAs will promptly notify all Participating Organizations of any such amendments to add a new Participating Organization.

b. All other amendments must be approved by each Participating Organization. All amendments, including adding a new Participating Organization but excluding changes to Exhibit B, must be filed with and approved by the Commission before they become effective.

25. Effective Date. The Effective Date of this Agreement will be the date the

SEC declares this Agreement to be effective pursuant to authority conferred by § 17(d) of the Act, and Rule 17d-2 thereunder.

26. Counterparts. This Agreement may be executed in any number of counterparts, including facsimile, each of which will be deemed an original, but all of which taken together shall constitute one single agreement among the Participating Organizations.

Exhibit A Covered Rules

Covered Regulation NMS Rules

SEA Rule 606—Disclosure of Order Routing Information.*

SEA Rule 607—Customer Account Statements.

SEA Rule 611—Order Protection Rule.

SEA Rule 612—Minimum Pricing Increment.

SEA Rule 613(g)(2)—Consolidated Audit Trail *

* Covered Regulation NMS Rules with asterisks (*) pertain to NMS securities. Covered Regulation NMS Rules without asterisks pertain to NMS stocks.

SRO Covered CAT Rules

24X—Rules 4.5–4.16

Cboe BZX—Rules 4.5–4.16

Cboe BYX—Rules 4.5–4.16

BOX—Rules 16020–16095

Cboe Options—Rules 7.20–7.31

Cboe C2—Chapter 7, Section B (only with respect to incorporation of Cboe Rules 7.20–7.31)

Cboe EDGA—Rules 4.5–4.16

Cboe EDGX—Rules 4.5–4.16

FINRA—Rules 6810–6895

IEX—Rules 11.610–1.695

MEMX Rules 4.5–4.16

MIAX—Rules 1701–1712

MIAX PEARL—Rules 1701–1712

MIAX Emerald—Rules 1701–1712

MIAX Sapphire—Rules 1701–1712

Nasdaq—General 7, Sections 1–13

Nasdaq Texas [BX] Equities Rules—General 7

PHLX—General 7

ISE—General 7

GEMX—General 7

MRX—General 7

NYSE—Rules 6810–6895

NYSE Arca—Rules—11.6810–11.6895

NYSE American—Rules 6810–6895

NYSE Texas—Rules 6.6810–6.6895

NYSE National—Rules 6.6810–6.6895

LTSE—Rules 11.610–11.695

GIX—Rules 11.610–11.695

MX2 Rules 4.5–4.16

TXSE Rules 4.005–4.016

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number 4–618 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 4–618. 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/other.shtml>). Copies of the plan also will be available for inspection and copying at the principal offices of the Participating Organizations. 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 4–618 and should be submitted on or before June 9, 2026.

V. Discussion

The Commission finds that the Plan, as amended, is consistent with the factors set forth in Section 17(d) of the Act²⁵ and Rule 17d-2(c) thereunder²⁶ in that the proposed amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed amended Plan should reduce unnecessary regulatory duplication by allocating to the applicable DREA certain examination and enforcement responsibilities, and to the applicable DCSA certain surveillance, investigation, and enforcement responsibilities, for Common Members that would otherwise be performed by multiple Parties. Accordingly, the proposed amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because the Parties will coordinate their regulatory

functions in accordance with the proposed amended Plan, the amended Plan should promote investor protection.

The Commission is hereby declaring effective a plan that allocates regulatory responsibility for certain provisions of the federal securities laws, rules, and regulations as set forth in Exhibit A to the Plan. The Commission notes that any amendment to the Plan must be approved by the relevant Parties as set forth in Paragraph 24 of the Plan and must be filed with and approved by the Commission before it may become effective.²⁷

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. In particular, the primary purpose of the amendment is to add MX2 and TXSE as Participating Organizations. The Commission notes that the most recent prior amendment to the Plan was published for comment and the Commission did not receive any comments thereon.²⁸ The Commission believes that the current amendment to the Plan does not raise any new regulatory issues that the Commission has not previously considered, and therefore believes that the amended Plan should become effective without any undue delay.

VI. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4–618. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Plan in File No. 4–618 is hereby approved and declared effective.

It is further ordered that the Parties who are not the DREA or DCSA as to a particular Common Member are relieved of those regulatory responsibilities allocated to the Common Member's DREA or DCSA under the Plan to the extent of such allocation.

²⁷ See Paragraph 24 of the Plan. The Commission notes, however, that changes to Exhibit B to the Plan (the allocation of Common Members to DREAs) are not required to be filed with, and approved by, the Commission before they become effective.

²⁸ See Securities Exchange Act Release No. 104232, 90 FR 53405 (November 25, 2025).

²⁵ 15 U.S.C. 78q(d).

²⁶ 17 CFR 240.17d-2(c).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-09962 Filed 5-18-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105492; File No. SR-SAPPHIRE-2026-24]

Self-Regulatory Organizations; MIAx SAPPHIRE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Short Term Option Series Program

May 14, 2026.

Pursuant to the provisions of 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 May 6, 2026, MIAx Sapphire, LLC (“MIAx Sapphire” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II 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 Short Term Option Series Program to add clarifying language concerning the listing and treatment of Monday and Wednesday Short Term Daily Expirations for Qualifying Securities when an Earnings Announcement ³ occurs after market close.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/miax-sapphire/rule-filings> and at the Exchange’s principal office.

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 Interpretation and Policy .02 to Exchange Rule 404, Series of Options Contracts Open for Trading. The amendment would add clarifying language concerning Monday and Wednesday expiration listings for options on certain individual stocks or Exchange-Traded Fund Shares (collectively “Qualifying Securities”) that are required to be marked closing only. Other technical changes are also proposed to Exchange Rule 404, Series of Options Contracts Open for Trading. Each change will be described below. This proposed rule change is based on a similar proposal submitted by Nasdaq ISE, LLC (“ISE”).⁴

Short Term Options Series

Currently, the Exchange permits certain Qualifying Securities to list up to two Monday and Wednesday Short Term Daily Expirations in addition to the Friday weekly expiration, provided they meet the eligibility requirements ⁵ noted in Interpretation and Policy .02 to Exchange Rule 404. Each calendar quarter, the Exchange applies the above criteria to individual stocks and Exchange-Traded Fund Shares to determine eligibility for the following quarter as a Qualifying Security.⁶ The

⁴ See Securities Exchange Act Release No. 105313 (April 27, 2026) (Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Short Term Options Series Program) (SR-ISE-2026-19).

⁵ Qualifying Securities must meet the following criteria on a quarterly basis: (1) an underlying security, as measured on the last day of the prior calendar quarter, must have: (A) a market capitalization of greater than 700 billion dollars for an individual stock based on the closing price, or (B) Assets under Management (“AUM”) greater than 50 billion dollars for an Exchange-Traded Fund Share based on net asset value; (2) monthly options volume, as measured by sides traded in the last month preceding the quarter end, of greater than 10 million options; (3) a position limit of at least 250,000 contracts; and (4) participate in the Penny Interval Program. See Interpretation and Policy .02 to Exchange Rule 404.

⁶ Beginning on the second trading day in the first month of each calendar quarter, the market capitalization of individual stocks is calculated based on the closing price established on the primary exchange on the last trading day of the

Exchange makes the list of Qualifying Securities available by close of business on the first trading day of the quarter on its website.

For individual stocks on Qualifying Securities, the Exchange does not list a Monday or Wednesday Short Term Daily Expiration on a day when an Earnings Announcement occurs after market close. If a Monday or Wednesday Short Term Option Daily Expiration is listed and an Earnings Announcement is subsequently made after the listing becomes available for trading, the Exchange immediately takes one of the following actions: (1) delists the affected expiration if there is no open interest, or (2) marks the affected expiration as closing only. This is the Exchange’s current practice to avoid violating the listing requirements of Interpretation and Policy .02 to Exchange Rule 404.

At this time, the Exchange proposes to codify this practice in its rule text to provide Members ⁷ with clear expectations regarding listing availability. The Exchange proposes to state,

For individual stocks on Qualifying Securities, the Exchange will not list a Monday or Wednesday Short Term Option Daily Expiration on a day when an Earnings Announcement will occur after market close. If a Monday or Wednesday Short Term Option Daily Expiration is listed and an Earnings Announcement is subsequently made after the listing becomes available for trading, the Exchange will: (1) delist the affected expiration if there is no open interest; or (2) if there is open interest, designate the affected expiration as closing only. “Earnings Announcement” shall include official public quarterly or yearly earnings filed with the Securities and Exchange Commission.

Additionally, the Exchange proposes to remove current text in Interpretation and Policy .02 to Exchange Rule 404 which states that, “For Qualifying Securities, the Exchange would not list an expiry on a day where there will be an Earnings Announcement that takes

prior calendar quarter and the AUM for Exchange-Traded Fund Shares is calculated based on the NAV established on the primary exchange on the last trading day of the prior calendar quarter. The data establishing the volume thresholds is established by using data from the last month of the prior calendar quarter from The Options Clearing Corporation. For options listed on the first trading day of a given calendar quarter, the volume is calculated using the last month of the quarter prior to that calendar quarter. For example, if the Exchange were to list Qualifying Securities in Q3 of 2026, the Exchange would look at the volume, measured in sides, for the last month of Q2 2026 or June 2026.

⁷ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

²⁹ 17 CFR 200.30-3(a)(34).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ An Earnings Announcement shall include official public quarterly or yearly earnings filed with the Securities and Exchange Commission (the “Commission”).

place after market close.” The proposed rule text makes this sentence unnecessary. Finally, the Exchange proposes to relocate the current description of an Earnings Announcement into the proposed text.

The Exchange also proposes other technical amendments to Interpretation and Policy .02 to Exchange Rule 404 to reorganize the rule text and improve readability. The Exchange proposes to relocate current Interpretation and Policy .11 to Exchange Rule 404 regarding listing Short Term Option Series in equity options, excluding Exchange-Traded Fund Shares and ETNs, which have an expiration date more than twenty-one days from the listing date to a new Interpretation and Policy .02(g) to Exchange Rule 404, additionally the Exchange proposes to slightly modify current Interpretation and Policy .11 to Exchange Rule 404 to improve readability. Also, the Exchange proposes to amend the citations in current Interpretation and Policy .11 to Exchange Rule 404 to reflect the relocation to current Interpretation and Policy .02(g) to Exchange Rule 404.

Other Amendments to Exchange Rule 404

The Exchange proposes to renumber current Interpretation and Policy .12 to Exchange Rule 404, Low Priced Stock Strike Price Interval Program, as Interpretation and Policy .11 and also proposes to renumber current Interpretation and Policy .13 to Exchange Rule 404, Monthly Options Series Program, as Interpretation and Policy .12.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that codifying its existing practice regarding the treatment of Monday and Wednesday Short Term Daily Expiration listings for Qualifying Securities promotes just and equitable principles of trade by providing Members with clear and transparent expectations concerning the availability of such listings. Under the proposed rule text, Members will have express notice that the Exchange will

not list a Monday or Wednesday Short Term Daily Expiration on a day when an Earnings Announcement is scheduled to occur after market close, and that in the event an Earnings Announcement is announced after such a listing becomes available for trading, the Exchange will either delist the affected expiration if there is no open interest or mark the expiration as closing only. By memorializing this practice in the rule text, the Exchange ensures that all market participants are informed of the manner in which the Exchange administers its Short Term Option Series Program with respect to Qualifying Securities, thereby promoting fairness and transparency in the marketplace.

The Exchange further believes the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system by ensuring that Monday or Wednesday Short Term Daily Expirations are not listed or do not remain available for new opening positions in circumstances that could expose investors to heightened risks associated with post-market-close Earnings Announcements. Options expiring on a day following an afterhours Earnings Announcement may be subject to significant price volatility and uncertainty that could disadvantage investors who are unable to react to material information disclosed after the close of trading. By formalizing the Exchange’s practice of either not listing such expirations or marking them as closing only when an Earnings Announcement is announced after listing, depending on whether there is open interest, the proposal helps ensure that the options market operates in a manner that mitigates these risks and supports the integrity of the national market system.

The Exchange notes that the proposal does not raise any new or novel regulatory concerns. The proposed rule change merely codifies the Exchange’s current practice, which has been in effect to ensure compliance with Interpretation and Policy .02 to Exchange Rule 404. The Exchange is not proposing to alter its existing approach to administering the Short Term Option Series Program for Qualifying Securities; rather, the Exchange seeks to formalize that approach in its rule text to enhance clarity and predictability for Members and other market participants.

The Exchange’s proposal to amend citations, relocate and amend Interpretation and Policy .11 to Exchange Rule 404, and to renumber current Interpretation and Policy .12 to Exchange Rule 404, Low Priced Stock

Strike Price Interval Program and Interpretation and Policy .13 to Exchange Rule 404, Monthly Options Series Program are non-substantive amendments intended to reorganize the Exchange’s current rules.

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.

With respect to intra-market competition, the Exchange does not believe the proposal will place any category of market participant at a competitive disadvantage relative to any other category of market participant. All market participants will be subject to the same rules regarding the listing and treatment of Monday and Wednesday Short Term Daily Expirations for Qualifying Securities when an Earnings Announcement occurs after market close.

With respect to inter-market competition, the Exchange does not believe the proposal will place the Exchange at a competitive disadvantage relative to other options exchanges or impose any burden on competition among options exchanges. The proposed rule change does not alter the competitive landscape for options trading, as it merely formalizes the Exchange’s current practice in rule text which practice is consistent with that of other options exchanges that have the same listing rules.

The Exchange’s proposal to amend citations, relocate Interpretation and Policy .11 to Exchange Rule 404, and to renumber current Interpretation and Policy .12 to Exchange Rule 404, Low Priced Stock Strike Price Interval Program and Interpretation and Policy .13 to Exchange Rule 404, Monthly Options Series Program are non-substantive amendments intended to reorganize the Exchange’s current rules.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-SAPPHIRE-2026-24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-SAPPHIRE-2026-24. 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-SAPPHIRE-2026-24 and should be submitted on or before June 9, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026-09964 Filed 5-18-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, May 21, 2026.

PLACE: The meeting will be held via remote means and at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Resolution of litigation claims; and
- Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

¹² 17 CFR 200.30-3(a)(12).

CONTACT PERSON FOR MORE INFORMATION:

For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

(Authority: 5 U.S.C. 552b.)

Dated: May 14, 2026.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026-09950 Filed 5-15-26; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105491; File No. SR-MIAX-2026-19]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Short Term Option Series Program

May 14, 2026.

Pursuant to the provisions of 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 May 6, 2026, Miami International Securities Exchange, LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II 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 Short Term Option Series Program to add clarifying language concerning the listing and treatment of Monday and Wednesday Short Term Daily Expirations for Qualifying Securities when an Earnings Announcement³ occurs after market close.

The text of the proposed rule change is available on the Exchange's website at <https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings> and at MIAX's principal office.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ An Earnings Announcement shall include official public quarterly or yearly earnings filed with the Securities and Exchange Commission (the "Commission").

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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.

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 Interpretation and Policy .02 to Exchange Rule 404, Series of Options Contracts Open for Trading. The amendment would add clarifying language concerning Monday and Wednesday expiration listings for options on certain individual stocks or Exchange-Traded Fund Shares (collectively "Qualifying Securities") that are required to be marked closing only. Other technical changes are also proposed to Exchange Rule 404, Series of Options Contracts Open for Trading. The Exchange also proposes an amendment to Rule 1502, Margin Requirements. Each change will be described below. This proposed rule change is based on a similar proposal submitted by Nasdaq ISE, LLC ("ISE").⁴ The Exchange notes that Exchange Rule 404 as proposed to be amended by this filing, is incorporated by reference into the MIAX Emerald, LLC ("MIAX Emerald") rulebook, and is thus a MIAX Emerald rule applicable to MIAX Emerald members.

Short Term Options Series

Currently, the Exchange permits certain Qualifying Securities to list up to two Monday and Wednesday Short Term Daily Expirations in addition to the Friday weekly expiration, provided they meet the eligibility requirements⁵

⁴ See Securities Exchange Act Release No. 105313 (April 27, 2026) (Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Short Term Options Series Program) (SR-ISE-2026-19).

⁵ Qualifying Securities must meet the following criteria on a quarterly basis: (1) an underlying security, as measured on the last day of the prior calendar quarter, must have: (A) a market capitalization of greater than 700 billion dollars for an individual stock based on the closing price, or

noted in Interpretation and Policy .02 to Exchange Rule 404. Each calendar quarter, the Exchange applies the above criteria to individual stocks and Exchange-Traded Fund Shares to determine eligibility for the following quarter as a Qualifying Security.⁶ The Exchange makes the list of Qualifying Securities available by close of business on the first trading day of the quarter on its website.

For individual stocks on Qualifying Securities, the Exchange does not list a Monday or Wednesday Short Term Daily Expiration on a day when an Earnings Announcement occurs after market close. If a Monday or Wednesday Short Term Option Daily Expiration is listed and an Earnings Announcement is subsequently made after the listing becomes available for trading, the Exchange immediately takes one of the following actions: (1) delists the affected expiration if there is no open interest, or (2) marks the affected expiration as closing only. This is the Exchange's current practice to avoid violating the listing requirements of Interpretation and Policy .02 to Exchange Rule 404.

At this time, the Exchange proposes to codify this practice in its rule text to provide Members⁷ with clear expectations regarding listing availability. The Exchange proposes to state,

For individual stocks on Qualifying Securities, the Exchange will not list a Monday or Wednesday Short Term Option Daily Expiration on a day when an Earnings Announcement will occur after market close. If a Monday or Wednesday Short Term

(B) Assets under Management ("AUM") greater than 50 billion dollars for an Exchange-Traded Fund Share based on net asset value; (2) monthly options volume, as measured by sides traded in the last month preceding the quarter end, of greater than 10 million options; (3) a position limit of at least 250,000 contracts; and (4) participate in the Penny Interval Program. See Interpretation and Policy .02 to Exchange Rule 404.

⁶ Beginning on the second trading day in the first month of each calendar quarter, the market capitalization of individual stocks is calculated based on the closing price established on the primary exchange on the last trading day of the prior calendar quarter and the AUM for Exchange-Traded Fund Shares is calculated based on the NAV established on the primary exchange on the last trading day of the prior calendar quarter. The data establishing the volume thresholds is established by using data from the last month of the prior calendar quarter from The Options Clearing Corporation. For options listed on the first trading day of a given calendar quarter, the volume is calculated using the last month of the quarter prior to that calendar quarter. For example, if the Exchange were to list Qualifying Securities in Q3 of 2026, the Exchange would look at the volume, measured in sides, for the last month of Q2 2026 or June 2026.

⁷ The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

Option Daily Expiration is listed and an Earnings Announcement is subsequently made after the listing becomes available for trading, the Exchange will: (1) delist the affected expiration if there is no open interest; or (2) if there is open interest, designate the affected expiration as closing only. "Earnings Announcement" shall include official public quarterly or yearly earnings filed with the Securities and Exchange Commission.

Additionally, the Exchange proposes to remove current text in Interpretation and Policy .02 to Exchange Rule 404 which states that, "For Qualifying Securities, the Exchange would not list an expiry on a day where there will be an Earnings Announcement that takes place after market close." The proposed rule text makes this sentence unnecessary. Finally, the Exchange proposes to relocate the current description of an Earnings Announcement into the proposed text.

The Exchange also proposes other technical amendments to Interpretation and Policy .02 to Exchange Rule 404 to reorganize the rule text and improve readability. The Exchange proposes to relocate current Interpretation and Policy .11 to Exchange Rule 404 regarding listing Short Term Option Series in equity options, excluding Exchange-Traded Fund Shares and ETNs, which have an expiration date more than twenty-one days from the listing date to a new Interpretation and Policy .02(g) to Exchange Rule 404, additionally the Exchange proposes to slightly modify current Interpretation and Policy .11 to Exchange Rule 404 to improve readability. Also, the Exchange proposes to amend the citations in current Interpretation and Policy .11 to Exchange Rule 404 to reflect the relocation to current Interpretation and Policy .02(g) to Exchange Rule 404.

Other Amendments to Exchange Rule 404

The Exchange proposes to renumber current Interpretation and Policy .12 to Exchange Rule 404, Low Priced Stock Strike Price Interval Program, as Interpretation and Policy .11 and also proposes to renumber current Interpretation and Policy .13 to Exchange Rule 404, Monthly Options Series Program, as Interpretation and Policy .12.

Margin

Currently, Rule 1502, Margin Requirements, provides at subparagraph (a) that a Member must elect to be bound by the initial and maintenance margin requirements of either the Chicago Board of Options Exchange ("Cboe") or the New York Stock Exchange as the same may be in effect

from time to time.⁸ The Exchange proposes to update Cboe's name from "Chicago Board of Options Exchange" to "Cboe Exchange, Inc."

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that codifying its existing practice regarding the treatment of Monday and Wednesday Short Term Daily Expiration listings for Qualifying Securities promotes just and equitable principles of trade by providing Members with clear and transparent expectations concerning the availability of such listings. Under the proposed rule text, Members will have express notice that the Exchange will not list a Monday or Wednesday Short Term Daily Expiration on a day when an Earnings Announcement is scheduled to occur after market close, and that in the event an Earnings Announcement is announced after such a listing becomes available for trading, the Exchange will either delist the affected expiration if there is no open interest or mark the expiration as closing only. By memorializing this practice in the rule text, the Exchange ensures that all market participants are informed of the manner in which the Exchange administers its Short Term Option Series Program with respect to Qualifying Securities, thereby promoting fairness and transparency in the marketplace.

The Exchange further believes the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system by ensuring that Monday or Wednesday Short Term Daily Expirations are not listed or do not remain available for new opening positions in circumstances that could expose investors to heightened risks associated with post-market-close Earnings Announcements. Options expiring on a day following an afterhours Earnings Announcement may be subject to significant price volatility and uncertainty that could disadvantage

investors who are unable to react to material information disclosed after the close of trading. By formalizing the Exchange's practice of either not listing such expirations or marking them as closing only when an Earnings Announcement is announced after listing, depending on whether there is open interest, the proposal helps ensure that the options market operates in a manner that mitigates these risks and supports the integrity of the national market system.

The Exchange notes that the proposal does not raise any new or novel regulatory concerns. The proposed rule change merely codifies the Exchange's current practice, which has been in effect to ensure compliance with Interpretation and Policy .02 to Exchange Rule 404. The Exchange is not proposing to alter its existing approach to administering the Short Term Option Series Program for Qualifying Securities; rather, the Exchange seeks to formalize that approach in its rule text to enhance clarity and predictability for Members and other market participants.

The Exchange's proposal to amend citations, relocate and amend Interpretation and Policy .11 to Exchange Rule 404, and to renumber current Interpretation and Policy .12 to Exchange Rule 404, Low Priced Stock Strike Price Interval Program and Interpretation and Policy .13 to Exchange Rule 404, Monthly Options Series Program are non-substantive amendments intended to reorganize the Exchange's current rules.

The amendment to Exchange Rule 1502, Margin Requirements to change Cboe's name is a non-substantive technical amendment.

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.

With respect to intra-market competition, the Exchange does not believe the proposal will place any category of market participant at a competitive disadvantage relative to any other category of market participant. All market participants will be subject to the same rules regarding the listing and treatment of Monday and Wednesday Short Term Daily Expirations for Qualifying Securities when an Earnings Announcement occurs after market close.

With respect to inter-market competition, the Exchange does not believe the proposal will place the Exchange at a competitive disadvantage

relative to other options exchanges or impose any burden on competition among options exchanges. The proposed rule change does not alter the competitive landscape for options trading, as it merely formalizes the Exchange's current practice in rule text which practice is consistent with that of other options exchanges that have the same listing rules.

The Exchange's proposal to amend citations, relocate Interpretation and Policy .11 to Exchange Rule 404, and to renumber current Interpretation and Policy .12 to Exchange Rule 404, Low Priced Stock Strike Price Interval Program and Interpretation and Policy .13 to Exchange Rule 404, Monthly Options Series Program are non-substantive amendments intended to reorganize the Exchange's current rules.

The amendment to Exchange Rule 1502, Margin Requirements to change Cboe's name is a non-substantive technical amendment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁸ The Exchange notes that all the rules of Chapter XV of MIAA, including 1502, are incorporated by reference into the rulebooks of MIAA Emerald, MIAA Pearl, LLC and MIAA Sapphire, LLC.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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-MIAX-2026-19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-MIAX-2026-19. 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-MIAX-2026-19 and should be submitted on or before June 9, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026-09963 Filed 5-18-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105494; File No. SR-NASDAQ-2025-069]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Adopt Additional Initial Listing Criteria for Companies Primarily Operating in China

May 14, 2026.

I. Introduction

On September 4, 2025, the Nasdaq Stock Market LLC ("Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt heightened initial listing standards for companies primarily operating in the People's Republic of China ("China" or "PRC"), including the Hong Kong Special Administrative Region ("Hong Kong") and the Macau Special Administrative Region ("Macau") (collectively "China-based companies"). On September 12, 2025, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original filing in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on September 19, 2025.³ On September 25, 2025, the Commission designated a longer period within which to take action on the proposed rule change, as modified by Amendment No. 1.⁴ On December 18, 2025, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act⁵ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁶ On March 11, 2026, the Commission issued a notice of designation of a longer period of time for Commission action on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 103979 (Sept. 16, 2025), 90 FR 45298 ("Notice"). Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nasdaq-2025-069/srnasdaq2025069.htm>.

⁴ See Securities Exchange Act Release No. 104058, 90 FR 46973 (Sept. 30, 2025). The Commission designated December 18, 2025, as the date by which the Commission shall approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1. See *id.*

⁵ 15 U.S.C. 78s(b)(2)(B).

⁶ See Securities Exchange Act Release No. 104456, 90 FR 60214 (Dec. 23, 2025) ("OIP").

proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷

On April 14, 2026, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the original proposed rule change, as modified by Amendment No. 1, in its entirety.⁸ On May 1, 2026, the Exchange filed Amendment No. 3 to the proposed rule change, which superseded the original proposed rule change, as modified by Amendment No. 2, in its entirety.⁹ The Commission is publishing this notice and order to solicit comments on Amendment No. 3 in Items II and III below, which Items have been prepared by the Exchange, and to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt additional initial listing criteria for companies primarily operating in China, including the Hong Kong Special Administrative Region and the Macau Special Administrative Region. This Amendment No. 3 supersedes the original filing in its entirety.¹⁰

The text of the proposed rule change is available on the Exchange's website at

⁷ See Securities Exchange Act Release No. 104969, 91 FR 12644 (Mar. 16, 2026). The Commission designated May 17, 2026, as the date by which the Commission must issue an order approving or disapproving the proposed rule change, as modified by Amendment No. 1. See *id.*

⁸ In Amendment No. 2, the Exchange: (1) made certain clarifications to proposed Nasdaq Rule 5210(l)(iii) in relation to a company seeking to list by Direct Listing, and proposed Nasdaq Rule 5210(l)(iv) in relation to a company whose security is trading on the over-the-counter market or that is transferring its listing from another national securities exchange; (2) provided additional explanation of certain aspects of the proposal; (3) provided responses to comment letters; and (4) made other technical and non-substantive changes. The full text of Amendment No. 2 can be found on the Commission's website at <https://www.sec.gov/comments/SR-NASDAQ-2025-069/srnasdaq2025069-751908-2319014.pdf> ("Amendment No. 2").

⁹ In Amendment No. 3, the Exchange: (1) amended proposed Nasdaq Rule 5210(l)(iii) such that a China-based company seeking to list in connection with a Direct Listing will not be permitted to list on the Nasdaq Global Market ("NGM"); (2) provided additional explanation of certain aspects of the proposal; and (3) made other technical and non-substantive changes. The full text of Amendment No. 3 can be found on the Commission's website at <https://www.sec.gov/comments/SR-NASDAQ-2025-069/srnasdaq2025069-765987-2350834.pdf> ("Amendment No. 3").

¹⁰ This Amendment No. 3 is being filed in order to add additional details to the proposal, and revise the requirements applicable to Direct Listings in the discussion and proposed rule text.

¹³ 17 CFR 200.30-3(a)(12).

<https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings>, and at the principal office of the Exchange.

III. 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 [V] 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

Since 2020, there has been a sharp increase in the number of companies from the People's Republic of China ("China" or the "PRC") seeking to list in the United States. A record number of Chinese companies sought a U.S. listing in 2024 and that pace continued in 2025.¹¹ U.S. investors have increasingly sought exposure to emerging market companies as part of a diversified portfolio, and China has the most emerging market companies globally, both in terms of number and their collective market value.¹² Chinese companies have been drawn to the higher valuations, diverse investor base, greater liquidity, and overall size of the U.S. capital markets, which allow Chinese companies to raise significantly more capital than they could in their domestic markets.¹³ As a result of these

dynamics, emerging market companies have sought to raise funds in the U.S. and list on Nasdaq.

However, amidst this increase, U.S. policymakers and regulatory agencies have voiced a range of bipartisan concerns regarding the listing of Chinese companies on American securities exchanges, citing risks to investors and national security. For example, in December 2020, Congress passed the Holding Foreign Companies Accountable Act,¹⁴ which among other things, requires the removal of a company's securities from U.S. exchanges if the company's auditor cannot be fully inspected by the Public Company Accounting Oversight Board ("PCAOB") because of a position taken by an authority in a foreign jurisdiction. Before the passage of this law, Nasdaq also identified concerns around the audits of Chinese companies and, in 2020, Nasdaq proposed additional listing requirements applicable to companies from jurisdictions that do not provide the PCAOB with access to conduct inspections of public accounting firms that audit Nasdaq-listed companies.¹⁵ At the same time, Nasdaq also proposed two other changes seeking to address concerns with companies primarily operating in a Restrictive Market, including Chinese companies.¹⁶ The PCAOB announced

Aug. 29, 2025, available at <https://arc-group.com/chinese-companies-listing-united-states/>; see also ARC Group, "Trend of Chinese Companies Listing in the United States" dated July 2, 2025, available at <https://arc-group.com/chinese-companies-listing-united-states/>.

¹⁴ The Holding Foreign Companies Accountable Act requires, among other things, that the Commission identify public companies that have retained a registered public accounting firm to issue an audit report where the firm has a branch or office that: (1) is located in a foreign jurisdiction, and (2) the Public Company Accounting Oversight Board ("PCAOB") has determined that it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction. Public Law 116–222, 134 Stat. 1063 (Dec. 18, 2020).

¹⁵ Securities Exchange Act Release No. 93256 (October 4, 2021), 86 FR 56338 (October 8, 2021) (approving SR–NASDAQ–2021–007, which replaced SR–Nasdaq–2020–027, Securities Exchange Act Release No. 89027 (June 8, 2020), 85 FR 35962 (June 12, 2020)). See also Nasdaq Rule 5005(a)(37), defining a "Restrictive Market" as "a jurisdiction that does not provide the Public Company Accounting Oversight Board with access to conduct inspections of public accounting firms that audit Nasdaq-listed companies" and Rule 5210(k) imposing additional requirements on any company that principally administers its business in a Restrictive Market.

¹⁶ Securities Exchange Act Release No. 89028 (June 8, 2020), 85 FR 35967 (June 12, 2020) (SR–NASDAQ–2019–026) and Securities Exchange Act Release No. 88987 (June 2, 2020), 85 FR 34774 (June 8, 2020) (SR–NASDAQ–2020–028). These proposals were withdrawn based, in part, on concerns expressed by the Commission Staff about whether the proposals were "consistent with Section 6(b)(5)

that it was able to secure complete access to inspect and investigate audit firms in the PRC in December 2022.¹⁷

More recently, bills introduced in Congress have continued to raise bipartisan concerns about broker-dealers affiliated with China and the risks that China's financial sector poses to U.S. and global financial systems.¹⁸ In February 2025, the U.S. Government put forth the "America First Investment Policy" which outlined economic and national security concerns with certain Chinese companies seeking investments in the United States and described various actions the U.S. Government would take with respect to Chinese companies. These actions included preventing U.S. companies and investors from investing in industries that advance China's national Military-Civil Fusion strategy.¹⁹

In May 2025, the financial officers of 23 states wrote a letter to Chairman Atkins highlighting concerns with the listing of Chinese companies. The letter noted that "China's actions create an environment ripe for fraud and abuse increasing the likelihood that China-based, U.S.-listed companies will violate the disclosure, auditing, or antifraud provisions of the Securities Exchange Act."²⁰ Congress members also wrote to Chair Atkins in May 2025 expressing security and human rights concerns and provided specific

of the Exchange Act and its requirement, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination." See Letters from Arnold Golub to Vanessa A. Countryman (February 1, 2021) available at <https://www.sec.gov/comments/sr-nasdaq-2020-026/srnasdaq2020026-8324959-228601.pdf> (withdrawing SR–Nasdaq–2020–026) and <https://www.sec.gov/comments/sr-nasdaq-2020-028/srnasdaq2020028-8324961-228602.pdf> (withdrawing SR–Nasdaq–2020–028).

¹⁷ FACT SHEET: PCAOB Secures Complete Access to Inspect, Investigate Chinese Firms for First Time in History (December 15, 2022) (available at <https://pcaobus.org/news-events/news-releases/vnews-release-detail/fact-sheet-pcaob-secures-complete-access-to-inspect-investigate-chinese-firms-for-first-time-in-history>).

¹⁸ See, e.g., the PRC Broker-Dealers and Investment Advisers Moratorium Act, S.2552 (119th Congress); the China Financial Threat Mitigation Act of 2025, H.R. 1549 and S. 1113 (119th Congress).

¹⁹ According to the U.S. State Department, "Military-Civil Fusion," is an aggressive, national strategy of the Chinese Communist Party intended to enable China to develop the most technologically advanced military in the world. See also *America First Investment Policy*, The White House (February 21, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/>.

²⁰ See Letter from Adam Crum, Alaska Commissioner of Revenue, et al. to The Honorable Paul Atkins (May 20, 2025) available at <https://sfof.com/wp-content/uploads/2025/05/Delisting-Letter.pdf> (highlighting concerns arising from the PCAOB audit inspections of major accounting firms in China).

¹¹ See "Deloitte China Releases 2025 Review and 2026 Outlook for Chinese Mainland & HK IPO Markets" dated Dec. 18, 2025, available at <https://www.deloitte.com/cn/en/about/press-room/mainland-and-hk-ipo-markets-2025-review-2026-outlook.html>.

¹² China represents the largest single-country weight in major emerging market indices. For example, it accounts for approximately 25% of the total MSCI Emerging Markets Index as of March 31, 2026. The MSCI Emerging Markets Index captures large and mid-cap representation across 24 Emerging Market countries. With 1,204 constituents, the index covers approximately 85% of the free float-adjusted market capitalization in each country. See "MSCI Emerging Markets Index (USD)" available at <https://www.msci.com/documents/10199/c0db0a48-01f2-4ba9-ad01-226fd5678111#:~:text=COUNTRY%20WEIGHTS%0AChina%2023.76%25%0ATaiwan%2022.5%25%0ASouth%20Korea%2018.08%25%0AIndia%2012.82%25%0ABrazil%204.56%25%0AOther%2018.26%25>.

¹³ See PitchBook, "Chinese Companies Flock to US Exchanges Despite Heightened Tensions" dated

examples of Chinese companies under the control of the Chinese Communist Party (the “CCP”).²¹ This letter highlighted a number of concerns with Chinese companies that are not common to companies in other foreign jurisdictions. The letter asserted that because of the CCP’s authority over companies, “no company is truly private” in the PRC, and that the CCP systematically conceals its control from U.S. investors. For example, in August 2025, it was announced that the CCP had expelled former senior officials accused of making millions from insider trading based on their access to share listings for subsidiaries of Chinese state-owned companies listed on China’s two principal stock exchanges.²²

In December 2025, Chairman Atkins explained during an interview that the Commission is tightening scrutiny of Chinese firms in U.S. markets to ensure “our rules . . . are complied with and that our laws are complied with” as companies “operating in China” list shares in the United States.²³ Chairman Atkins went on to note that the SEC has identified close to a dozen Chinese companies that showed “indications of manipulative behavior” and involvement in “ramp-and-dump” schemes. He made clear that the foreign private issuers that pose a risk to U.S. investors were mainly incorporated outside of China, while the issuer maintained operations in China, or elsewhere in Asia, while the primary listing was in the U.S.²⁴

The Commission also has recognized that “China’s legal system is substantially different from the legal system in the United States and may raise risks and uncertainties concerning the intent, effect, and enforcement of its laws, rules, and regulations . . .”²⁵

²¹ Letter from Congressmen John Moolenaar and Rick Scott, et al. to The Honorable Paul Atkins (May 2, 2025) available at <https://chineselectcommittee.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/SEC%20Letter%20Updated%20compressed.pdf> (the “Congressional Letter”).

²² Richard Spencer (The Times), “China Purges Insider Traders After £30m Raid on Official’s Home” (August 20, 2025), available at <https://www.thetimes.com/world/asia/article/china-purges-insider-traders-after-30m-raid-on-officials-home-hsk0jvcgp>.

²³ See Kristen Altus (Fox Business), “SEC Chairman Paul Atkins Says Agency Tightening Scrutiny of Chinese Firms Listing in US Markets” (December 3, 2025), available at <https://www.foxbusiness.com/politics/sec-chairman-paul-atkins-says-agency-tightening-scrutiny-chinese-firms-listing-us-markets.amp>.

²⁴ *Id.*

²⁵ “Disclosure Considerations for China-Based Issuers” available at <https://www.sec.gov/rules-regulations/staff-guidance/disclosure-guidance/disclosure-considerations-china-based-issuers>. The Commission notes that staff reports, statistics, and

Investors that incur losses from malfeasance and successfully obtain judgements against Chinese companies and their officers and directors located in China may face greater difficulties in enforcing and collecting on those judgements. Further, in September 2025, the Commission announced the creation of a cross-border task force which will focus on market manipulation and other securities law violations involving foreign jurisdiction, specifically naming China as a country where governmental control and other factors pose unique investor risks.²⁶ Nasdaq shares similar concerns regarding manipulation and potential securities law violations. Additionally, it has also been reported that China’s securities regulator, the China Securities Regulatory Commission, has taken action to prohibit small company Chinese listings in the U.S. based on “concerns over excessive speculation on New York-listed Chinese stocks.”²⁷

Although concerns may exist with the trading of companies from any foreign jurisdiction, companies headquartered, incorporated or whose business is principally administered in China are more frequently the subject of trading concerns than those from other regions. For example, based on data covering the period of August 2022 to April 2025, 70% of the matters where Nasdaq referred concerns about potential manipulation to the SEC or FINRA were related to trading in Chinese emerging market companies and the number of referrals increased each year during this time period.²⁸ During the same time period, Chinese companies represented less than 10% of all Nasdaq listings.²⁹

other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person.

²⁶ See Press Release, “SEC Announces Formation of Cross-Border Task Force to Combat Fraud” (September 5, 2025) available at <https://www.sec.gov/newsroom/press-releases/2025-113-sec-announces-formation-cross-border-task-force-combat-fraud>.

²⁷ See *China Puts Brakes on US Stock Listings for Homegrown Companies*, Financial Times (February 27, 2025), available at <https://www.ft.com/content/a5640320-7ed3-47c5-b9a1-2cd600170be>.

²⁸ The total number of referrals to the SEC or FINRA was 10 in 2022, 8 in 2023, 52 in 2024, 91 in 2025. To date, 46 referrals have been made for 2026.

²⁹ Nasdaq vigorously regulates trading on its marketplace and brings appropriate enforcement action against its trading members. However, due to U.S. market structure, where trading in listed securities takes place across all equities exchanges and on off-exchange venues, Nasdaq does not have insight into all trading activity in listed securities

Nasdaq believes that these trading concerns are due, in part, to the companies listing through an initial public offering (“IPO”) or business combination with a small offering size or a low public float percentage, which, together with the other concerns identified above about companies from China, result in the company not attracting market attention nor developing sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly trading. As a result, the securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. These factors, in concert with the risks specific to Chinese companies under CCP authority, make the securities more susceptible to price manipulation by bad actors due to insider trading. The erosion of investor confidence and the risk to investors in such cases may be compounded if regulatory investigations into price manipulation, insider trading and compliance concerns are impeded. For example, U.S. investors and exchanges may not be made aware of CCP ownership in certain Chinese companies. Additionally, investor protections and remedies may be limited due to obstacles encountered by U.S. authorities in bringing or enforcing actions against entities and individuals in China involved in potentially manipulative trading activities. Collectively, these Congressional bills, letters and findings raise significant concerns, which Nasdaq shares, and support the imposition of stricter initial listing requirements for Chinese companies.³⁰

For these reasons, and as described more fully below, Nasdaq proposes to require that, in the case of an IPO, China-based companies must offer a minimum number of securities through

and must refer matters involving cross-market trading to other U.S. regulators, including the SEC and FINRA.

³⁰ Since the initial proposal of this filing, Nasdaq has also proposed and implemented additional rules, which may help address concerns raised by state and congressional leaders. See Nasdaq Rule IM-5101-3, allowing Nasdaq to use its authority under Rule 5101 to deny initial listing based on factors that make a company’s securities susceptible to manipulation. See also Exchange Act Release No. 104450 (December 18, 2025), 90 FR 60184 (December 23, 2025) (modifying Rules 5405(b)(1)(C) and 5505(b)(3)(C) to increase the minimum Market Value of Unrestricted Publicly Held Share for initial listing). This proposal seeks areas of concern that may not be adequately addressed within the existing Nasdaq rules.

a Firm Commitment Offering³¹ in the United States to public holders that will result in gross proceeds to the company of at least \$25 million. In addition, as described in detail below, Nasdaq also proposes to adopt additional requirements for Chinese companies that are currently trading on the over-the-counter (“OTC”) market or another national securities exchange and are seeking to list in connection with the rules applicable to a business combination and for companies seeking to list in connection with a Direct Listing.

Identification of Companies Based in China

Nasdaq is proposing to adopt a new initial listing requirement for companies based in China. More specifically, proposed Rule 5210(l) would apply to any company that is headquartered or incorporated in China (including the Hong Kong Special Administrative Region and the Macau Special Administrative Region), or whose business is principally administered in one of those jurisdictions. Nasdaq will determine in which jurisdiction a company is principally administered based on the analysis of the facts and circumstances, including if: (1) the company’s books and records are located in such jurisdiction; (2) at least 50% of the company’s assets are located in such jurisdiction; (3) at least 50% of the company’s revenues are derived from such jurisdiction; (4) at least 50% of the company’s directors are citizens of, or reside in, such jurisdiction; (5) at least 50% of the company’s officers are citizens of, or reside in, such jurisdiction; (6) at least 50% of the company’s employees are based in such jurisdiction; or (7) the company is controlled by, or under common control with,³² one or more persons or entities that are citizens of, reside in, or whose business is headquartered, incorporated, or principally administered in such jurisdiction.³³ Nasdaq is proposing to

broaden the criteria used for identifying which jurisdiction a company is principally administered from the current criteria in Listing Rule 5005(a)(37) to better identify Chinese companies that present risks to investors.³⁴

Nasdaq believes the risks associated with Chinese companies that have substantial participation by Chinese investors, combined with insiders retaining significant ownership, and the potential hidden ownership of the CCP cited in the Congressional Letter,³⁵ does not promote sufficient investor base and trading interest to support fair and orderly trading in the secondary market. Furthermore, as more Chinese companies seek to list on U.S. exchanges, the risk to U.S. investors due to the limited ability for U.S. regulators to conduct inspections and investigations or bring or enforce actions against entities and individuals involved in potentially manipulative trading activities in securities from Chinese companies, create compliance concerns. Therefore, the new initial listing requirements, specifically for Chinese companies, are intended to increase investor protections by strengthening the requirements for such companies to list on Nasdaq and to ensure sufficient liquidity exists for meaningful price discovery.

When determining whether a company is principally administered in one of the jurisdictions, Nasdaq will consider the seven elements holistically, recognizing that there are various factors to consider when determining which jurisdiction a company conducts its principal business activities. For example, Company X could be incorporated in Country Y and its headquarters could be located in Country Z, while at least half of its

senior management, employees, and assets are located in China. If Company X applies to list its Primary Equity Security on Nasdaq in connection with an IPO, Nasdaq would consider Company X’s business to be principally administered in China, and Company X would therefore be subject to the proposed additional requirements applicable to a Chinese company. Nasdaq would also consider a company to be principally administered in China if, for example, the company’s book and records are located in the Hong Kong Special Administrative Region and at least half of the company’s revenues are derived from the Macau Special Administrative Region. Where Nasdaq determines that a company is headquartered or incorporated in China (including the Hong Kong Special Administrative Region and the Macau Special Administrative Region), or that the company’s business is principally administered in one of those jurisdictions, and the company does not satisfy the additional requirements described, Nasdaq would deny the company’s listing application, and the company could appeal Nasdaq’s determination pursuant to the Rule 5800 Series.

Minimum Offering Size for an IPO

The substantive change being proposed is to adopt new Rule 5210(l)(i), which would require that a company that falls under Rule 5210(l) (a “China-based Issuer”) and is conducting an IPO must offer a minimum amount of securities in a Firm Commitment Offering³⁶ in the United States to Public Holders³⁷ that will result in gross proceeds to the company of at least \$25 million. This proposed amount is the same as the requirement for companies that administer their business in a Restrictive Market, while other companies seeking to list on the Nasdaq Capital Market (“NCM”) through an IPO must satisfy the \$15 million Market Value of Unrestricted Publicly Held Shares³⁸ from their offering proceeds. A

³¹ The term “Firm Commitment Offering” shall have the meaning as set forth in Rule 5005(a)(17), which means an offering of securities by participants in a selling syndicate under an agreement that imposes a financial commitment on participants in such syndicate to purchase such securities.

³² The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) shall have the same meaning as set forth in 17 CFR 240.12b–2(4), which means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

³³ Several of these factors are also already used by Nasdaq rules to determine whether a company’s business is principally administered in a

“Restrictive Market.” See Listing Rule 5005(a)(37). The additional factors that Nasdaq would consider when determining whether a business is principally administered in China are supported by Nasdaq’s experience in applying the Restrictive Market definition and SEC guidance regarding foreign private issuer status, which suggests that a foreign company may consider certain factors when determining whether a foreign company’s business is located principally in the U.S., including the locations of: the company’s principal business segments or operations; its board and shareholders’ meetings; its headquarters; and its most influential key executives (potentially a subset of all executives). See Division of Corporation Finance of the SEC, Accessing the U.S. Capital Markets—A Brief Overview for Foreign Private Issuers (February 13, 2013), available at <https://www.sec.gov/divisions/corpfin/international/foreign-private-issuers-overview.shtml>.

³⁴ Nasdaq will request information from a company during the application process where the company’s public filings do not provide sufficient information necessary to determine the applicability of a factor.

³⁵ See Congressional Letter, *supra* note 21.

³⁶ Rule 5005(a)(17) defines “Firm Commitment Offering” as “an offering of securities by participants in a selling syndicate under an agreement that imposes a financial commitment on participants in such syndicate to purchase such securities.”

³⁷ Rule 5005(a)(36) defines “Public Holders” as “holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.”

³⁸ Rule 5005(a)(46) defines “Unrestricted Publicly Held Shares” as the Publicly Held Shares that are Unrestricted Securities. Rule 5005(a)(35) defines “Publicly Held Shares” as shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent

company that falls under proposed Rule 5210(l) will also need to comply with all other applicable listing requirements.

The Exchange has observed that China-based Issuers listing on Nasdaq in connection with an IPO with an offering size below \$25 million have a higher rate of compliance concerns. Nasdaq believes that these higher rates of concern may be mitigated by requiring that the company conduct a Firm Commitment Offering of at least \$25 million. Firm Commitment Offerings typically involve a book building process that helps to generate an investor base and trading interest that promotes sufficient depth and liquidity to help support fair and orderly trading on the Exchange. Such offerings also typically involve more due diligence by the broker-dealer than would be done in connection with a best-efforts offering, which helps to ensure that third parties subject to U.S. regulatory oversight are conducting significant due diligence on the company, its registration statement and its financial statements. The Exchange believes that the proposal will help ensure that China-based Issuers seeking to list on the Exchange have sufficient investor base to support fair and orderly trading on the Exchange.

In developing the Proposal, Nasdaq analyzed the data behind its observations. An analysis of IPOs from August 2022 to April 2025 found that of the 151 China-based Issuers listed on Nasdaq through an IPO, 143 of such companies would not have qualified under proposed Rule 5210(l)(i) because they had offering amounts less than \$25 million.³⁹ Relatedly, nearly half of these 143 companies were cited for failure to comply with Nasdaq's continued listing standards.

This data illustrates the growing concerns with China-based Issuers listing on U.S. exchanges and the increased risk to U.S. investors, including the risk of quickly becoming non-compliant with the listing requirements and therefore facing delisting. Therefore, the Exchange

believes that requiring a Firm Commitment Offering with proceeds to the company of at least \$25 million will mitigate these concerns and provide greater support for a China-based Issuer's price, as determined through the offering, and will help assure that there will be sufficient liquidity, U.S. investor interest and distribution to support price discovery and fair and orderly trading on the Exchange once a security is listed.

Minimum Market Value of Publicly Held Shares for a Business Combination

In the case of a business combination, as described in Rule 5110(a) or IM-5101-2(b),⁴⁰ Nasdaq believes that such transactions when involving China-based Issuers, present similar risks to U.S. investors as IPOs of China-based Issuers. However, such a business combination would typically not involve an offering. Therefore, Nasdaq is proposing to adopt a new Rule 5210(l)(ii) that would impose a similar new requirement as applicable to IPOs but would reflect that the listing would not typically be accompanied by an offering. Specifically, proposed Rule 5210(l)(ii) would require a China-based Issuer that has gone through a business combination to have a minimum Market Value of Unrestricted Publicly Held Shares equal to at least \$25 million.

Market Value of Unrestricted Publicly Held Shares excludes securities subject to resale restrictions from the calculation of Publicly Held Shares because securities subject to resale restrictions are not freely transferrable or available for outside investors to purchase and therefore do not truly contribute to a security's liquidity upon listing. Nasdaq believes that requiring a post-business combination entity headquartered or incorporated in China, or whose business is principally administered in China, to have a minimum Market Value of Unrestricted Publicly Held Shares of at least \$25 million would help to provide an additional assurance that there are sufficient freely tradable shares and investor interest to support fair and orderly trading on the Exchange. Nasdaq believes that this will help mitigate the unique risks that China-based Issuers present to U.S. investors due to barriers on access to information and limitations

on U.S. regulators to conduct investigations or bring or enforce actions against the company and non-U.S. persons. Also mitigated are concerns about the accuracy of disclosures, accountability and access to information. Adopting this additional requirement will help prevent China-based Issuers from using a business combination to avoid the requirement being imposed on IPOs.

Direct Listings of Chinese Companies

In the case of a Direct Listing⁴¹ (as defined in Rule IM-5315-1) Nasdaq is proposing to adopt Rule 5210(l)(iii) which requires a Chinese company to meet all applicable listing requirements for the Nasdaq Global Select Market ("NGS") and the additional requirements of Rule IM-5315-1. However, a company whose business is headquartered, incorporated, or principally administered in China (including the Hong Kong Special Administrative Region and the Macau Special Administrative Region) will not be permitted to list on the Nasdaq Global Market ("NGM") or the NCM in connection with a Direct Listing, notwithstanding that the Company may meet the applicable initial listing requirements for the NGM or NCM and the additional requirements of IM-5405-1 or IM-5505-1.

Companies seeking to list through a Direct Listing are currently required to satisfy enhanced listing standards to determine compliance with the price-based listing requirements pursuant to Rules IM-5315-1 (NGS), IM-5405-1 (NGM) and IM-5505-1 (NCM). If a company's security that is seeking to list on NGS, NGM or NCM has had sustained recent trading in a Private Placement Market,⁴² Nasdaq may attribute a Market Value of Unrestricted Publicly Held Shares equal to the lesser of (i) the value calculable based on a Valuation performed by an independent valuation agent pursuant to Rule IM-5315-1(f) and (ii) the value calculable based on the most recent trading price in the Private Placement Market.⁴³

⁴¹ Pursuant to Nasdaq Rule IM-5315-1, a Direct Listing occurs when a company that wishes to list on Nasdaq has sold common equity securities in a private placement, which have not been listed on a national securities exchange or traded in the OTC market pursuant to FINRA Form 211 immediately prior to the initial pricing.

⁴² A "Private Placement Market" is defined as a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer. See Rule 5005(a)(34).

⁴³ See IM-5315-1(a)(1) (NGS), IM-5405-1(a)(1) (NGM) and IM-5505-1 (NCM). The Valuation must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. The Valuation must

of the total shares outstanding. Rule 5005(a)(47) defines "Unrestricted Securities" as securities that are not Restricted Securities and Rule 5005(a)(38) defines "Restricted Securities" as securities that are subject to resale restrictions for any reason, including, but not limited to, securities: (1) acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; (2) acquired through an employee stock benefit plan or as compensation for professional services; (3) acquired in reliance on Regulation S, which cannot be resold within the United States; (4) subject to a lockup agreement or a similar contractual restriction; or (5) considered "restricted securities" under Rule 144.

³⁹ All 151 companies were headquartered or incorporated in China.

⁴⁰ Rule 5110(a) relates to business combinations with non-Nasdaq entities resulting in a change of control. Rule IM-5101-2(b) relates to a business combination with an acquisition company, which is a company whose business plan at the time of its initial listing is to complete an IPO and engage in a merger or acquisition with one or more unidentified companies within a specific period of time.

Nasdaq believes that the price from such sustained trading in the Private Placement Market for the company's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq, and that qualifying a company based on the lower of such trading price or the Valuation helps assure that the company satisfies Nasdaq's listing requirements. Nasdaq may require a company listing on the NGS that has not had sustained recent trading in a Private Placement Market to satisfy the applicable Market Value of Unrestricted Publicly Held Shares requirement and provide a Valuation evidencing a Market Value of Publicly Held Shares of at least \$250,000,000.⁴⁴ For a company that has not had sustained recent trading in a Private Placement Market and that is applying to list on the NGM or NCM, Nasdaq will generally require the company to provide a Valuation that demonstrates a price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares that exceeds 200% of the otherwise applicable requirement.⁴⁵

Historically, Nasdaq has not observed any companies seeking to list in connection with a Direct Listing that have had sustained recent trading in a Private Placement Market. In the absence of sustained recent trading in the Private Placement Market, a company seeking to list on NGS is required to demonstrate a Market Value of Publicly Held Shares of at least \$250 million and a Market Value of Unrestricted Publicly Held Shares of at least \$100 million.⁴⁶ On the other hand, a company conducting a Direct Listing

on NGM or NCM can list with a Market Value of Unrestricted Publicly Held Shares as low as \$30 million, with that amount calculated based on an independent third-party valuation of the company. Because a Direct Listing does not raise any offering proceeds and typically does not involve an underwriter to market the transaction and help develop distribution and investor interest, Nasdaq does not believe that the NGM and NCM minimum of \$30 million in Unrestricted Publicly Held Shares is sufficient for China-based Issuers to support meaningful price discovery and fair and orderly trading. In that regard, Nasdaq notes that the valuation on which the amount of Unrestricted Publicly Held Shares is derived is subjective and the \$30 million requirement is just barely above the \$25 million offering proceeds that would be required in an IPO. As discussed above, Nasdaq believes that China-based Issuers present unique risks to U.S. investors and therefore precluding a China-based Issuer from listing through a Direct Listing on the NGM and NCM will help to ensure that the company has sufficient public float, investor base, and trading interest likely to generate depth and liquidity necessary to promote fair and orderly trading on the secondary market. Adopting this additional requirement also will help prevent companies from using a Direct Listing to avoid the requirement being imposed on IPOs.

Transfer of a Chinese Company Listing

Nasdaq notes that other markets do not have comparable requirements to what is being proposed. Therefore, China-based Issuers that do not meet the heightened requirements of proposed Rule 5210(l) may elect to list on those other markets. Nasdaq believes that a China-based Issuers initially trading on the OTC market or listing on another national securities exchange and then quickly transferring to Nasdaq may present similar risks to U.S. investors as IPOs of China-based Issuers. Therefore, Nasdaq proposes to adopt Rule 5210(l)(iv), which would require a China-based Issuer that transfers from the OTC market or from another national securities exchange to first trade on that other market for at least one year before it is eligible to list on Nasdaq. This prerequisite will provide sufficient time for the company to establish a trading history and publicly disclose the result of operations, upon which investors can rely, and minimizes the risk that companies are utilizing the OTC market or another national securities exchange solely to circumvent Nasdaq's proposed requirements for

China-based Issuers.⁴⁷ In addition, like the requirement proposed for companies listing in connection with a business combination, Nasdaq proposes that these seasoned companies, which will be listing without an offering, must have a minimum Market Value of Unrestricted Publicly Held Shares of at least \$25 million to ensure that a security to be listed on Nasdaq has adequate liquidity, distribution and U.S. investor interest. Elements of the proposed requirements for a China-based Issuer that transfers from the OTC market are similar to the current Rule 5210(k), applicable to Restrictive Market Companies,⁴⁸ and the one-year seasoning requirement for companies formed by a Reverse Merger under current Rule 5110(c)(1)(A), each of which provides for a period that a company must trade on another market before it can list on Nasdaq, and each of which was found by the Commission to be consistent with the Act.

Implementation Timeline and Other Changes

In order to provide companies with a reasonable opportunity to adjust to the proposed changes, Nasdaq is proposing a delay of 30 days after Commission approval before the changes become effective. Therefore, companies listing on or after 30 days from the date the Commission's approval order must comply with the proposed rules. This will allow companies that have taken substantial steps to list under the current rules to complete the process. Nasdaq also proposes to renumber the remainder of Rules 5210 as subsections (m) and (n) and update the cross-reference in Rule 1031(b) to ensure consistency in its rulebook.

Nasdaq will issue a denial letter where it concludes that a company is headquartered or incorporated in China (including the Hong Kong Special Administrative Region and the Macau Special Administrative Region), or whose business is principally administered in one of those jurisdictions, and the company does not meet the additional requirements applicable to its type of listing. A

be of a recent date as of the time of the approval of the Company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement. Nasdaq will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the Company had diminished since the date of the Valuation and will continue to monitor the Company and the appropriateness of relying on the Valuation up to the time of listing. Nasdaq may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.

⁴⁴ See IM-5315-1(b).

⁴⁵ See IM-5405-1(a)(2) (NGM); Rule IM-5505-1(a)(2) (NCM).

⁴⁶ A company can list with a Market Value of Unrestricted Publicly Held Shares of at least \$100 million if the company also has stockholders' equity of at least \$110 million; otherwise the company is required to have Market Value of Unrestricted Publicly Held Shares of at least \$110 million. See Rule 5315(f)(2).

⁴⁷ Companies trading in the OTC Market at the time of application must also satisfy a minimum average daily trading volume before listing. See Listing Rules 5405(a)(4) and 5505(a)(5).

⁴⁸ Unlike the requirement for Restrictive Markets, the proposed rules do not include an alternative allowing companies to list if the proceeds from the offering would represent at least 25% of the Company's post-offering Market Value of Listed Securities. In applying that alternative in connection with the Restrictive Market requirements, Nasdaq observed that the alternative allowed smaller companies to list without achieving the rule's liquidity objectives of supporting meaningful price discovery.

company can request a review of that denial letter pursuant to Rule 5815.

Comment Letters

The Commission received several comment letters in response to its solicitation of comments about the proposed changes. Three commenters expressed general support for the proposal⁴⁹ while others expressed concern that the proposal unfairly singles out China-based companies and is inconsistent with recent U.S.-China regulatory cooperation.⁵⁰

Of the commenters that expressed general support, one commenter proposed certain modifications to the proposal, noting that Chinese citizenship alone does not signify a regulatory risk. The commenter asserted that the current proposal “risks unintentionally capturing issuers that do not present the same regulatory concerns” for which the proposal was designed to address.⁵¹ This commenter suggested that the heightened requirements should apply only to companies “principally operating in China, rather than issuers that are based in the U.S. simply because their founders, controlling persons, directors, or officers are Chinese citizens.”⁵² This commenter also suggested extending the transition period for compliance with the proposal from 30 days to 60 days for issuers with pending initial listing applications.⁵³ Another commenter that supported the proposal recommended that “the increased standards should apply to companies based in additional foreign jurisdictions where it is

determined there are elevated levels of fraud” to prevent fraudsters from “simply mov[ing] to other jurisdictions where it’s even easier to commit fraud.”⁵⁴ Finally, a third commenter in general support of the proposal noted that the proposal takes “meaningful steps to preserve market integrity and protect U.S. investors from potential losses associated with the smallest microcap Chinese companies.”⁵⁵ This commenter also suggests “expanding the application of the proposed rule to the smallest microcap companies generally, including those companies incorporated in the Cayman Islands.”⁵⁶

Nasdaq recognizes that there are various factors to consider when determining where a company conducts its principal business activities and believes that the location and citizenship of the company’s founders, controlling persons, directors, or officers is an important factor. The presence of one factor will not automatically result in a determination that the issuer is a China-based Issuer. Rather, as discussed above, Nasdaq will consider the seven elements holistically when determining whether a company is principally administered in one of the subject jurisdictions and the location and citizenship of associated persons will be considered in the context of the other factors.

With respect to the request for a longer transition period, Nasdaq notes that the initial proposal was published in September 2025, which has provided issuers with pending listing applications with sufficient time to prepare for the heightened listing standards. Therefore, Nasdaq is not amending the transition period for compliance. Additionally, Nasdaq intends that the proposal will capture China-based Issuers that are typically cited for compliance issues. Based on the data discussed above, Nasdaq does not believe that a country-specific rule is necessary for any other country at this time, and that its current listing standards, including rules recently adopted to increase the initial listing requirements and accelerate delisting of non-compliant companies, are sufficient to address the commenters’ concerns related to companies in other jurisdictions.⁵⁷ Nasdaq is limiting the proposed listing standards to China-based Issuers based on the concerns that

Nasdaq, along with U.S. policymakers and regulatory agencies, have observed with such companies. Further, Nasdaq notes that it recently adopted Listing Rule IM-5101-3, which provides greater ability for Nasdaq to deny listing to companies from other jurisdictions that meet all stated listing requirements based on, among other things, considerations related to the company’s advisors (including auditors, underwriters, law firms, brokers, clearing firms, or other professional service providers) or concerns Nasdaq has identified with other previously listed companies that are similarly situated to the company. Additionally, Listing Rule IM-5101-3 provides a qualitative description of factors related to Nasdaq’s use of discretion in denying an initial listing, including where a company is located, and whether the company is in a jurisdiction where there are limited legal remedies to U.S. shareholders. Nasdaq believes Listing Rule IM-5101-3 helps to address commenters’ desire to extend the proposal to other jurisdictions. However, unlike Rule IM-5101-3, the proposed rule specifies a minimum threshold of \$25 million Firm Commitment Offering for IPOs and a \$25 million minimum Market Value of Unrestricted Publicly Held Shares following the business combination, for Chinese companies. Nasdaq believes the \$25 million minimum threshold is reasonable and necessary because the data has shown that China-based Issuers below the threshold have a higher rate of compliance concerns, which may be mitigated by a higher threshold because Firm Commitment Offerings typically generates an investor base and trading interest that promotes sufficient depth and liquidity to help support fair and orderly trading on the Exchange. Additionally, Firm Commitment Offerings typically involve more due diligence by the broker-dealer which helps to ensure that third parties subject to U.S. regulatory oversight are conducting significant due diligence on the company. Nasdaq will also continue to monitor and will increase listing standards to additional specific countries if necessary.

Of the commenters in opposition, most raised concerns that the proposal violates Section 6(b)(5) of the Act by permitting unfair discrimination among issuers by singling out China-based Issuers and deterring qualified issuers from listing on the Exchange.⁵⁸ Typical

⁴⁹ See Letter from Emmanuel Tamrat, Senior Research Analyst, Council of Institutional Investors, dated Oct. 10, 2025 (“CII Letter 1”); see also Letter from Emmanuel Tamrat, Senior Research Analyst, Council of Institutional Investors, dated Jan. 13, 2026 (“CII Letter 2”); Letter from Jeffrey Starr, Managing Director, Head of Operations, Charles Schwab & Co., dated Dec. 16, 2025 (“Schwab Letter”); Letter from Hunter Taubman Fischer & Li LLC, dated Sept. 16, 2025 (“HTFL Letter”).

⁵⁰ See Letter from Beijing Guo Huan Law Firm, dated Jan. 4, 2026 (“Beijing Guo Han Letter”); Letter from Joseph Wilson, Esq. at 2–3, Bevilacqua PLLC, dated Oct. 10, 2025 (“Bevilacqua Letter 1”); Letter from Joseph Wilson, Esq. at 3, Bevilacqua PLLC, dated Jan. 13, 2026 (“Bevilacqua Letter 2”); Letter from USA World Management Group LTD, dated Dec. 30, 2025 (“USA World Letter”); Letter from US International Finance Foundation, dated Jan. 4, 2026 (“USIFF Letter”); Letter from Sen Time Studio, dated Dec. 28, 2025 (“SEN Time Studio Letter”); Hong Kong United Business Consulting Limited, dated Jan. 13, 2026 (“HKUBC Letter”); Letter from HIGO Global Technology, Inc. dated Jan. (“HIGO Letter”); Letter from US Unicorn Foundation Inc., dated Dec. 19, 2025 (“US Unicorn Letter”); Letter from China Listed Companies Association, dated Jan. 14, 2026 (“China LCA Letter”); Letter from Cecilia, dated Jan. 4, 2026 (“Cecilia Letter”).

⁵¹ See HTFL Letter at 2.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See Schwab Letter at 4.

⁵⁵ See CII Letter 2 at 2.

⁵⁶ *Id.* at 2–4.

⁵⁷ See *supra*, note 30; Exchange Act Release No. 104318 (December 5, 2025), 90 FR 57225 (December 10, 2025) (modifying the compliance periods available when a security’s closing bid price is below \$0.10).

⁵⁸ See China LCA Letter; Bevilacqua Letter; HKUBC Letter; Beijing Guo Han Letter at 2–3; USA World Letter; SEN Time Studio Letter at 4.

of these comments, one commenter stated that the proposal “would be unlawful and make for bad policy,” is “not necessary or appropriate to protect national security” and is “anti-competitive as it discriminates against certain Chinese issuers imposing additional, more onerous listing criteria on them than are imposed on other foreign issuers.”⁵⁹ Other commenters also suggested that Nasdaq should apply a more neutral and metrics-based alternative.⁶⁰

While the proposal imposes heightened initial listing requirements on China-based Issuers, Nasdaq believes the proposal is consistent with the requirements of Section 6(b)(5) of the Act, which requires that an Exchange’s rules be designed to prohibit unfair discrimination. As outlined above, Nasdaq and U.S. regulators and policymakers have identified specific and serious concerns with companies that principally operate in China, which increase the risks to investors and make the protection of investors more difficult. These concerns include heightened risk of fraud and manipulative behavior, hidden CCP ownership and control, and greater difficulties enforcing laws and rules and collecting on judgements. Thus, while the proposed rules would provide for heightened requirements for companies that principally operate in China, those rules are not unfairly discriminatory and would enhance investor protection, which is a central purpose of the Act.

Conclusion

Nasdaq believes that the U.S. exchanges can provide U.S. investors with opportunities to diversify their portfolio by providing exposure to emerging market companies in China. However, due to heightened risks identified in the trading of these companies’ securities, Nasdaq also believes it is necessary to increase the requirements for these companies to list to help provide better liquidity in their securities. Nasdaq believes that the proposed rule changes will enhance the liquidity available in China-based Issuers listing in the United States, thereby making trading in the secondary market more difficult for bad actors to manipulate while helping to balance the desirability of China-based Issuers to access U.S. markets with necessary protections for investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Further, the Exchange believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has previously opined on the importance of meaningful listing standards for the protection of investors and the public interest.⁶³ In particular, the Commission has stated:

The development and enforcement of meaningful listing standards for an exchange is of critical importance to financial markets and the investing public. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity to promote fair and orderly markets.⁶⁴

Nasdaq believes that the factors for determining whether a company is based in China will assist Nasdaq in determining which companies should be subject to the proposed new standard, which will prevent fraudulent and manipulative acts and practices. Nasdaq also believes that the factors are not unfairly discriminatory. The proposed factors used to determine if a company is headquartered or incorporated in China (including the Hong Kong Special Administrative Region and the Macau Special Administrative Region), or whose business is principally administered in one of those jurisdictions, are similar to the factors contained in current Rule 5005(a)(37) and adds additional factors because, as discussed above, China-based Issuers carry a risk of insufficient investor base and trading interest to support fair and orderly trading in the secondary market due to substantial participation by Chinese investors, combined with insiders retaining

significant ownership, and the potential hidden ownership of the CCP cited in the Congressional Letter. Moreover, Nasdaq will consider the seven elements holistically when determining whether a company is principally administered in one of the jurisdictions. Nasdaq therefore believes that these companies should be subject to heightened standards for listing on Nasdaq.

Nasdaq believes that requiring a \$25 million minimum offering size for China-based Issuers seeking to list on Nasdaq through an IPO or \$25 million in Unrestricted Publicly Held Shares for China-based Issuers seeking to list on Nasdaq through a business combination or transfer from the OTC market or another national securities exchange may decrease the number of companies subsequently cited for compliance issues and help ensure that a security of a China-based Issuer to be listed on Nasdaq has adequate liquidity and distribution to support fair and orderly trading in the secondary market, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

Additionally, Nasdaq believes that allowing China-based Issuers to list on the NGS, rather than the NGM or NCM, in connection with a Direct Listing, will ensure that such companies satisfy higher listing requirements, including the minimum amount of Publicly Held Shares and Market Value of Unrestricted Publicly Held Shares, which will help to ensure that the security has sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly trading, thereby protecting investors and the public interest.

Nasdaq also believes that extending the \$25 million minimum offering size and the requirement for the company to have traded for at least one year when transferring from the OTC market or another exchange aligns with similar listing requirements.⁶⁵

While the proposals apply only to China-based Issuers, the Exchange believes that the proposals are not designed to permit unfair discrimination among companies because Nasdaq believes that trading in China-based Issuers presents unique potential risks to U.S. investors, including heightened susceptibility to fraud and manipulation by bad actors, hidden CCP ownership and control, and

⁵⁹ See Bevilacqua Letter.

⁶⁰ See China LCA Letter at 2–3; Bevilacqua Letter at 3–4; HKUBC Letter at 3; USA World Letter at 2–3 (suggesting increasing listing standards for “all issuers regardless of geographic location,” and “establish[ing] objective liquidity metrics applicable to all issuers.”).

⁶¹ 15 U.S.C. 78f(b).

⁶² 15 U.S.C. 78f(b)(5).

⁶³ Securities Exchange Act Release No. 102622 (March 12, 2025), 90 FR 12608 (March 18, 2025) (approving SR-Nasdaq–2024–084 adopting initial listing liquidity requirements for companies applying to list or uplist on the NGM or NCM).

⁶⁴ *Id.* at 12609.

⁶⁵ See Rule 5110(c)(1)(A) (requiring a company that completed a Reverse Merger, as defined in Rule 5005(a)(39) to trade on another market for at least one year before being eligible to apply to Nasdaq) and 5210(k) (requiring companies from a Restrictive Market, as defined in Rule 5005(a)(39) to satisfy heightened listing requirements).

greater difficulties enforcing laws and rules and collecting on judgments. Nasdaq believes that companies with a Firm Commitment Offering size or a Market Value of Unrestricted Publicly Held Shares below \$25 million may not develop a sufficient investor base and trading interest to provide the depth and liquidity necessary to promote fair and orderly trading, resulting in a security that is illiquid thereby amplifying these risks.

Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices. Price manipulation is a particular concern when insiders retain a significant ownership portion of the company. Therefore, Nasdaq believes that it is not unfairly discriminatory to treat China-based Issuers differently under these proposals because the proposed rules will help ensure that securities of a China-based Issuer listed on Nasdaq have sufficient investor base and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets, thereby promoting investor protection and the public interest.

Additionally, elements of these proposals are similar to the current Rule 5210(k), applicable to Restrictive Market Companies, and the one-year seasoning requirement for companies formed by a Reverse Merger under current Rule 5110(c)(1)(A), each of which was found by the Commission to be consistent with the Act.

Lastly, Nasdaq believes that implementing a 30-day delay from the date of the Commission's approval order before the changes become effective provides companies with an opportunity to adjust to the proposed changes. The delay is not unfairly discriminatory because it will allow companies that have taken substantial steps to list under the current rules to complete the process. Additionally, Nasdaq also proposes to renumber the remainder of Rule 5210 as subsections (m) and (n) and update the cross reference to Rule 5210(m) found in Rule 1031(b) to ensure consistency in its rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. While the proposed rule changes will apply only to companies primarily operating in China (including the Hong Kong Special Administrative Region and the Macau

Special Administrative Region), Nasdaq, Congress, state financial officers and the SEC have identified specific concerns with such companies that make the imposition of additional initial listing criteria on such companies appropriate to enhance investor protection, which is a central purpose of the Act. Any impact on competition, either among listed companies or between exchanges, is incidental to that purpose. As noted above, other markets do not have comparable requirements to what is being proposed, and therefore China-based Issuers may elect to list on those other markets

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.⁶⁶

IV. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶⁷ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act,⁶⁸ which requires, among other things, 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 remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and Section 6(b)(8) of the Act,⁶⁹ which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

The Exchange proposes to adopt heightened initial listing standards for China-based companies conducting an IPO, engaged in a business combination, or transferring from another trading venue to list on Nasdaq. The Exchange

states that China-based companies present unique risks to U.S. investors, and the heightened requirements for China-based companies to list will help provide better liquidity in their securities.⁷⁰ In addition, the Exchange has proposed to prohibit Direct Listings on the NGM and NCM of securities issued by China-based companies due to concerns regarding liquidity and fair and orderly trading.⁷¹

The Commission has consistently recognized that the development and enforcement of meaningful listing standards⁷² by an exchange is of critical importance to financial markets and the investing public.⁷³ Among other things, the Commission has stated that listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to bona fide companies that have or will have sufficient public float, investor base, and trading interest to provide the depth and liquidity to promote fair and orderly markets.⁷⁴ Meaningful listing standards are also important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.⁷⁵

⁷⁰ See Amendment No. 3, *supra* note 9, at 24–25.

⁷¹ See *id.* at 18.

⁷² This reference to “listing standards” is referring to both initial and continued listing standards.

⁷³ See, e.g., Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR–NYSE–2008–17).

⁷⁴ See, e.g., Securities Exchange Act Release Nos. 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR–NYSE–2017–31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR–NYSE–2017–11); 65708 (Nov. 8, 2011), 76 FR 70799, 70802 (Nov. 15, 2011) (SR–NASDAQ–2011–073); 63607 (Dec. 23, 2010), 75 FR 82420, 82422 (Dec. 30, 2010) (SR–NASDAQ–2010–137); and 57785 (May 6, 2008), 73 FR 27597, 27599 (May 13, 2008) (SR–NYSE–2008–17). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. See, e.g., Securities Exchange Act Release Nos. 82627 (Feb. 2, 2018), 83 FR 5650, 5633, n.53 (Feb. 8, 2018) (SR–NYSE–2017–30); 87648 (Dec. 3, 2019), 84 FR 67308, 67314, n.42 (Dec. 9, 2019) (SR–NASDAQ–2019–059); and 88716 (Apr. 21, 2020), 85 FR 23393, 23395, n.22 (Apr. 27, 2020) (SR–NASDAQ–2020–001).

⁷⁵ See, e.g., Securities Exchange Act Release Nos. 88716 (Apr. 21, 2020), 85 FR 23393 (Apr. 27, 2020) (SR–NASDAQ–2020–001); 88389 (Mar. 16, 2020), 85 FR 16163 (Mar. 20, 2020) (SR–NASDAQ–2019–089). See also Securities Exchange Act Release No. 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR–NYSE–2017–31) (stating that “[a]dequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market” and that “[o]nce a security has been

⁶⁶ The Commission notes that this section refers to Nasdaq not soliciting or receiving comments directly.

⁶⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶⁸ 15 U.S.C. 78f(b)(5).

⁶⁹ 15 U.S.C. 78f(b)(8).

Focus on China-Based Companies

The Exchange's proposal provides for differential treatment of China-based companies seeking Exchange listing as compared to companies based in the United States or other foreign jurisdictions. The Exchange states that trading in China-based companies presents unique potential risk to U.S. investors, and China-based companies increasingly have sought listings in the United States as U.S. investors have sought exposure to companies from emerging markets, such as China.⁷⁶ The Exchange also states that U.S. lawmakers and regulators have identified concerns with the listing of China-based companies, including indications of manipulative trading of their securities, difficulty enforcing and collecting on judgments on officers and directors in China, and CCP control of China-based companies.⁷⁷ The Exchange states that, collectively, these findings raise significant concerns, which Nasdaq shares, and support the imposition of stricter initial listing standards for China-based companies.⁷⁸

The Exchange further states that China-based companies are more frequently the subject of trading and non-compliance concerns than similarly-situated companies from other regions.⁷⁹ According to the Exchange, during the period of August 2022 to April 2025, it observed that nearly 70% of the matters where Nasdaq referred concerns about potential manipulation to the Commission or FINRA were related to trading in Chinese emerging market companies and the number of referrals increased during this time period.⁸⁰ During the same time period, Chinese companies represented less than 10% of all Nasdaq listings.⁸¹ The Exchange states that it believes that these trading concerns are due, in part, to China-based companies listing through an IPO or business combination that have certain characteristics, such as a small offering size or a low public float percentage, which in combination with the other concerns identified about China-based companies may result in the companies not attracting market attention or developing sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly

trading.⁸² The Exchange states that such securities may trade infrequently, in a more volatile manner, and with a wider bid-ask spread, all of which may result in trading at prices that may not reflect their true market value.⁸³ Furthermore, the Exchange states that these securities may be more susceptible to price manipulation by bad actors.⁸⁴

The Exchange states that the risk to investors related to low-priced securities issued by China-based companies may be compounded because regulatory investigations into price manipulation, insider trading, and compliance concerns may be impeded, and investor protections and remedies may be limited in such cases, due to obstacles in bringing or enforcing actions against entities and individuals in China involved in potentially manipulative trading activities.⁸⁵ The Exchange states that therefore it believes that the proposal to impose heightened initial listing standards would enhance the liquidity available in China-based companies listing in the U.S., thereby making trading in the secondary market more difficult to manipulate and balancing access to China-based companies with the protection of investors.⁸⁶

Some commenters expressed general support for Nasdaq's ongoing efforts to enhance its listing standards, including the current proposal.⁸⁷ One commenter stated that it supports "Nasdaq for taking action to preserve market integrity and protect U.S. investors from potential losses in shareholder value resulting from the high volatility and potential market manipulation of the smallest microcap Chinese companies."⁸⁸ This commenter stated that based on its August 2025 report, certain China-based companies circumvent restrictions on foreign investment in strategically sensitive sectors and "U.S. rules" by using the variable interest entity ("VIE") structure.⁸⁹ This commenter also stated that these companies are "beyond the reach of enforcement actions by U.S. authorities;" and China-based companies that employ the VIE structure have been associated with "widely reported controversies that

resulted in delistings and/or losses in shareholder value."⁹⁰

Several commenters raised concerns that the proposal is overly broad and unfairly discriminatory against China-based companies.⁹¹ One of these commenters stated that the proposal "would be unlawful," is "not necessary or appropriate to protect national security," and is "anti-competitive as it discriminates against certain Chinese issuers."⁹² Several commenters stated that the proposal does not provide adequate justification for why it does not constitute unfair discrimination.⁹³ One commenter stated that the proposal would "deter reputable, rule-abiding enterprises from listing on the Exchange."⁹⁴ Another commenter stated that the proposal would "establish a dangerous precedent allowing national securities exchanges to impose heightened listing standards

⁹⁰ *Id.* at 3.

⁹¹ See Bevilacqua Letter 1 at 2–3; US Unicorn Letter at 1; HIGO Letter at 1; SEN Time Studio Letter at 1–2; USA World Letter at 2; USIFF Letter at 1–2; Letter from United Securities Legal Group, APC, The State Bar of California, dated Jan. 4, 2026 ("United Securities Letter") at 2; Cecilia Letter at 1; Guo Huan Letter at 1–4; Bevilacqua Letter 2 at 2–4; China LCA Letter at 1. One commenter stated that the Commission should strike Nasdaq's response to comment letters in Amendment No. 2 because Nasdaq filed Amendment No. 2 after the deadline for rebuttal comments set forth in the OIP. See Letter from Joseph D. Wilson, Esq. Bevilacqua PLLC, dated Apr. 21, 2026. Although the Commission acknowledges that Nasdaq filed Amendment No. 2 after January 27, 2026, which was the deadline for rebuttal comments set forth in the OIP, the Commission, at its discretion, has traditionally considered comments submitted after a comment period closes but before final action has been taken on a proposed rule change. Accordingly, in approving this proposal, the Commission has considered the Exchange's statements, including responses to comment letters, in Amendment No. 3, which superseded and replaced Amendment No. 2 in its entirety.

⁹² See Bevilacqua Letter 1 at 2–3. This commenter stated that allowing larger companies to raise more capital would pose a greater threat to national security; and that impediments to regulatory investigations or actions may occur in foreign countries other than China. See Bevilacqua Letter 2 at 3. Another commenter stated that "Congress and the Executive Branch addressed [national security and geopolitical concerns] through targeted statutes," and an exchange listing rule is not an appropriate venue to address these issues. See United Securities Letter at 2.

⁹³ See Bevilacqua Letter 1 at 2; SEN Time Studio Letter at 1–2. A commenter recommended that Nasdaq should conduct and publicly disclose a quantitative assessment of the anticipated impact of the proposed rule. See SEN Time Studio Letter at 5. Another commenter stated that the Commission and FINRA referral statistics "[do] not establish causation unique to Chinese jurisdiction," and that the Commission "has previously rejected SRO attempts to impose jurisdiction-specific restrictions when the risks are not demonstrably unique." United Securities Letter at 3.

⁹⁴ HIGO Letter at 1. Another commenter stated that the proposal "may exclude high-quality, compliant small and medium-sized companies." SEN Time Studio Letter at 5.

approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue . . . so that fair and orderly markets can be maintained").

⁷⁶ See Amendment No. 3, *supra* note 9, at 4, 24.

⁷⁷ See *id.* at 4–9.

⁷⁸ See *id.* at 9–10.

⁷⁹ See *id.* at 8.

⁸⁰ See *id.*

⁸¹ See *id.*

⁸² See *id.* at 8–9.

⁸³ See *id.* at 9.

⁸⁴ See *id.*

⁸⁵ See *id.*

⁸⁶ See *id.* at 24–25.

⁸⁷ See CII Letter 1; CII Letter 2; Schwab Letter at 1. See also HTFL Letter at 1.

⁸⁸ CII Letter 1 at 2.

⁸⁹ See CII Letter 2 at 3. See also *id.* at 5–44 (attaching Emmanuel Tamrat, Senior Research Analyst, CII, Behind the Veil: Risks of Chinese Companies and the VIE Structure, Aug. 2025).

on issuers from any disfavored jurisdiction.”⁹⁵

In response to these comments, the Exchange states that Nasdaq and U.S. regulators and policymakers have identified specific and serious concerns with China-based companies.⁹⁶ These concerns include heightened risk of fraud and manipulative behavior, hidden CCP ownership and control, and greater difficulties enforcing laws and rules and collecting on judgments.⁹⁷ Accordingly, the Exchange states that it believes imposing heightened initial listing standards for China-based companies is not unfairly discriminatory and will enhance investor protection.⁹⁸

The Exchange has identified unique risks regarding China-based companies, including a heightened susceptibility to manipulative trading, potential governmental control of companies, and the difficulties that may be presented when enforcing laws and rules and collecting on judgments on entities within China. In addition, the Exchange provided information observing that nearly 70% of the matters the Exchange referred to the Commission or FINRA based on concerns about potential manipulation were related to trading in Chinese emerging market companies, while during the same period of time, Chinese companies represented less than 10% of all Nasdaq listings.⁹⁹ This information demonstrates that the Exchange has made a disproportionate amount of referrals in recent years regarding potentially manipulative trading concerning China-based companies, supporting its belief that China-based companies pose a heightened risk to investors. The Commission agrees that the risks to U.S. investors associated with listing China-based companies identified by the Exchange justify the imposition of heightened initial listing standards on China-based companies; therefore, the Commission concludes that the proposal is appropriately targeted in a manner that is not unfairly discriminatory, consistent with Section 6(b)(5) of the Act, and will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, consistent with Section 6(b)(8) of the Act.

One commenter that supported the proposal and acknowledged that the “rate of fraud associated with Chinese firms is certainly high,” stated that “the

increased standards should apply to companies based in additional foreign jurisdictions where it is determined there are elevated levels of fraud.”¹⁰⁰ This commenter stated that, “[o]therwise, fraudsters will simply move to other jurisdictions where it’s even easier to commit fraud” and that “other jurisdictions also see many instances of fraudulent activities.”¹⁰¹ Another commenter that supported the proposal suggested that the Exchange expand the application of the proposed rule to “small microcap companies,” including those companies incorporated in the Cayman Islands.¹⁰²

In response, the Exchange states that it does not believe that a country-specific rule is necessary for any other country at this time and that its current listing standards, including recently adopted changes to increase initial listing standards and accelerate the delisting of non-compliant companies, are sufficient to address commenters’ concerns related to companies in other jurisdictions.¹⁰³ The Exchange also states that recently-adopted Nasdaq Rule IM-5101-3 provides Nasdaq with greater ability to deny listing to a company from another jurisdiction based on, among other things, considerations related to the company’s advisors or concerns Nasdaq has identified with other similarly-situated companies.¹⁰⁴ The Exchange states that Nasdaq Rule IM-5101-3 also provides a qualitative description of factors related to Nasdaq’s use of discretion in denying an initial listing, including where a company is located and whether the company is in a jurisdiction where there are limited legal remedies available to U.S. investors.¹⁰⁵ The Exchange believes that Nasdaq Rule IM-5101-3 helps to address commenters’ desires to extend the proposal to other jurisdictions.¹⁰⁶ Furthermore, the Exchange states that it will continue to monitor and will increase listing standards for companies from additional countries, as necessary.¹⁰⁷

Despite the suggestions by commenters to apply heightened listing standards to companies from other jurisdictions, the Commission must approve the proposal if it finds that the proposal is consistent with the Act and

rules thereunder.¹⁰⁸ The Exchange may exercise its discretion, through application of Nasdaq Rule 5101 and Nasdaq Rule IM-5101-3, to deny initial listing to a company based on factors that make a company’s securities susceptible to manipulation, including where the company is located (with such location not being limited to China) and whether the expected public float and dissemination of the share distribution raises concerns about adequate liquidity and potential concentration. While the Exchange’s general discretionary authority thus allows for heightened scrutiny of a company from another foreign jurisdiction if the Exchange identifies an elevated level of fraud involving companies in that jurisdiction, the unique and persistent risks presented by China-based companies, as discussed above, justify the articulation of clear heightened listing standards for China-based companies as reasonably designed means to address those risks. As such, the Commission finds that the proposal is not unfairly discriminatory and is designed to prevent fraudulent and manipulative acts, consistent with Section 6(b)(5) of the Act, and will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, consistent with Section 6(b)(8) of the Act.

Identification of China-Based Companies

The Exchange proposes to apply heightened initial listing standards to China-based companies that are headquartered or incorporated in China (including Hong Kong and Macau), or whose business is principally administered in one of these jurisdictions. Proposed Nasdaq Rule 5210(l) provides that the Exchange will determine in which jurisdiction a company is principally administered based on an analysis of the facts and circumstances, including seven enumerated elements.¹⁰⁹

The Exchange states that it will consider these elements holistically.¹¹⁰ Several of these elements are already used to determine whether a company’s business is principally administered in a Restrictive Market under Nasdaq Rule 5005(a)(37).¹¹¹ The Exchange states that it is proposing to broaden its criteria from the current criteria under Nasdaq Rule 5005(a)(37) and that the additional

¹⁰⁰ Schwab Letter at 4.

¹⁰¹ *Id.* One commenter, who opposed the proposal, stated that market volatility and price manipulation concerns are not unique to any geographic region. See USA World Letter at 2–3.

¹⁰² See CII Letter 2 at 2–4.

¹⁰³ See Amendment No. 3, *supra* note 9, at 22.

¹⁰⁴ See *id.* at 22.

¹⁰⁵ See *id.* at 23.

¹⁰⁶ See *id.*

¹⁰⁷ See *id.*

¹⁰⁸ 15 U.S.C. 78s(b)(2)(C)(i).

¹⁰⁹ See Amendment No. 3, *supra* note 9, at 10.

¹¹⁰ See *id.* at 12.

¹¹¹ See *id.* at 11, n.26. See also Nasdaq Rule 5005(a)(37).

⁹⁵ United Securities Letter at 4.

⁹⁶ See Amendment No. 3, *supra* note 9, at 24.

⁹⁷ See *id.*

⁹⁸ See *id.*

⁹⁹ See *supra* notes 80–81 and accompanying text.

elements are supported by Nasdaq's experience in applying the Restrictive Market definition and Commission staff guidance regarding foreign private issuers.¹¹² According to the Exchange, the use of the factors for determining whether a company is based in China will assist Nasdaq in determining which companies should be subject to the proposed new standard, which will prevent fraudulent and manipulative acts and practices.¹¹³ The Exchange also states that it believes that the factors are not unfairly discriminatory.¹¹⁴ The Exchange states that if it determines that a company is a China-based company and denies such company's listing application for failure to satisfy the proposed heightened initial listing standards, the company could appeal Nasdaq's determination pursuant to the Nasdaq Rule 5800 Series.¹¹⁵

One commenter generally supported the proposal, but expressed concern that the proposed scope of issuers that would be considered to be China-based companies "could capture issuers that are incorporated, headquartered, and operating entirely in the United States, or in other transparent jurisdictions, merely because (i) they were founded or controlled by entrepreneurs who are Chinese citizens or (ii) 50% of their officers or directors are Chinese citizens, even if such individuals have long resided in the United States."¹¹⁶ This commenter stated that the current proposal "risks unintentionally capturing issuers that do not present the same regulatory concerns" as the concerns that the proposal was designed to address and suggested that the heightened requirements in the proposal only apply to issuers "principally operating in China, rather than issuers that are based in the U.S. simply because their founders, controlling persons, directors, or officers are Chinese citizens."¹¹⁷

In response, the Exchange states that the location and citizenship of a company's founders and leadership is

an important factor in determining where a company conducts its principal business activities.¹¹⁸ The Exchange also explains that location and citizenship of such persons will be considered in the context of other elements in making its determination, and the presence of one element would not necessarily result in a determination that the issuer is China-based.¹¹⁹

The Exchange's consideration of where a company is principally administered is reasonably designed to prevent companies from evading heightened initial listing standards imposed on China-based companies by moving the location of their headquarters or jurisdiction in which they are incorporated and avoids differential treatment of companies that present similar risks. The specific elements that will be used to determine whether an issuer has a business that is principally administered in China are substantially similar to the elements in Nasdaq's rules that are used to determine whether a business is principally administered in a Restrictive Market, with additional elements that the Exchange states that it added based on its experience applying the Restrictive Market definition.¹²⁰ The application of these elements in a holistic manner, rather than an automatic classification of a company based on a single element, will allow the Exchange to use its judgment to determine whether or not a particular company's ties with China are significant enough to indicate that the company principally administers its business in China. Accordingly, the specific elements proposed by the Exchange for determining whether an issuer has a business that is principally administered in China and thus will be considered a China-based company, which the Exchange will consider holistically based on the facts and circumstances, should help to ensure that the Exchange applies the heightened initial listing standards to companies in a manner that is not unfairly discriminatory, consistent with Section 6(b)(5) of the Act, and will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, consistent with Section 6(b)(8) of the Act.

¹¹⁸ See Amendment No. 3, *supra* note 9, at 21–22.

¹¹⁹ See *id.* at 22.

¹²⁰ See *id.* at 5 (citing to Securities Exchange Act Release No. 93256 (Oct. 4, 2021), 86 FR 56338 (Oct. 8, 2021) (SR–NASDAQ–2021–007)).

Heightened Initial Listing Standards for IPOs, Business Combinations, and Transfers

The Exchange proposes heightened initial listing standards that require (i) a China-based company conducting an IPO to offer a minimum amount of securities in the U.S. to Public Holders in a Firm Commitment Offering that will result in gross proceeds to the company of at least \$25 million; (ii) a company conducting a business combination, as described in Nasdaq Rules 5110(a) or IM–5101–2, with a China-based company, to have a minimum Market Value of Unrestricted Publicly Held Shares following the business combination equal to at least \$25 million; and (iii) a China-based company whose security is trading on the OTC market or that is transferring its listing from another national securities exchange to have a minimum Market Value of Unrestricted Publicly Held Shares of at least \$25 million and have traded on the other market for at least one year before it is eligible to list on Nasdaq.

The Exchange states that it has observed that China-based companies listing on Nasdaq in connection with an IPO that had an offering size below \$25 million have a higher rate of compliance concerns.¹²¹ According to the Exchange, companies with a Firm Commitment Offering size or Market Value of Unrestricted Publicly Held Shares below \$25 million may not develop a sufficient investor base and trading interest to provide the depth and liquidity necessary to promote fair and orderly trading, resulting in an illiquid security and amplifying the unique risks to U.S. investors presented by China-based issuers.¹²² The Exchange states that less liquid securities may also be more susceptible to price manipulation, which is a particular concern when insiders retain significant ownership interest in the company.¹²³ The Exchange states that requiring heightened initial listing standards would mitigate the non-compliance concerns by ensuring that price discovery would be supported by sufficient liquidity, U.S. investor

¹²¹ See Amendment No. 3, *supra* note 9, at 13. Specifically, the Exchange states that its analysis of IPOs from April 2022 to April 2025 found that of the 151 companies headquartered or incorporated in China that listed on Nasdaq through an IPO, 143 of such companies had offering amounts of less than \$25 million, and nearly half of those 143 companies were cited for failure to comply with Nasdaq's continued listing standards. See *id.* at 14.

¹²² See *id.* at 13–14.

¹²³ See *id.* at 28.

¹¹² See Amendment No. 3, *supra* note 9, at 11, n.26.

¹¹³ See Amendment No. 3, *supra* note 9, at 26.

¹¹⁴ See *id.*

¹¹⁵ See *id.* at 12.

¹¹⁶ HTFL Letter at 2.

¹¹⁷ *Id.* This commenter stated that the proposed listing standard should be based on "operational jurisdiction and regulatory oversight, not citizenship per se" so as not to create "unintended barriers for legitimate issuers operating under robust local regulations." *Id.* (emphasis omitted). See also US Unicorn Letter at 1. Another commenter stated that the criteria "risks capturing companies that are headquartered, incorporated, and operating entirely within the United States or other transparent jurisdictions," and the proposal "conflates citizenship with regulatory risk." See US Unicorn Letter at 1.

interest, and distribution to support fair and orderly trading.¹²⁴

In particular, the Exchange's proposal to heighten the requirement for a China-based company listing in connection with an IPO such that the company would be required to offer a minimum amount of securities in a Firm Commitment Offering in the United States to Public Holders that will result in gross proceeds to the company of at least \$25 million is higher than the minimum Market Value of Unrestricted Publicly Held Shares of \$15 million from offering proceeds generally required for a company seeking to list through an IPO on the NCM.¹²⁵ The Exchange states that a Firm Commitment Offering typically involves a book building process that helps to generate an investor base and trading interest that promotes sufficient depth and liquidity to help support fair and orderly trading on the Exchange.¹²⁶ The Exchange also states that these offerings typically involve significant due diligence by third parties that are subject to U.S. regulatory oversight.¹²⁷ The Exchange states that the proposals to heighten the initial listing standards for a company conducting a business combination with a China-based company and a China-based company whose security is trading on the OTC market or that is transferring its listing from another national securities exchange will impose comparable standards and help prevent China-based companies from using a business combination or a transfer to avoid heightened listing standards.¹²⁸ A China-based company subject to the proposed initial listing standards for an IPO, business combination, or transfer would also need to comply with all other applicable listing standards for the market tier on which it is listing.¹²⁹

One commenter stated that most emerging growth, China-based companies raised funds in the range of \$5 million to \$15 million, "an amount generally sufficient to support phased

objectives such as technology research and development and market expansion."¹³⁰ This commenter stated that increasing the minimum IPO threshold to \$25 million, as proposed, "would exclude approximately 88% of potential listing candidates based solely on the offering size requirement."¹³¹ Another commenter stated that the proposed \$25 million minimum proceeds requirement "lacks adequate empirical support and rationale."¹³² Several commenters stated that the proposal limits the investment opportunities for U.S. investors and their ability to make their own investment decisions.¹³³

The Commission has previously stated that a Firm Commitment Offering is designed to promote appropriate price discovery and assists in creating a liquid market.¹³⁴ In addition, having a minimum Market Value of Unrestricted Publicly Held Shares, and minimum duration, where applicable, should allow the Exchange to more accurately determine whether a China-based company conducting an IPO, a post-business combination entity involving a China-based company, or a China-based company seeking to transfer from a different market has a sufficient market, adequate distribution, liquidity, and investor interest, and is thus suitable for listing and trading on the Exchange. Further, the Exchange provided information showing that nearly half of the China-based companies that listed on Nasdaq through an IPO from April 2022 to August 2025 were subsequently cited for failure to comply with continued listing standards.¹³⁵ This information supports concerns about the rate of non-compliance exhibited by China-based companies with offering proceeds below \$25 million. Accordingly, the proposed \$25 million threshold is reasonably designed to exclude from listing companies that are

more likely to experience issues complying with the Exchange's continued listing standards. The proposal is appropriately targeted to the unique risks that may be posed by China-based companies and, within that subset of companies, those that may not develop a sufficient investor base and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets and reduce the risk of manipulative trading. Therefore, the Commission finds that the heightened initial listing standards for China-based companies are reasonably designed and consistent with the requirements of Section 6(b)(5) of the Act that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest, and not be designed to permit unfair discrimination.

The Commission also finds that the proposal is consistent with Section 6(b)(8) of the Act in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.¹³⁶ The Commission recognizes that imposing heightened listing standards on China-based companies will result in a segment of smaller, China-based companies not qualifying for initial listing that would have otherwise satisfied the Exchange's initial listing standards. As such, the heightened listing standards may hamper the ability of these companies to attract investors and raise capital. However, as discussed above, the risks to U.S. investors posed by China-based companies justify imposing heightened initial listing standards and the \$25 million threshold is reasonably designed to promote fair and orderly markets and reduce the risk of manipulative trading. Therefore, the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

Several commenters stated that Nasdaq's current rules already provide the Exchange with discretionary authority to address its concerns regarding liquidity and potential manipulation of China-based companies.¹³⁷ The commenters cited Nasdaq Rule 5101 in relation to Exchange's discretionary authority,¹³⁸

¹²⁴ See *id.* at 14.

¹²⁵ See *id.* at 12–13. See also Nasdaq Rules 5505(b)(1)(B), 5505(b)(2)(C), and 5505(b)(3)(C). The initial listing standards for a company listing in connection with an IPO that principally administers its business in a Restrictive Market include a similar \$25 million threshold. See *id.* at 13. However, no China-based jurisdiction has fallen within the Restrictive Market definition since December 2022, when the PCAOB secured access to inspect and investigate audit firms in the PRC. See *id.* at 5. See also https://assets.pcaobus.org/pcaob-dev/docs/default-source/international/documents/2022-hfcaa-determination-report.pdf?sfvrsn=1345a530_4.

¹²⁶ See Amendment No. 3, *supra* note 9, at 13.

¹²⁷ See *id.* at 13–14.

¹²⁸ See *id.* at 18–19.

¹²⁹ See *id.* at 13.

¹³⁰ SEN Time Studio Letter at 3. See also Cecilia Letter at 1.

¹³¹ SEN Time Studio Letter at 3. One commenter stated that "genuine high-growth companies . . . will be forced to pivot to other capital markets." US Unicorn Letter at 2. See also HIGO Letter at 1; SEN Time Studio Letter at 3; USA World Letter at 3.

¹³² See USA World Letter at 2–3. This commenter stated that there is no "transparent empirical analysis" to support the proposed \$25 million standard and that a "minimum fundraising amount does not necessarily translate into increased liquidity or improved trading conditions." *Id.* at 2.

¹³³ See US Unicorn Letter at 2; USA World Letter at 3; Bevilacqua Letter 1 at 3.

¹³⁴ See Securities Exchange Act Release No. 93256 (Oct. 4, 2021), 86 FR 56338, 56343 (Oct. 8, 2021) (SR–NASDAQ–2021–007). See also Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102, 33112 (July 11, 2019) (SR–NASDAQ–2019–009).

¹³⁵ See *supra* note 121.

¹³⁶ 15 U.S.C. 78f(b)(8).

¹³⁷ See US Unicorn Letter at 1–2; SEN Time Studio Letter at 2–3; United Securities Letter at 2–3; Cecilia Letter at 1; HKUBC Letter at 1–2.

¹³⁸ See US Unicorn Letter at 1–2. See also SEN Time Studio Letter at 2; HKUBC Letter at 1–2. One commenter stated that Nasdaq is "well-positioned"

Nasdaq Rule 5210(k) in relation to heightened initial listing standards for Restrictive Market companies,¹³⁹ and Nasdaq Rules 5810(c)(3)(A)(iii) and 5815(a)(1)(B)(ii) in relation to immediate delisting and suspension from trading if a company's security closes at or below \$0.10 for ten consecutive business days.¹⁴⁰

The Exchange states that the proposal seeks to address areas of concern that may not be adequately addressed by the existing Nasdaq rules.¹⁴¹ In response to commenters, the Exchange states that, unlike Nasdaq Rule IM-5101-3, the proposed rule contains a minimum threshold of \$25 million that is reasonable and necessary because imposing the threshold may mitigate the higher rate of compliance concerns observed in China-based companies below the \$25 million threshold.¹⁴²

While existing Nasdaq initial and continued listing standards may address some similar concerns, the risks identified by the Exchange discussed above justify the imposition of requirements that specifically target China-based companies with a smaller offering size or public float. As compared to the Exchange's broad discretionary authority under Nasdaq Rules 5101 and IM-5101-3, the imposition of a \$25 million threshold for China-based companies that seek to list on the Exchange in connection with an IPO, in conjunction with a business combination, or through a transfer from another market will provide transparency regarding how the Exchange will make its listing determinations regarding China-based companies and allow for the listing of those China-based companies whose securities the Exchange can reasonably expect to have sufficient depth and liquidity to promote fair and orderly markets. Additionally, following changes that secured access to inspect and investigate audit firms by PCAOB in the PRC in December 2022, China (including Hong Kong and Macau) no

to achieve the proposals' objective through Nasdaq Rule IM-5101-3. See HKUBC Letter at 2-3.

¹³⁹ See US Unicorn Letter at 1-2. Another commenter stated that audit and enforcement concerns have been "substantially mitigated by the 2022 U.S.-China agreement granting inspection access and ongoing cooperation." United Securities Letter at 3. See also Cecilia Letter at 1.

¹⁴⁰ See SEN Time Studio Letter at 3. One commenter stated that the proposed rules would compound the effect of delisting rules on China-based companies. See Cecilia Letter at 1-2.

¹⁴¹ See Amendment No. 3, *supra* note 9, at n.23. The Exchange also states that current listing standards are sufficient to address the commenters' concerns related to companies in other jurisdictions. See *id.* at 22. See also *supra* notes 103-106 and accompanying text.

¹⁴² See Amendment No. 3, *supra* note 9, at 23.

longer qualifies as a Restrictive Market and therefore China-based companies are no longer subject to the heightened listing standards for Restrictive Market companies under Nasdaq Rule 5210(k).¹⁴³ Further, recent changes to Nasdaq Rules 5810(c)(3)(A)(iii) and 5815(a)(1)(B)(ii), along with other recently adopted changes to the Exchange's continued listing standards, address suspension and delisting from the Exchange.¹⁴⁴ In contrast, the current proposal is reasonably designed to help prevent the initial listing of companies that otherwise would be reasonably expected to have difficulties maintaining compliance with the Exchange's continued listing standards, thereby promoting fair and orderly markets and preventing potential harm to investors.

Several commenters provided suggested alternatives to the proposal. One commenter stated that a more effective strategy for addressing market manipulation would be to expand cross-market trading surveillance and enforcement tools.¹⁴⁵ In addition, the commenter suggested strengthening universal disclosure and corporate governance requirements and adopting market-wide liquidity and quality metrics.¹⁴⁶ Another commenter recommended that the Exchange impose industry-specific exemptions and publicly disclose the "material considerations . . . when rejecting listing applications," and improve procedural protections.¹⁴⁷ Another commenter suggested that the Exchange and the Commission should conduct further dialogue with market participants on the proposal.¹⁴⁸ Even if commenters' suggestions could provide an alternative means of addressing the

¹⁴³ See *id.* at 5.

¹⁴⁴ See, e.g., Securities Exchange Act Release Nos. 101271 (Oct. 7, 2024), 89 FR 82652 (Oct. 11, 2024) (SR-NASDAQ-2024-029) (modifying the application of bid price compliance periods where a listed company takes action to achieve compliance with the minimum bid price rule and that action causes non-compliance with another continued listing requirement); 102245 (Jan. 17, 2025), 90 FR 8081 (Jan. 23, 2025) (SR-NASDAQ-2024-045) (modifying the application of bid price compliance periods and the delisting appeals process for non-compliance with the minimum bid price rule under certain circumstances); 104318 (Dec. 5, 2025), 90 FR 57225 (Dec. 10, 2025) (SR-NASDAQ-2025-065) (modifying the application of minimum bid price rule in situations where a security does not maintain a closing bid price of greater than \$0.10 for ten consecutive business days).

¹⁴⁵ See USA World Letter at 4.

¹⁴⁶ See *id.*

¹⁴⁷ See SEN Time Studio Letter at 4. This commenter also suggested that the Exchange allow certain companies to raise capital through a combination of new share issuance and convertible debt issuance. See *id.*

¹⁴⁸ See China LCA Letter at 2.

risks presented by China-based companies that are discussed above, these suggestions are not part of Nasdaq's proposal and the Commission must approve the proposal if it finds that the proposal is consistent with the Act and rules thereunder. As discussed above, the proposed heightened initial listing standards are reasonably designed to address these risks.

Restricted Use of Direct Listings

Under the proposal, the Exchange will not permit China-based companies to list on the NGM and NCM in connection with a Direct Listing.¹⁴⁹ The Exchange states that it does not believe the initial listing standards for Direct Listings on the NGM and NCM, which require a Market Value of Unrestricted Publicly Held Shares as low as \$30 million, are sufficient for China-based companies to support meaningful price discovery and fair and orderly trading because Direct Listings do not raise any offering proceeds and typically do not involve an underwriter to market the transaction and help develop investor interest.¹⁵⁰ The Exchange also states that adopting this additional requirement will help prevent companies from using a Direct Listing to avoid the proposed requirement for IPOs.¹⁵¹ China-based companies will continue to be permitted to list on the NGS in connection with a Direct Listing, provided they meet the applicable listing standards.¹⁵²

Given the heightened risks identified by the Exchange regarding China-based companies, the restriction on China-based companies listing on the NCM or NGM in connection with a Direct Listing is reasonably designed to ensure that these companies have adequate liquidity to support fair and orderly trading and prevent China-based companies from using Direct Listings to avoid the heightened initial listing requirements for IPOs. Accordingly, the Commission finds that the proposal to prohibit China-based companies from listing on the NGM and NCM in connection with a Direct Listing is consistent with the requirements of Section 6(b)(5) of the Act that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable

¹⁴⁹ See proposed Nasdaq Rule 5210(l)(iii).

¹⁵⁰ See Amendment No. 3, *supra* note 9, at 17-18.

¹⁵¹ See *id.* at 18.

¹⁵² See *id.* at 16. In contrast to the relatively low Market Value of Publicly Held Shares requirements on the NGM and NCM, a company seeking to list on the NGS in connection with a Direct Listing must demonstrate a Market Value of Publicly Held Shares of at least \$250 million and a Market Value of Unrestricted Publicly Held Shares of at least \$100 million. See *id.* at 17.

principles of trade, and protect investors and the public interest, and not be designed to permit unfair discrimination, and the requirements of Section 6(b)(8) of the Act that the rules of the exchange not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

In sum, the Commission concludes that given the risks Nasdaq, along with U.S. policymakers and regulatory agencies, have identified as being presented by China-based companies, the proposed heightened initial listing standards for China-based companies, including the prohibition on Direct Listings on the NGM and NCM, would help ensure that listed companies have a sufficient market, with adequate depth and liquidity, and sufficient investor interest to support listing on the Exchange. Accordingly, the proposal to impose these heightened listing standards on China-based issuers will help maintain fair and orderly markets and is designed to protect investors and the public interest, and is not designed to permit unfair discrimination. Further, the proposal does not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the risks posed by China-based companies justify their differential treatment and the heightened initial listing standards are reasonably designed to protect investors and help maintain a fair and orderly market.

Implementation Period

The Exchange has proposed a delay of 30 days after Commission approval of the proposal before the changes become effective. The Exchange states that this will allow companies that have taken substantial steps to list under the current rules to complete the initial listing process.¹⁵³ Two commenters requested a longer transition period.¹⁵⁴ In response, the Exchange states that the initial proposal was published in

September 2025, and it has provided issuers with pending listing applications with sufficient time to prepare for heightened listing standards.¹⁵⁵ The Commission finds that the proposed implementation period is appropriate and consistent with the requirements of the Act because a 30-day implementation period should allow prospective issuers time to prepare while avoiding an unnecessary delay in the Exchange implementing the proposed heightened listing standards to address the risks it has identified pertaining to China-based companies.

Based on the foregoing, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Act.

V. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 3, 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–2025–069 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NASDAQ–2025–069. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2025–069 and should be submitted on or before June 9, 2026.

VI. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the **Federal Register**. The change made to the proposal in Amendment No. 3 to remove the ability of China-based companies listing in connection with a Direct Listing to list on the NGM is consistent with the proposal's aim to impose heightened listing standards on China-based companies to help provide better liquidity in those securities, and thus mitigate the unique risks that such companies may present. This change to the proposal also will help to ensure that China-based companies are not able to evade the heightened listing standards for IPOs by listing in connection with a Direct Listing on the NGM and ensures consistent treatment with Direct Listings seeking to list on the NCM. In addition, as compared to the Notice, Amendment No. 3 provides additional clarity to the proposal by (1) making certain clarifications to proposed Nasdaq Rule 5210(l)(iii) in relation to a company seeking to list by Direct Listing, and proposed Nasdaq Rule 5210(l)(iv) in relation to a company whose security is trading on the OTC market or that is transferring its listing from another national securities exchange; (2) providing additional explanation of certain aspects of the proposal; (3) providing responses to comment letters; and (4) making other technical and non-substantive changes.

These changes to the proposal and additional information in Amendment No. 3 assist the Commission in evaluating the proposal and determining that it is consistent with the Act, and do not raise any regulatory issues substantially different from those that had previously been subject to comment. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁵⁶ to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵⁷ that the proposed rule change (SR–NASDAQ–2025–069), as modified by Amendment No. 3 be, and hereby is, approved on an accelerated basis.

¹⁵⁶ 15 U.S.C. 78s(b)(2).

¹⁵⁷ *Id.*

¹⁵³ See *id.* at 19–20.

¹⁵⁴ See HTFL Letter at 3 (recommending at 60-day period); SEN Time Studio Letter at 4 (recommending a period of no less than 180 days for issuers already in the listing review or preparation process). In addition, one commenter provided examples of pending business combination listings of Special Purpose Acquisition Companies (“SPACs”) with China-based companies and observed that “they have been at a standstill since this new rule proposal.” See Letter from Anonymous, dated Apr. 23, 2026, at 1, 2–8. This commenter stated that the proposal “appears to retroactively alter the regulatory landscape for any and all China-linked SPACs,” and suggested that the proposal “should be implemented prospectively, with sufficient transition periods and safeguards to protect existing investors.” *Id.* at 1, 10.

¹⁵⁵ See Amendment No. 3, *supra* note 9, at 22.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵⁸

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026–09966 Filed 5–18–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0600]

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension: Rule 611

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for Rule 611 (17 CFR 242.611) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (“Exchange Act”). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

On June 9, 2005, effective August 29, 2005 (see 70 FR 37496, June 29, 2005), the Commission adopted Rule 611 of Regulation NMS under the Exchange Act to require any national securities exchange, national securities association, alternative trading system, exchange market maker, over-the-counter market maker, and any other broker-dealer that executes orders internally by trading as principal or crossing orders as agent, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of a transaction in its market at a price that is inferior to a protected bid or offer displayed in another market at the time of execution (a “trade-through”), absent an applicable exception and, if relying on an exception, that are reasonably designed to assure compliance with the terms of the exception. Without this collection of information, respondents would not have a means to enforce compliance with the Commission’s intention to prevent trade-throughs pursuant to the rule.

There are approximately 305 respondents¹ per year that will require an aggregate total of approximately 18,300 hours to comply with this Rule. It is anticipated that each respondent will continue to expend approximately 60 hours annually: two hours per month of internal legal time and three hours per month of internal compliance time to ensure that its written policies and procedures are up-to-date and remain in compliance with Rule 611. The estimated cost for an attorney is \$744 per hour and the estimated cost for a financial examiner in the securities industry is \$365 per hour. Therefore the estimated total internal cost of compliance for the annual hour burden is as follows: [(2 legal hours × 12 months × \$744) × 305] + [(3 compliance hours × 12 months × \$365) × 305] = \$9,453,780.²

¹ The Commission estimates that there are currently 305 trading centers subject to Rule 611. This estimate includes 20 exchanges (17 exchanges that trade NMS stocks + three exchanges that are approved but not yet operating) and 33 ATSs that trade NMS stocks. Based on data from the consolidated audit trail for January 2026, the estimate also includes 96 exchange market makers and 225 broker-dealers acting as OTC market maker or executing orders internally by trading as principal or crossing orders as agent. 69 broker-dealers are both exchange market makers and an OTC market maker or broker-dealer internalizing orders. 20 + 33 + 96 + 225 – 69 = 305 trading centers.

² 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). 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 to total annual wages across all occupations for NAICS 523 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>.

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 July 20, 2026. There will be a second opportunity to comment on this SEC request following the **Federal Register** publishing a 30-Day Submission Notice.

Dated: May 15, 2026.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026–09992 Filed 5–18–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105493; File No. SR–NYSEARCA–2026–48]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule To Adopt Fees Applicable to Trading Options on MXWLD, MXACW, and MXUSA

May 14, 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 May 1, 2026, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

¹⁵⁸ 17 CFR 200.30–3(a)(12).

below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule ("Fee Schedule") to adopt fees applicable to trading in options that overlie each of the MSCI World Index (1/100), the full value of the MSCI ACWI Index, and a reduced value of the MSCI USA Index (1/100). 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 purpose of this filing is to amend the Fee Schedule to establish fees in connection with the launch of trading in options that overlie the MSCI World Index (1/100) ("WORLD 1/100 options" or "MXWLD"), the full value of the MSCI ACWI Index ("ACWI options" or "MXACWI"[sic]), and a reduced value of the MSCI USA Index (1/100) ("USA 1/100 options" or "MXUSA"). The Exchange recently filed a proposed rule change to adopt rules to facilitate the transfer and trading of WORLD 1/100 options, ACWI options and USA 1/100 options, which currently trade on Cboe Exchange, Inc. ("Cboe Options").⁴ The Exchange proposes that the fees set forth

in this filing will take effect on May 1, 2026, the day that trading in WORLD 1/100 options, ACWI options and USA 1/100 options begins on the Exchange.⁵

The MSCI World Index (1/100) ("WORLD Index (1/100)"), the MSCI ACWI Index ("ACWI Index") and the MSCI USA Index (1/100) ("USA Index (1/100)") are free float-adjusted market capitalization indexes calculated by MSCI Inc. ("MSCI"). Specifically,

- The MSCI World Index (1/100) consists of component stocks from 23 developed markets.⁶ The MSCI World Index (1/100) consists of large- and mid-cap components across these markets, has 1,311 constituents, and covers approximately 85% of the free float-adjusted market capitalization in each country.⁷

- The MSCI ACWI Index consists of component stocks from 23 developed markets⁸ and 24 emerging markets.⁹ The MSCI ACWI Index consists of large- and mid-cap components across these markets, has 2,515 constituents, and covers approximately 85% of the global investable equity opportunity set.¹⁰

- The MSCI USA Index (1/100) consists of large- and mid-cap components from the United States, has 538 constituents, and covers approximately 85% of the free float-adjusted market capitalization in the United States.¹¹

The Exchange proposes to adopt the following per contract transaction fees for manual executions in MXWLD, MXACW and MXUSA, which are largely based on the fees currently assessed by Cboe Options:¹²

⁵ See <https://www.nyse.com/trader-update/history#110000956142>.

⁶ These developed markets include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hong Kong, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

⁷ See MSCI World Index (1/100) fact sheet (dated March 31, 2026), available at MSCI World Index.

⁸ These developed markets include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hong Kong, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

⁹ These emerging markets include Brazil, Chile, China, Colombia, Czech Republic, Egypt, Greece, Hungary, India, Indonesia, Korea, Kuwait, Malaysia, Mexico, Peru, Philippines, Poland, Qatar, Saudi Arabia, South Africa, Taiwan, Thailand, Turkey, and the United Arab Emirates.

¹⁰ See MSCI ACWI Index fact sheet (dated March 31, 2026), available at MSCI ACWI Index.

¹¹ See MSCI USA Index (1/100) fact sheet (dated March 31, 2026), available at MSCI USA Index.

¹² See Cboe Options Fee Schedule, available at [Cboe_FeeSchedule.pdf](#) (providing for \$0.10 per contract rate for Cboe Options Market-Maker/DPM/LMM manual transactions in index products; \$0.20 per contract rate for Broker-Dealer manual transaction in index products; \$0.05 per contract

Order type	Fee
LMM	\$0.10
NYSE Arca Market Maker	0.10
Firm and Broker Dealer	0.20
Professional Customer	0.05
Customer	0.05
Firm Facilitation and Broker Dealer facilitating a Customer or Professional Customer	N/A

Similar to the exclusion of the options overlying the MSCI EAFE Index ("MXEA") and the MSCI Emerging Markets Index ("MXEF"), the Exchange proposes to amend Endnote 19 to provide that the Firm and Broker Dealer Monthly Fee Cap, Limit of Fees on Options Strategy Executions, and FB Prepay Program are not applicable to transactions in MXWLD, MXACW and MXUSA. The Exchange similarly proposes to amend Endnote 7, which defines the "Firm Facilitation and Broker Dealer facilitating a Customer—Manual" categorization to exclude transactions in MXWLD, MXACW and MXUSA.

Finally, as with MXEA and MXEF, the Exchange proposes to adopt an Index License Surcharge of \$0.20 per contract for all Non-Customer transactions in MXWLD, MXACW and MXUSA, which were, likewise, based on the index license surcharge fee assessed by Cboe Options for transactions in MXWLD, MXACW and MXUSA¹³ and reflects costs incurred by the Exchange related to licensing for purposes of listing and trading WORLD 1/100 options, ACWI options and USA 1/100 options.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁵ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance

rate for Customer manual transactions in MXWLD, MXACW and MXUSA).

¹³ See Cboe Options Fee Schedule, Surcharge Fee Index License (applying \$0.15 surcharge on transactions in MXWLD, MXACW and MXUSA).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

⁴ See Securities Exchange Act Release No. 105194 (April 10, 2026) 91 FR 20187 (April 15, 2026) (SR-NYSEARCA-2026-35) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Facilitate the Transfer and Trading of Options That Overlie a Reduced Value of the MSCI World Index (1/100), the Full Value of the MSCI ACWI Index and a Reduced Value of the MSCI USA Index (1/100)).

of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁶

There are currently 18 registered options exchanges competing for order flow. Based on publicly available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹⁷ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in March 2026, the Exchange had 10.50% market share of executed volume of multiply-listed equity and ETF options trades.¹⁸ In such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of options order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees.

The Exchange believes the proposed fees for trading in MXWLD, MXACW and MXUSA are reasonable, equitable, and not unfairly discriminatory. As noted above, the proposed fees are generally based on fees currently assessed by Cboe Options for trading in WORLD 1/100 options, ACWI options and USA 1/100 options.¹⁹ The Exchange believes that it is reasonable for the Exchange to adopt fees largely based on

the existing pricing structure for WORLD 1/100 options, ACWI options and USA 1/100 options, which would provide continuity to market participants trading in these options. The Exchange also believes that the proposed fees are reasonable because the proposed fees for manual transactions in MXWLD, MXACW and MXUSA are within the range of fees currently applicable to manual transactions and the exclusion of MXWLD, MXACW and MXUSA from certain pricing programs is consistent with the exclusion of fees related to other index products traded on the Exchange, most notably MXEA and MXEF.²⁰

The Exchange also believes that the proposed Index License Surcharge is reasonable because it is intended to help recoup some of the costs associated with the license required to make MXWLD, MXACW and MXUSA options available for trading on the Exchange. The Exchange further believes that the proposed change is reasonably designed to encourage market participants to continue trading in MXWLD, MXACW and MXUSA once trading in these options begins on the Exchange and believes that maintaining consistency with the Cboe Options pricing structure would facilitate the transition for all market participants to trading these options on the Exchange. To the extent the proposed change is effective in encouraging market participants to maintain or increase their trading activity in MXWLD, MXACW and MXUSA, the Exchange believes the proposed change would improve the Exchange’s overall competitiveness and strengthen its market quality for all market participants.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits and is not unfairly discriminatory because the proposed fees are based on the amount and type of business transacted on the Exchange. Trading in WORLD 1/100 options, ACWI options and USA 1/100 options is voluntary and all similarly situated market participants would be subject to the same fee structure on an equal and non-discriminatory basis, as proposed. To the extent that the proposed change attracts increased order flow to the Exchange, it would continue to make the Exchange a more competitive venue for, among other things, order

execution, thereby improving market quality for all market participants on the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange’s statement regarding the burden on competition.

B. Self-Regulatory Organization’s Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission’s goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”²¹

Intramarket Competition. The proposed change is designed to facilitate trading in WORLD 1/100 options, ACWI options and USA 1/100 options on the Exchange and to promote continuity for market participants by maintaining general consistency with the existing fee structure on Cboe Options for trading in MXWLD, MXACW and MXUSA. The proposed fees would apply to all similarly situated market participants that trade WORLD 1/100 options, ACWI options and USA 1/100 options, and, accordingly, the proposed changes would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the other 17 competing options exchanges if they deem the Exchange’s fee levels to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

¹⁷ The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

¹⁸ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.*, the Exchange’s market share in multiply-listed equity and ETF options was 11.28% for the month of March 2025 and 10.50% for the month of March 2026.

¹⁹ See notes 12 & 13 *supra*.

²⁰ See also Fee Schedule, FIRM MONTHLY FEE CAP (excluding Royalty Fees for KBW Bank Index options from fees that count towards the Firm and Broker Dealer Monthly Fee Cap); STRATEGY EXECUTION FEE CAP (excluding Royalty Fees for KBW Bank Index options from calculation of cap on transaction fees for strategy executions).

²¹ See Reg NMS Adopting Release, *supra* note 12, at 37499.

equity and ETF options trades.²² Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in March 2026, the Exchange had 10.50% market share of executed volume of multiply-listed equity and ETF options trades.²³

The Exchange believes that the proposed rule change reflects this competitive environment because it adopts fees for trading in WORLD 1/100 options, ACWI options and USA 1/100 options generally based on Cboe Options' fees, thereby modifying the Exchange's fees in a manner designed to encourage market participants to maintain or increase trading activity in such options once they transition to list and trade on the Exchange. To the extent that market participants continue to trade in MXWLD, MXACW and MXUSA on the Exchange, all Exchange market participants stand to benefit from increased order flow and additional trading opportunities on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)²⁴ of the Act and subparagraph (f)(2) of Rule 19b-4²⁵ thereunder, because it establishes a due,

fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁶ 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-NYSEARCA-2026-48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2026-48. 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-NYSEARCA-2026-48 and should be submitted on or before June 9, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-09965 Filed 5-18-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105487; File No. SR-FINRA-2026-007]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change to Exempt Specified Collective Trust Funds From FINRA Rules 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) and 5131(b) (New Issue Allocations and Distributions)

May 14, 2026.

On March 30, 2026, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to exempt certain collective trust funds ("CTFs") from FINRA Rules 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offering) and 5131 (New Issue Allocations and Distributions). The proposed rule change was published for comment in the **Federal Register** on April 10, 2026.³

Section 19(b)(2) of the Act⁴ provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after the publication of the notice for this proposed rule change is May 25, 2026.

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 105163 (Apr. 7, 2026), 91 FR 18493. Comments received on the proposed rule change are available at: <https://www.sec.gov/rules-regulations/public-comments/sr-finra-2026-007>.

⁴ 15 U.S.C. 78s(b)(2).

²² The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

²³ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.*, the Exchange's market share in multiply-listed equity and ETF options was 11.28% for the month of March 2025 and 10.50% for the month of March 2026.

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f)(2).

²⁶ 15 U.S.C. 78s(b)(2)(B).

The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, pursuant to Section 19(b)(2) of the Act, the Commission designates July 9, 2026, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-FINRA-2026-007).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-09959 Filed 5-18-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105488; File No. SR-EMERALD-2026-13]

Self-Regulatory Organizations; MIAx Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 515A, MIAx Emerald Price Improvement Mechanism and PRIME Solicitation Mechanism

May 14, 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 May 1, 2026, MIAx Emerald, LLC (“MIAx Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 515A, MIAx Emerald Price Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism, to permit orders for the accounts of Market Makers assigned in the applicable options class, to be solicited as a contra party to the Agency

Order submitted for execution in a PRIME or cPRIME Auction.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/emerald-options/rule-filings>, and at the Exchange’s principal office.

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 Policy .04 of Exchange Rule 515A, MIAx Emerald Price Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism, (“Solicitation Auction”),³ to permit orders for the accounts of Market Makers⁴ assigned in the applicable options class, to be solicited as a contra party to the Agency Order⁵ submitted for execution in a PRIME or cPRIME Auction.⁶

PRIME is a process by which a Member⁷ may electronically submit for execution (“Auction”) an order it represents as agent (“Agency Order”) against principal interest, and/or an

³ See Exchange Rule 515A(b).

⁴ The term “Market Makers” refers to “Lead Market Makers,” “Primary Lead Market Makers,” and “Register Market Makers” collectively. See Exchange Rule 100.

⁵ PRIME is a process by which a Member may electronically submit for execution (“Auction”) an order it represents as agent (“Agency Order”) against principal interest, and/or an Agency Order against solicited interest. See Exchange Rule 515A(a). The term “Member” means and individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁶ “cPRIME” is the process by which a Member may electronically submit a “cPRIME Order” (as defined in Rule 518(b)(7)) it represents as agent (a “cPRIME Agency Order”) against principal or solicited interest for execution (a “cPRIME Auction”). See Exchange Rule 515A.12(a).

⁷ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

Agency Order against solicited interest.⁸ A Member (the “Initiating Member”) may initiate an Auction provided all of the following are met: (i) the Agency Order is in a class designated as eligible for PRIME as determined by the Exchange and within the designated Auction order eligibility size parameters as such size parameters are determined by the Exchange; (ii) the Initiating Member must stop the entire Agency Order as principal or with a solicited order at the better of the NBBO⁹ or the Agency Order’s limit price (if the order is a limit order); and (iii) with respect to Agency Orders that have a size of less than 50 contracts, if at the time of receipt of the Agency Order, the NBBO has a bid/ask differential of \$0.01, the System¹⁰ will reject the Agency Order.¹¹ Members may use PRIME to execute complex orders at a net price. “cPRIME” is the process by which a Member may electronically submit a “cPRIME Order” (as defined in Rule 518(b)(7)) it represents as agent (a “cPRIME Agency Order”) against principal or solicited interest for execution (a “cPRIME Auction”), subject to the criteria enumerated in Policy .12 of Rule 515A.¹²

Currently, Policy .04 of Rule 515A provides that Members may enter contra orders that are solicited. The PRIME provides a facility for Members that locate liquidity for their customer orders. Members may not use the Solicitation Auction to circumvent Rule 520 limiting principal transactions. This may include, but is not limited to, Members entering contra orders that are solicited from (a) affiliated broker-dealers, or (b) broker-dealers with which the Member has an arrangement that allows the Member to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Additionally, solicited contra orders entered by Members to trade against Agency Orders may not be for the account of a MIAx Market Maker assigned to the options class.¹³

The last sentence of Policy .04 of Rule 515A prohibits orders for the accounts of Market Makers assigned to the applicable options class on the

⁸ See Exchange Rule 515A(a).

⁹ The term “NBBO” means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

¹⁰ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹¹ See Exchange Rule 515A(a)(1).

¹² See Exchange Rule 515A.12(a).

¹³ See Policy .04 of Exchange Rule 515A.

⁵ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Exchange to be solicited to execute against the Agency Order in a PRIME or cPRIME Auction. While market participants other than appointed MIAIX Emerald Market Makers may contribute liquidity to these crossing auctions as either contra orders or responses, Market Makers assigned to the options class, who are the primary source of liquidity on the Exchange in their assigned options class, are limited in the manner in which they may provide liquidity to these auctions.

The Exchange believes that eliminating the prohibition against assigned Market Makers acting as contra in PRIME and cPRIME Auctions would enhance price improvement opportunities. Allowing the assigned Market Maker in the options class to be solicited as a contra party may result in exposure of more orders to potential price improvement via the auction processes.

Further, the Exchange notes that the electronic crossing price improvement auction of at least one other options exchange currently permits orders for the accounts of appointed market-makers to be solicited as the contra for that auction.¹⁴

Implementation

The Exchange proposes to implement this change in Q3 of 2026 and will issue a Regulatory Circular notifying market participants of the exact date at least 30 days in advance.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ in particular, in that it is designed to 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 also 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.

In particular, the Exchange believes the proposed rule change will promote just and equitable principles of trade and remove impediments to and perfect the mechanisms 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 Members to solicit primary liquidity providers in a class for electronic auctions, the Exchange believes Members 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 PRIME and cPRIME Auctions, including competition to initiate PRIME and cPRIME 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, and may increase the number of PRIME and cPRIME Auctions being initiated. Furthermore, the Exchange believes increasing the number of market participants available to be solicited may increase competition to provide Agency Orders, which may lead to a PRIME Auction being initiated at a better price. More market participants competing to provide Agency 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 Agency Order, to submit responses to a PRIME Auction will continue to provide competition for executions against these Agency Orders.

The Exchange believes any risk that appointed Market Makers may misuse the non-public information of an upcoming PRIME or cPRIME 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 PRIME or cPRIME Auctions in other classes. The Exchange notes that Policy .01 of Exchange Rule 515A provides that it shall be considered conduct inconsistent with just and equitable principles of trade, in accordance to Exchange Rule 301¹⁸ for any Member to enter orders, quotes, Agency Orders, or other responses for the purpose of disrupting or manipulating the Auction.¹⁹ Additionally, Exchange Rule 303 provides that each Member must establish, maintain and enforce written procedures reasonably designed, taking into consideration the nature of such Member's business, to prevent the misuse of material, non-public information by such Member or persons associated with such Member.²⁰

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 or all other market participants. Currently, all market participants, other than assigned Market Makers, may be solicited as the contra and submit responses in PRIME Auctions for all classes. 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 PRIME Auctions. The Exchange believes the proposed rule change will provide all Market Makers on the Exchange with the same ability to participate in PRIME 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

¹⁴ See Securities Exchange Act Release No.105049 (March 19, 2026), 91 FR 14057 (March 24, 2026) (SR-CBOE-2025-090) (Order Approving a Proposed Rule Change To Permit Orders for the Accounts of Market-Makers With an Appointment in the Applicable Class To Be Solicited as the Contra-Side Order Submitted Into Certain Exchange Auctions).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ *Id.*

¹⁸ The Exchange notes that the rules contained in MIAIX Chapter III, are incorporated by reference into MIAIX Emerald Chapter III, and are thus MIAIX Emerald Rules and thereby applicable to MIAIX Emerald Members. See Chapter III of the MIAIX Emerald Rulebook.

¹⁹ See Interpretations and Policies .01 of Exchange Rule 515A.

²⁰ See Exchange Rule 303.

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 PRIME Auctions to assigned 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 the PRIME Auction mechanism on the Exchange. Additionally, the Exchange notes 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.²¹ The Exchange believes the proposed rule change may improve price competition with PRIME Auctions, because the primary liquidity providers will be able to increase participation in PRIME Auctions.

For all the reasons stated, 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, and believes the proposed change will enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Act²² and subparagraph (f)(6) of Rule 19b-4 thereunder.²³

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)²⁴ 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-EMERALD-2026-13 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-EMERALD-2026-13. 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-EMERALD-2026-13 and should be submitted on or before June 9, 2026.

of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁴ 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-09960 Filed 5-18-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0571]

Proposed Collection; Comment Request; Extension: Rule 206(4)-6

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

The title for the collection of information is "Rule 206(4)-6" under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*) ("Advisers Act") and the collection has been approved under OMB Control No. 3235-0571. The Commission adopted rule 206(4)-6 (17 CFR 275.206(4)-6), the proxy voting rule, to address an investment adviser's fiduciary obligation to clients who have given the adviser authority to vote their securities. Under the rule, an investment adviser that exercises voting authority over client securities is required to: (i) adopt and implement written policies and procedures that are reasonably designed to ensure that the adviser votes client securities in the best interest of clients, including procedures to address any material conflict that may arise between the interests of the adviser and the client; (ii) disclose to clients how they may obtain information from the adviser on how the adviser has voted with respect to their securities; and (iii) describe to clients the adviser's proxy voting policies and procedures and, on request, furnish a copy of the policies and procedures to the requesting client. The rule is designed to assure that advisers that vote proxies for their clients vote those proxies in their clients' best interest and provide clients with information about how their proxies were voted.

²⁵ 17 CFR 200.30-3(a)(12).

²¹ See *supra* note 14.

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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing

Rule 206(4)–6 contains “collection of information” requirements within the meaning of the Paperwork Reduction Act. The respondents are investment advisers registered with the Commission that vote proxies with respect to clients’ securities. Advisory clients of these investment advisers use the information required by the rule to assess investment advisers’ proxy voting policies and procedures and to monitor the advisers’ performance of their proxy voting activities. The information required by Adviser’s Act rule 204–2, a recordkeeping rule, also is used by the Commission staff in its examination and oversight program. Without the information collected under the rules, advisory clients would not have information they need to assess the adviser’s services and monitor the adviser’s handling of their accounts, and the Commission would be less efficient and effective in its programs.

The estimated number of investment advisers subject to the collection of information requirements under the rule is 15,996. It is estimated that each of these advisers is required to spend on average 10 hours annually documenting its proxy voting procedures under the requirements of the rule, for a total burden of 159,960 hours. We further estimate that on average, approximately 377 clients of each adviser would request copies of the underlying policies and procedures. We estimate that it would take these advisers 0.1 hours per client to deliver copies of the policies and procedures, for a total burden of 603,049 hours. Accordingly, we estimate that rule 206(4)–6 results in an annual aggregate burden of collection for SEC-registered investment advisers of a total of 763,009.2 hours.

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 July 20, 2026. There will be a second opportunity to comment on this SEC request following the **Federal Register** publishing a 30-Day Submission Notice.

Dated: May 14, 2026.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026–09951 Filed 5–18–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–105495; File No. SR–CboeEDGX–2026–028]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Chapter 8 of the Exchange’s Rulebook Relating To Investigative and Disciplinary Matters

May 14, 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 May 4, 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 and II 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. (“EDGX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) proposed rule changes to amend Chapter 8 of the Exchange’s Rulebook relating to investigative and disciplinary matters. 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/equities/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 rules concerning investigative and disciplinary matters involving Exchange Members³ and persons associated with Members (“associated persons”). Specifically, the Exchange proposes to update its Rules relating to (1) disciplinary jurisdiction; (2) complaints and investigations; (3) expedited proceedings; (4) charges; (5) answers; (6) hearings; (7) offers of settlement; (8) decisions; (9) reviews; (10) judgments and sanctions; (11) service of notice; (12) agency review and reporting; (13) imposition of fines for minor rule violations; (14) ex parte communications; and (15) release of disciplinary complaints, decisions, and other information. The Exchange proposes these updates in an effort to increase efficiency and fairness by harmonizing the Exchange’s Rules concerning investigative and disciplinary matters with those of the Exchange’s affiliate exchanges: Cboe Exchange, Inc. (“C1” or “Cboe Options”) and Cboe C2 Exchange, Inc. (“C2”) (collectively, and hereinafter, referred to as the “Affiliated

³ See Exchange Rule 1.5(n). “The term ‘Member’ shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ‘member’ of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.”

⁴ See Rules of Cboe Exchange, Inc., specifically Rules 13.1, 13.2, 13.3, 13.4, 13.5, 13.6, 13.8, 13.9, 13.10, 13.11, 13.12, 13.13, 13.14, 13.15, and 13.16.

⁵ See Rules of Cboe C2 Exchange, Inc., specifically Chapter 13, which incorporates by reference the rules contained in Cboe Exchange, Inc. Chapter 13.

Exchanges”).⁶ In doing so, the Exchange proposes rule changes to adopt new roles for the Exchange’s Business Conduct Committee (“BCC”).⁷ As part of the harmonization process between the Exchange and Affiliated Exchanges, the Exchange proposes to align the Exchange’s hearing process and timeliness requirements with those of the Affiliated Exchanges. Additionally, the Exchange proposes to remove Rule 8.14, Agency Review, in its entirety because the Act provides for a statutory right to review⁸ and the Affiliated Exchanges do not contain a similar provision. In place of the removed Rule 8.14, the Exchange proposes to add a rule regarding reporting to the Central Registration Depository (“CRD”). The Exchange also proposes to remove Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, because the Rules of the Affiliated Exchanges do not contain a similar provision. Finally, the Exchange proposes to update certain Rules contained in Chapter 8 of the Exchange’s Rulebook to correct minor errors and update obsolete and outdated language.

By way of background, the Exchange Rules currently divide responsibility for the adjudication of its Rules into two categories: (1) rules for which the Chief Regulatory Officer (“CRO”) and Hearing Panels are responsible for adjudicating through formal disciplinary proceedings; and (2) rules under which fines may be assessed in lieu of formal disciplinary action. With respect to violations that are adjudicated by the CRO and Hearing Panels, Rule 8.4(b) requires the CRO to prepare a statement of charges whenever it appears that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange has occurred and formal disciplinary action is warranted. Alternatively, in lieu of conducting a formal disciplinary proceeding, Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, provides for disposition of specific violations through assessment of fines.

⁶ The rules under Chapter 13 of the Affiliated Exchanges are the same in number, form and substance. Therefore, the Exchange refers singularly to the corresponding rule of the “Affiliated Exchanges” throughout this proposed rule filing.

⁷ See proposed Rule 8.2(m). The BCC has decision-making authority concerning possible violations within the disciplinary jurisdiction of the Exchange. The BCC is comprised of one or more Members or associated persons, one or more public representatives, and may also include other individuals affiliated with the securities, futures or derivatives industry, all as appointed by the Exchange’s Nominating and Governance Committee with the approval of the Exchange’s Board of Directors.

⁸ 15 U.S.C. 78s(d).

In sum, the current application of the Rules provides for the CRO to determine whether to initiate charges in a regulatory matter and to determine appropriate sanctions for rule violations.

The Exchange believes that harmonizing the composition of the disciplinary Rules between the Exchange and the Affiliated Exchanges benefits Members because those parties who maintain status as both a Member of the Exchange and a Trading Permit Holder⁹ (“TPH”) on the Affiliated Exchanges will be subject to substantially similar disciplinary rules and not perceive one set of disciplinary rules to be more lenient or harsh depending on the Exchange’s core business. The Exchange notes that the CRO will continue to supervise the regulatory functions of the Exchange, separate from that of the Exchange’s business interest, reporting directly to the Regulatory Oversight Committee of the Board of Directors (“ROC”). Below is a summary of the Exchange’s Rules and their proposed changes concerning investigations and disciplinary matters.

Summary of Proposed Rule Changes

The Exchange proposes the following rule changes, including proposed changes to:

(1) Amend Rule 8.1, Disciplinary Jurisdiction, to reflect the Affiliated Exchanges’ Rule 13.1, including adding a provision that Members or associated persons continue to be subject to the disciplinary jurisdiction of the Exchange with respect to the failure to honor arbitration awards and removing the provision specifying that the Exchange may contract with another self-regulatory organization to perform some or all of the Exchange’s disciplinary functions;

(2) Amend Rule 8.2, Complaint and Investigation, to reflect the layout and content of Affiliated Exchanges’ Rule 13.2 by:

a. Updating Rule 8.2(a) to place the responsibility of initiating an investigation with the Exchange’s regulatory staff whenever the regulatory staff determines a reasonable basis exists to do so or upon receipt of a complaint by any person or entity

⁹ See Bylaws of Cboe Exchange, Inc. Section 1.1 Definitions. “The term “Trading Permit Holder” means any individual, corporation, partnership, limited liability company or other entity authorized by the Rules that holds a Trading Permit A Trading Permit Holder is a “member” solely for purposes of the Act; however, one’s status as a Trading Permit Holder does not confer on that Person any ownership interest in the Exchange.”

including the Board,¹⁰ Exchange employees, and Members;

b. Updating Rule 8.2(b) to specify the appropriate action when the regulatory staff finds reasonable grounds to believe a violation occurred, but no formal regulatory action is warranted in lieu of a statement of charges;

c. Updating Rule 8.2(c) to add that a Member or associated person is obligated to appear and testify, respond to interrogatories, and furnish information as requested by the Exchange in connection with an inquiry resulting from agreement pursuant to Exchange Rules 8.2(f), 8.2(g), or 13.7;

d. Updating Rule 8.2(d) to extend the time in which a Subject¹¹ has to submit a response to a notification from 15 to 25 days, add a 25-day tolling period while a request for access to the relevant investigative file is pending, and make other non-substantive conforming changes;

e. Updating Rule 8.2(h) to extend the time in which a Subject has to submit a videotaped response to a notification from 15 to 25 days and to specify the length and format of videotaped responses submitted pursuant to the Rule;

f. Adding Interpretation and Policy .03–.05 of the Affiliated Exchanges’ Rule 13.2 as Exchange Rules 8.2(i)–(k) to specify the format of complaints and form of materials to be submitted upon request, and define the term “Regulatory staff” as it is used in Chapter 8 of the Exchange Rules; and

g. Adding Proposed Rule 8.2(m) defining the BCC and outlining the composition of the BCC;

(3) Amend Rule 8.3, Expedited Proceeding, to extend the time a Subject has to submit written responses to notices from the Regulatory staff from 15 to 25 days and to make other non-substantive conforming changes to the Rule text;

(4) Amend Rule 8.4, Charges, to remove the current text of Rule 8.4(a) and replace it entirely with the text of the Affiliated Exchanges’ Rule 13.4(a), add that a Complainant¹² shall be notified if further proceedings are warranted to Rule 8.4(b), and add Rule 8.4(c) specifying the terms of a

¹⁰ See Rule 1.5(e). The terms “Board” and “Board of Directors” shall mean the Board of Directors of the Exchange.

¹¹ See Rule 8.2(d). The term “Subject” means the “person(s) who is the subject of the report” issued pursuant to Rule 8.2.

¹² See Proposed Rule 8.2(a). The term “Complainant” means “any person or entity, including the Board, Exchange employees, and Members” that submits a complaint pursuant to Rule 8.2.

Respondent's¹³ access to requested documents;

(5) Amend Rule 8.5, Answer, to extend the time that a Subject has to submit an answer from 15 to 25 days and add a 25-day tolling period while a request for access to the relevant investigative file is pending;

(6) Update Rule 8.6, Hearing, by:

a. Specifying that hearings on charges shall be held before a Hearing Panel comprised of three or five members of the BCC, rather than appointed by the Chief Executive Officer; and that BCC Counsel may assist the Hearing Panel in preparing its written recommendations or judgments;

b. Replacing the current text of Rule 8.6(a)(1) by adopting the Affiliated Exchanges' Rule 13.6(a)(1) regarding the impartiality of Hearing Panel members and deleting Rules 8.6(a)(1)(A)–(B);

c. Adopting the Affiliated Exchanges' Rule 13.6(a)(2) regarding motions for disqualification of Hearing Panel members as Rule 8.6(a)(2) and the Affiliated Exchanges' Rule 13.6(a)(3) regarding rulings on motions for disqualification of Hearing Panel members as Rule 8.6(a)(3);

d. Replacing the current text of Rule 8.6(b) by adopting the Affiliated Exchanges' Rule 13.6(b) regarding prehearing procedures;

e. Removing current Rule 8.6(c) and renumbering current Rule 8.6(d) as Rule 8.6(c);

f. Adopting the Affiliated Exchanges' Rule 13.6(d) regarding documents and witnesses as Rule 8.6(d); and

g. Adopting the Affiliated Exchanges' Rule 13.6(d), Interpretations and Policies .01–.03 regarding interventions as Rule 8.6(e);

(7) Amend Rule 8.8, Offers of Settlement, to clarify that the staff may also appear before the CRO to make an oral statement if the Respondent elects to make an oral statement before the CRO, and that a Respondent may submit an offer during the course of any proceeding under Chapter 8 of the Exchange Rules;

(8) Amend Rule 8.9, Decision, to add that a decision shall also include a statement of the sanctions imposed and reasons for the sanctions, that the regulatory division of the Exchange shall also receive a copy of statements, and that the Exchange shall post the complete decision on the appropriate EDGX website once the decision is considered final;

(9) Update Rule 8.10, Review, by:

a. Extending the time for a Respondent to petition for review of a

decision from 10 days to 15 days, specify the process of petitioning for review of a decision, and clarify that other parties to a hearing may also submit petitions for review and responses to petitions for review;

b. Allowing the Board or a committee of the Board to ratify a review, clarify that new issues may be raised by the parties involved in the review, and clarify that the Board may affirm, reverse or modify the decision, and that the decision must be served upon the Respondent and the regulatory division of the Exchange;

c. Extending the time the Board has to review a decision from 20 days to 30 days; and

d. Eliminating Rule 8.10(d);

(10) Amend Rule 8.11, Judgment and Sanctions, to remove a committee of the Board as an applicable body that may determine penalties and impose discipline upon Members and associated persons and remove Interpretations and Policies .01 to Rule 8.11;

(11) Amend Rule 8.12, Miscellaneous Provisions, to clarify that the address a Respondent may be served at is the last known place of business as it appears on the books and records of the Exchange, and to provide an additional three days to the prescribed period a Respondent has to respond in the case of service by certified mail;

(12) Remove Rule 8.14, Agency Review, in its entirety and replace it with the text of Rule 13.14 of the Affiliated Exchanges regarding reporting to the CRD;

(13) Revise Rule 8.15, Imposition of Fines for Minor Rule Violations, to include additional details about the Minor Rule Violation program and align the Exchange's rule with corresponding Rule 13.15 of the Affiliated Exchanges;

(14) Update Rule 8.16, *Ex Parte* Communications, to clarify that the provisions of the Rule apply to all Members and associated persons, amend the definition of Adjudicator¹⁴ under the Rule, add subparagraphs (e), (f), and (g) to define *ex parte* communication, and add clarifying provisions regarding what may not be considered a violation of Rule 8.16; and

(15) Remove Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, in its entirety.

Detailed descriptions of the proposed changes to specific rules within Chapter 8 are outlined below.

Exchange Rule 8.1, Disciplinary Jurisdiction

(1) Current Rule 8.1

In its current form, Exchange Rule 8.1 sets forth the Exchange's jurisdiction regarding disciplinary matters involving its Members and associated persons. Members and associated persons are subject to the disciplinary jurisdiction of the Exchange pursuant to Chapter 8 of the Exchange's Rulebook and, after notice and opportunity for a hearing may be appropriately disciplined by: expulsion; suspension; limitation of activities, functions and operation; fine; censure; suspension or bar from association with a Member or any other fitting sanction.¹⁵ An individual Member or associated person may be charged with a violation committed by an employee under the Member's supervision or by the Member or associated person, as though such violation was their own.¹⁶ Similarly, a Member organization may be charged with any violation committed by its employees or by any other person who is associated with such Member organization, as though such violation was their own.¹⁷ Members and associated persons continue to be subject to the Exchange's disciplinary jurisdiction following termination of such person's association with a Member with respect to matters that occurred prior to such termination provided that the Exchange gave written notice to the former Member or former associated person within one year of the Exchange's receipt of written notice of termination of such former Member or such former associated person.¹⁸ Chapter 8 does not apply to summary suspensions or other action taken pursuant to Chapter 7 of the Rules of the Exchange and action taken pursuant to Chapter 7 shall not be deemed disciplinary action under Chapter 8.¹⁹ Rule 8.1(d) provides that Exchange is permitted to contract with another self-regulatory organization ("SRO") to perform some or all of the Exchange's disciplinary functions and allows the Exchange to retain ultimate legal responsibility for and control of such functions.²⁰

(2) Proposed Changes to Rule 8.1

The Exchange first proposes to amend Rule 8.1(b) to clarify that former Members or associated people continue to be subject to the Exchange's

¹⁵ See Rule 8.1(a).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Rule 8.1(b).

¹⁹ See Rule 8.1(c).

²⁰ See Rule 8.1(d).

¹³ See Proposed Rule 8.2(b). The term "Respondent" means "the person or organization alleged to have committed a violation."

¹⁴ See Proposed Rule 8.16 (defining "Adjudicator" as "any member of the Hearing Panel, Business Conduct Committee, Board or committee of the Board" participating in a decision with respect to the proceeding at issue).

jurisdiction with respect to their failure to honor an arbitration award pursuant to Chapter 9 of the Exchange Rules. Chapter 9 of the Exchange's Rules governs the EDGX arbitration process. Rule 9.5 states that failing to honor a EDGX arbitration award may be deemed conduct inconsistent with just and equitable principles of trade. Conduct inconsistent with just and equitable principles of trade is a violation of Rule 3.1 and is thus subject to the disciplinary jurisdiction of the Exchange and should be codified as such.²¹ Currently, however, such failure to honor a EDGX arbitration award by a former Member, or former person associated with a Member, may not always be subject to the Exchange's disciplinary jurisdiction.

Current Rule 8.1(b) provides that a Member or associated person shall continue to be subject to the disciplinary jurisdiction of the Exchange following such Member's or associated person's termination of membership, or termination of association with such Member, with respect to matters that occurred prior to such termination, provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former Member or associated person within one year of the Exchange's receipt of notice of such termination.²² This provision allows for certain anomalies in the context of failure to pay arbitration awards. For example, consider the following scenario: A customer is involved in a trading dispute with a EDGX Member. Months later, the Member terminates its membership on the Exchange. Weeks after the membership termination, the customer properly files an arbitration claim with EDGX.²³ One and a half years after the membership termination, the customer prevails in the arbitration proceeding, and a monetary award is imposed against the former Member. Nevertheless, the former Member subsequently fails to honor the arbitration award. Because more than one year has passed since the former Member's termination of membership and the Exchange did not provide written notice of the commencement of an inquiry into the failure to pay the

award, the Exchange could not assert disciplinary jurisdiction over the former Member. The Exchange believes this is problematic given the fact that the dispute concerned Exchange-related business, and that the award was pursuant to an Exchange arbitration proceeding. While the Exchange notes that the customer in the above example would be able to seek enforcement of the award through the judicial system, the inability of the Exchange to potentially take disciplinary measures undermines the credibility of the Exchange's arbitration forum.

The Exchange also proposes to remove current Rule 8.1(d) in its entirety to remove obsolete and duplicative language regarding the ability of the Exchange to contract with another self-regulatory organization to perform disciplinary functions and replace this text with text found in Rule 13.1, Interpretations and Policies .02 of the Affiliated Exchanges describing when the notice requirement found in current Rule 8.1(b) shall not apply. Rule 8.1(d) currently states that the Exchange may contract with another self-regulatory organization to perform some or all of the Exchange's disciplinary functions, allows the Exchange to specify the extent to which the Rules of Chapter 8 govern disciplinary functions when contracting with an SRO, and allows the Exchange to retain ultimate legal responsibility and control over the Exchange's disciplinary functions. The Exchange proposes to remove the current language of 8.1(d) because its contents are duplicative of Exchange Rule 13.7, Regulatory Services Agreements.²⁴ The text added to Rule 8.1(d) would eliminate the notice requirement in Rule 8.1(b) solely with respect to instances where the Exchange seeks to take disciplinary measures with respect to a former Member or associated person for failure to honor an arbitration award pursuant to Chapter 9. Accordingly, the Exchange proposes to delete the text of current Rule 8.1(d) and replace this text with the text of Rule

13.1, Interpretations and Policies. 02 of the Affiliated Exchanges in its entirety.²⁵

Together, the proposed changes to Rule 8.1(b) and Rule 8.1(d) would provide that failing to pay arbitration awards would remain under the disciplinary jurisdiction of the Exchange. The proposed change to Rule 8.1(b) seeks to clarify that former Members or associated persons continue to be subject to the Exchange's jurisdiction with respect to their failure to honor an arbitration award pursuant to Chapter 9 of the Exchange Rules while the proposed change to Rule 8.1(d) would seek to eliminate the notice requirement in Rule 8.1(b) solely with respect to instances where the Exchange seeks to take disciplinary measures with respect to a former Member or associated person for failure to honor an arbitration award pursuant to Chapter 9. The proposed amendments to Rule 8.1(b) and 8.1(d) will result in Rule 8.1 aligning with Rule 13.1 of the Affiliated Exchanges.

Exchange Rule 8.2, Complaint and Investigation

(1) Current Rule 8.2

Current Rule 8.2 states that staff investigates and examines possible violations within the disciplinary jurisdiction of the Exchange ("violations") whenever possible violations are brought to its attention in any manner, including upon order of the Board, the CRO or other Exchange officials designated by the CRO, or upon receipt of a complaint alleging such violation.²⁶ Members and associated persons are required to cooperate with staff inquiries and to furnish information requested in connection with investigations and examinations.²⁷ Members and associated persons are entitled to be represented by counsel during any such Exchange investigation, proceeding or inquiry.²⁸ Failure to furnish information requested by the Exchange in the course of an inquiry, investigation, hearing or appeal, or in the course of preparation by the Exchange in anticipation of such hearing or appeal on the date or within the time period specified by the Exchange shall be deemed to be a

²⁵ The proposed change is substantially similar to SR-CBOE-2001-14, with minor differences for terminology and outdated rule references. Additionally, the Affiliated Exchanges' current arbitration rule (Chapter 14) explicitly states that former TPHs and associated persons of TPHs are considered to be encompassed by Chapter 14.

²⁶ See Rule 8.2(a).

²⁷ See Rule 8.2(c).

²⁸ *Id.*

²⁴ See Affiliated Exchanges' Rule 13.7. "The Exchange may enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Exchange Act. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Commission. . . . the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide."

²¹ See Rule 9.5.

²² See Rule 8.1(b).

²³ Rule 9.1 states that Members shall comply with any FINRA rules and interpretations thereof incorporated by reference as if such rules and interpretations were part of the Exchange's Rules. FINRA Rule 12202 states that claims by or against a member or an associated person who is inactive at the time the claim is filed is ineligible for arbitration under the FINRA Code of Arbitration unless the customer agrees in writing to arbitrate after the claim arises.

violation of Rule 8.2.²⁹ In each instance where an investigation has been instituted as a result of a complaint, and in every other instance in which an investigation finds that there are reasonable grounds to believe that a violation has been committed, the staff (or when appropriate, the designated self-regulatory organization) submits a written report (“report”) of the investigation to the CRO.³⁰

Prior to submitting a report to the CRO, staff must notify the subject of the report (“Subject”) of the nature of the alleged violations.³¹ Unless the CRO decides expeditious action is required, the Subject has 15 days to submit a written statement to the CRO concerning why no disciplinary action should be taken.³² The Subject may request access to documents in the investigative file, furnished by the Subject or the Subject’s agents, to assist the Subject in preparing such a written statement.³³ The Subject may also submit a videotaped response in lieu of a written statement, the length and format of which is decided by the Exchange.³⁴

The Exchange may enter into cooperative agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance or for market surveillance, investigative, enforcement or other regulatory purposes.³⁵ No Member or associated person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or another self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish testimony, documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such testimony, documentary materials or other information in connection with an inquiry resulting from a cooperative agreement entered into by the Exchange.³⁶

(2) Proposed Changes to Rule 8.2

The Exchange proposes to reorganize and amend Rule 8.2 to align with and reflect the layout of the Affiliated Exchanges’ Rule 13.2. The Exchange proposes these amendments to Rule 8.2

with the sole purpose of aligning the Rules of the Exchange with the Rules of the Affiliated Exchanges, thereby promoting consistency and efficiency for Members and TPHs.

First, the Exchange proposes to update Rule 8.2(a) to remove the Exchange’s (or designated SRO’s) and the Board’s ability to initiate an investigation and place the responsibility to initiate an investigation with the Exchange’s Regulatory staff, defined *infra*, upon receipt of a complaint. Specifically, Rule 8.2(a) currently provides that an investigation can be initiated in four different ways: (1) by the Exchange, (2) by the Board, (3) by the CRO, or (4) by receipt of a complaint. The Exchange proposes to amend Rule 8.2(a) to place the responsibility to initiate an investigation with the Exchange’s Regulatory staff whenever the Regulatory staff determines a reasonable basis to do so exists or upon receipt of a complaint by any person or entity including the Board, Exchange employees, and Members (the “Complainant”), provided that such complaint specifies in reasonable detail the facts constituting the alleged violation. The proposed amendment to Rule 8.2(a) will result in Rule 8.2(a) aligning with Rule 13.2(a) of the Affiliated Exchanges.

Second, the Exchange proposes to replace Rule 8.2(b) with the equivalent Rule 13.2(c) of the Affiliated Exchanges, which specifies the appropriate procedure in circumstances in which the Regulatory staff finds reasonable grounds to believe a violation occurred, but no formal regulatory action is warranted in lieu of a statement of charges. Currently, Rule 8.2(b) provides that a written report of an investigation shall be submitted to the CRO in every instance where an investigation has been instituted and an investigation results in a finding that a violation was committed. Notably, current Rule 8.2(b) does not contemplate the appropriate procedures for when the Regulatory staff determines that a violation occurred, but a non-formal regulatory action is warranted in lieu of issuing a statement of charges or when the Regulatory staff determines no reasonable grounds to believe a violation occurred exist. The Exchange proposes to amend 8.2(b) to provide that when the Regulatory staff determines that a violation occurred, but a non-formal regulatory action is warranted, in lieu of issuing a statement of charges, the Regulatory staff may impose a non-formal regulatory action without the submission of a written report of its investigation to the CRO. Additionally, the Exchange proposes to amend Rule 8.2(b) to provide that when

the Regulatory staff determines no reasonable grounds to believe a violation occurred exist, the Regulatory staff may close the investigation without submission of a written report to the CRO. The proposed Rule 8.2(b) reflects the language and procedures described Affiliated Exchanges’ Rule 13.2(c) and differs only where necessary to conform to the Exchange’s existing Rule text and to account for details or descriptions included in the Exchange’s Rules but not in the applicable Rules of the Affiliated Exchanges.

Third, the Exchange proposes to amend Rule 8.2(c) to add that a Member or associated person is obligated to appear and testify, respond to interrogatories, and furnish information requested by the Exchange in connection with an inquiry resulting from an agreement pursuant to Exchange Rules 8.2(f),³⁷ 8.2(g),³⁸ or 13.7.³⁹ Currently, Exchange Rule 8.2(c) provides for circumstances in which a Member or associated person is obligated to appear and testify, respond in writing to interrogatories, and furnish documentary materials and other information requested by the Exchange including in connection with a an investigation initiated pursuant to the Rule or a hearing or appeal conducted or anticipated to be conducted pursuant to Chapter 8 of the Exchange Rules. Current Rule 8.2(c) does not obligate a Member or associated person to perform the specified actions in connection with an Exchange inquiry resulting from an agreement entered in connection with regulatory cooperation, a cooperative agreement, or a regulatory services agreement. The Exchange proposes to amend Rule 8.2(c) to add that a Member or associated person is obligated to appear and testify, respond to

³⁷ See Rule 8.2(f). “No Member or person associated with a Member or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or other self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish testimony, documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such testimony, documentary materials or other information in connection with an inquiry resulting from an agreement entered into by the Exchange pursuant to subsection (g) of this Rule. . . .”

³⁸ See Rule 8.2(g). “The Exchange may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance or for market surveillance, investigative, enforcement or other regulatory purposes. . . .”

³⁹ See Rule 13.7. The Exchange may enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Exchange Act. . . .”

²⁹ See Rule 8.2(e).

³⁰ See Rule 8.2(b).

³¹ See Rule 8.2(d).

³² *Id.*

³³ *Id.*

³⁴ See Rule 8.2(h).

³⁵ See Rule 8.2(g).

³⁶ See Rule 8.2(f).

interrogatories, and furnish information requested by the Exchange in connection with an inquiry resulting from agreement pursuant to Exchange Rules 8.2(f), Regulatory Cooperation, 8.2(g), Cooperative Agreements, or 13.7, Regulatory Services Agreements. The proposed change to Rule 8.2(c) reflects the language of Affiliated Exchanges' Rule 13.2(b) and differs only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Fourth, the Exchange proposes to amend Rule 8.2(d) to extend the time in which a Subject⁴⁰ has to submit a response to a notification from 15 to 25 days, add a 25-day tolling period while a request for access to the relevant investigative file is pending, and add clarifying language to specify that the reference to any resolution of the Board in Rule 8.2(d) refers only to resolutions of the Board regulating the conduct of business on the Exchange. Currently, Rule 8.2(c) allows Subjects 15 days from the date of notification to submit a written statement to the CRO describing why no disciplinary action should be taken, whereas the Affiliated Exchanges allow for 25 days.⁴¹ Additionally, current Rule 8.2(c) does not include a tolling provision for Subjects when they are awaiting access to the relevant investigative file, whereas the Affiliated Exchanges include a tolling provision.⁴² Finally, unlike Rule 13.2(d) of the Affiliated Exchanges, current Exchange Rule 8.2(c) refers to resolutions of the Board without specifying that the Rule only refers to resolutions of the Board regulating the conduct of business on the Exchange. To ensure consistency between the Exchange and the Affiliated Exchanges, the Exchange proposes to amend Rule 8.2(d) to extend the time for a Subject to submit a response to a notification from 15 to 25 days, add a 25-day tolling period while a request for access to the relevant investigative file is pending, and add clarifying language to specify that the reference to any resolution of the Board in Rule 8.2(d) refers only to resolutions of the Board regulating the conduct of business on the Exchange. The resulting Rule 8.2(d)

will reflect the language of Rule 13.2(d) of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Fifth, the Exchange proposes to amend Rule 8.2(h) to extend the time in which a Subject may submit a videotaped response to a notification from 15 to 25 days and to specify the length and format of videotaped responses submitted pursuant to the Rule 8.2. Currently, Exchange Rule 8.2(h) allows Subjects 15 days to submit a videotaped response to a notification. The current Rule fails to specify the length and format of videotaped responses and states that the Exchange will establish these standards. The Exchange proposes to extend the time in which a Subject may submit a videotaped response to a notification from 15 to 25 days to align the Exchange's Rules with those of the Affiliated Exchanges and proposed Rule 8.2(d), discussed above. The Exchange also proposes to specify that submitted videotaped responses shall not exceed 12 minutes and must be accompanied by a written transcript to align the Exchange's Rules with those of the Affiliated Exchanges and provide clarity to its Members regarding the standards for videotaped responses submitted pursuant to Rule 8.2(h). The resulting Rule 8.2(d) will reflect the exact language of Interpretation and Policy .02 of the Affiliated Exchanges' Rule 13.2.

Sixth, the Exchange proposes to add Interpretation and Policy .03—.05 of the Affiliated Exchanges' Rule 13.2 as Exchange Rule 8.2(i)—(k) to specify the format of complaints, specify the form of materials to be submitted upon request, and define the term "Regulatory staff" as it is used in Chapter 8 of the Exchange Rules. The Affiliated Exchanges have rules in place specifying (1) that Complainants should sign written complaints or identify themselves when making oral complaints; (2) that data should be furnished upon request in the manner and standard electronic format prescribed by the Exchange; and (3) that define the term "Regulatory staff" as used in the relevant chapter. Conversely, the Exchange currently has no rules making such specifications. As such, the Exchange proposes to amend Rule 8.2 to add the specifications related to identification, furnishing materials upon request, and the definition of Regulatory staff that are included in the Rules of the Affiliated Exchanges. The Exchange proposes to

adopt Rule 8.2(i) requiring Complainants to sign written complaints or identify themselves when making oral complaints and identify the specific rules and regulations allegedly violated. The Exchange also proposes to adopt Rule 8.2(j) requiring each Member to furnish data concerning orders, transactions, and positions upon request in the manner and standard electronic format prescribed by the Exchange. Finally, the Exchange proposes to adopt Rule 8.2(k) to define the term "Regulatory staff," as used in Chapter 8, to mean the Exchange's employees in the regulatory division, and, as applicable, employees of FINRA performing regulatory services for the Exchange. The resulting Rules 8.2(i), 8.2(j), and 8.2(k) will reflect Interpretation and Policy .03—.05 of the Affiliated Exchanges' Rule 13.2 with the only difference between the rules being the corresponding Exchange Rules and defined terms referenced in each.

Finally, the Exchange proposes to add Rule 8.2(m) to the Rules of the Exchange defining the BCC and detailing its composition. Proposed Rule 8.2(m) will define the BCC as a committee of the Board with decision-making authority concerning possible violation within the discretionary jurisdiction of the Exchange. Further, the proposed rule will detail the composition of the BCC as being comprised of one or more Member or associated person, one or more public representatives, and may also include other individuals affiliated with the securities, futures or derivatives industry, all as appointed by the Exchange's Nominating and Governance Committee with the approval of the Exchange's Board of Directors. The resulting Rule 8.2(m) will set forth the definition and composition of the BCC in the Rules of the Exchange thereby adding clarity. The Exchange's proposed amendments to Rule 8.2 discussed above will result in clarifying the Rules of the Exchange and the terms therein and Rule 8.2 aligning with and reflecting the general format of the Affiliated Exchanges' Rule 13.2 with differences only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Exchange Rule 8.3, Expedited Processing

(1) Current Rule 8.3

Current Rule 8.3, Expedited Proceeding, states that when a Subject receives notice of a report, the Subject may seek to dispose of the matter

⁴⁰ See Rule 8.2(d). The term "Subject" refers to the person(s) who is the subject of the report.

⁴¹ See Affiliated Exchanges' Rule 13.2(d). "A subject shall have 25 days from the date of notification [] to submit a written statement to the CRO concerning why no disciplinary action should be taken."

⁴² See Affiliated Exchanges' Rule 13.2(d). "The 25-day period to submit a written statement shall toll while any request for access to the investigative file pursuant to this section is pending."

through a letter of consent.⁴³ The Subject may submit notice to staff electing to proceed in an expedited manner and shall have 15 days to submit a written statement pursuant to Rule 8.2(d).⁴⁴ The Subject and staff may then negotiate a letter of consent outlining stipulations and findings regarding the violation(s) and the sanctions therefore.⁴⁵ Disposing of the matter via letter of consent occurs only if the Subject and staff agree on the terms and it is signed by the Subject.⁴⁶ The CRO may accept or reject the letter of consent.⁴⁷ If the CRO accepts the letter, the Exchange may adopt the letter as its decision.⁴⁸ If the CRO rejects the letter, the matter proceeds as if the letter had not been submitted. The CRO's decision to accept or reject the letter is final.⁴⁹ Upon rejection, the Subject shall have 15 days to submit a written statement pursuant to Rule 8.2(d).⁵⁰ At any time, the Subject or staff may terminate the negotiations via written declaration of an end to the negotiations.⁵¹

(2) Proposed Changes to Rule 8.3

The Exchange proposes to amend Rule 8.3, Expedited Proceeding, to extend the time for a Subject to submit written responses to notices from the Regulatory staff from 15 to 25 days and to make other non-substantive conforming changes to the rule text. Rule 8.3, Expedited Proceedings, references Rule 8.2(d), regarding notice and time to respond to a notice, multiple times. Currently, Rule 8.2(d) allows Subjects 15 days to respond to a notice from the Exchange's Regulatory staff. As discussed in detail above, the Exchange is proposing to extend time allotted in Rule 8.2(d) to 25 days to align the Rules of the Exchange with those of the Affiliated Exchanges. Similarly, current Rule 8.3 allows Subjects 15 days to submit a written notice in response a notification electing to proceed in an expedited manner, a declaration of an end to negotiations, or a rejection of a letter of consent. The Exchange now proposes to extend the time allotted to a Subject to submit a written response in each of these scenarios to 25 days.

Additionally, the Exchange proposes to make other non-substantive changes to Rule 8.3 to conform the language of

the Rule with the language of Affiliated Exchanges' Rule 13.3, Expedited Proceeding. These non-substantive changes include changing references to "Exchange staff" to "Regulatory staff," which the Exchange proposes to define in Rule 8.2(k), discussed above. The Exchange's proposed amendments to Rule 8.3 as discussed above will align Rule 8.3 with the general format and language of the Affiliated Exchanges' Rule 13.3.

Exchange Rule 8.4, Charges

(1) Current Rule 8.4

Current Rule 8.4 states that when it appears to the CRO from the staff's report pursuant to Rule 8.2(b) that no probable cause exists for finding a violation occurred or if the CRO otherwise determines that no further action is warranted, the CRO issues a written statement setting out its reasons for that finding.⁵² When the CRO determines probable cause exists for finding a violation occurred and further proceedings are warranted, the CRO directs staff to prepare a statement of charges against the Respondent specifying the acts for which the Respondent is charged and setting forth the specific violations.⁵³ A copy of the statement of charges shall be served upon the Respondent in accordance with Rule 8.12.⁵⁴

(2) Proposed Changes to Rule 8.4

The Exchange proposes to amend Rule 8.4, Charges, to delete the current text of Rule 8.4(a) and replace it entirely with the text of the Affiliated Exchanges' Rule 13.4(a), amend Rule 8.4(b) to provide that a Complainant shall be notified if further proceedings are warranted, and add Rule 8.4(c) specifying the terms of a Respondent's access to requested documents.

First, the Exchange proposes to delete the current text of Rule 8.4(a) and replace it entirely with the text of the Affiliated Exchanges' Rule 13.4(a). Current Rule 8.4(a) describes the steps the CRO must take in the case he or she determines that no probable cause exists for finding a violation occurred or that no further proceedings are warranted. In both cases, current Rule 8.4(a) directs the CRO to issue a written statement setting forth the reasons for his or her finding. Rule 8.4(a) does not specify which materials the CRO must base his or her finding on and requires the CRO, rather than the Regulatory staff, to take the specified action. The Exchange proposes to amend Rule 8.4(a) to adopt

the language of the Affiliated Exchange's Rule 13.4(a) in its entirety. As a result, Rule 8.4(a) will continue to describe the steps the CRO must take if he or she determines that no probable cause exists for finding a violation occurred or that no further proceedings are warranted. The amended Rule 8.4(a) will also specify that the CRO should base his or her finding on the report of the Regulatory staff, that the determination should be based on whether a violation occurred within the disciplinary jurisdiction of the Exchange, and direct the Regulatory staff, rather than the CRO, to prepare and issue a written statement setting forth the reasons for the CRO's findings. The resulting Rule 8.4(a) will reflect the exact language of the Affiliated Exchanges' Rule 13.4(a).

Second, the Exchange proposes to amend Rule 8.4(b) to specify that the CRO's finding should be based on the report of the Regulatory staff and that the Regulatory staff prepares and issues the statement of charges. Similar to current Rule 8.4(a), current Rule 8.4(b) does not specify that the CRO's finding should be based on a report from the Regulatory staff or that the Regulatory staff, rather than the CRO, should prepare and issue statements of charges. The Exchange proposes to amend Rule 8.4(b) to add these specifications. Additionally, the Exchange proposes to amend Rule 8.4(b) to specify that the term "Respondent" refers to the person or organization alleged to have committed a violation, and that the Complainant, if any, shall be notified if further proceedings are warranted. Current Rule 8.4(b) does not specifically define the term "Respondent" or whether Complainants will be contacted if further proceedings are warranted. The Exchange proposes to add to Rule 8.4(b) that the term "Respondent" refers to "the person or organization alleged to have committed a violation." The Exchange also proposes to add that if further proceedings are warranted, the Complainant shall be notified. The resulting Rule 8.4(b) will reflect the exact language of Rules 13.4(b) of the Affiliated Exchanges.

Finally, the Exchange proposes to add subparagraph (c) to Rule 8.4 to specify the terms of the Respondent's access to requested documents. Currently, neither Rule 8.4, nor any provision in Chapter 8 of the Exchange's Rulebook, provides the terms of Respondent's access to documents relating to their investigation. The Exchange proposes to adopt Rule 8.4(c) to specify that Respondents who have made a request for documents shall have access to all documents concerning their case within

⁴³ See Rule 8.3.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See Rule 8.4(a).

⁵³ See Rule 8.4(b).

⁵⁴ *Id.*

25 days after a statement of charges has been properly served upon the Respondent. If a Respondent requests such documentation, the Regulatory staff may protect the identity of the Complainant. The Exchange seeks to add clarity to the process by which Respondents may obtain all relevant documentation and ensure that procedures for obtaining such information are transparently communicated to all Members of the Exchange. The resulting Rule 8.4(c) will reflect the language of Rules 13.4(c) of the Affiliated Exchanges, with differences only to account for the Exchange Rules referenced therein.

Exchange Rule 8.5, Answer

(1) Current Rule 8.5

Currently, Rule 8.5, Answer, states that a Respondent has 15 days after service of the statement of charges to file a written answer to the statement of charges (“Answer”).⁵⁵ The Answer must specifically admit or deny any allegation contained in the statement of charges and may be accompanied by supporting documentation.⁵⁶

(2) Proposed Changes to Rule 8.5

The Exchange proposes to amend Rule 8.5, Answer, to extend the time for a Subject to submit an answer from 15 to 25 days and add a 25-day tolling period while a request for access to the relevant investigative file is pending. Similar to Rule 8.2, discussed above, Rule 8.5 currently allows Respondents 15 days after service of the charges to file an answer, whereas the Affiliated Exchanges allow for 25 days.⁵⁷ Additionally, current Rule 8.5 does not include a tolling provision for Respondents when they are awaiting access to the relevant investigative file, whereas the Affiliated Exchanges include a tolling provision.⁵⁸ To ensure consistency between the Exchange and its Affiliated Exchanges, the Exchange proposes to amend Rule 8.5 to extend the time that a Respondent has to file an answer from 15 to 25 days and add a 25-day tolling period while a request for access to the relevant investigative file is pending. The resulting Rule 8.5 will reflect the language of Rule 13.5 of the Affiliated Exchanges with differences

only to account for the Exchange Rules referenced therein.

Exchange Rule 8.6, Hearings

(1) Current Rule 8.6

Current Rule 8.6, Hearings, states that subject to Rule 8.7⁵⁹ regarding summary proceedings, hearings on charges are held before a panel of three hearing officers (the “Hearing Panel”) appointed by the Chief Executive Officer.⁶⁰ Each Hearing Panel shall be comprised of the following: (i) a professional hearing officer, who shall serve as Chairman; (ii) a hearing officer who is an Industry Member;⁶¹ and (iii) a hearing officer who is a Member Representative.⁶² Exchange counsel may assist the Hearing Panel in preparing its written recommendations or judgments.⁶⁴ Within 15 days of the appointment of the Hearing Panel, the Respondent may move, in writing, to disqualify any Hearing Officer sitting on such Hearing Panel based upon bias or conflict of interest.⁶⁵ The Exchange may file a brief in opposition to the Respondent’s motion within 15 days of service thereof.⁶⁶ The Hearing Panel shall rule upon such motion no later than 30 days from filing by the Respondent.⁶⁷

Participants shall be given at least 15 business days’ notice of the time and place of the hearing and a statement of the matters to be considered therein.⁶⁸ Not less than 8 days in advance of the

⁵⁹ See Rule 8.7. “Notwithstanding the provisions of Rule 8.6 of this Chapter, the CRO may make a determination without a hearing and may impose a penalty as to violations which the Respondent has admitted or charges which the Respondent has failed to answer or which otherwise are not in dispute. Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent, who shall have ten (10) business days from the date of service to notify the CRO that he desires a hearing upon all or a portion of any charges not previously admitted or upon the penalty. Failure to so notify the CRO shall constitute an admission of the violations and acceptance of the penalty as determined by the CRO and a waiver of all rights of review. If the Respondent requests a hearing, the matters which are the subject of the hearing shall be handled in accordance with the hearing and review procedures of this Chapter.”

⁶⁰ See Rule 8.6(a)(2).

⁶¹ See Rule 8.6(a)(1)(A). An “Industry Member” is generally defined as a person having significant involvement with a broker or dealer, a person who provides professional services to a broker or dealer, or a person who has an employment relationship or consults for or provides professional services to the Exchange or any affiliate thereof.

⁶² See Rule 8.6(a)(1)(B). The term “Member Representative” means a member of any hearing panel who is an office, director, employee or agent of an Exchange Member.

⁶³ See Rule 8.6(a)(2).

⁶⁴ See Rule 8.6(b).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See Rule 8.6(c).

hearing date, the parties must furnish copies of all documentary evidence they wish to present at the hearing, and the parties shall furnish a list of all documents submitted for the record not less than four business days in advance of the hearing.⁶⁹ These documents shall be made available to the parties for inspection and copying.⁷⁰ The Hearing Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct at the hearing.⁷¹ The charges shall be presented by a representative of the Exchange or the designated SRO who, along with the Respondent, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Hearing Panel and opposing parties.⁷² The Respondent is entitled to be represented by counsel who may participate fully in the hearing.⁷³ A transcript of the hearing shall be made and shall become part of the record.⁷⁴

(2) Proposed Changes to Rule 8.6

The Exchange proposes to remove current text of Rule 8.6, Hearings, and replace it entirely with the language of Rule 13.6 of the Affiliated Exchanges, which describes the process of conducting hearings for the Affiliated Exchanges. Proposed changes to Rule 8.6 include amending Rule 8.6(a) to change the composition of the panel overseeing hearings from three hearing officers appointed by the CEO to three to five members of the BCC selected by the Chairperson of the BCC; reorganizing the contents of the Rule to reflect the format of Rule 13.6 of the Affiliated Exchanges, and adding subparagraphs (d) and (e) to Rule 8.6.

The Exchange proposes to amend Rule 8.6(a) to remove the current rule text and replace it entirely with the text of Rule 13.6(a) of the Affiliated Exchanges. Current Rule 8.6(a) defines the terms “Industry Member” and “Member Representative member,” and then specifies the composition of Hearing Panels that conduct hearings pursuant to the Rule as three hearing officers appointed by the CRO. The amended Rule 8.6(a) will define the term “Hearing Panel” as the selected members of the BCC that shall exercise the authority of the BCC with respect to matters pertaining to the hearing. The proposed rule change will transform the composition of the Hearing Panel from

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See Rule 8.6(d).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁵⁵ See Rule 8.5.

⁵⁶ *Id.*

⁵⁷ See Affiliated Exchanges’ Rule 13.5. “The Respondent shall have 25 business days after service of the charges to file a written answer thereto.”

⁵⁸ See Affiliated Exchanges’ Rule 13.5. “The 25-day period to submit a written answer shall toll while any request for access to the investigative file pursuant to Rule 13.4(c) is pending.”

a panel of three hearing officers appointed by the Chief Executive Officer to three to five members of the BCC selected by the Chairperson of the BCC. Proposed Rule 8.6(a) will also provide that the Exchange and the Respondent shall be the parties to the hearing and where a Member organization is a party, it shall be represented at the hearing by one of its Principals or nominees. Additionally, the rule will provide that Hearing Panel members shall remain impartial and function independently from Exchange staff.

Current Rule 8.6(b) imposes the requirement that members of the Hearing Panel must remain impartial and provides the procedures for which a Respondent may move to disqualify a member of the Hearing Panel based on bias or a conflict of interest. The Exchange proposes to remove subparagraph (b) of Rule 8.6 and replace it with a provision describing hearing procedures, discussed in detail *infra*. The Exchange proposes to amend subparagraph (1) of Rule 8.6(a) to set forth the requirement that members of the Hearing Panel remain impartial throughout the proceeding and the procedures for, if at any point in time, a member of the Hearing Panel determines they have a conflict of interest. These provisions were previously contained in subparagraph (b) of Rule 8.6. If a conflict of interest arises, the Hearing Panel member shall notify the Chairperson of the BCC who shall notify all Parties that the Hearing Panel member withdrawals from the hearing and then appoint a replacement. Finally, subparagraph (2) of proposed Rule 8.6(a) will provide for an avenue by which a Respondent may motion for the disqualification of a Hearing Panel member based on bias or a conflict of interest within 15 days of the appointment of the Hearing Panel member. This provision was also previously contained in subparagraph (b) of Rule 8.6. Similar to the requirements of current Rule 8.6(b), motions for disqualification of a Hearing Panel member will be required to be in writing and must state the facts and circumstances giving rise to the alleged bias or conflict. Then, the Exchange will have 15 days to file a brief in opposition to the Respondent's motion. The resulting Rule 8.6(a) will reflect the requirements and format set forth in Affiliated Exchanges' Rule 13.6(a) and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but

not in the applicable Rules of the Affiliated Exchanges.

Next, the Exchange proposes to amend current Rule 8.6(b) to remove the existing text and replace it entirely with the text of Rule 13.6(b) of the Affiliated Exchanges. Current Rule 8.6(b) imposes the requirement that members of the Hearing Panel must remain impartial and provides the procedures for which a Respondent may move to disqualify a member of the Hearing Panel based on bias or a conflict of interest. As discussed above, the Exchange proposes to move the requirement of impartiality of Hearing Panel members and the procedures for addressing a Hearing Panel member's conflict of interest to subparagraph (a) of Rule 8.6. The Exchange proposes to replace current Rule 8.6(b) with a provision specifying prehearing procedures, which are currently found in Rule 8.6(c). As discussed in greater detail *infra*, the Exchange proposes to remove the text of current Rule 8.6(c) and renumber current Rule 8.6(d) as Rule 8.6(c).

The Exchange proposes to amend Rule 8.6(b) to specify the terms of notice before a hearing, location of a hearing, pre-hearing furnishing of documents, and pre-hearing conference requirements. First, the amended Rule 8.6(b) will specify that notice shall be served upon all Parties to a hearing at least 15 days before the hearing specifying the time and location of the hearing which is typically held in Chicago, but may be held outside of Chicago to accommodate hearing participants. Similar to current Rule 8.6(c), proposed Rule 8.6(b) will require 15 business days' notice of a hearing to all parties and require that all evidence each party intends to furnish to the Hearing Panel shall be furnished within 10 business days prior to the hearing. Next, proposed Rule 8.6(b) will specify that each party to a hearing must furnish all documentary evidence it intends to present at the hearing to the Hearing Panel and all other parties to the hearing within 10 days prior to the scheduled hearing. Proposed Rule 8.6(b) will also provide that where time and the nature of a proceeding permit, the parties shall meet in a prehearing conference to clarify and simplify issues and otherwise expediate the hearing process. The Rule will specify that at such prehearing conference the parties shall attempt to reach an agreement regarding the authenticity of documents and facts not in dispute, and that either party may request that the Hearing Panel or Chairperson thereof decide any unresolved prehearing issue. Finally, proposed Rule 8.6(b) will set forth the situations in which interlocutory Board

review of a decision by the Hearing Panel is permitted. Generally, proposed Rule 8.6(b) will prohibit any interlocutory review by the Board unless the Hearing Panel agrees to review after determining that the issue is a controlling issue of rule or policy and that immediate Board review would materially advance the ultimate resolution of the case. The resulting Rule 8.6(b) will reflect the language and organization of Rule 13.6(b) of the Affiliated Exchanges.

Next, the Exchange proposes to remove the existing text of Rule 8.6(c) as this text has been incorporated into proposed Rule 8.6(b). The Exchange also proposes to renumber current Rule 8.6(d) concerning the conduct of hearing as Rule 8.6(c) and proposes additional non-substantive changes to reflect the language of the Affiliated Exchanges' Rule 13.6(c). Proposed Rule 8.6(c) will impose the same requirements upon the Hearing Panel at a hearing as current Rule 8.6(d) does and add the opportunity for intervening parties to present evidence at a hearing be represented by counsel. The resulting Rule 8.6(c) will reflect the exact language of Rule 13.6(c) of the Affiliated Exchanges.

Next, the Exchange proposes to adopt Rule 13.6(d) of the Affiliated Exchanges regarding documents and witnesses as Exchange Rule 8.6(d). Proposed Rule 8.6(d) will provide the process by which the Hearing Panel may compel the production of evidence from the Exchange, a Member, or associated person. Proposed Rule 8.6(d) will allow a Respondent to submit a written request to the Hearing Panel asking the Hearing Panel to enter an order compelling the production of non-privileged documents by the Exchange, a Member, or associated person. Before entering an order under proposed Rule 8.6(d), the Hearing Panel will be required to hear any objections raised and weigh the probative value of the requested evidence against considerations including undue delay, waste of time, confusion, and unfair prejudice. As a result of compelled production under proposed Rule 8.6(d), the Hearing Panel may require the Respondent to pay the costs of producing the requested evidence and no Member or associated person may refuse to furnish relevant evidence requested or ordered by the Hearing Panel. The resulting Rule 8.6(d) will reflect the language and procedures outlined in Rule 13.6(f) of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the

Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Finally, the Exchange proposes to adopt the Affiliated Exchanges' Rule 13.6 Interpretations and Policies .01—.03 regarding parties intervening in a hearing as Rule 8.6(e). Proposed Rule 8.6(e) will set forth the process by which a third party may intervene as a party to a hearing. Under proposed Rule 8.6(e), a party may only intervene in a hearing if (1) the party satisfactorily demonstrates to the Hearing Panel that the party has an interest in the subject of the hearing and that disposition of the matter before the Hearing Panel may impair or impede the party's ability to protect that interest; or (2) the Hearing Panel, in its discretion, permits a party to intervene when the party's claim or defense and the main action have questions of fact or law in common. Proposed Rule 8.6(e) will require any party seeking to intervene in a hearing to file a notice requesting to intervene with the Hearing Panel stating the grounds for intervention. The Exchange proposes to add subparagraphs (1) and (2) to proposed Rule 8.6(d) including specifying that the Hearing Panel has discretion to take into consideration whether intervention will unduly delay a hearing and that the CRO shall have authority to direct that a hearing to be scheduled at any time after the period to answer, specified in Rule 8.5, discussed above, has elapsed. The resulting Rule 8.6(f) will reflect the exact language of Affiliated Exchanges' Rule 13.6 Interpretations and Policies .01—.03 with the only difference between the Rules being the Rules referenced therein.

The Exchanges proposes the aforementioned changes to Rule 8.6, Hearings, with the broader purpose of harmonizing the Rules of the Exchange with the Rules of the Affiliated Exchanges. The changes to Rule 8.6 propose to adopt new roles for the Exchange's Business Conduct Committee similar to the functions of the relevant BCC of the Affiliated Exchanges. The Exchange believes that harmonizing the composition of the disciplinary rules between the Exchange and the Affiliated Exchanges benefits Members because those parties who maintain status as both a Member of the Exchange and a Trading Permit Holder on the Affiliated Exchanges will be subject to substantially similar disciplinary rules and not perceive one set of disciplinary rules to be more lenient or harsh depending on the Exchange's core business.

Rule 8.8, Offers of Settlement

(1) Current Rule 8.8

Current Rule 8.8, Offers of Settlement, states that a Respondent may submit an offer of settlement ("offer") to the CRO at any time during the course of any proceeding.⁷⁵ If the CRO accepts the offer, it issues a decision consistent with the terms of the offer.⁷⁶ If the CRO rejects the offer, it notifies the Respondent and the matter proceeds as if the offer had not been made.⁷⁷ In addition, the Respondent is notified if staff will not recommend acceptance of an offer, and the Respondent may then appear before the CRO to make an oral statement in support of the offer.⁷⁸ If the CRO rejects an offer that the staff supports, the Respondent may also appear before the CRO to make an oral statement concerning why the CRO should consider changing its decision.⁷⁹ A Respondent must make a request for such an appearance within 5 days of being notified that the offer was rejected or that the staff will not recommend acceptance.⁸⁰ Unless otherwise ordered by the CRO, a Respondent shall be entitled to submit a maximum of two written offers of settlement in connection with the statement of charges issued pursuant to Rule 8.4(b).⁸¹

(2) Proposed Changes to Rule 8.8

The Exchange proposes to amend Rule 8.8, Offers of Settlement, to remove the provision that the staff may also appear before the CRO to make an oral statement if the Respondent elects to make an oral statement before the CRO. Additionally, the Exchange proposes to amend Rule 8.8 to provide that a Respondent may submit an offer during the course of any proceeding under Chapter 8 of the Exchange Rules. Currently, Rule 8.8(b) allows a Respondent to appear before the CRO to make an oral statement in support of an offer. If the CRO rejects the offer, the Respondent may appear in front of the CRO to make an oral statement in support of their offer and the Exchange staff may appear to make an oral statement in support of its position.⁸² The Exchange proposes to remove the language in Rule 8.8(b) stating that the staff may also make an oral statement in support of its position. Rule 13.8 of the Affiliated Exchanges contains a similar provision to Exchange Rule 8.8(b), but

does not contain a provision allowing the staff to also appear in front of the CRO. The Exchange proposes to remove this provision of Rule 8.8(b) to ensure consistency across the Rules of the Exchange and the Affiliated Exchanges.

The Exchange also proposes to add subparagraph (d) to Rule 8.8 regarding presentment of offers of settlement. The Exchange proposes to add language taken from Affiliated Exchanges' Rule 13.8 Interpretations and Policies .02 which clarifies when a Respondent may propose a written offer and that the Hearing Panel shall grant parties leave from a hearing if an offer of settlement is submitted subsequent to a hearing. The Exchange proposes to adopt similar language to Affiliated Exchanges' Rule 13.8 Interpretations and Policies .02. The resulting Rule 8.8(d) will ensure the granting of leave from hearings when an offer is submitted subsequent to a hearing and clarify that a Respondent may submit a written offer at any time during a proceeding under Chapter 8 of the Exchange Rules, subject to Rule 8.8(c).⁸³

Rule 8.9, Decision

(1) Current Rule 8.9

Currently, Rule 8.9, Decision, states that following a hearing, the Hearing Panel issues a decision, in writing, determining whether the Respondent has committed a violation.⁸⁴ The decision shall include a statement of findings and conclusions upon all material issues presented on the record.⁸⁵ Where a penalty is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged and setting forth the specific provisions of authority of which the acts are deemed to be in violation.⁸⁶ The Respondent shall promptly be sent a copy of the decision.⁸⁷

(2) Proposed Changes to Rule 8.9

The Exchange proposes to amend Rule 8.9, Decision, to add that a decision shall also include a statement of the penalties imposed and reasons for the penalties, that the regulatory division shall also receive a copy of the statements, and that the Exchange shall post the complete decision on the appropriate EDGX website once the

⁸³ See Rule 8.8(c). "Unless the CRO shall otherwise order, a Respondent shall be entitled to submit to the CRO a maximum of two written offers of settlement in connection with the statement of charges issued to that Respondent pursuant to Rule 8.4(b)."

⁸⁴ See Rule 8.9.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁷⁵ See Rule 8.8(a).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See Rule 8.8(b).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See Rule 8.8(c).

⁸² See Rule 8.8(a).

decision is considered final. Current Rule 8.9 sets out the required contents of a decision where a penalty is imposed but does not include that the decision must include a statement of the sanctions and the reasons for their imposition. The Exchange proposes to add to Rule 8.9 that where a penalty is imposed, the decision of the Hearing Panel shall also include a statement of the penalties imposed and the reasons therefor. Additionally, current Rule 8.9 states that a Respondent shall receive a copy of a decision but does not provide that the regulatory division of the Exchange shall receive a copy as well. The Exchange proposes to amend Rule 8.9 to include that the regulatory division shall also receive a copy of the decision. Finally, the Exchange proposes to add to Rule 8.9 that after review of a decision is complete and considered final, the Exchange shall post the complete decision on the appropriate EDGX website. The Rules of the Affiliated Exchanges include a similar provision⁸⁸ that is currently not contained in the Rules of the Exchange. The Exchange proposes this addition to ensure consistency across the Rules of the Exchange and Affiliated Exchanges and to ensure that Members and Trading Permit Holders of each do not perceive the Rules of one exchange as stricter than the other. The resulting Rule 8.9 will closely reflect Rule 13.9 of the Affiliated Exchanges, with the only difference being the Exchange Rules referenced therein.

Rule 8.10, Review

(1) Current Rule 8.10

Current Rule 8.10, Review, states that a Respondent has 10 days after service of a decision to petition for review of the decision by submitting a petition, in writing, and specifying the findings and conclusions to which exceptions are taken together with reasons for such exceptions.⁸⁹ The review shall be conducted by the Appeals Committee of the Board (the "Committee").⁹⁰ The review shall be based solely upon the record and the written exceptions filed by the parties unless the Committee decides to open the record for introduction of evidence or to hear arguments.⁹¹ The Committee's decision shall be in writing and shall be final.⁹²

The Board may order review of a decision made pursuant to Rule 8.7⁹³ or

8.9, discussed above, within 20 business days after issuance of the decision.⁹⁴ Such review shall be conducted in accordance with the Committee review procedure described above.⁹⁵ Within 30 days of a decision made to not initiate charges pursuant to Rule 8.4(a), described above, the Board may order review of such decision upon application made by the Chief Executive Officer ("CEO").⁹⁶ Such review shall be conducted in accordance with the Committee review procedure described above.⁹⁷

(2) Proposed Changes to Rule 8.10:

The Exchange proposes amend Rule 8.10(a) to reflect the content and format of Rule 13.10 of the Affiliated Exchanges. In doing so, the Exchange proposes to extend the time for a Respondent to petition for review of a decision from 10 days to 15 days, to specify the process of petitioning for review of a decision, and to clarify that other parties to a hearing may also submit a petition for review and a response to petitions for review. The Exchange also proposes to amend Rule 8.10(b) to allow the Board or a committee of the Board, excluding any Board member who participated in the review, to ratify a review, and to clarify that new issues may be raised by the parties involved in the review, but all parties must be given notice and opportunity to address them. Additionally, the Exchange proposes to amend Rule 8.10(b) to further clarify that the Board may affirm, reverse or modify the decision, and that the decision must be served upon the Respondent and the regulatory division of the Exchange. Next, the Exchange proposes to amend Rule 8.10(c) to extend the time allotted for the Board to review a decision from 20 days to 30 days. Finally, the Exchange proposes to remove subparagraph (d) of Rule 8.10 entirely to eliminate the CEO's role from

determination without a hearing and may impose a penalty as to violations which the Respondent has admitted or charges which the Respondent has failed to answer or which otherwise are not in dispute. Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent, who shall have ten (10) business days from the date of service to notify the CRO that he desires a hearing upon all or a portion of any charges not previously admitted or upon the penalty. Failure to so notify the CRO shall constitute an admission of the violations and acceptance of the penalty as determined by the CRO and a waiver of all rights of review. If the Respondent requests a hearing, the matters which are the subject of the hearing shall be handled in accordance with the hearing and review procedures of this Chapter."

⁹⁴ See Rule 8.10(c).

⁹⁵ *Id.*

⁹⁶ See Rule 8.10(d).

⁹⁷ *Id.*

the disciplinary issues of the Exchange all together.

The Exchange proposes to amend Rule 8.10(a) to allow both the Respondent and the regulatory division the opportunity to petition for review of a decision, extend the period of time allotted to both parties to file such a review from 10 days to 15 days, and specify the process by which the parties may petition for review. Current Rule 8.10(a) allows only the Respondent to petition for review of a decision within 10 days of service of notice of a decision and fails to specify the process for filing a petition for review. The Exchange proposes to extend this time to 15 days, include the regulatory division of the Exchange as a party who may petition for review, and specify that a petitioning party must file a copy of the written petition with the Secretary of the Exchange ("Secretary") shared with all other parties to the hearing. In response to a petition for review all other parties to the hearing shall have 15 days to respond to the petition by serving a written response upon the Secretary and all other parties to the hearing. The resulting Rule 8.10(a) will clarify the processes for submitting petitions for review for all parties to a hearing and closely reflect the language of Rule 13.10(a) of the Affiliated Exchanges. The resulting Rule 8.10(a) will differ from Rule 13.10(a) of the Affiliated Exchanges only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

The Exchange proposes to amend Rule 8.10(b) to reflect the language of the Rule 13.10(b) of the Affiliated Exchanges. Current Rule 8.10(b) provides that the review of a decision shall be conducted by the Appeals Committee of the Board and based solely on the record and written exceptions filed by the parties. The Exchange proposes to allow the Board or any subcommittee thereof, excluding any Director who took part in the Hearing Panel, to review a decision. The Exchange proposes to allow the reviewing Committee to open the record to introduce additional evidence if it chooses, in which case parties to the hearing shall be given notice and opportunity to address any additional issues. Finally, the Exchange proposes to clarify that the decision of the Board shall be made in writing and served upon the Respondent and the Regulatory Division. The resulting Rule 8.10(b) will closely reflect Rule 13.10(b) of the Affiliated Exchanges with differences to account for the

⁸⁸ See Affiliated Exchange Rule 13.9.

⁸⁹ See Rule 8.10(a).

⁹⁰ See Rule 8.10(b).

⁹¹ *Id.*

⁹² *Id.*

⁹³ See Rule 8.7. "Notwithstanding the provisions of Rule 8.6 of this Chapter, the CRO may make a

Exchange's existing Rule text and details and descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

The Exchange proposes to amend Rule 8.10(c) to extend the time the Board which the Board can review an order of a decision from 20 days to 30 days and to specify that the 30 period begins at the time service of the decision upon the Respondent and the Regulatory Division. Current Rule 8.10(c) allows the Board to review an order of a decision made pursuant to Rule 8.7 or Rule 8.9, described above, within 20 business days after issuance of the decision. The Exchange proposes to extend the time allotted to the Board to review an order of a decision to 30 days. The resulting Rule 8.10(c) will closely reflect Rule 13.10(c) of the Affiliated Exchanges with differences only to account for the Exchange Rules referenced therein.

Finally, the Exchange proposes to remove current subparagraph (d) from Rule 8.10, which allows the CEO to apply for, and the Board to order for, the review of decisions made pursuant to Rule 8.4(a), discussed above. The Exchange proposes to eliminate subparagraph (d) of Rule 8.10 with the broader purpose of removing the CEO from disciplinary matters within the Exchange. As discussed above, the Exchange seeks to align its Rules with those of the Affiliated Exchanges, which do not include the CEO as a stakeholder in disciplinary actions taken by the Affiliated Exchanges. The resulting Rule 8.10 will closely reflect the language and processes prescribed by Rule 13.10 of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Rule 8.11, Judgment and Sanction

(1) Current Rule 8.11

Current Rule 8.11, Judgment and Sanction, provides that the CRO, Hearing Panel, or committee of the Board appropriately discipline Members and associated persons for violations by expulsion, suspension, limitation of activities, fine, censure, suspension of association with a Member, suspension or revocation of membership, or any other fitting sanction.⁹⁸ Under this Rule, the CRO, Hearing Panel, or a committee of the Board, as applicable, considers several factors when determining

sanctions including, but not limited to, deterrence, remediation, precedent and the appropriateness of disgorgement and/or restitution.⁹⁹ Penalties imposed under this Rule shall not become effective until the review process is completed or the decision otherwise becomes final.¹⁰⁰ The CRO, Hearing Panel, or committee of the Board, as applicable, may impose such conditions and restrictions on the activities of the Respondent pending effectiveness of a decision imposing a penalty on the Respondent as necessary for the protection of investors, creditors, and the Exchange.¹⁰¹ The current Rule 8.11 also states that Exchange staff shall make all necessary findings under the Exchange Act and comply with all other applicable laws and regulations.¹⁰²

(2) Proposed Changes to Rule 8.11

The Exchange proposes to amend Rule 8.11, Judgment and Sanctions, to remove a committee of the Board as an applicable body that may determine penalties and impose discipline upon Members and associated persons. Current Rule 8.11(a) lists the CRO, Hearing Panel, and a committee of the Board as persons who may impose appropriate disciplinary actions for violations by expulsion, suspension, limitation of activities, fine, censure, suspension of association with a Member, suspension or revocation of membership, or any other fitting sanction. Current Rule 8.11(b) also includes a committee of the Board as an applicable body that may impose conditions or restrictions upon Members or associated persons for the protection of investors, creditors, and the Exchange pending the effectiveness of a decision imposing a penalty. Similarly, Rule 8.11(c) sets forth the appropriate considerations of the CRO, Hearing Panel, and committee of the Board in determining the imposition of sanctions. The Exchange proposes to remove a committee of the Board as a party that may determine and impose sanctions as described in the Rule. The resulting Rule 8.11 will contain the process for imposing disciplinary actions, but with a committee of the Board removed as a party that may take the actions described in Rule 8.11. The resulting Rule 8.11 will closely reflect Rule 13.11 of the Affiliated Exchanges with differences only to account for the Exchange Rules referenced therein.

⁹⁸ See Rule 8.11(c).

¹⁰⁰ See Rule 8.11(b).

¹⁰¹ *Id.*

¹⁰² See Rule 8.11, *Interpretations and Policies .01* to Rule 8.11.

The Exchange also proposes to remove Interpretations and Policies .01 to Rule 8.11. Interpretations and Policies .01 to Rule 8.11 currently states that Exchange staff shall make all necessary findings under the Exchange Act and comply with all other applicable laws and regulations. The Exchange proposes to remove this portion of Rule 8.11 because it is duplicative of the duties already imposed on the Exchange by the Exchange Act and other laws and regulations. Additionally, the corresponding Rule 13.11 of the Affiliated Exchanges does not contain a similar provision. Accordingly, the Exchange proposes to remove the duplicative language of Interpretations and Policies .01 to Rule 8.11 to align the Rules of the Exchange with those of the Affiliate Exchanges.

Rule 8.12, Miscellaneous Provisions

(1) Current Rule 8.12

Current Rule 8.12, Miscellaneous Provisions, states that service may be effected by personally delivering any charges, notices or other documents upon the Respondent, by leaving such charges, notices or other documents at his place of business, or by registered and certified mail addressed to the Respondent at his last known place of business.¹⁰³ The Exchange may grant an extension of time limits for the submission of answers, petitions or other materials if the authority to whom such materials are to be submitted grants permission for the extension.¹⁰⁴

The Exchange's staff, CRO, Board, or designated SRO shall have the right (1) to require any Member to report orally or in writing with regard to any matter involved in any such investigation or hearing, and (2) to investigate the books, records and accounts of any such Member with relation to any matter involved in any such investigation or hearing.¹⁰⁵ Members shall comply with requests to make any report as required by Rule 8.12(c) and shall comply with any inspection of books, records and accounts as may be validly called for under Rule 8.12(c).¹⁰⁶

(2) Proposed Changes to Rule 8.12

The Exchange proposes to amend Rule 8.12, Miscellaneous Provisions, to clarify that the address the Respondent may be served at is the last known place of business as it appears on the books and records of the Exchange, and to provide an additional three days to the

¹⁰³ See Rule 8.12(a).

¹⁰⁴ See Rule 8.12(b).

¹⁰⁵ See Rule 8.12(c).

¹⁰⁶ *Id.*

⁹⁸ See Rule 8.11(a).

prescribed period a Respondent has to respond in the case of service by certified mail. Additionally, the Exchange proposes to clarify all references to Respondent within Rule 8.12. Current Rule 8.12(a) describes where a Respondent may be served, including by mail to his last known place of business. However, the current Rule does not provide the source of the address that may be used in the case of service by certified mail and does not allow for additional time to respond to service in the case of service by certified mail. The Exchange proposes to amend Rule 8.12(a) to clarify that service by mail shall be addressed to the Respondent at the Respondent's last known place of business as it appears on the books and records of the Exchange. The Exchange also proposes to add a provision to Rule 8.12(a) to allow the Respondent three additional days to respond to service delivered by certified mail. Finally, the Exchange proposes to add non-substantive changes to Rule 8.12(a) to clearly use the term "Respondent" instead of "his" when referring to the Respondent in the Rule text. The resulting Rule 8.12(a) will clearly state the address to be used in the case of service by certified mail. The resulting Rule 8.12 will closely reflect the language and processes prescribed by Rule 13.12 of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

8.14, Agency Review

(1) Current Rule 8.14

Current Rule 8.14, Agency Review, states that actions taken by the Exchange pursuant to Chapter 8 shall be subject to the review and action of any appropriate regulatory agency under the Act.¹⁰⁷

(2) Proposed Changes to Rule 8.14

The Exchange proposes to remove current Rule 8.14, Agency Review, in its entirety and replace it with the text of Rule 13.14 of the Affiliated Exchanges. Current Rule 8.14 states that actions taken by the Exchange shall be subject to review by the appropriate regulatory agency under the Act. The Exchange believes this provision is duplicative of rules and restrictions already imposed on disciplinary actions under the Exchange Act.¹⁰⁸ Thus, the Exchange

proposes to remove the text of current Rule 8.14 because it is duplicative.

In place of current Rule 8.14, the Exchange proposes adopt language regarding reporting to the CRD using similar language to that of Rule 13.14 of the Affiliated Exchanges. Subparagraph (a) of proposed Rule 8.14, Reporting to the Central Registration Depository, will require the Exchange to report any issuance of a statement of charges concerning formal Exchange disciplinary proceedings pursuant to Rule 8.4(b), described above, and all significant changes in the status of pending proceedings to the CRD.

The Exchange also proposes to add clarifying descriptions of the terms used in Rule 8.14(a) to subparagraph (b) of proposed Rule 8.14. Proposed subparagraph (b)(1) of proposed Rule 8.14 will clarify that formal Exchange disciplinary proceedings are considered pending from the time the statement of charges is issued pursuant to Exchange Rule 8.4(b), as described above, until the proceeding becomes final. Subparagraph (b)(2) of proposed Rule 8.14 will clarify that an Exchange disciplinary proceeding shall be considered formal if it is initiated by the Exchange pursuant to Exchange Rule 8.1 through 8.13. Finally, subparagraph (b)(3) of proposed Rule 8.14 will list examples of significant changes that shall be reported to the CRD including the scheduling of a disciplinary hearing, the issuance of a decision by the CRO or Hearing Panel, the filing of an appeal to the Board, and the issuance of a decision by the Board. The resulting Rule 8.14 will reflect the language of Rule 13.14 of the Affiliated Exchanges with the only differences between the rules being the references to the Exchange specific rules within them. The Exchange proposes the aforementioned changes to Rule 8.14 with the purpose of clarifying which instances the Exchange reports disciplinary proceedings to the CRD and aligning the Rules of the Exchange with those of the Affiliated Exchanges.

Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules

(1) Current Rule 8.15

Current Rule 8.15, Imposition of Fines for Minor Rule Violations, states that in lieu of commencing disciplinary proceedings, the Exchange may impose fines on Members and associated persons for specified Rule violations that the Exchange has deemed minor in nature.¹⁰⁹ In any action taken by the Exchange pursuant to Rule 8.15, the

person against whom a fine is imposed shall be served, as provided in Rule 8.12 discussed above, with a written statement setting forth the details of each violation, the associated fine for each violation, the date by which the determination becomes final, and the fine due and payable to the Exchange.¹¹⁰ The person against whom a fine is imposed shall not have less than 15 business days after the date of service to contest the Exchange's determination.¹¹¹ Payment of the fine shall be deemed to be a waiver by such person of the right to a disciplinary proceeding under Rule 8.1–8.13, discussed above, and any review of the matter by the appeals committee or by the Board.¹¹² If the person against whom a fine is imposed contests the Exchange's determination through a written response meeting the requirements of an Answer, described in Rule 8.5 above, the matter shall become a disciplinary proceeding subject to the provisions of Rules 8.1–8.13, described above.¹¹³ The Exchange periodically announces a listing of Exchange Rules as to which fines may be imposed and the specific dollar amount that may be imposed or the minimum and maximum dollar amounts that may be imposed with respect to such violations.¹¹⁴ The Exchange is not required to impose a fine pursuant to Rule 8.15 with respect to a violation of any Rule included in such listing.¹¹⁵

(2) Proposed Changes to Rule 8.15

The Exchange proposes to amend Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, to reflect the content and layout of Rule 13.15 of the Affiliated Exchanges, which provides the guidelines for imposing fines for minor rule violations on the Affiliated Exchanges. The Exchange proposes to amend Rule 8.15(a) to limit fines imposed under the Rule to \$5,000, specify the actions constituting minor rule violations, describe the Exchange's treatment of separate and similar offenses for purposes of the Rule, and clarify that reporting of uncontested violations to the Commission not exceeding \$2,500 shall be reported on a periodic basis. The Exchange proposes to amend Rule 8.15(b) to extend the time that a determination becomes final or a determination must be contested

¹¹⁰ See Rule 8.15(b).

¹¹¹ *Id.*

¹¹² See Rule 8.15(c).

¹¹³ See Rule 8.15(d).

¹¹⁴ See Rule 8.15(e). See also Rule 8.15, Interpretations and Policies .01 (List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15).

¹¹⁵ *Id.*

¹⁰⁷ See Rule 8.14.

¹⁰⁸ See 15 U.S.C. 78s.

¹⁰⁹ See Rule 8.15(a).

under the Rule from no less than 15 days to no less than 30 days after service of the written statement and to specify that failure to contest, submission, and/or acceptance of a fine by a member does not constitute admission. The Exchange proposes to remove current rule 8.15(c) in its entirety and replace it with revised Rule 8.15(c). The Exchange proposes revised Rule 8.15(c) with subparagraphs (1)–(4), which will describe the process of contesting a fine. Finally, the Exchange proposes to amend current Rule 8.15(e) to become revised Rule 8.15(d) and make conforming non-substantive changes, authorize the Exchange to impose fines for first or second offenses when warranted under the circumstances as set forth in the Rule's *Interpretations and Policies*,¹¹⁶ and clarify the Exchange's authority to take formal disciplinary action under Rule 8.2 *et seq.*, rather than Rule 8.15 when warranted by the egregiousness of the violation.

The Exchange proposes to amend Rule 8.15(a) to limit fines imposed under the Rule to \$5,000, specify the actions constituting minor rule violations, describe the Exchange's treatment of separate and similar offenses for purposes of the Rule, and clarify that reporting of uncontested violations to the Commission not exceeding \$2,500 shall be reported on a periodic basis. Currently, Rule 8.15(a) does not contain a limitation on the fine that may be imposed under the Rule and does not specify the character of rule violations that constitute minor violations within the meaning of Rule 8.15. The Exchange proposes to limit the fines that may be imposed under the Rule to \$5,000. Additionally, the Exchange proposes to specify, within Rule 8.15(a), that minor rule violations within the meaning of the Rule are contained in *Interpretations and Policies* .01 to Rule 8.15 and Rule 25.3, Penalty for Minor Rule Violations.¹¹⁷ Currently, Rule 8.15(a) also does not contain a provision, such as the one contained in Rule 13.15(a) of the Affiliated Exchanges, allowing the Exchange to aggregate particular violations based on a comprehensive automated surveillance program. The Exchange proposes to amend Rule 8.15 to contain a similar provision providing that the Exchange may aggregate individual violations and treat these violations as a single offense, provided

that the aggregation is based on a comprehensive automated surveillance program. Finally, current Rule 8.15(a) provides that uncontested violations not exceeding \$2,500 shall not be publicly reported, except as may be required by Rule 19d–1 under the Act or as may be required by any other regulatory authority. Currently, the Exchange does not publicly report uncontested violations not exceeding \$2,500, but does notify the Commission on a periodic basis of all fines imposed pursuant to Rule 8.15. The Exchange proposes to amend Rule 8.15(a) to clarify that it shall report uncontested fines not exceeding \$2,500 to the Commission on a periodic basis.

Next, the Exchange proposes to amend Rule 8.15(b) to extend the time that a determination becomes final or a determination must be contested under the Rule from no less than 15 days to no less than 30 days after service of the written statement and to specify that failure to contest, submission, and/or acceptance of a fine by a Member does not constitute admission. Currently, Rule 8.15 states that the date that a determination becomes final or a determination must be contested shall be no less than 15 days. The Exchange proposes to amend Rule 8.15(b) to set the date a determination becomes final or a determination must be contested to not less than 30 days, which is the time provided in Rule 13.15(b) of the Rules of the Affiliated Exchanges. Additionally, current Rule 8.15(b) fails to specify the meaning of a Member's failure to contest a fine or a Member's submission of and/or the Exchange's acceptance of an offer of settlement. The Exchange proposes to amend Rule 8.15(b) to specify that such actions do not constitute admission of the violation the fine is issued for.

Additionally, the Exchange proposes to remove the current text of Rule 8.15(c) and Rule 8.15(d) in their entirety. Current Rule 8.15(c) states that payment of a fine by a person whom a fine is imposed against pursuant to Rule 8.15 constitutes waiver of the person's right to disciplinary proceedings under Rule 8.1 through 8.13, discussed above and any review of the matter thereof. Current Rule 8.15(d) states that if the person against whom a fine is imposed contests the Exchange's determination through a written response meeting the requirements of an Answer, described in Rule 8.5 above, the matter shall become a disciplinary proceeding subject to the provisions of Rules 8.1 through 8.13. The Exchange proposes to remove the text of Rule 8.15(c) and Rule 8.15(d) in their entirety because the corresponding

Rule 13.15 of the Affiliated Exchanges does not contain a similar provision.

Next, the Exchange proposes to add revised Rule 8.15(c) with language taken from the text of Rule 13.15(c) of the Affiliated Exchanges, including subparagraphs (1)–(4), which describe the process of contesting a fine. The resulting subparagraph (1) of revised Rule 8.15(c) will provide that any person against whom a fine is imposed may contest the fine by filing a written Answer, as described in Rule 8.5, with the Secretary of the Exchange. Then the Rule will provide that the Answer will become subject to review by a Hearing Panel and hearings, if requested, will be conducted in accordance with Rule 8.6, discussed above. Next, the resulting subparagraph (2) of revised Rule 8.15(c) will provide that if the Hearing Panel determines that the conduct for which the fine was imposed is a violation of the Rules of the Exchange, then the Hearing Panel may impose applicable disciplinary sanctions and impose a forum fee of \$100, if no hearing is conducted, or \$300, if a hearing is conducted. Additionally, the Rule will provide that the Hearing Panel has discretion to waive the forum fee if it determines that a rule violation occurred but the disciplinary sanction imposed for such rule violation(s) is a fine less than the total fine initially imposed by the Exchange. The resulting subparagraph (3) of revised Rule 8.15(c) will provide that the party that commenced the action, the person charged, or the Board may require a review by the Board of a determination by a Hearing Panel as described in Rule 8.10, discussed above, and that the party who commenced the action shall have the same rights as a Respondent under Rule 8.10. Finally, resulting subparagraph (4) of revised Rule 8.15(c) shall provide that if a fine is upheld after contestation, the party responsible for paying the fine must pay the fine, all interest accrued, and any forum fee imposed immediately. The proposed amendment to current Rule 8.15(c) will result in the text of the Rule reflecting that of the corresponding Rule 13.15(c) of the Affiliated Exchanges.

Finally, the Exchange proposes to renumber current subparagraph (e) as revised subparagraph (d) and amend revised Rule 8.15(d) to make conforming non-substantive changes, clarify that the Exchange may impose fines for first or second offenses when warranted under the circumstances as set forth in the Rule's *Interpretations and Policies*, and clarify that the Exchange may take formal disciplinary action under Rule 8.2 *et seq.*, rather than Rule 8.15, when warranted by the egregiousness of the

¹¹⁶ See *Interpretations and Policies* .01 to Rule 8.15 (List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15).

¹¹⁷ See Rule 25.3 (Penalty for Minor Rule Violations).

violation. With the Exchange's proposal to remove the current text found in Rule 8.15(c) and proposed re-numbering of Rule 8.15(d) to Rule 8.15(c), the Exchange also proposes to re-number current subparagraph (e) as subparagraph (d). Current Rule 8.15(e) requires the Exchange to periodically announce Exchange Rules under which fines may be imposed and the specific dollar amount that may be imposed thereunder. The Exchange proposes to amend the language of current Rule 8.15(e) (proposed Rule 8.15(d)) to reflect the language of Rule 13.15(f) of the Affiliated Exchanges. As a result, revised Rule 8.15(d) will allow the Exchange to impose fines for first or second offenses when warranted under the circumstances as set forth in the Rule's *Interpretations and Policies* and authorize the Exchange to take formal disciplinary action under Rule 8.2 *et seq.*, rather than Rule 8.15, when warranted by the egregiousness of the violation. The resulting Rule 8.15(d) will also clarify that the Exchange shall issue regulatory circulars to its Members and Member organizations containing a list of Exchange Rules and Bylaws for which the Exchange may impose fines as provided in Rule 8.15. The Exchange proposes all of the changes to Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, with the broader purpose of clarifying the process by which the Exchange may impose fines for minor violations and harmonizing the Rules of the Exchange with the Rules of the Affiliated Exchanges. The Exchange notes that the proposed changes include language taken solely from the Rules of the Affiliated Exchanges and do not substantively alter the Exchange's Rules regarding minor rule violations. As such, the proposed changes do not pose any novel legal or regulatory issues for the Commission's consideration.

Rule 8.16, Ex Parte Communications

(1) Current Rule 8.16

Current Rule 8.16, *Ex Parte Communications*, states that the Exchange has in place rules prohibiting ex parte communications relevant to the merits of a proceeding between Respondents and Exchange staff members and any Hearing Officer, any member of the Board, or a member of a committee of the Board who is participating in a decision with respect to that proceeding (an "Adjudicator") unless all parties are on notice and have an opportunity to participate in the communication.¹¹⁸ If an ex parte

communication occurs in violation of Rule 8.16, an Adjudicator shall place in the record: (1) all such written communications; (2) memoranda stating the substance of all such oral communications; and (3) all written responses and memoranda stating the substance of all oral responses to all such communications.¹¹⁹ Further, the Board or a committee thereof may take whatever action it deems appropriate if a prohibited ex parte communication has occurred.¹²⁰ Participants to a proceeding may respond to any allegations relating to a prohibited ex parte communication placed in the record.¹²¹ The prohibitions of Rule 8.16 apply beginning with the initiation of an investigation pursuant to Rule 8.2(a) (described above), unless the person responsible for the communication knows that an investigation shall be initiated.¹²² In such instances, the prohibition on ex parte communication shall apply beginning at the time such person knows the investigation shall be initiated.¹²³

(2) Proposed Changes to Rule 8.16

The Exchange proposes to amend Rule 8.16, *Ex Parte Communications*, to clarify that the provisions of the Rule apply to all Members and associated persons, amend the definition of Adjudicator under the Rule, add subparagraph (e) to define *ex parte* communication, and add subparagraphs (f) and (g) which provide guidance regarding what may not be considered a violation of Rule 8.16. Current Rule 8.16(a) provides that no Respondent or Exchange staff member may make an *ex parte* communication in violation of the Rule. Additionally, the Rule currently includes in the definition of "Adjudicator" any Officer or member of the Board or a committee of the Board who is participating in the decision in a proceeding.

The Exchange proposes to amend Rule 8.16(a) to clarify that the prohibition against *ex parte* communications under the Rule applies to all members and associated persons and Exchange staff members. The Exchange also proposes to amend the definition of Adjudicator provided in subparagraph (a) to include any member of the Hearing Panel, Business Conduct Committee, Board or committee of the Board who is participating in a decision. The proposed definition will eliminate Officers and add the Hearing Panel and

Business Conduct Committee members to the definition of Adjudicator as it is used in Rule 8.16.

Next, the Exchange proposes to add subparagraphs (e), (f), and (g) to Rule 8.16 closely resembling the language of subparagraphs (e), (f), and (g) of Rule 13.16 of the Affiliated Exchanges. Proposed Rule 8.16(e) will include a definition of "*ex parte* communication" including that the term means an oral or written communication made without notice to all parties, unless a copy has been delivered to all interested parties or it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present. Proposed Rule 8.16(f) will clarify that *ex parte* communications solely regarding procedural matters are not a violation of the Rule. Proposed Rule 8.16(g) will add an exception to the Rule if a person refuses an attempted *ex parte* communication once it becomes apparent that communication concerns the merits of the proceeding at issue. Proposed rule 8.16(g) will also specify that for the exception contained therein to apply, the person refusing the attempted communication must notify the Regulatory staff of the attempted communication and how the person responded. The resulting Rule 8.16 will and conform the definition of Adjudicator as it is used in Rule 8.16 with the language of proposed Rule 8.6, discussed above. Additionally, the resulting Rule 8.16 will closely resemble Rule 13.16 of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information

(1) Current Rule 8.18

Current Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, states that the Exchange shall release a copy to the public of, subject to the Exchange's discretion, any disciplinary complaint,¹²⁴ disciplinary decision,¹²⁵

¹²⁴ See Rule 8.18 (e)(1). A disciplinary complaint shall mean any statement of charges issued pursuant to Rule 8.4 or any notice served pursuant to Rule 8.17.

¹²⁵ See Rule 8.18(e)(2). A disciplinary decision shall mean any decision issued pursuant to Chapter 8, including, decisions issued by a Hearing Panel or the Appeals Committee, accepted offers of settlement, and suspension order pursuant to Rule 8.17; provided, however, minor rule violation plan letter issued pursuant to Rules 8.15 and 25.3 are not subject to this Rule.

¹¹⁸ See Rule 8.16 (a)(1) and Rule 8.16(a)(2).

¹¹⁹ See Rule 8.16(b).

¹²⁰ See Rule 8.16(c).

¹²¹ *Id.*

¹²² See Rule 8.16(d).

¹²³ *Id.*

or any client suspension order issued by the Exchange.¹²⁶ Any release to the public of a disciplinary complaint must indicate that the complaint represents the initiation of a formal proceeding by the Exchange and does not represent a final decision at to any of the allegations contained in the complaint.¹²⁷ Copies of any disciplinary decision provided to the public prior to the expiration of the time period for appeal or review, or while such appeal or review is pending, shall indicate that the findings and sanctions imposed therein are subject to review and modification by the Exchange or the Commission.¹²⁸ The Exchange reserves the right to redact information that contains confidential customer information and, in extraordinary circumstances, may decline to release a copy of or information related to a disciplinary complaint or a disciplinary decision.¹²⁹ The Exchange shall provide notice to the public in the event that a disciplinary decision is appealed to the Commission and whether the effectiveness of such decision has been stayed pending the outcome of the proceedings before the Commission.¹³⁰

(2) Proposed Changes to Rule 8.18

The Exchange proposes to eliminate current Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, in its entirety. Current Rule 8.18 sets out the procedures for releasing to the public disciplinary complaints and disciplinary decisions issued by the Exchange. The Exchange proposes to eliminate Rule 8.18 because the Rules of the Affiliated Exchanges do not contain a similar provision and proposed amendments to the Exchange's rulebook, including the proposed amendment to Rule 8.9, discussed above, include provisions for the release of complete decisions on the appropriate EDGX website. Thus, the specifications included in current Rule 8.18 are no longer necessary.

The Exchange proposes all amendments discussed about with the broader purpose of aligning the Rules of the Exchange with the Rules of the Affiliated Exchanges. The Exchange believes that harmonizing the Rules of the Exchange with the Rules of the Affiliated Exchanges benefits Members because those parties who maintain status as both a Member of the Exchange and a Trading Permit Holder on the

Affiliated Exchanges will be subject to substantially similar disciplinary rules and not perceive one set of disciplinary rules to be more lenient or harsh depending on the Exchange's core business.

2. Statutory Basis

The Exchange believes the proposed rule changes are 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.¹³¹ Specifically, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)¹³² requirements that the rules of an exchange be designed to present 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 changes are consistent with the Section 6(b)(5)¹³³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Exchange believes that the proposed rule changes further the objectives of Section 6(b)(7) of the Act,¹³⁴ in that they provides fair procedures for the disciplining of Members and associated persons, the denial of Member status to any person, the barring of any person from becoming associated with a Member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a Member thereof.

In particular, the Exchange believes the proposed rule changes will contribute to the protection of investor and public by having rules related to all disciplinary matters consistent among Cboe EDGX Exchange and the Affiliated Exchanges, Cboe Exchange and Cboe C2 Exchange, as well as by bolstering participants' collective understanding of the Exchange's Rules and the Rules of the Affiliated Exchanges. All proposed rule changes are intended to provide clarification and alignment with the

Rules of the Affiliated Exchanges. Further, the proposed changes are derived from the Rules of the Affiliated Exchanges, which have been previously reviewed by the Commission.

In particular, the Exchange proposes to amend Rule 8.6, Hearings, to adopt new roles for the Exchange's Business Conduct Committee to compose the Hearing Panel to hear and decide applicable matters under Chapter 8 of the Exchange's Rules. The Exchange proposes to adopt new roles for the Exchange's Business Conduct Committee, which will perform a substantially similar function to the current panel overseeing disciplinary hearings. A Hearing Panel consisting of impartial members will continue to be available to Members and associated persons. Thus, the Exchange believes the proposed changes to Rule 8.6 regarding hearings will not impose any additional burden upon Members or associated persons and will ensure continued fairness in the Exchange's disciplinary procedures. The Exchange believes the proposed changes to Rule 8.6, Hearings, ensures the hearing process for disciplinary matters within the jurisdiction of the Exchange is clearly articulated and easily understandable for all Members and associated persons. The proposed changes to Rule 8.6 will align the structure of Chapter 8 with that of the corresponding Rulebooks of the Affiliate Exchanges, thus promoting consistency amongst the Exchange and its Affiliate Exchanges. The introduction of the proposed subparagraphs does not present any new or novel issues for the Commission to consider, as the proposed text is identical to text already approved by the Commission, however the Exchange notes that the proposed rule may differ slightly where necessary to conform to existing Exchange rule text.

The proposed rule changes to Rule 8.1, Disciplinary Jurisdiction, Rule 8.2, Complaint and Investigation, Rule 8.3, Expedited Proceeding, Rule 8.4, Charges, Rule 8.5, Answer, Rule 8.8, Offers of Settlement, Rule 8.9, Decision, Rule 8.10, Petition, Rule 8.11, Judgment and Sanction, Rule 8.12, Miscellaneous Provisions, and Rule 8.16, *Ex Parte* Communications provide both clarification and alignment with the Rules of the Affiliated Exchanges. These proposed rule changes amend the language of the Exchange Rules using language taken from the Rules of the Affiliated Exchanges and does not raise any novel rule text that the Commission has not already reviewed. The additional proposal of adding Rule 8.2(m) defining the BCC and detailing

¹²⁶ See Rule 8.18(a)(1) and Rule 8.18(a)(2).

¹²⁷ See Rule 8.18(b)(1).

¹²⁸ See Rule 8.18(b)(2).

¹²⁹ See Rule 8.18(c).

¹³⁰ See Rule 8.18(d).

¹³¹ 15 U.S.C. 78f(b).

¹³² 15 U.S.C. 78f(b)(5).

¹³³ *Id.*

¹³⁴ 15 U.S.C. 78f(b)(7).

its composition adds clarity to the Rules of the Exchange by adding a concrete definition of a term used in both the Rules of the Exchange and its Affiliated Exchanges. Each of these rules changes results in rules no more stringent for Members and associated persons than are currently in place. Therefore, the Exchange believes the proposed changes will not significantly alter the disciplinary standards imposed on Members and associated persons nor impose any significant additional burden. As such, the Exchange believes the proposed changes will continue to ensure the Exchange's disciplinary procedures remain fair to all Members and associated persons. Additionally, the Exchange believes the proposed rule changes will result in greater uniformity and less burdensome regulatory compliance for Members and associated persons. Greater uniformity in disciplinary rules across the Exchange and the Affiliated Exchanges will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed amendments to Rule 8.1, Disciplinary Jurisdiction seek to clarify that former Members or associated persons continue to be subject to the Exchange's jurisdiction with respect to their failure to honor an arbitration award. As discussed above, the proposed amendments to Rule 8.1 ensure that a failure to honor a EDGX arbitration award by a former Member, or former person associated with a Member remains within the disciplinary jurisdiction of the Exchange. Thus, the proposed change to Rule 8.1 ensures the credibility of the Exchange's arbitration forum thereby protecting investors and the public interest. The Exchange also believes the proposed changes to Rule 8.1 will ensure fairness in the disciplinary procedures of the Exchange by ensuring that failures to pay arbitration awards by former Members and associated persons will remain under the disciplinary jurisdiction of the Exchange. Additionally, the proposed changes to Rule 8.1 will result in aligning the Rules of the Exchange with those of the Affiliated Exchanges, providing greater uniformity in disciplinary rules across the Exchange and the Affiliated Exchanges.

The proposed changes to Rule 8.2, Complaint and Investigation, clarify the contents of the Rule and extend the time a Subject or Respondent has to respond to an inquiry from the Exchange. The proposed addition of subparagraphs (i)–(k) regarding Identification, Furnishing

Materials Upon Request, and the definition of the term “Regulatory Staff” to Rule 8.2 will offer clarity to Members and associated persons regarding the procedures and complaint process and terms used throughout the Rule. Additionally, the proposed changes to Rule 8.2 will align the structure of Chapter 8 with that of the corresponding Rulebooks of the Affiliate Exchanges, thus promoting consistency amongst the Exchange and its Affiliate Exchanges. The introduction of the proposed subparagraphs does not present any new or novel issues for the Commission to consider, as the proposed text is identical to text already approved by the Commission, however the Exchange notes that the proposed rule may differ slightly where necessary to conform to existing Exchange rule text. None of the proposed changes to Rule 8.2 shortens the amount of time allotted to a Subject or Respondent to respond to an inquiry from the Exchange, but rather extends the amount of time that a Subject or Respondent has to respond to an inquiry from the Exchange. As such, the Exchange believes the proposed changes to Rule 8.2 ensure that the Exchange's disciplinary procedures remain fair to all Members and associated persons. Additionally, the Exchange believes that each of these proposed rule changes protects investors and the public by providing additional information regarding the disciplinary processes of the Exchange and by providing additional time for Subjects and Respondents to respond to an inquiry from the Exchange.

The proposed changes to Rule 8.3, Expedited Proceeding, Rule 8.4, Charges, Rule 8.5, Answer, Rule 8.8, Offers of Settlement, Rule 8.9, Decision, Rule 8.10, Review, Rule 8.11, Judgment and Sanction, Rule 8.12, Miscellaneous Provisions, and Rule 8.16, *Ex Parte* Communications are proposed in order to define terms used throughout the Rules and make other non-substantive conforming provisions with the purpose of clarifying the language of the Rules and aligning the contents of the Rules with Rules of the Affiliated Exchanges. The Exchange notes that none of these proposed rule changes shortens the amount of time allotted to a Subject or Respondent to respond to an inquiry from the Exchange, but rather extends the amount of time that a Subject or Respondent has to respond to an inquiry from the Exchange. The Exchange believes the proposed changes will not significantly alter the disciplinary procedures of the Exchange nor impose any significant additional burden thereby protecting investors and the

public interest and ensuring fairness in the disciplinary procedures of the Exchange. Further, the proposed changes to these Rules are necessary to align the Answer, Decision, and Review sections of Chapter 8 with the proposed changes to Rule 8.6.

Additionally, the Exchange believes the proposed deletion of rule text in Rule 8.14, Agency Review, and Rule 8.18, Release of Disciplinary Complaints, Decisions, and Other Information, contribute to the protection of investors and the public interest by both aligning the Rules of the Exchange with the Rules of the Affiliate Exchanges and by removing duplicative language from the Rules of the Exchange. The Exchange proposes to remove the entire text of both current Rule 8.14, regarding the right to agency review of Exchange disciplinary actions, and Rule 8.18, regarding the release of final disciplinary actions, because each of these rules are duplicative of the rights of Members under other Exchange Rules and the Exchange Act itself. The Exchange believes the proposed changes will continue to ensure fairness in the Exchange's disciplinary procedures because they do not remove or alter any of the rights of Members of associated persons. The Exchange believes that removing the text of each of these rules will provide clarity to investors regarding the disciplinary processes of the Exchange by eliminating duplicative, and potentially confusing, text from the Rules of the Exchange.

Further, the Exchange believes that revising current Rule 8.14, Agency Review, and replacing the existing text (which is proposed to be deleted) with rule text regarding reporting to the CRD that is substantially similar to Rule 13.4 of the Affiliated Exchanges, contributes to the protection of investors and the public interest by providing investors, the public, and Members with notice of the information the Exchange reports to the CRD regarding disciplinary matters. Together, these changes benefit investors and the public interest by providing additional clarity in the Exchange's rulebook and aligning the Exchange's Rules with that of its Affiliate Exchanges. The proposed addition of rule text regarding reporting to the CRD in proposed Rule 8.14 will also align the structure of Chapter 8 with that of the corresponding rulebooks of the Affiliate Exchanges, thus promoting consistency amongst the Exchange and its Affiliate Exchanges. Additionally, the introduction of the proposed rule text in Rule 8.14 following the deletion of existing rule text does not present any new or novel issues for the Commission to consider,

as the proposed text is identical to text already reviewed by the Commission, however the Exchange notes that the proposed rule may differ slightly where necessary to conform to existing Exchange rule text.

Further, the Exchange believes the proposed changes to Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, contribute to the protection of investors and the public interest by both aligning the Rules and procedures of the Exchange with the Rules and procedures of the Affiliate Exchanges and by clearly setting forth the process and requirements of the imposition of fines for minor rule violations. The Exchange is not proposing to amend any of the rates associated with the imposition of fines for minor rule violations, but rather seeks to clarify only how and when a fine may be imposed. Further, the Exchange seeks to provide additional detail about how a Member may contest a fine imposed by the Exchange. These proposed changes do not impose additional regulatory burdens on Members but instead provide greater clarity and reduce confusion by aligning the process of imposing a fine for a minor rule violation across the Exchange and its Affiliated Exchanges. By clarifying rules and reducing confusion, the Exchange believes the proposed changes to Rule 8.15 collectively ensure fairness in the disciplinary procedures of the Exchange. The proposed amendments to Rule 8.15 are based solely on existing Rule 13.15 of the Affiliated Exchanges. However, the language of the Exchange Rules and the Rules of the Affiliated Exchanges may differ slightly where necessary to conform to existing Exchange rule text or to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Additionally, the Exchange believes the proposed changes to align the language of the Rules of the Exchange with those of the Affiliated Exchanges promote consistency and improve understanding of the Rules across EDGX Exchange and its Affiliated Exchanges. The proposed rule changes to Chapter 8 are based on the existing Rules of the Affiliated Exchanges. However, the language of the Exchange Rules and the Rules of the Affiliated Exchanges may differ slightly where necessary to conform to existing Exchange rule text or to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges. The Exchange believes aligning the Rules of the

Exchange with the Rules of the Affiliated Exchanges will result in greater uniformity and less burdensome regulatory compliance for the Exchange and its Members. As such, the Exchange believes maintaining uniformity will foster cooperation and coordination with persons engaged in facilitating trading on the Exchange and its Affiliated Exchanges and will remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the proposed rule changes apply equally to all Members, persons associated with a Member, and former Members in that each of these parties are subject to the proposed disciplinary rules, thereby ensuring fairness in the disciplinary procedures of the Exchange. As such, the Exchange believes the proposed rule changes also promote the just and equitable principles of trade and are not unfairly discriminatory.

The Exchange also believes that the proposed amendments will collectively contribute to the protection of investors and the public interest by making the Exchange's Rules easier to understand, standing alone and collectively with the rules of its Affiliated Exchanges. In addition, the proposed rule changes include other non-substantive changes throughout the rules that will protect investors and benefit market participants, as these changes simplify or clarify rules, delete duplicative rule provisions, conform paragraph numbering and lettering throughout the rules, use plain English, and conform language to the corresponding rules of its Affiliated Exchanges where feasible. By simplifying and clarifying rules, the Exchange believes the proposed changes also collectively ensure fairness in the disciplinary procedures of the Exchange.

Finally, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Members and associated persons with the Act, the rules and regulations thereunder, and the Rules of the Exchange. As stated, the proposed rule changes conform the Exchange's disciplinary procedures and Rules to the disciplinary procedures and Rules of its Affiliated Exchanges. Thus, the Exchange believes these proposed changes create uniformity, which allows for the Exchange to organize consistently with the Affiliated Exchanges and to more easily apply its disciplinary rules to Members of the

Exchange and Trading Permit Holders on the Affiliated Exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes do not create an unnecessary or inappropriate intra-market burden on competition because the proposed changes will apply uniformly to all Members of the Exchange. Thus, the Exchange believes this proposed rule changes will reduce the burden on Exchange participants by providing consistent and clear Rules among the Exchange and the Affiliated Exchanges. Further, the proposed changes are not designed to address any competitive issues. Indeed, the proposed rule changes do not create an unnecessary or inappropriate inter-market burden on competition because the proposed rule changes are intended to harmonize the Exchange Rules with that of the Affiliated Exchanges.

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 Act¹³⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³⁶

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

¹³⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹³⁶ 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.

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)¹³⁷ 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-2026-028 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-2026-028. 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-2026-028 and should be submitted on or before June 9, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-09967 Filed 5-18-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105489; File No. SR-CboeBZX-2026-034]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Chapter 8 of the Exchange's Rulebook Relating to Investigative and Disciplinary Matters

May 14, 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 May 4, 2026, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 (the "Commission") proposed rule changes to amend Chapter 8 of the Exchange's Rulebook relating to investigative and disciplinary matters. 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/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 concerning investigative and disciplinary matters involving Exchange Members³ and persons associated with Members ("associated persons"). Specifically, the Exchange proposes to update its Rules relating to (1) disciplinary jurisdiction; (2) complaints and investigations; (3) expedited proceedings; (4) charges; (5) answers; (6) hearings; (7) offers of settlement; (8) decisions; (9) reviews; (10) judgments and sanctions; (11) service of notice; (12) agency review and reporting; (13) imposition of fines for minor rule violations; (14) ex parte communications; and (15) release of disciplinary matters with those of the Exchange's affiliate exchanges: Cboe Exchange, Inc. ("C1" or "Cboe Options")⁴ and Cboe C2 Exchange, Inc. ("C2")⁵ (collectively, and hereinafter, referred to as the "Affiliated Exchanges").⁶ In doing so, the Exchange proposes rules changes to adopt new roles for the Exchange's Business Conduct Committee ("BCC").⁷ As part

³ See Exchange Rule 1.5(n). "The term 'Member' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a 'member' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange."

⁴ See Rules of Cboe Exchange, Inc., specifically Rules 13.1, 13.2, 13.3, 13.4, 13.5, 13.6, 13.8, 13.9, 13.10, 13.11, 13.12, 13.13, 13.14, 13.15, and 13.16.

⁵ See Rules of Cboe C2 Exchange, Inc., specifically Chapter 13, which incorporates by reference the rules contained in Cboe Exchange, Inc. Chapter 13.

⁶ The rules under Chapter 13 of the Affiliated Exchanges are the same in number, form and substance. Therefore, the Exchange refers singularly to the corresponding rule of the "Affiliated Exchanges" throughout this proposed rule filing.

⁷ See proposed Rule 8.2(m). The BCC has decision-making authority concerning possible violations within the disciplinary jurisdiction of the Exchange. The BCC is comprised of one or more Members or associated persons, one or more public representatives, and may also include other individuals affiliated with the securities, futures or derivatives industry, all as appointed by the Exchange's Nominating and Governance Committee with the approval of the Exchange's Board of Directors.

¹³⁷ 15 U.S.C. 78s(b)(2)(B).

¹³⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

of the harmonization process between the Exchange and Affiliated Exchanges, the Exchange proposes to align the Exchange's hearing process and timeliness requirements with those of the Affiliated Exchanges. Additionally, the Exchange proposes to remove Rule 8.14, Agency Review, in its entirety because the Act provides for a statutory right to review⁸ and the Affiliated Exchanges do not contain a similar provision. In place of the removed Rule 8.14, the Exchange proposes to add a rule regarding reporting to the Central Registration Depository ("CRD"). The Exchange also proposes to remove Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, because the Rules of the Affiliated Exchanges do not contain a similar provision. Finally, the Exchange proposes to update certain Rules contained in Chapter 8 of the Exchange's Rulebook to correct minor errors and update obsolete and outdated language.

By way of background, the Exchange Rules currently divide responsibility for the adjudication of its Rules into two categories: (1) rules for which the Chief Regulatory Officer ("CRO") and Hearing Panels are responsible for adjudicating through formal disciplinary proceedings; and (2) rules under which fines may be assessed in lieu of formal disciplinary action. With respect to violations that are adjudicated by the CRO and Hearing Panels, Rule 8.4(b) requires the CRO to prepare a statement of charges whenever it appears that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange has occurred and formal disciplinary action is warranted. Alternatively, in lieu of conducting a formal disciplinary proceeding, Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, provides for disposition of specific violations through assessment of fines. In sum, the current application of the Rules provides for the CRO to determine whether to initiate charges in a regulatory matter and to determine appropriate sanctions for rule violations.

The Exchange believes that harmonizing the composition of the disciplinary Rules between the Exchange and the Affiliated Exchanges benefits Members because those parties who maintain status as both a Member of the Exchange and a Trading Permit Holder⁹ ("TPH") on the Affiliated

Exchanges will be subject to substantially similar disciplinary rules and not perceive one set of disciplinary rules to be more lenient or harsh depending on the Exchange's core business. The Exchange notes that the CRO will continue to supervise the regulatory functions of the Exchange, separate from that of the Exchange's business interest, reporting directly to the Regulatory Oversight Committee of the Board of Directors ("ROC"). Below is a summary of the Exchange's Rules and their proposed changes concerning investigations and disciplinary matters.

Summary of Proposed Rule Changes

The Exchange proposes the following rule changes, including proposed changes to:

(1) Amend Rule 8.1, Disciplinary Jurisdiction, to reflect the Affiliated Exchanges' Rule 13.1, including adding a provision that Members or associated persons continue to be subject to the disciplinary jurisdiction of the Exchange with respect to the failure to honor arbitration awards and removing the provision specifying that the Exchange may contract with another self-regulatory organization to perform some or all of the Exchange's disciplinary functions;

(2) Amend Rule 8.2, Complaint and Investigation, to reflect the layout and content of Affiliated Exchanges' Rule 13.2 by:

a. Updating Rule 8.2(a) to place the responsibility of initiating an investigation with the Exchange's regulatory staff whenever the regulatory staff determines a reasonable basis exists to do so or upon receipt of a complaint by any person or entity including the Board,¹⁰ Exchange employees, and Members;

b. Updating Rule 8.2(b) to specify the appropriate action when the regulatory staff finds reasonable grounds to believe a violation occurred, but no formal regulatory action is warranted in lieu of a statement of charges;

c. Updating Rule 8.2(c) to add that a Member or associated person is obligated to appear and testify, respond to interrogatories, and furnish information as requested by the Exchange in connection with an inquiry resulting from agreement pursuant to Exchange Rules 8.2(f), 8.2(g), or 13.7;

limited liability company or other entity authorized by the Rules that holds a Trading Permit. . . . A Trading Permit Holder is a "member" solely for purposes of the Act; however, one's status as a Trading Permit Holder does not confer on that Person any ownership interest in the Exchange."

¹⁰ See Rule 1.5(f). The terms "Board" and "Board of Directors" shall mean the Board of Directors of the Exchange.

d. Updating Rule 8.2(d) to extend the time in which a Subject¹¹ has to submit a response to a notification from 15 to 25 days, add a 25-day tolling period while a request for access to the relevant investigative file is pending, and make other non-substantive conforming changes;

e. Updating Rule 8.2(h) to extend the time in which a Subject has to submit a videotaped response to a notification from 15 to 25 days and to specify the length and format of videotaped responses submitted pursuant to the Rule;

f. Adding Interpretation and Policy .03-.05 of the Affiliated Exchanges' Rule 13.2 as Exchange Rules 8.2(i)-(k) to specify the format of complaints and form of materials to be submitted upon request, and define the term "Regulatory staff" as it is used in Chapter 8 of the Exchange Rules; and

g. Adding Proposed Rule 8.2(m) defining the BCC and outlining the composition of the BCC;

(3) Amend Rule 8.3, Expedited Proceeding, to extend the time a Subject has to submit written responses to notices from the Regulatory staff from 15 to 25 days and to make other non-substantive conforming changes to the Rule text;

(4) Amend Rule 8.4, Charges, to remove the current text of Rule 8.4(a) and replace it entirely with the text of the Affiliated Exchanges' Rule 13.4(a), add that a Complainant¹² shall be notified if further proceedings are warranted to Rule 8.4(b), and add Rule 8.4(c) specifying the terms of a Respondent's¹³ access to requested documents;

(5) Amend Rule 8.5, Answer, to extend the time that a Subject has to submit an answer from 15 to 25 days and add a 25-day tolling period while a request for access to the relevant investigative file is pending;

(6) Update Rule 8.6, Hearing, by:

a. Specifying that hearings on charges shall be held before a Hearing Panel comprised of three or five members of the BCC, rather than appointed by the Chief Executive Officer; and that BCC Counsel may assist the Hearing Panel in preparing its written recommendations or judgments;

¹¹ See Rule 8.2(d). The term "Subject" means the "person(s) who is the subject of the report" issued pursuant to Rule 8.2.

¹² See Proposed Rule 8.2(a). The term "Complainant" means "any person or entity, including the Board, Exchange employees, and Members" that submits a complaint pursuant to Rule 8.2.

¹³ See Proposed Rule 8.2(b). The term "Respondent" means "the person or organization alleged to have committed a violation."

⁸ 15 U.S.C. 78s(d).

⁹ See Bylaws of Cboe Exchange, Inc. Section 1.1 Definitions. "The term "Trading Permit Holder" means any individual, corporation, partnership,

b. Replacing the current text of Rule 8.6(a)(1) by adopting the Affiliated Exchanges' Rule 13.6(a)(1) regarding the impartiality of Hearing Panel members and deleting Rules 8.6(a)(1)(A)–(B);

c. Adopting the Affiliated Exchanges' Rule 13.6(a)(2) regarding motions for disqualification of Hearing Panel members as Rule 8.6(a)(2) and the Affiliated Exchanges' Rule 13.6(a)(3) regarding rulings on motions for disqualification of Hearing Panel members as Rule 8.6(a)(3);

d. Replacing the current text of Rule 8.6(b) by adopting the Affiliated Exchanges' Rule 13.6(b) regarding prehearing procedures;

e. Removing current Rule 8.6(c) and renumbering current Rule 8.6(d) as Rule 8.6(c);

f. Adopting the Affiliated Exchanges' Rule 13.6(d) regarding documents and witnesses as Rule 8.6(d); and

g. Adopting the Affiliated Exchanges' Rule 13.6(d), Interpretations and Policies .01–.03 regarding interventions as Rule 8.6(e);

(7) Amend Rule 8.8, Offers of Settlement, to clarify that the staff may also appear before the CRO to make an oral statement if the Respondent elects to make an oral statement before the CRO, and that a Respondent may submit an offer during the course of any proceeding under Chapter 8 of the Exchange Rules;

(8) Amend Rule 8.9, Decision, to add that a decision shall also include a statement of the sanctions imposed and reasons for the sanctions, that the regulatory division of the Exchange shall also receive a copy of statements, and that the Exchange shall post the complete decision on the appropriate BZX website once the decision is considered final;

(9) Update Rule 8.10, Review, by:

a. Extending the time for a Respondent to petition for review of a decision from 10 days to 15 days, specify the process of petitioning for review of a decision, and clarify that other parties to a hearing may also submit petitions for review and responses to petitions for review;

b. Allowing the Board or a committee of the Board to ratify a review, clarify that new issues may be raised by the parties involved in the review, and clarify that the Board may affirm, reverse or modify the decision, and that the decision must be served upon the Respondent and the regulatory division of the Exchange;

c. Extending the time the Board has to review a decision from 20 days to 30 days; and

d. Eliminating Rule 8.10(d);

(10) Amend Rule 8.11, Judgment and Sanctions, to remove a committee of the Board as an applicable body that may determine penalties and impose discipline upon Members and associated persons and remove Interpretations and Policies .01 to Rule 8.11;

(11) Amend Rule 8.12, Miscellaneous Provisions, to clarify that the address a Respondent may be served at is the last known place of business as it appears on the books and records of the Exchange, and to provide an additional three days to the prescribed period a Respondent has to respond in the case of service by certified mail;

(12) Remove Rule 8.14, Agency Review, in its entirety and replace it with the text of Rule 13.14 of the Affiliated Exchanges regarding reporting to the CRD;

(13) Revise Rule 8.15, Imposition of Fines for Minor Rule Violations, to include additional details about the Minor Rule Violation program and align the Exchange's rule with corresponding Rule 13.15 of the Affiliated Exchanges;

(14) Update Rule 8.16, *Ex Parte* Communications, to clarify that the provisions of the Rule apply to all Members and associated persons, amend the definition of Adjudicator¹⁴ under the Rule, add subparagraphs (e), (f), and (g) to define *ex parte* communication, and add clarifying provisions regarding what may not be considered a violation of Rule 8.16; and

(15) Remove Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, in its entirety.

Detailed descriptions of the proposed changes to specific rules within Chapter 8 are outlined below.

Exchange Rule 8.1, Disciplinary Jurisdiction

(1) Current Rule 8.1

In its current form, Exchange Rule 8.1 sets forth the Exchange's jurisdiction regarding disciplinary matters involving its Members and associated persons. Members and associated persons are subject to the disciplinary jurisdiction of the Exchange pursuant to Chapter 8 of the Exchange's Rulebook and, after notice and opportunity for a hearing may be appropriately disciplined by: expulsion; suspension; limitation of activities, functions and operation; fine; censure; suspension or bar from association with a Member or any other fitting sanction.¹⁵ An individual

Member or associated person may be charged with a violation committed by an employee under the Member's supervision or by the Member or associated person, as though such violation was their own.¹⁶ Similarly, a Member organization may be charged with any violation committed by its employees or by any other person who is associated with such Member organization, as though such violation was their own.¹⁷ Members and associated persons continue to be subject to the Exchange's disciplinary jurisdiction following termination of such person's association with a Member with respect to matters that occurred prior to such termination provided that the Exchange gave written notice to the former Member or former associated person within one year of the Exchange's receipt of written notice of termination of such former Member or such former associated person.¹⁸ Chapter 8 does not apply to summary suspensions or other action taken pursuant to Chapter 7 of the Rules of the Exchange and action taken pursuant to Chapter 7 shall not be deemed disciplinary action under Chapter 8.¹⁹ Rule 8.1(d) provides that Exchange is permitted to contract with another self-regulatory organization ("SRO") to perform some or all of the Exchange's disciplinary functions and allows the Exchange to retain ultimate legal responsibility for and control of such functions.²⁰

(2) Proposed Changes to Rule 8.1

The Exchange first proposes to amend Rule 8.1(b) to clarify that former Members or associated people continue to be subject to the Exchange's jurisdiction with respect to their failure to honor an arbitration award pursuant to Chapter 9 of the Exchange Rules. Chapter 9 of the Exchange's Rules governs the BZX arbitration process. Rule 9.5 states that failing to honor a BZX arbitration award may be deemed conduct inconsistent with just and equitable principles of trade. Conduct inconsistent with just and equitable principles of trade is a violation of Rule 3.1 and is thus subject to the disciplinary jurisdiction of the Exchange and should be codified as such.²¹ Currently, however, such failure to honor a BZX arbitration award by a former Member, or former person associated with a Member, may not

¹⁴ See Proposed Rule 8.16 (defining "Adjudicator" as "any member of the Hearing Panel, Business Conduct Committee, Board or committee of the Board" participating in a decision with respect to the proceeding at issue).

¹⁵ See Rule 8.1(a).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Rule 8.1(b).

¹⁹ See Rule 8.1(c).

²⁰ See Rule 8.1(d).

²¹ See Rule 9.5.

always be subject to the Exchange's disciplinary jurisdiction.

Current Rule 8.1(b) provides that a Member or associated person shall continue to be subject to the disciplinary jurisdiction of the Exchange following such Member's or associated person's termination of membership, or termination of association with such Member, with respect to matters that occurred prior to such termination, provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former Member or associated person within one year of the Exchange's receipt of notice of such termination.²² This provision allows for certain anomalies in the context of failure to pay arbitration awards. For example, consider the following scenario: A customer is involved in a trading dispute with a BZX Member. Months later, the Member terminates its membership on the Exchange. Weeks after the membership termination, the customer properly files an arbitration claim with BZX.²³ One and a half years after the membership termination, the customer prevails in the arbitration proceeding, and a monetary award is imposed against the former Member. Nevertheless, the former Member subsequently fails to honor the arbitration award. Because more than one year has passed since the former Member's termination of membership and the Exchange did not provide written notice of the commencement of an inquiry into the failure to pay the award, the Exchange could not assert disciplinary jurisdiction over the former Member. The Exchange believes this is problematic given the fact that the dispute concerned Exchange-related business, and that the award was pursuant to an Exchange arbitration proceeding. While the Exchange notes that the customer in the above example would be able to seek enforcement of the award through the judicial system, the inability of the Exchange to potentially take disciplinary measures undermines the credibility of the Exchange's arbitration forum.

The Exchange also proposes to remove current Rule 8.1(d) in its entirety to remove obsolete and duplicative language regarding the

ability of the Exchange to contract with another self-regulatory organization to perform disciplinary functions and replace this text with text found in Rule 13.1, Interpretations and Policies .02 of the Affiliated Exchanges describing when the notice requirement found in current Rule 8.1(b) shall not apply. Rule 8.1(d) currently states that the Exchange may contract with another self-regulatory organization to perform some or all of the Exchange's disciplinary functions, allows the Exchange to specify the extent to which the Rules of Chapter 8 govern disciplinary functions when contracting with an SRO, and allows the Exchange to retain ultimate legal responsibility and control over the Exchange's disciplinary functions. The Exchange proposes to remove the current language of 8.1(d) because its contents are duplicative of Exchange Rule 13.7, Regulatory Services Agreements.²⁴ The text added to Rule 8.1(d) would eliminate the notice requirement in Rule 8.1(b) solely with respect to instances where the Exchange seeks to take disciplinary measures with respect to a former Member or associated person for failure to honor an arbitration award pursuant to Chapter 9. Accordingly, the Exchange proposes to delete the text of current Rule 8.1(d) and replace this text with the text of Rule 13.1, Interpretations and Policies .02 of the Affiliated Exchanges in its entirety.²⁵

Together, the proposed changes to Rule 8.1(b) and Rule 8.1(d) would provide that failing to pay arbitration awards would remain under the disciplinary jurisdiction of the Exchange. The proposed change to Rule 8.1(b) seeks to clarify that former Members or associated persons continue to be subject to the Exchange's jurisdiction with respect to their failure

to honor an arbitration award pursuant to Chapter 9 of the Exchange Rules while the proposed change to Rule 8.1(d) would seek to eliminate the notice requirement in Rule 8.1(b) solely with respect to instances where the Exchange seeks to take disciplinary measures with respect to a former Member or associated person for failure to honor an arbitration award pursuant to Chapter 9. The proposed amendments to Rule 8.1(b) and 8.1(d) will result in Rule 8.1 aligning with Rule 13.1 of the Affiliated Exchanges.

Exchange Rule 8.2, Complaint and Investigation

(1) Current Rule 8.2

Current Rule 8.2 states that staff investigates and examines possible violations within the disciplinary jurisdiction of the Exchange ("violations") whenever possible violations are brought to its attention in any manner, including upon order of the Board, the CRO or other Exchange officials designated by the CRO, or upon receipt of a complaint alleging such violation.²⁶ Members and associated persons are required to cooperate with staff inquiries and to furnish information requested in connection with investigations and examinations.²⁷ Members and associated persons are entitled to be represented by counsel during any such Exchange investigation, proceeding or inquiry.²⁸ Failure to furnish information requested by the Exchange in the course of an inquiry, investigation, hearing or appeal, or in the course of preparation by the Exchange in anticipation of such hearing or appeal on the date or within the time period specified by the Exchange shall be deemed to be a violation of Rule 8.2.²⁹ In each instance where an investigation has been instituted as a result of a complaint, and in every other instance in which an investigation finds that there are reasonable grounds to believe that a violation has been committed, the staff (or when appropriate, the designated self-regulatory organization) submits a written report ("report") of the investigation to the CRO.³⁰

Prior to submitting a report to the CRO, staff must notify the subject of the report ("Subject") of the nature of the alleged violations.³¹ Unless the CRO decides expeditious action is required, the Subject has 15 days to submit a

²² See Rule 8.1(b).

²³ Rule 9.1 states that Members shall comply with any FINRA rules and interpretations thereof incorporated by reference as if such rules and interpretations were part of the Exchange's Rules. FINRA Rule 12202 states that claims by or against a member or an associated person who is inactive at the time the claim is filed is ineligible for arbitration under the FINRA Code of Arbitration unless the customer agrees in writing to arbitrate after the claim arises.

²⁴ See Affiliated Exchanges' Rule 13.7. "The Exchange may enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Exchange Act. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Commission. . . . the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide."

²⁵ The proposed change is substantially similar to SR-CBOE-2001-14, with minor differences for terminology and outdated rule references. Additionally, the Affiliated Exchanges' current arbitration rule (Chapter 14) explicitly states that former TPHs and associated persons of TPHs are considered to be encompassed by Chapter 14.

²⁶ See Rule 8.2(a).

²⁷ See Rule 8.2(c).

²⁸ *Id.*

²⁹ See Rule 8.2(e).

³⁰ See Rule 8.2(b).

³¹ See Rule 8.2(d).

written statement to the CRO concerning why no disciplinary action should be taken.³² The Subject may request access to documents in the investigative file, furnished by the Subject or the Subject's agents, to assist the Subject in preparing such a written statement.³³ The Subject may also submit a videotaped response in lieu of a written statement, the length and format of which is decided by the Exchange.³⁴

The Exchange may enter into cooperative agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance or for market surveillance, investigative, enforcement or other regulatory purposes.³⁵ No Member or associated person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or another self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish testimony, documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such testimony, documentary materials or other information in connection with an inquiry resulting from a cooperative agreement entered into by the Exchange.³⁶

(2) Proposed Changes to Rule 8.2

The Exchange proposes to reorganize and amend Rule 8.2 to align with and reflect the layout of the Affiliated Exchanges' Rule 13.2. The Exchange proposes these amendments to Rule 8.2 with the sole purpose of aligning the Rules of the Exchange with the Rules of the Affiliate Exchanges, thereby promoting consistency and efficiency for Members and TPHs.

First, the Exchange proposes to update Rule 8.2(a) to remove the Exchange's (or designated SRO's) and the Board's ability to initiate an investigation and place the responsibility to initiate an investigation with the Exchange's Regulatory staff, defined *infra*, upon receipt of a complaint. Specifically, Rule 8.2(a) currently provides that an investigation can be initiated in four different ways: (1) by the Exchange, (2) by the Board, (3) by the CRO, or (4) by receipt of a complaint. The Exchange proposes to

amend Rule 8.2(a) to place the responsibility to initiate an investigation with the Exchange's Regulatory staff whenever the Regulatory staff determines a reasonable basis to do so exists or upon receipt of a complaint by any person or entity including the Board, Exchange employees, and Members (the "Complainant"), provided that such complaint specifies in reasonable detail the facts constituting the alleged violation. The proposed amendment to Rule 8.2(a) will result in Rule 8.2(a) aligning with Rule 13.2(a) of the Affiliated Exchanges.

Second, the Exchange proposes to replace Rule 8.2(b) with the equivalent Rule 13.2(c) of the Affiliated Exchanges, which specifies the appropriate procedure in circumstances in which the Regulatory staff finds reasonable grounds to believe a violation occurred, but no formal regulatory action is warranted in lieu of a statement of charges. Currently, Rule 8.2(b) provides that a written report of an investigation shall be submitted to the CRO in every instance where an investigation has been instituted and an investigation results in a finding that a violation was committed. Notably, current Rule 8.2(b) does not contemplate the appropriate procedures for when the Regulatory staff determines that a violation occurred, but a non-formal regulatory action is warranted in lieu of issuing a statement of charges or when the Regulatory staff determines no reasonable grounds to believe a violation occurred exist. The Exchange proposes to amend 8.2(b) to provide that when the Regulatory staff determines that a violation occurred, but a non-formal regulatory action is warranted, in lieu of issuing a statement of charges, the Regulatory staff may impose a non-formal regulatory action without the submission of a written report of its investigation to the CRO. Additionally, the Exchange proposes to amend Rule 8.2(b) to provide that when the Regulatory staff determines no reasonable grounds to believe a violation occurred exist, the Regulatory staff may close the investigation without submission of a written report to the CRO. The proposed Rule 8.2(b) reflects the language and procedures described Affiliated Exchanges' Rule 13.2(c) and differs only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Third, the Exchange proposes to amend Rule 8.2(c) to add that a Member or associated person is obligated to appear and testify, respond to interrogatories, and furnish information

requested by the Exchange in connection with an inquiry resulting from an agreement pursuant to Exchange Rules 8.2(f),³⁷ 8.2(g),³⁸ or 13.7.³⁹ Currently, Exchange Rule 8.2(c) provides for circumstances in which a Member or associated person is obligated to appear and testify, respond in writing to interrogatories, and furnish documentary materials and other information requested by the Exchange including in connection with a an investigation initiated pursuant to the Rule or a hearing or appeal conducted or anticipated to be conducted pursuant to Chapter 8 of the Exchange Rules. Current Rule 8.2(c) does not obligate a Member or associated person to perform the specified actions in connection with an Exchange inquiry resulting from an agreement entered in connection with regulatory cooperation, a cooperative agreement, or a regulatory services agreement. The Exchange proposes to amend Rule 8.2(c) to add that a Member or associated person is obligated to appear and testify, respond to interrogatories, and furnish information requested by the Exchange in connection with an inquiry resulting from agreement pursuant to Exchange Rules 8.2(f), Regulatory Cooperation, 8.2(g), Cooperative Agreements, or 13.7, Regulatory Services Agreements. The proposed change to Rule 8.2(c) reflects the language of Affiliated Exchanges' Rule 13.2(b) and differs only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Fourth, the Exchange proposes to amend Rule 8.2(d) to extend the time in

³⁷ See Rule 8.2(f). "No Member or person associated with a Member or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or other self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish testimony, documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such testimony, documentary materials or other information in connection with an inquiry resulting from an agreement entered into by the Exchange pursuant to subsection (g) of this Rule. . . ."

³⁸ See Rule 8.2(g). "The Exchange may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance or for market surveillance, investigative, enforcement or other regulatory purposes. . . ."

³⁹ See Rule 13.7. The Exchange may enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Exchange Act. . . ."

³² *Id.*

³³ *Id.*

³⁴ See Rule 8.2(h).

³⁵ See Rule 8.2(g).

³⁶ See Rule 8.2(f).

which a Subject⁴⁰ has to submit a response to a notification from 15 to 25 days, add a 25-day tolling period while a request for access to the relevant investigative file is pending, and add clarifying language to specify that the reference to any resolution of the Board in Rule 8.2(d) refers only to resolutions of the Board regulating the conduct of business on the Exchange. Currently, Rule 8.2(c) allows Subjects 15 days from the date of notification to submit a written statement to the CRO describing why no disciplinary action should be taken, whereas the Affiliated Exchanges allow for 25 days.⁴¹ Additionally, current Rule 8.2(c) does not include a tolling provision for Subjects when they are awaiting access to the relevant investigative file, whereas the Affiliated Exchanges include a tolling provision.⁴² Finally, unlike Rule 13.2(d) of the Affiliated Exchanges, current Exchange Rule 8.2(c) refers to resolutions of the Board without specifying that the Rule only refers to resolutions of the Board regulating the conduct of business on the Exchange. To ensure consistency between the Exchange and the Affiliated Exchanges, the Exchange proposes to amend Rule 8.2(d) to extend the time for a Subject to submit a response to a notification from 15 to 25 days, add a 25-day tolling period while a request for access to the relevant investigative file is pending, and add clarifying language to specify that the reference to any resolution of the Board in Rule 8.2(d) refers only to resolutions of the Board regulating the conduct of business on the Exchange. The resulting Rule 8.2(d) will reflect the language of Rule 13.2(d) of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Fifth, the Exchange proposes to amend Rule 8.2(h) to extend the time in which a Subject may submit a videotaped response to a notification from 15 to 25 days and to specify the length and format of videotaped responses submitted pursuant to the Rule 8.2. Currently, Exchange Rule 8.2(h) allows Subjects 15 days to submit a videotaped response to a notification.

The current Rule fails to specify the length and format of videotaped responses and states that the Exchange will establish these standards. The Exchange proposes to extend the time in which a Subject may submit a videotaped response to a notification from 15 to 25 days to align the Exchange's Rules with those of the Affiliated Exchanges and proposed Rule 8.2(d), discussed above. The Exchange also proposes to specify that submitted videotaped responses shall not exceed 12 minutes and must be accompanied by a written transcript to align the Exchange's Rules with those of the Affiliated Exchanges and provide clarity to its Members regarding the standards for videotaped responses submitted pursuant to Rule 8.2(h). The resulting Rule 8.2(d) will reflect the exact language of Interpretation and Policy .02 of the Affiliated Exchanges' Rule 13.2.

Sixth, the Exchange proposes to add Interpretation and Policy .03-.05 of the Affiliated Exchanges' Rule 13.2 as Exchange Rule 8.2(i)-(k) to specify the format of complaints, specify the form of materials to be submitted upon request, and define the term "Regulatory staff" as it is used in Chapter 8 of the Exchange Rules. The Affiliated Exchanges have rules in place specifying (1) that Complainants should sign written complaints or identify themselves when making oral complaints; (2) that data should be furnished upon request in the manner and standard electronic format prescribed by the Exchange; and (3) that define the term "Regulatory staff" as used in the relevant chapter.

Conversely, the Exchange currently has no rules making such specifications. As such, the Exchange proposes to amend Rule 8.2 to add the specifications related to identification, furnishing materials upon request, and the definition of Regulatory staff that are included in the Rules of the Affiliated Exchanges. The Exchange proposes to adopt Rule 8.2(i) requiring Complainants to sign written complaints or identify themselves when making oral complaints and identify the specific rules and regulations allegedly violated. The Exchange also proposes to adopt Rule 8.2(j) requiring each Member to furnish data concerning orders, transactions, and positions upon request in the manner and standard electronic format prescribed by the Exchange.

Finally, the Exchange proposes to adopt Rule 8.2(k) to define the term "Regulatory staff," as used in Chapter 8, to mean the Exchange's employees in the regulatory division, and, as applicable, employees of FINRA

performing regulatory services for the Exchange. The resulting Rules 8.2(i), 8.2(j), and 8.2(k) will reflect Interpretation and Policy .03-.05 of the Affiliated Exchanges' Rule 13.2 with the only difference between the rules being the corresponding Exchange Rules and defined terms referenced in each.

Finally, the Exchange proposes to add Rule 8.2(m) to the Rules of the Exchange defining the BCC and detailing its composition. Proposed Rule 8.2(m) will define the BCC as a committee of the Board with decision-making authority concerning possible violation within the discretionary jurisdiction of the Exchange. Further, the proposed rule will detail the composition of the BCC as being comprised of one or more Member or associated person, one or more public representatives, and may also include other individuals affiliated with the securities, futures or derivatives industry, all as appointed by the Exchange's Nominating and Governance Committee with the approval of the Exchange's Board of Directors. The resulting Rule 8.2(m) will set forth the definition and composition of the BCC in the Rules of the Exchange thereby adding clarity. The Exchange's proposed amendments to Rule 8.2 discussed above will result in clarifying the Rules of the Exchange and the terms therein and Rule 8.2 aligning with and reflecting the general format of the Affiliated Exchanges' Rule 13.2 with differences only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Exchange Rule 8.3, Expedited Processing

(1) Current Rule 8.3

Current Rule 8.3, Expedited Proceeding, states that when a Subject receives notice of a report, the Subject may seek to dispose of the matter through a letter of consent.⁴³ The Subject may submit notice to staff electing to proceed in an expedited manner and shall have 15 days to submit a written statement pursuant to Rule 8.2(d).⁴⁴ The Subject and staff may then negotiate a letter of consent outlining stipulations and findings regarding the violation(s) and the sanctions therefore.⁴⁵ Disposing of the matter via letter of consent occurs only if the Subject and staff agree on the terms and it is signed by the Subject.⁴⁶

⁴³ See Rule 8.3.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁰ See Rule 8.2(d). The term "Subject" refers to the person(s) who is the subject of the report.

⁴¹ See Affiliated Exchanges' Rule 13.2(d). "A subject shall have 25 days from the date of notification [] to submit a written statement to the CRO concerning why no disciplinary action should be taken."

⁴² See Affiliated Exchanges' Rule 13.2(d). "The 25-day period to submit a written statement shall toll while any request for access to the investigative file pursuant to this section is pending."

The CRO may accept or reject the letter of consent.⁴⁷ If the CRO accepts the letter, the Exchange may adopt the letter as its decision.⁴⁸ If the CRO rejects the letter, the matter proceeds as if the letter had not been submitted. The CRO's decision to accept or reject the letter is final.⁴⁹ Upon rejection, the Subject shall have 15 days to submit a written statement pursuant to Rule 8.2(d).⁵⁰ At any time, the Subject or staff may terminate the negotiations via written declaration of an end to the negotiations.⁵¹

(2) Proposed Changes to Rule 8.3

The Exchange proposes to amend Rule 8.3, Expedited Proceeding, to extend the time for a Subject to submit written responses to notices from the Regulatory staff from 15 to 25 days and to make other non-substantive conforming changes to the rule text. Rule 8.3, Expedited Proceedings, references Rule 8.2(d), regarding notice and time to respond to a notice, multiple times. Currently, Rule 8.2(d) allows Subjects 15 days to respond to a notice from the Exchange's Regulatory staff. As discussed in detail above, the Exchange is proposing to extend time allotted in Rule 8.2(d) to 25 days to align the Rules of the Exchange with those of the Affiliated Exchanges. Similarly, current Rule 8.3 allows Subjects 15 days to submit a written notice in response a notification electing to proceed in an expedited manner, a declaration of an end to negotiations, or a rejection of a letter of consent. The Exchange now proposes to extend the time allotted to a Subject to submit a written response in each of these scenarios to 25 days.

Additionally, the Exchange proposes to make other non-substantive changes to Rule 8.3 to conform the language of the Rule with the language of Affiliated Exchanges' Rule 13.3, Expedited Proceeding. These non-substantive changes include changing references to "Exchange staff" to "Regulatory staff," which the Exchange proposes to define in Rule 8.2(k), discussed above. The Exchange's proposed amendments to Rule 8.3 as discussed above will align Rule 8.3 with the general format and language of the Affiliated Exchanges' Rule 13.3.

Exchange Rule 8.4, Charges

(1) Current Rule 8.4

Current Rule 8.4 states that when it appears to the CRO from the staff's report pursuant to Rule 8.2(b) that no probable cause exists for finding a violation occurred or if the CRO otherwise determines that no further action is warranted, the CRO issues a written statement setting out its reasons for that finding.⁵² When the CRO determines probable cause exists for finding a violation occurred and further proceedings are warranted, the CRO directs staff to prepare a statement of charges against the Respondent specifying the acts for which the Respondent is charged and setting forth the specific violations.⁵³ A copy of the statement of charges shall be served upon the Respondent in accordance with Rule 8.12.⁵⁴

(2) Proposed Changes to Rule 8.4

The Exchange proposes to amend Rule 8.4, Charges, to delete the current text of Rule 8.4(a) and replace it entirely with the text of the Affiliated Exchanges' Rule 13.4(a), amend Rule 8.4(b) to provide that a Complainant shall be notified if further proceedings are warranted, and add Rule 8.4(c) specifying the terms of a Respondent's access to requested documents.

First, the Exchange proposes to delete the current text of Rule 8.4(a) and replace it entirely with the text of the Affiliated Exchanges' Rule 13.4(a). Current Rule 8.4(a) describes the steps the CRO must take in the case he or she determines that no probable cause exists for finding a violation occurred or that no further proceedings are warranted. In both cases, current Rule 8.4(a) directs the CRO to issue a written statement setting forth the reasons for his or her finding. Rule 8.4(a) does not specify which materials the CRO must base his or her finding on and requires the CRO, rather than the Regulatory staff, to take the specified action. The Exchange proposes to amend Rule 8.4(a) to adopt the language of the Affiliated Exchange's Rule 13.4(a) in its entirety. As a result, Rule 8.4(a) will continue to describe the steps the CRO must take if he or she determines that no probable cause exists for finding a violation occurred or that no further proceedings are warranted. The amended Rule 8.4(a) will also specify that the CRO should base his or her finding on the report of the Regulatory staff, that the determination should be based on the

whether a violation occurred within the disciplinary jurisdiction of the Exchange, and direct the Regulatory staff, rather than the CRO, to prepare and issue a written statement setting forth the reasons for the CRO's findings. The resulting Rule 8.4(a) will reflect the exact language of the Affiliated Exchanges' Rule 13.4(a).

Second, the Exchange proposes to amend Rule 8.4(b) to specify that the CRO's finding should be based on the report of the Regulatory staff and that the Regulatory staff prepares and issues the statement of charges. Similar to current Rule 8.4(a), current Rule 8.4(b) does not specify that the CRO's finding should be based on a report from the Regulatory staff or that the Regulatory staff, rather than the CRO, should prepare and issue statements of charges. The Exchange proposes to amend Rule 8.4(b) to add these specifications. Additionally, the Exchange proposes to amend Rule 8.4(b) to specify that the term "Respondent" refers to the person or organization alleged to have committed a violation, and that the Complainant, if any, shall be notified if further proceedings are warranted. Current Rule 8.4(b) does not specifically define the term "Respondent" or whether Complainants will be contacted if further proceedings are warranted. The Exchange proposes to add to Rule 8.4(b) that the term "Respondent" refers to "the person or organization alleged to have committed a violation." The Exchange also proposes to add that if further proceedings are warranted, the Complainant shall be notified. The resulting Rule 8.4(b) will reflect the exact language of Rules 13.4(b) of the Affiliated Exchanges.

Finally, the Exchange proposes to add subparagraph (c) to Rule 8.4 to specify the terms of the Respondent's access to requested documents. Currently, neither Rule 8.4, nor any provision in Chapter 8 of the Exchange's Rulebook, provides the terms of Respondent's access to documents relating to their investigation. The Exchange proposes to adopt Rule 8.4(c) to specify that Respondents who have made a request for documents shall have access to all documents concerning their case within 25 days after a statement of charges has been properly served upon the Respondent. If a Respondent requests such documentation, the Regulatory staff may protect the identity of the Complainant. The Exchange seeks to add clarity to the process by which Respondents may obtain all relevant documentation and ensure that procedures for obtaining such information are transparently communicated to all Members of the

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See Rule 8.4(a).

⁵³ See Rule 8.4(b).

⁵⁴ *Id.*

Exchange. The resulting Rule 8.4(c) will reflect the language of Rules 13.4(c) of the Affiliated Exchanges, with differences only to account for the Exchange Rules referenced therein.

Exchange Rule 8.5, Answer

(1) Current Rule 8.5

Currently, Rule 8.5, Answer, states that a Respondent has 15 days after service of the statement of charges to file a written answer to the statement of charges (“Answer”).⁵⁵ The Answer must specifically admit or deny any allegation contained in the statement of charges and may be accompanied by supporting documentation.⁵⁶

(2) Proposed Changes to Rule 8.5

The Exchange proposes to amend Rule 8.5, Answer, to extend the time for a Subject to submit an answer from 15 to 25 days and add a 25-day tolling period while a request for access to the relevant investigative file is pending. Similar to Rule 8.2, discussed above, Rule 8.5 currently allows Respondents 15 days after service of the charges to file an answer, whereas the Affiliated Exchanges allow for 25 days.⁵⁷ Additionally, current Rule 8.5 does not include a tolling provision for Respondents when they are awaiting access to the relevant investigative file, whereas the Affiliated Exchanges include a tolling provision.⁵⁸ To ensure consistency between the Exchange and its Affiliated Exchanges, the Exchange proposes to amend Rule 8.5 to extend the time that a Respondent has to file an answer from 15 to 25 days and add a 25-day tolling period while a request for access to the relevant investigative file is pending. The resulting Rule 8.5 will reflect the language of Rule 13.5 of the Affiliated Exchanges with differences only to account for the Exchange Rules referenced therein.

Exchange Rule 8.6, Hearings

(1) Current Rule 8.6

Current Rule 8.6, Hearings, states that subject to Rule 8.7⁵⁹ regarding summary

proceedings, hearings on charges are held before a panel of three hearing officers (the “Hearing Panel”) appointed by the Chief Executive Officer.⁶⁰ Each Hearing Panel shall be comprised of the following: (i) a professional hearing officer, who shall serve as Chairman; (ii) a hearing officer who is an Industry member;⁶¹ and (iii) a hearing officer who is a Member Representative.⁶² Exchange counsel may assist the Hearing Panel in preparing its written recommendations or judgments.⁶⁴ Within 15 days of the appointment of the Hearing Panel, the Respondent may move, in writing, to disqualify any Hearing Officer sitting on such Hearing Panel based upon bias or conflict of interest.⁶⁵ The Exchange may file a brief in opposition to the Respondent’s motion within 15 days of service thereof.⁶⁶ The Hearing Panel shall rule upon such motion no later than 30 days from filing by the Respondent.⁶⁷

Participants shall be given at least 15 business days’ notice of the time and place of the hearing and a statement of the matters to be considered therein.⁶⁸ Not less than 8 days in advance of the hearing date, the parties must furnish copies of all documentary evidence they wish to present at the hearing, and the parties shall furnish a list of all documents submitted for the record not less than four business days in advance of the hearing.⁶⁹ These documents shall be made available to the parties for inspection and copying.⁷⁰ The Hearing Panel shall determine all questions concerning the admissibility of evidence

specifying the violations and penalty, shall be served upon the Respondent, who shall have ten (10) business days from the date of service to notify the CRO that he desires a hearing upon all or a portion of any charges not previously admitted or upon the penalty. Failure to so notify the CRO shall constitute an admission of the violations and acceptance of the penalty as determined by the CRO and a waiver of all rights of review. If the Respondent requests a hearing, the matters which are the subject of the hearing shall be handled in accordance with the hearing and review procedures of this Chapter.”

⁶⁰ See Rule 8.6(a)(2).

⁶¹ See Rule 8.6(a)(1)(A). An “Industry member” is generally defined as a person having significant involvement with a broker or dealer, a person who provides professional services to a broker or dealer, or a person who has an employment relationship or consults for or provides professional services to the Exchange or any affiliate thereof.

⁶² See Rule 8.6(a)(1)(B). The term “Member Representative” means a member of any hearing panel who is an office, director, employee or agent of an Exchange Member.

⁶³ See Rule 8.6(a)(2).

⁶⁴ See Rule 8.6(b).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See Rule 8.6(c).

⁶⁹ *Id.*

⁷⁰ *Id.*

and shall otherwise regulate the conduct at the hearing.⁷¹ The charges shall be presented by a representative of the Exchange or the designated SRO who, along with the Respondent, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Hearing Panel and opposing parties.⁷² The Respondent is entitled to be represented by counsel who may participate fully in the hearing.⁷³ A transcript of the hearing shall be made and shall become part of the record.⁷⁴

(2) Proposed Changes to Rule 8.6

The Exchange proposes to remove current text of Rule 8.6, Hearings, and replace it entirely with the language of Rule 13.6 of the Affiliated Exchanges, which describes the process of conducting hearings for the Affiliated Exchanges. Proposed changes to Rule 8.6 include amending Rule 8.6(a) to change the composition of the panel overseeing hearings from three hearing officers appointed by the CEO to three to five members of the BCC selected by the Chairperson of the BCC; reorganizing the contents of the Rule to reflect the format of Rule 13.6 of the Affiliated Exchanges, and adding subparagraphs (d) and (e) to Rule 8.6.

The Exchange proposes to amend Rule 8.6(a) to remove the current rule text and replace it entirely with the text of Rule 13.6(a) of the Affiliated Exchanges. Current Rule 8.6(a) defines the terms “Industry Member” and “Member Representative member,” and then specifies the composition of Hearing Panels that conduct hearings pursuant to the Rule as three hearing officers appointed by the CRO. The amended Rule 8.6(a) will define the term “Hearing Panel” as the selected members of the BCC that shall exercise the authority of the BCC with respect to matters pertaining to the hearing. The proposed rule change will transform the composition of the Hearing Panel from a panel of three hearing officers appointed by the Chief Executive Officer to three to five members of the BCC selected by the Chairperson of the BCC. Proposed Rule 8.6(a) will also provide that the Exchange and the Respondent shall be the parties to the hearing and where a Member organization is a party, it shall be represented at the hearing by one of its Principals or nominees. Additionally, the rule will provide that Hearing Panel members shall remain impartial and

⁷¹ See Rule 8.6(d).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁵⁵ See Rule 8.5.

⁵⁶ *Id.*

⁵⁷ See Affiliated Exchanges’ Rule 13.5. “The Respondent shall have 25 business days after service of the charges to file a written answer thereto.”

⁵⁸ See Affiliated Exchanges’ Rule 13.5. “The 25-day period to submit a written answer shall toll while any request for access to the investigative file pursuant to Rule 13.4(c) is pending.”

⁵⁹ See Rule 8.7. “Notwithstanding the provisions of Rule 8.6 of this Chapter, the CRO may make a determination without a hearing and may impose a penalty as to violations which the Respondent has admitted or charges which the Respondent has failed to answer or which otherwise are not in dispute. Notice of such summary determination,

function independently from Exchange staff.

Current Rule 8.6(b) imposes the requirement that members of the Hearing Panel must remain impartial and provides the procedures for which a Respondent may move to disqualify a member of the Hearing Panel based on bias or a conflict of interest. The Exchange proposes to remove subparagraph (b) of Rule 8.6 and replace it with a provision describing hearing procedures, discussed in detail *infra*. The Exchange proposes to amend subparagraph (1) of Rule 8.6(a) to set forth the requirement that members of the Hearing Panel remain impartial throughout the proceeding and the procedures for, if at any point in time, a member of the Hearing Panel determines they have a conflict of interest. These provisions were previously contained in subparagraph (b) of Rule 8.6. If a conflict of interest arises, the Hearing Panel member shall notify the Chairperson of the BCC who shall notify all Parties that the Hearing Panel member withdrawals from the hearing and then appoint a replacement. Finally, subparagraph (2) of proposed Rule 8.6(a) will provide for an avenue by which a Respondent may motion for the disqualification of a Hearing Panel member based on bias or a conflict of interest within 15 days of the appointment of the Hearing Panel member. This provision was also previously contained in subparagraph (b) of Rule 8.6. Similar to the requirements of current Rule 8.6(b), motions for disqualification of a Hearing Panel member will be required to be in writing and must state the facts and circumstances giving rise to the alleged bias or conflict. Then, the Exchange will have 15 days to file a brief in opposition to the Respondent's motion. The resulting Rule 8.6(a) will reflect the requirements and format set forth in Affiliated Exchanges' Rule 13.6(a) and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Next, the Exchange proposes to amend current Rule 8.6(b) to remove the existing text and replace it entirely with the text of Rule 13.6(b) of the Affiliated Exchanges. Current Rule 8.6(b) imposes the requirement that members of the Hearing Panel must remain impartial and provides the procedures for which a Respondent may move to disqualify a member of the Hearing Panel based on bias or a conflict of interest. As discussed above, the Exchange proposes to move the requirement of impartiality

of Hearing Panel members and the procedures for addressing a Hearing Panel member's conflict of interest to subparagraph (a) of Rule 8.6. The Exchange proposes to replace current Rule 8.6(b) with a provision specifying prehearing procedures, which are currently found in Rule 8.6(c). As discussed in greater detail *infra*, the Exchange proposes to remove the text of current Rule 8.6(c) and renumber current Rule 8.6(d) as Rule 8.6(c).

The Exchange proposes to amend Rule 8.6(b) to specify the terms of notice before a hearing, location of a hearing, pre-hearing furnishing of documents, and pre-hearing conference requirements. First, the amended Rule 8.6(b) will specify that notice shall be served upon all Parties to a hearing at least 15 days before the hearing specifying the time and location of the hearing which is typically held in Chicago, but may be held outside of Chicago to accommodate hearing participants. Similar to current Rule 8.6(c), proposed Rule 8.6(b) will require 15 business days' notice of a hearing to all parties and require that all evidence each party intends to furnish to the Hearing Panel shall be furnished within 10 business days prior to the hearing. Next, proposed Rule 8.6(b) will specify that each party to a hearing must furnish all documentary evidence it intends to present at the hearing to the Hearing Panel and all other parties to the hearing within 10 days prior to the scheduled hearing. Proposed Rule 8.6(b) will also provide that where time and the nature of a proceeding permit, the parties shall meet in a prehearing conference to clarify and simplify issues and otherwise expediate the hearing process. The Rule will specify that at such pre-hearing conference the parties shall attempt to reach an agreement regarding the authenticity of documents and facts not in dispute, and that either party may request that the Hearing Panel or Chairperson thereof decide any unresolved prehearing issue. Finally, proposed Rule 8.6(b) will set forth the situations in which interlocutory Board review of a decision by the Hearing Panel is permitted. Generally, proposed Rule 8.6(b) will prohibit any interlocutory review by the Board unless the Hearing Panel agrees to review after determining that the issue is a controlling issue of rule or policy and that immediate Board review would materially advance the ultimate resolution of the case. The resulting Rule 8.6(b) will reflect the language and organization of Rule 13.6(b) of the Affiliated Exchanges.

Next, the Exchange proposes to remove the existing text of Rule 8.6(c)

as this text has been incorporated into proposed Rule 8.6(b). The Exchange also proposes to renumber current Rule 8.6(d) concerning the conduct of hearing as Rule 8.6(c) and proposes additional non-substantive changes to reflect the language of the Affiliated Exchanges' Rule 13.6(c). Proposed Rule 8.6(c) will impose the same requirements upon the Hearing Panel at a hearing as current Rule 8.6(d) does and add the opportunity for intervening parties to present evidence at a hearing be represented by counsel. The resulting Rule 8.6(c) will reflect the exact language of Rule 13.6(c) of the Affiliated Exchanges.

Next, the Exchange proposes to adopt Rule 13.6(d) of the Affiliated Exchanges regarding documents and witnesses as Exchange Rule 8.6(d). Proposed Rule 8.6(d) will provide the process by which the Hearing Panel may compel the production of evidence from the Exchange, a Member, or associated person. Proposed Rule 8.6(d) will allow a Respondent to submit a written request to the Hearing Panel asking the Hearing Panel to enter an order compelling the production of non-privileged documents by the Exchange, a Member, or associated person. Before entering an order under proposed Rule 8.6(d), the Hearing Panel will be required to hear any objections raised and weigh the probative value of the requested evidence against considerations including undue delay, waste of time, confusion, and unfair prejudice. As a result of compelled production under proposed Rule 8.6(d), the Hearing Panel may require the Respondent to pay the costs of producing the requested evidence and no Member or associated person may refuse to furnish relevant evidence requested or ordered by the Hearing Panel. The resulting Rule 8.6(d) will reflect the language and procedures outlined in Rule 13.6(f) of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Finally, the Exchange proposes to adopt the Affiliated Exchanges' Rule 13.6 Interpretations and Policies .01–.03 regarding parties intervening in a hearing as Rule 8.6(e). Proposed Rule 8.6(e) will set forth the process by which a third party may intervene as a party to a hearing. Under proposed Rule 8.6(e), a party may only intervene in a hearing if (1) the party satisfactorily demonstrates to the Hearing Panel that the party has an interest in the subject

of the hearing and that disposition of the matter before the Hearing Panel may impair or impede the party's ability to protect that interest; or (2) the Hearing Panel, in its discretion, permits a party to intervene when the party's claim or defense and the main action have questions of fact or law in common. Proposed Rule 8.6(e) will require any party seeking to intervene in a hearing to file a notice requesting to intervene with the Hearing Panel stating the grounds for intervention. The Exchange proposes to add subparagraphs (1) and (2) to proposed Rule 8.6(d) including specifying that the Hearing Panel has discretion to take into consideration whether intervention will unduly delay a hearing and that the CRO shall have authority to direct that a hearing to be scheduled at any time after the period to answer, specified in Rule 8.5, discussed above, has elapsed. The resulting Rule 8.6(f) will reflect the exact language of Affiliated Exchanges' Rule 13.6 Interpretations and Policies .01–.03 with the only difference between the Rules being the Rules referenced therein.

The Exchanges proposes the aforementioned changes to Rule 8.6, Hearings, with the broader purpose of harmonizing the Rules of the Exchange with the Rules of the Affiliated Exchanges. The changes to Rule 8.6 propose to adopt new roles for the Exchange's Business Conduct Committee similar to the functions of the relevant BCC of the Affiliated Exchanges. The Exchange believes that harmonizing the composition of the disciplinary rules between the Exchange and the Affiliated Exchanges benefits Members because those parties who maintain status as both a Member of the Exchange and a Trading Permit Holder on the Affiliated Exchanges will be subject to substantially similar disciplinary rules and not perceive one set of disciplinary rules to be more lenient or harsh depending on the Exchange's core business.

Rule 8.8, Offers of Settlement

(1) Current Rule 8.8

Current Rule 8.8, Offers of Settlement, states that a Respondent may submit an offer of settlement ("offer") to the CRO at any time during the course of any proceeding.⁷⁵ If the CRO accepts the offer, it issues a decision consistent with the terms of the offer.⁷⁶ If the CRO rejects the offer, it notifies the Respondent and the matter proceeds as if the offer had not been made.⁷⁷ In

addition, the Respondent is notified if staff will not recommend acceptance of an offer, and the Respondent may then appear before the CRO to make an oral statement in support of the offer.⁷⁸ If the CRO rejects an offer that the staff supports, the Respondent may also appear before the CRO to make an oral statement concerning why the CRO should consider changing its decision.⁷⁹ A Respondent must make a request for such an appearance within 5 days of being notified that the offer was rejected or that the staff will not recommend acceptance.⁸⁰ Unless otherwise ordered by the CRO, a Respondent shall be entitled to submit a maximum of two written offers of settlement in connection with the statement of charges issued pursuant to Rule 8.4(b).⁸¹

(2) Proposed Changes to Rule 8.8

The Exchange proposes to amend Rule 8.8, Offers of Settlement, to remove the provision that the staff may also appear before the CRO to make an oral statement if the Respondent elects to make an oral statement before the CRO. Additionally, the Exchange proposes to amend Rule 8.8 to provide that a Respondent may submit an offer during the course of any proceeding under Chapter 8 of the Exchange Rules. Currently, Rule 8.8(b) allows a Respondent to appear before the CRO to make an oral statement in support of an offer. If the CRO rejects the offer, the Respondent may appear in front of the CRO to make an oral statement in support of their offer and the Exchange staff may appear to make an oral statement in support of its position.⁸² The Exchange proposes to remove the language in Rule 8.8(b) stating that the staff may also make an oral statement in support of its position. Rule 13.8 of the Affiliated Exchanges contains a similar provision to Exchange Rule 8.8(b), but does not contain a provision allowing the staff to also appear in front of the CRO. The Exchange proposes to remove this provision of Rule 8.8(b) to ensure consistency across the Rules of the Exchange and the Affiliated Exchanges.

The Exchange also proposes to add subparagraph (d) to Rule 8.8 regarding presentment of offers of settlement. The Exchange proposes to add language taken from Affiliated Exchanges' Rule 13.8 Interpretations and Policies .02 which clarifies when a Respondent may propose a written offer and that the Hearing Panel shall grant parties leave

from a hearing if an offer of settlement is submitted subsequent to a hearing. The Exchange proposes to adopt similar language to Affiliated Exchanges' Rule 13.8 Interpretations and Policies .02. The resulting Rule 8.8(d) will ensure the granting of leave from hearings when an offer is submitted subsequent to a hearing and clarify that a Respondent may submit a written offer at any time during a proceeding under Chapter 8 of the Exchange Rules, subject to Rule 8.8(c).⁸³

Rule 8.9, Decision

(1) Current Rule 8.9

Currently, Rule 8.9, Decision, states that following a hearing, the Hearing Panel issues a decision, in writing, determining whether the Respondent has committed a violation.⁸⁴ The decision shall include a statement of findings and conclusions upon all material issues presented on the record.⁸⁵ Where a penalty is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged and setting forth the specific provisions of authority of which the acts are deemed to be in violation.⁸⁶ The Respondent shall promptly be sent a copy of the decision.⁸⁷

(2) Proposed Changes to Rule 8.9

The Exchange proposes to amend Rule 8.9, Decision, to add that a decision shall also include a statement of the penalties imposed and reasons for the penalties, that the regulatory division shall also receive a copy of the statements, and that the Exchange shall post the complete decision on the appropriate BZX website once the decision is considered final. Current Rule 8.9 sets out the required contents of a decision where a penalty is imposed but does not include that the decision must include a statement of the sanctions and the reasons for their imposition. The Exchange proposes to add to Rule 8.9 that where a penalty is imposed, the decision of the Hearing Panel shall also include a statement of the penalties imposed and the reasons therefor. Additionally, current Rule 8.9 states that a Respondent shall receive a copy of a decision but does not provide that the regulatory division of the

⁸³ See Rule 8.8(c). "Unless the CRO shall otherwise order, a Respondent shall be entitled to submit to the CRO a maximum of two written offers of settlement in connection with the statement of charges issued to that Respondent pursuant to Rule 8.4(b)."

⁸⁴ See Rule 8.9.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁷⁸ See Rule 8.8(b).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See Rule 8.8(c).

⁸² See Rule 8.8(a).

⁷⁵ See Rule 8.8(a).

⁷⁶ *Id.*

⁷⁷ *Id.*

Exchange shall receive a copy as well. The Exchange proposes to amend Rule 8.9 to include that the regulatory division shall also receive a copy of the decision. Finally, the Exchange proposes to add to Rule 8.9 that after review of a decision is complete and considered final, the Exchange shall post the complete decision on the appropriate BZX website. The Rules of the Affiliated Exchanges include a similar provision⁸⁸ that is currently not contained in the Rules of the Exchange. The Exchange proposes this addition to ensure consistency across the Rules of the Exchange and Affiliated Exchanges and to ensure that Members and Trading Permit Holders of each do not perceive the Rules of one exchange as stricter than the other. The resulting Rule 8.9 will closely reflect Rule 13.9 of the Affiliated Exchanges, with the only difference being the Exchange Rules referenced therein.

Rule 8.10, Review

(1) Current Rule 8.10

Current Rule 8.10, Review, states that a Respondent has 10 days after service of a decision to petition for review of the decision by submitting a petition, in writing, and specifying the findings and conclusions to which exceptions are taken together with reasons for such exceptions.⁸⁹ The review shall be conducted by the Appeals Committee of the Board (the "Committee").⁹⁰ The review shall be based solely upon the record and the written exceptions filed by the parties unless the Committee decides to open the record for introduction of evidence or to hear arguments.⁹¹ The Committee's decision shall be in writing and shall be final.⁹²

The Board may order review of a decision made pursuant to Rule 8.7⁹³ or 8.9, discussed above, within 20 business

days after issuance of the decision.⁹⁴ Such review shall be conducted in accordance with the Committee review procedure described above.⁹⁵ Within 30 days of a decision made to not initiate charges pursuant to Rule 8.4(a), described above, the Board may order review of such decision upon application made by the Chief Executive Officer ("CEO").⁹⁶ Such review shall be conducted in accordance with the Committee review procedure described above.⁹⁷

(2) Proposed Changes to Rule 8.10

The Exchange proposes amend Rule 8.10(a) to reflect the content and format of Rule 13.10 of the Affiliated Exchanges. In doing so, the Exchange proposes to extend the time for a Respondent to petition for review of a decision from 10 days to 15 days, to specify the process of petitioning for review of a decision, and to clarify that other parties to a hearing may also submit a petition for review and a response to petitions for review. The Exchange also proposes to amend Rule 8.10(b) to allow the Board or a committee of the Board, excluding any Board member who participated in the review, to ratify a review, and to clarify that new issues may be raised by the parties involved in the review, but all parties must be given notice and opportunity to address them. Additionally, the Exchange proposes to amend Rule 8.10(b) to further clarify that the Board may affirm, reverse or modify the decision, and that the decision must be served upon the Respondent and the regulatory division of the Exchange. Next, the Exchange proposes to amend Rule 8.10(c) to extend the time allotted for the Board to review a decision from 20 days to 30 days. Finally, the Exchange proposes to remove subparagraph (d) of Rule 8.10 entirely to eliminate the CEO's role from the disciplinary issues of the Exchange all together.

The Exchange proposes to amend Rule 8.10(a) to allow both the Respondent and the regulatory division the opportunity to petition for review of a decision, extend the period of time allotted to both parties to file such a review from 10 days to 15 days, and specify the process by which the parties may petition for review. Current Rule 8.10(a) allows only the Respondent to petition for review of a decision within 10 days of service of notice of a decision and fails to specify the process for filing

a petition for review. The Exchange proposes to extend this time to 15 days, include the regulatory division of the Exchange as a party who may petition for review, and specify that a petitioning party must file a copy of the written petition with the Secretary of the Exchange ("Secretary") shared with all other parties to the hearing. In response to a petition for review all other parties to the hearing shall have 15 days to respond to the petition by serving a written response upon the Secretary and all other parties to the hearing. The resulting Rule 8.10(a) will clarify the processes for submitting petitions for review for all parties to a hearing and closely reflect the language of Rule 13.10(a) of the Affiliated Exchanges. The resulting Rule 8.10(a) will differ from Rule 13.10(a) of the Affiliated Exchanges only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

The Exchange proposes to amend Rule 8.10(b) to reflect the language of the Rule 13.10(b) of the Affiliated Exchanges. Current Rule 8.10(b) provides that the review of a decision shall be conducted by the Appeals Committee of the Board and based solely on the record and written exceptions filed by the parties. The Exchange proposes to allow the Board or any subcommittee thereof, excluding any Director who took part in the Hearing Panel, to review a decision. The Exchange proposes to allow the reviewing Committee to open the record to introduce additional evidence if it chooses, in which case parties to the hearing shall be given notice and opportunity to address any additional issues. Finally, the Exchange proposes to clarify that the decision of the Board shall be made in writing and served upon the Respondent and the Regulatory Division. The resulting Rule 8.10(b) will closely reflect Rule 13.10(b) of the Affiliated Exchanges with differences to account for the Exchange's existing Rule text and details and descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

The Exchange proposes to amend Rule 8.10(c) to extend the time the Board which the Board can review an order of a decision from 20 days to 30 days and to specify that the 30 period begins at the time service of the decision upon the Respondent and the Regulatory Division. Current Rule 8.10(c) allows the Board to review an order of a decision made pursuant to

⁸⁸ See Affiliated Exchange Rule 13.9.

⁸⁹ See Rule 8.10(a).

⁹⁰ See Rule 8.10(b).

⁹¹ *Id.*

⁹² *Id.*

⁹³ See Rule 8.7. "Notwithstanding the provisions of Rule 8.6 of this Chapter, the CRO may make a determination without a hearing and may impose a penalty as to violations which the Respondent has admitted or charges which the Respondent has failed to answer or which otherwise are not in dispute. Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent, who shall have ten (10) business days from the date of service to notify the CRO that he desires a hearing upon all or a portion of any charges not previously admitted or upon the penalty. Failure to so notify the CRO shall constitute an admission of the violations and acceptance of the penalty as determined by the CRO and a waiver of all rights of review. If the Respondent requests a hearing, the matters which are the subject of the hearing shall be handled in accordance with the hearing and review procedures of this Chapter."

⁹⁴ See Rule 8.10(c).

⁹⁵ *Id.*

⁹⁶ See Rule 8.10(d).

⁹⁷ *Id.*

Rule 8.7 or Rule 8.9, described above, within 20 business days after issuance of the decision. The Exchange proposes to extend the time allotted to the Board to review an order of a decision to 30 days. The resulting Rule 8.10(c) will closely reflect Rule 13.10(c) of the Affiliated Exchanges with differences only to account for the Exchange Rules referenced therein.

Finally, the Exchange proposes to remove current subparagraph (d) from Rule 8.10, which allows the CEO to apply for, and the Board to order for, the review of decisions made pursuant to Rule 8.4(a), discussed above. The Exchange proposes to eliminate subparagraph (d) of Rule 8.10 with the broader purpose of removing the CEO from disciplinary matters within the Exchange. As discussed above, the Exchange seeks to align its Rules with those of the Affiliated Exchanges, which do not include the CEO as a stakeholder in disciplinary actions taken by the Affiliated Exchanges. The resulting Rule 8.10 will closely reflect the language and processes prescribed by Rule 13.10 of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Rule 8.11, Judgment and Sanction

(1) Current Rule 8.11

Current Rule 8.11, Judgment and Sanction, provides that the CRO, Hearing Panel, or committee of the Board appropriately discipline Members and associated persons for violations by expulsion, suspension, limitation of activities, fine, censure, suspension of association with a Member, suspension or revocation of membership, or any other fitting sanction.⁹⁸ Under this Rule, the CRO, Hearing Panel, or a committee of the Board, as applicable, considers several factors when determining sanctions including, but not limited to, deterrence, remediation, precedent and the appropriateness of disgorgement and/or restitution.⁹⁹ Penalties imposed under this Rule shall not become effective until the review process is completed or the decision otherwise becomes final.¹⁰⁰ The CRO, Hearing Panel, or committee of the Board, as applicable, may impose such conditions and restrictions on the activities of the Respondent pending effectiveness of a decision imposing a penalty on the Respondent as necessary for the

protection of investors, creditors, and the Exchange.¹⁰¹ The current Rule 8.11 also states that Exchange staff shall make all necessary findings under the Exchange Act and comply with all other applicable laws and regulations.¹⁰²

(2) Proposed Changes to Rule 8.11

The Exchange proposes to amend Rule 8.11, Judgment and Sanctions, to remove a committee of the Board as an applicable body that may determine penalties and impose discipline upon Members and associated persons. Current Rule 8.11(a) lists the CRO, Hearing Panel, and a committee of the Board as persons who may impose appropriate disciplinary actions for violations by expulsion, suspension, limitation of activities, fine, censure, suspension of association with a Member, suspension or revocation of membership, or any other fitting sanction. Current Rule 8.11(b) also includes a committee of the Board as an applicable body that may impose conditions or restrictions upon Members or associated persons for the protection of investors, creditors, and the Exchange pending the effectiveness of a decision imposing a penalty. Similarly, Rule 8.11(c) sets forth the appropriate considerations of the CRO, Hearing Panel, and committee of the Board in determining the imposition of sanctions. The Exchange proposes to remove a committee of the Board as a party that may determine and impose sanctions as described in the Rule. The resulting Rule 8.11 will contain the process for imposing disciplinary actions, but with a committee of the Board removed as a party that may take the actions described in Rule 8.11. The resulting Rule 8.11 will closely reflect Rule 13.11 of the Affiliated Exchanges with differences only to account for the Exchange Rules referenced therein.

The Exchange also proposes to remove Interpretations and Policies .01 to Rule 8.11. Interpretations and Policies .01 to Rule 8.11 currently states that Exchange staff shall make all necessary findings under the Exchange Act and comply with all other applicable laws and regulations. The Exchange proposes to remove this portion of Rule 8.11 because it is duplicative of the duties already imposed on the Exchange by the Exchange Act and other laws and regulations. Additionally, the corresponding Rule 13.11 of the Affiliated Exchanges does not contain a similar provision. Accordingly, the

Exchange proposes to remove the duplicative language of Interpretations and Policies .01 to Rule 8.11 to align the Rules of the Exchange with those of the Affiliated Exchanges.

Rule 8.12, Miscellaneous Provisions

(1) Current Rule 8.12

Current Rule 8.12, Miscellaneous Provisions, states that service may be effected by personally delivering any charges, notices or other documents upon the Respondent, by leaving such charges, notices or other documents at his place of business, or by registered and certified mail addressed to the Respondent at his last known place of business.¹⁰³ The Exchange may grant an extension of time limits for the submission of answers, petitions or other materials if the authority to whom such materials are to be submitted grants permission for the extension.¹⁰⁴

The Exchange's staff, CRO, Board, or designated SRO shall have the right (1) to require any Member to report orally or in writing with regard to any matter involved in any such investigation or hearing, and (2) to investigate the books, records and accounts of any such Member with relation to any matter involved in any such investigation or hearing.¹⁰⁵ Members shall comply with requests to make any report as required by Rule 8.12(c) and shall comply with any inspection of books, records and accounts as may be validly called for under Rule 8.12(c).¹⁰⁶

(2) Proposed Changes to Rule 8.12

The Exchange proposes to amend Rule 8.12, Miscellaneous Provisions, to clarify that the address the Respondent may be served at is the last known place of business as it appears on the books and records of the Exchange, and to provide an additional three days to the prescribed period a Respondent has to respond in the case of service by certified mail. Additionally, the Exchange proposes to clarify all references to Respondent within Rule 8.12. Current Rule 8.12(a) describes where a Respondent may be served, including by mail to his last known place of business. However, the current Rule does not provide the source of the address that may be used in the case of service by certified mail and does not allow for additional time to respond to service in the case of service by certified mail. The Exchange proposes to amend Rule 8.12(a) to clarify that service by mail shall be addressed to the

⁹⁸ See Rule 8.11(a).

⁹⁹ See Rule 8.11(c).

¹⁰⁰ See Rule 8.11(b).

¹⁰¹ *Id.*

¹⁰² See Rule 8.11, *Interpretations and Policies .01* to Rule 8.11.

¹⁰³ See Rule 8.12(a).

¹⁰⁴ See Rule 8.12(b).

¹⁰⁵ See Rule 8.12(c).

¹⁰⁶ *Id.*

Respondent at the Respondent's last known place of business as it appears on the books and records of the Exchange. The Exchange also proposes to add a provision to Rule 8.12(a) to allow the Respondent three additional days to respond to service delivered by certified mail. Finally, the Exchange proposes to add non-substantive changes to Rule 8.12(a) to clearly use the term "Respondent" instead of "his" when referring to the Respondent in the Rule text. The resulting Rule 8.12(a) will clearly state the address to be used in the case of service by certified mail. The resulting Rule 8.12 will closely reflect the language and processes prescribed by Rule 13.12 of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

8.14, Agency Review

(1) Current Rule 8.14

Current Rule 8.14, Agency Review, states that actions taken by the Exchange pursuant to Chapter 8 shall be subject to the review and action of any appropriate regulatory agency under the Act.¹⁰⁷

(2) Proposed Changes to Rule 8.14

The Exchange proposes to remove current Rule 8.14, Agency Review, in its entirety and replace it with the text of Rule 13.14 of the Affiliated Exchanges. Current Rule 8.14 states that actions taken by the Exchange shall be subject to review by the appropriate regulatory agency under the Act. The Exchange believes this provision is duplicative of rules and restrictions already imposed on disciplinary actions under the Exchange Act.¹⁰⁸ Thus, the Exchange proposes to remove the text of current Rule 8.14 because it is duplicative.

In place of current Rule 8.14, the Exchange proposes adopt language regarding reporting to the CRD using similar language to that of Rule 13.14 of the Affiliated Exchanges. Subparagraph (a) of proposed Rule 8.14, Reporting to the Central Registration Depository, will require the Exchange to report any issuance of a statement of charges concerning formal Exchange disciplinary proceedings pursuant to Rule 8.4(b), described above, and all significant changes in the status of pending proceedings to the CRD.

The Exchange also proposes to add clarifying descriptions of the terms used

in Rule 8.14(a) to subparagraph (b) of proposed Rule 8.14. Proposed subparagraph (b)(1) of proposed Rule 8.14 will clarify that formal Exchange disciplinary proceedings are considered pending from the time the statement of charges is issued pursuant to Exchange Rule 8.4(b), as described above, until the proceeding becomes final. Subparagraph (b)(2) of proposed Rule 8.14 will clarify that an Exchange disciplinary proceeding shall be considered formal if it is initiated by the Exchange pursuant to Exchange Rule 8.1 through 8.13. Finally, subparagraph (b)(3) of proposed Rule 8.14 will list examples of significant changes that shall be reported to the CRD including the scheduling of a disciplinary hearing, the issuance of a decision by the CRO or Hearing Panel, the filing of an appeal to the Board, and the issuance of a decision by the Board. The resulting Rule 8.14 will reflect the language of Rule 13.14 of the Affiliated Exchanges with the only differences between the rules being the references to the Exchange specific rules within them. The Exchange proposes the aforementioned changes to Rule 8.14 with the purpose of clarifying which instances the Exchange reports disciplinary proceedings to the CRD and aligning the Rules of the Exchange with those of the Affiliated Exchanges.

Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules

(1) Current Rule 8.15

Current Rule 8.15, Imposition of Fines for Minor Rule Violations, states that in lieu of commencing disciplinary proceedings, the Exchange may impose fines on Members and associated persons for specified Rule violations that the Exchange has deemed minor in nature.¹⁰⁹ In any action taken by the Exchange pursuant to Rule 8.15, the person against whom a fine is imposed shall be served, as provided in Rule 8.12 discussed above, with a written statement setting forth the details of each violation, the associated fine for each violation, the date by which the determination becomes final, and the fine due and payable to the Exchange.¹¹⁰ The person against whom a fine is imposed shall not have less than 15 business days after the date of service to contest the Exchange's determination.¹¹¹ Payment of the fine shall be deemed to be a waiver by such person of the right to a disciplinary proceeding under Rule 8.1–8.13, discussed above, and any review of the

matter by the appeals committee or by the Board.¹¹² If the person against whom a fine is imposed contests the Exchange's determination through a written response meeting the requirements of an Answer, described in Rule 8.5 above, the matter shall become a disciplinary proceeding subject to the provisions of Rules 8.1–8.13, described above.¹¹³ The Exchange periodically announces a listing of Exchange Rules as to which fines may be imposed and the specific dollar amount that may be imposed or the minimum and maximum dollar amounts that may be imposed with respect to such violations.¹¹⁴ The Exchange is not required to impose a fine pursuant to Rule 8.15 with respect to a violation of any Rule included in such listing.¹¹⁵

(2) Proposed Changes to Rule 8.15:

The Exchange proposes to amend Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, to reflect the content and layout of Rule 13.15 of the Affiliated Exchanges, which provides the guidelines for imposing fines for minor rule violations on the Affiliated Exchanges. The Exchange proposes to amend Rule 8.15(a) to limit fines imposed under the Rule to \$5,000, specify the actions constituting minor rule violations, describe the Exchange's treatment of separate and similar offenses for purposes of the Rule, and clarify that reporting of uncontested violations to the Commission not exceeding \$2,500 shall be reported on a periodic basis. The Exchange proposes to amend Rule 8.15(b) to extend the time that a determination becomes final or a determination must be contested under the Rule from no less than 15 days to no less than 30 days after service of the written statement and to specify that failure to contest, submission, and/or acceptance of a fine by a member does not constitute admission. The Exchange proposes to remove current rule 8.15(c) in its entirety and replace it with revised Rule 8.15(c). The Exchange proposes revised Rule 8.15(c) with subparagraphs (1)–(4), which will describe the process of contesting a fine. Finally, the Exchange proposes to amend current Rule 8.15(e) to become revised Rule 8.15(d) and make conforming non-substantive changes, authorize the Exchange to impose fines for first or second offenses when warranted under the circumstances as

¹¹² See Rule 8.15(c).

¹¹³ See Rule 8.15(d).

¹¹⁴ See Rule 8.15(e). See also Rule 8.15, Interpretations and Policies .01 (List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15).

¹¹⁵ *Id.*

¹⁰⁷ See Rule 8.14.

¹⁰⁸ See 15 U.S.C. 78s.

¹⁰⁹ See Rule 8.15(a).

¹¹⁰ See Rule 8.15(b).

¹¹¹ *Id.*

set forth in the Rule's *Interpretations and Policies*,¹¹⁶ and clarify the Exchange's authority to take formal disciplinary action under Rule 8.2 *et seq.*, rather than Rule 8.15 when warranted by the egregiousness of the violation.

The Exchange proposes to amend Rule 8.15(a) to limit fines imposed under the Rule to \$5,000, specify the actions constituting minor rule violations, describe the Exchange's treatment of separate and similar offenses for purposes of the Rule, and clarify that reporting of uncontested violations to the Commission not exceeding \$2,500 shall be reported on a periodic basis. Currently, Rule 8.15(a) does not contain a limitation on the fine that may be imposed under the Rule and does not specify the character of rule violations that constitute minor violations within the meaning of Rule 8.15. The Exchange proposes to limit the fines that may be imposed under the Rule to \$5,000. Additionally, the Exchange proposes to specify, within Rule 8.15(a), that minor rule violations within the meaning of the Rule are contained in *Interpretations and Policies* .01 to Rule 8.15 and Rule 25.3, Penalty for Minor Rule Violations.¹¹⁷ Currently, Rule 8.15(a) also does not contain a provision, such as the one contained in Rule 13.15(a) of the Affiliated Exchanges, allowing the Exchange to aggregate particular violations based on a comprehensive automated surveillance program. The Exchange proposes to amend Rule 8.15 to contain a similar provision providing that the Exchange may aggregate individual violations and treat these violations as a single offense, provided that the aggregation is based on a comprehensive automated surveillance program. Finally, current Rule 8.15(a) provides that uncontested violations not exceeding \$2,500 shall not be publicly reported, except as may be required by Rule 19d-1 under the Act or as may be required by any other regulatory authority. Currently, the Exchange does not publicly report uncontested violations not exceeding \$2,500, but does notify the Commission on a periodic basis of all fines imposed pursuant to Rule 8.15. The Exchange proposes to amend Rule 8.15(a) to clarify that it shall report uncontested fines not exceeding \$2,500 to the Commission on a periodic basis.

Next, the Exchange proposes to amend Rule 8.15(b) to extend the time that a determination becomes final or a determination must be contested under the Rule from no less than 15 days to no less than 30 days after service of the written statement and to specify that failure to contest, submission, and/or acceptance of a fine by a Member does not constitute admission. Currently, Rule 8.15 states that the date that a determination becomes final or a determination must be contested shall be no less than 15 days. The Exchange proposes to amend Rule 8.15(b) to set the date a determination becomes final or a determination must be contested to not less than 30 days, which is the time provided in Rule 13.15(b) of the Rules of the Affiliated Exchanges. Additionally, current Rule 8.15(b) fails to specify the meaning of a Member's failure to contest a fine or a Member's submission of and/or the Exchange's acceptance of an offer of settlement. The Exchange proposes to amend Rule 8.15(b) to specify that such actions do not constitute admission of the violation the fine is issued for.

Additionally, the Exchange proposes to remove the current text of Rule 8.15(c) and Rule 8.15(d) in their entirety. Current Rule 8.15(c) states that payment of a fine by a person whom a fine is imposed against pursuant to Rule 8.15 constitutes waiver of the person's right to disciplinary proceedings under Rule 8.1 through 8.13, discussed above and any review of the matter thereof. Current Rule 8.15(d) states that if the person against whom a fine is imposed contests the Exchange's determination through a written response meeting the requirements of an Answer, described in Rule 8.5 above, the matter shall become a disciplinary proceeding subject to the provisions of Rules 8.1 through 8.13. The Exchange proposes to remove the text of Rule 8.15(c) and Rule 8.15(d) in their entirety because the corresponding Rule 13.15 of the Affiliated Exchanges does not contain a similar provision.

Next, the Exchange proposes to add revised Rule 8.15(c) with language taken from the text of Rule 13.15(c) of the Affiliated Exchanges, including subparagraphs (1)–(4), which describe the process of contesting a fine. The resulting subparagraph (1) of revised Rule 8.15(c) will provide that any person against whom a fine is imposed may contest the fine by filing a written Answer, as described in Rule 8.5, with the Secretary of the Exchange. Then the Rule will provide that the Answer will become subject to review by a Hearing Panel and hearings, if requested, will be conducted in accordance with Rule 8.6, discussed above. Next, the resulting

subparagraph (2) of revised Rule 8.15(c) will provide that if the Hearing Panel determines that the conduct for which the fine was imposed is a violation of the Rules of the Exchange, then the Hearing Panel may impose applicable disciplinary sanctions and impose a forum fee of \$100, if no hearing is conducted, or \$300, if a hearing is conducted. Additionally, the Rule will provide that the Hearing Panel has discretion to waive the forum fee if it determines that a rule violation occurred but the disciplinary sanction imposed for such rule violation(s) is a fine less than the total fine initially imposed by the Exchange. The resulting subparagraph (3) of revised Rule 8.15(c) will provide that the party that commenced the action, the person charged, or the Board may require a review by the Board of a determination by a Hearing Panel as described in Rule 8.10, discussed above, and that the party who commenced the action shall have the same rights as a Respondent under Rule 8.10. Finally, resulting subparagraph (4) of revised Rule 8.15(c) shall provide that if a fine is upheld after contestation, the party responsible for paying the fine must pay the fine, all interest accrued, and any forum fee imposed immediately. The proposed amendment to current Rule 8.15(c) will result in the text of the Rule reflecting that of the corresponding Rule 13.15(c) of the Affiliated Exchanges.

Finally, the Exchange proposes to re-number current subparagraph (e) as revised subparagraph (d) and amend revised Rule 8.15(d) to make conforming non-substantive changes, clarify that the Exchange may impose fines for first or second offenses when warranted under the circumstances as set forth in the Rule's *Interpretations and Policies*, and clarify that the Exchange may take formal disciplinary action under Rule 8.2 *et seq.*, rather than Rule 8.15, when warranted by the egregiousness of the violation. With the Exchange's proposal to remove the current text found in Rule 8.15(c) and proposed re-numbering of Rule 8.15(d) to Rule 8.15(c), the Exchange also proposes to re-number current subparagraph (e) as subparagraph (d). Current Rule 8.15(e) requires the Exchange to periodically announce Exchange Rules under which fines may be imposed and the specific dollar amount that may be imposed thereunder. The Exchange proposes to amend the language of current Rule 8.15(e) (proposed Rule 8.15(d)) to reflect the language of Rule 13.15(f) of the Affiliated Exchanges. As a result, revised Rule 8.15(d) will allow the Exchange to impose fines for first or

¹¹⁶ See *Interpretations and Policies* .01 to Rule 8.15 (List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15).

¹¹⁷ See Rule 25.3 (Penalty for Minor Rule Violations).

second offenses when warranted under the circumstances as set forth in the Rule's *Interpretations and Policies* and authorize the Exchange to take formal disciplinary action under Rule 8.2 *et seq.*, rather than Rule 8.15, when warranted by the egregiousness of the violation. The resulting Rule 8.15(d) will also clarify that the Exchange shall issue regulatory circulars to its Members and Member organizations containing a list of Exchange Rules and Bylaws for which the Exchange may impose fines as provided in Rule 8.15. The Exchange proposes all of the changes to Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, with the broader purpose of clarifying the process by which the Exchange may impose fines for minor violations and harmonizing the Rules of the Exchange with the Rules of the Affiliated Exchanges. The Exchange notes that the proposed changes include language taken solely from the Rules of the Affiliated Exchanges and do not substantively alter the Exchange's Rules regarding minor rule violations. As such, the proposed changes do not pose any novel legal or regulatory issues for the Commission's consideration.

Rule 8.16, Ex Parte Communications

(1) Current Rule 8.16

Current Rule 8.16, *Ex Parte Communications*, states that the Exchange has in place rules prohibiting ex parte communications relevant to the merits of a proceeding between Respondents and Exchange staff members and any Hearing Officer, any member of the Board, or a member of a committee of the Board who is participating in a decision with respect to that proceeding (an "Adjudicator") unless all parties are on notice and have an opportunity to participate in the communication.¹¹⁸ If an ex parte communication occurs in violation of Rule 8.16, an Adjudicator shall place in the record: (1) all such written communications; (2) memoranda stating the substance of all such oral communications; and (3) all written responses and memoranda stating the substance of all oral responses to all such communications.¹¹⁹ Further, the Board or a committee thereof may take whatever action it deems appropriate if a prohibited ex parte communication has occurred.¹²⁰ Participants to a proceeding may respond to any allegations relating to a prohibited ex parte communication placed in the

record.¹²¹ The prohibitions of Rule 8.16 apply beginning with the initiation of an investigation pursuant to Rule 8.2(a) (described above), unless the person responsible for the communication knows that an investigation shall be initiated.¹²² In such instances, the prohibition on ex parte communication shall apply beginning at the time such person knows the investigation shall be initiated.¹²³

(2) Proposed Changes to Rule 8.16

The Exchange proposes to amend Rule 8.16, *Ex Parte Communications*, to clarify that the provisions of the Rule apply to all Members and associated persons, amend the definition of Adjudicator under the Rule, add subparagraph (e) to define *ex parte* communication, and add subparagraphs (f) and (g) which provide guidance regarding what may not be considered a violation of Rule 8.16. Current Rule 8.16(a) provides that no Respondent or Exchange staff member may make an *ex parte* communication in violation of the Rule. Additionally, the Rule currently includes in the definition of "Adjudicator" any Officer or member of the Board or a committee of the Board who is participating in the decision in a proceeding.

The Exchange proposes to amend Rule 8.16(a) to clarify that the prohibition against *ex parte* communications under the Rule applies to all members and associated persons and Exchange staff members. The Exchange also proposes to amend the definition of Adjudicator provided in subparagraph (a) to include any member of the Hearing Panel, Business Conduct Committee, Board or committee of the Board who is participating in a decision. The proposed definition will eliminate Officers and add the Hearing Panel and Business Conduct Committee members to the definition of Adjudicator as it is used in Rule 8.16.

Next, the Exchange proposes to add subparagraphs (e), (f), and (g) to Rule 8.16 closely resembling the language of subparagraphs (e), (f), and (g) of Rule 13.16 of the Affiliated Exchanges. Proposed Rule 8.16(e) will include a definition of "*ex parte* communication" including that the term means an oral or written communication made without notice to all parties, unless a copy has been delivered to all interested parties or it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present. Proposed Rule 8.16(f) will

clarify that *ex parte* communications solely regarding procedural matters are not a violation of the Rule. Proposed Rule 8.16(g) will add an exception to the Rule if a person refuses an attempted *ex parte* communication once it becomes apparent that communication concerns the merits of the proceeding at issue. Proposed rule 8.16(g) will also specify that for the exception contained therein to apply, the person refusing the attempted communication must notify the Regulatory staff of the attempted communication and how the person responded. The resulting Rule 8.16 will and conform the definition of Adjudicator as it is used in Rule 8.16 with the language of proposed Rule 8.6, discussed above. Additionally, the resulting Rule 8.16 will closely resemble Rule 13.16 of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information

(1) Current Rule 8.18

Current Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, states that the Exchange shall release a copy to the public of, subject to the Exchange's discretion, any disciplinary complaint,¹²⁴ disciplinary decision,¹²⁵ or any client suspension order issued by the Exchange.¹²⁶ Any release to the public of a disciplinary complaint must indicate that the complaint represents the initiation of a formal proceeding by the Exchange and does not represent a final decision at to any of the allegations contained in the complaint.¹²⁷ Copies of any disciplinary decision provided to the public prior to the expiration of the time period for appeal or review, or while such appeal or review is pending, shall indicate that the findings and sanctions imposed therein are subject to review and modification by the

¹²⁴ See Rule 8.18 (e)(1). A disciplinary complaint shall mean any statement of charges issued pursuant to Rule 8.4 or any notice served pursuant to Rule 8.17.

¹²⁵ See Rule 8.18(e)(2). A disciplinary decision shall mean any decision issued pursuant to Chapter 8, including, decisions issued by a Hearing Panel or the Appeals Committee, accepted offers of settlement, and suspension order pursuant to Rule 8.17; provided, however, minor rule violation plan letter issued pursuant to Rules 8.15 and 25.3 are not subject to this Rule.

¹²⁶ See Rule 8.18(a)(1) and Rule 8.18(a)(2).

¹²⁷ See Rule 8.18(b)(1).

¹¹⁸ See Rule 8.16 (a)(1) and Rule 8.16(a)(2).

¹¹⁹ See Rule 8.16(b).

¹²⁰ See Rule 8.16(c).

¹²¹ *Id.*

¹²² See Rule 8.16(d).

¹²³ *Id.*

Exchange or the Commission.¹²⁸ The Exchange reserves the right to redact information that contains confidential customer information and, in extraordinary circumstances, may decline to release a copy of or information related to a disciplinary complaint or a disciplinary decision.¹²⁹ The Exchange shall provide notice to the public in the event that a disciplinary decision is appealed to the Commission and whether the effectiveness of such decision has been stayed pending the outcome of the proceedings before the Commission.¹³⁰

(2) Proposed Changes to Rule 8.18

The Exchange proposes to eliminate current Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, in its entirety. Current Rule 8.18 sets out the procedures for releasing to the public disciplinary complaints and disciplinary decisions issued by the Exchange. The Exchange proposes to eliminate Rule 8.18 because the Rules of the Affiliated Exchanges do not contain a similar provision and proposed amendments to the Exchange's rulebook, including the proposed amendment to Rule 8.9, discussed above, include provisions for the release of complete decisions on the appropriate BZX website. Thus, the specifications included in current Rule 8.18 are no longer necessary.

The Exchange proposes all amendments discussed about with the broader purpose of aligning the Rules of the Exchange with the Rules of the Affiliated Exchanges. The Exchange believes that harmonizing the Rules of the Exchange with the Rules of the Affiliated Exchanges benefits Members because those parties who maintain status as both a Member of the Exchange and a Trading Permit Holder on the Affiliated Exchanges will be subject to substantially similar disciplinary rules and not perceive one set of disciplinary rules to be more lenient or harsh depending on the Exchange's core business.

2. Statutory Basis

The Exchange believes the proposed rule changes are 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.¹³¹ Specifically, the Exchange believes the proposed rule

changes are consistent with the Section 6(b)(5)¹³² requirements that the rules of an exchange be designed to present 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 changes are consistent with the Section 6(b)(5)¹³³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Exchange believes that the proposed rule changes further the objectives of Section 6(b)(7) of the Act,¹³⁴ in that they provides fair procedures for the disciplining of Members and associated persons, the denial of Member status to any person, the barring of any person from becoming associated with a Member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a Member thereof.

In particular, the Exchange believes the proposed rule changes will contribute to the protection of investor and public by having rules related to all disciplinary matters consistent among Cboe BZX Exchange and the Affiliated Exchanges, Cboe Exchange and Cboe C2 Exchange, as well as by bolstering participants' collective understanding of the Exchange's Rules and the Rules of the Affiliated Exchanges. All proposed rule changes are intended to provide clarification and alignment with the Rules of the Affiliated Exchanges. Further, the proposed changes are derived from the Rules of the Affiliated Exchanges, which have been previously reviewed by the Commission.

In particular, the Exchange proposes to amend Rule 8.6, Hearings, to adopt new roles for the Exchange's Business Conduct Committee to compose the Hearing Panel to hear and decide applicable matters under Chapter 8 of the Exchange's Rules. The Exchange proposes to adopt new roles for the Exchange's Business Conduct Committee, which will perform a substantially similar function to the current panel overseeing disciplinary

hearings. A Hearing Panel consisting of impartial members will continue to be available to Members and associated persons. Thus, the Exchange believes the proposed changes to Rule 8.6 regarding hearings will not impose any additional burden upon Members or associated persons and will ensure continued fairness in the Exchange's disciplinary procedures. The Exchange believes the proposed changes to Rule 8.6, Hearings, ensures the hearing process for disciplinary matters within the jurisdiction of the Exchange is clearly articulated and easily understandable for all Members and associated persons. The proposed changes to Rule 8.6 will align the structure of Chapter 8 with that of the corresponding Rulebooks of the Affiliate Exchanges, thus promoting consistency amongst the Exchange and its Affiliate Exchanges. The introduction of the proposed subparagraphs does not present any new or novel issues for the Commission to consider, as the proposed text is identical to text already approved by the Commission, however the Exchange notes that the proposed rule may differ slightly where necessary to conform to existing Exchange rule text.

The proposed rule changes to Rule 8.1, Disciplinary Jurisdiction, Rule 8.2, Complaint and Investigation, Rule 8.3, Expediated Proceeding, Rule 8.4, Charges, Rule 8.5, Answer, Rule 8.8, Offers of Settlement, Rule 8.9, Decision, Rule 8.10, Petition, Rule 8.11, Judgment and Sanction, Rule 8.12, Miscellaneous Provisions, and Rule 8.16, *Ex Parte* Communications provide both clarification and alignment with the Rules of the Affiliated Exchanges. These proposed rule changes amend the language of the Exchange Rules using language taken from the Rules of the Affiliated Exchanges and does not raise any novel rule text that the Commission has not already reviewed. The additional proposal of adding Rule 8.2(m) defining the BCC and detailing its composition adds clarity to the Rules of the Exchange by adding a concrete definition of a term used in both the Rules of the Exchange and its Affiliated Exchanges. Each of these rules changes results in rules no more stringent for Members and associated persons than are currently in place. Therefore, the Exchange believes the proposed changes will not significantly alter the disciplinary standards imposed on Members and associated persons nor impose any significant additional burden. As such, the Exchange believes the proposed changes will continue to ensure the Exchange's disciplinary

¹²⁸ See Rule 8.18(b)(2).

¹²⁹ See Rule 8.18(c).

¹³⁰ See Rule 8.18(d).

¹³¹ 15 U.S.C. 78f(b).

¹³² 15 U.S.C. 78f(b)(5).

¹³³ *Id.*

¹³⁴ 15 U.S.C. 78f(b)(7).

procedures remain fair to all Members and associated persons. Additionally, the Exchange believes the proposed changes will result in greater uniformity and less burdensome regulatory compliance for Members and associated persons. Greater uniformity in disciplinary rules across the Exchange and the Affiliated Exchanges will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed amendments to Rule 8.1, Disciplinary Jurisdiction seek to clarify that former Members or associated persons continue to be subject to the Exchange's jurisdiction with respect to their failure to honor an arbitration award. As discussed above, the proposed amendments to Rule 8.1 ensure that a failure to honor a BZX arbitration award by a former Member, or former person associated with a Member remains within the disciplinary jurisdiction of the Exchange. Thus, the proposed change to Rule 8.1 ensures the credibility of the Exchange's arbitration forum thereby protecting investors and the public interest. The Exchange also believes the proposed changes to Rule 8.1 will ensure fairness in the disciplinary procedures of the Exchange by ensuring that failures to pay arbitration awards by former Members and associated persons will remain under the disciplinary jurisdiction of the Exchange. Additionally, the proposed changes to Rule 8.1 will result in aligning the Rules of the Exchange with those of the Affiliated Exchanges, providing greater uniformity in disciplinary rules across the Exchange and the Affiliated Exchanges.

The proposed changes to Rule 8.2, Complaint and Investigation, clarify the contents of the Rule and extend the time a Subject or Respondent has to respond to an inquiry from the Exchange. The proposed addition of subparagraphs (i)–(k) regarding Identification, Furnishing Materials Upon Request, and the definition of the term “Regulatory Staff” to Rule 8.2 will offer clarity to Members and associated persons regarding the procedures and complaint process and terms used throughout the Rule. Additionally, the proposed changes to Rule 8.2 will align the structure of Chapter 8 with that of the corresponding Rulebooks of the Affiliate Exchanges, thus promoting consistency amongst the Exchange and its Affiliate Exchanges. The introduction of the proposed subparagraphs does not present any new or novel issues for the Commission to consider, as the proposed text is

identical to text already approved by the Commission, however the Exchange notes that the proposed rule may differ slightly where necessary to conform to existing Exchange rule text. None of the proposed changes to Rule 8.2 shortens the amount of time allotted to a Subject or Respondent to respond to an inquiry from the Exchange, but rather extends the amount of time that a Subject or Respondent has to respond to an inquiry from the Exchange. As such, the Exchange believes the proposed changes to Rule 8.2 ensure that the Exchange's disciplinary procedures remain fair to all Members and associated persons. Additionally, the Exchange believes that each of these proposed rule changes protects investors and the public by providing additional information regarding the disciplinary processes of the Exchange and by providing additional time for Subjects and Respondents to respond to an inquiry from the Exchange.

The proposed changes to Rule 8.3, Expedited Proceeding, Rule 8.4, Charges, Rule 8.5, Answer, Rule 8.8, Offers of Settlement, Rule 8.9, Decision, Rule 8.10, Review, Rule 8.11, Judgment and Sanction, Rule 8.12, Miscellaneous Provisions, and Rule 8.16, *Ex Parte* Communications are proposed in order to define terms used throughout the Rules and make other non-substantive conforming provisions with the purpose of clarifying the language of the Rules and aligning the contents of the Rules with Rules of the Affiliated Exchanges. The Exchange notes that none of these proposed rule changes shortens the amount of time allotted to a Subject or Respondent to respond to an inquiry from the Exchange, but rather extends the amount of time that a Subject or Respondent has to respond to an inquiry from the Exchange. The Exchange believes the proposed changes will not significantly alter the disciplinary procedures of the Exchange nor impose any significant additional burden thereby protecting investors and the public interest and ensuring fairness in the disciplinary procedures of the Exchange. Further, the proposed changes to these Rules are necessary to align the Answer, Decision, and Review sections of Chapter 8 with the proposed changes to Rule 8.6.

Additionally, the Exchange believes the proposed deletion of rule text in Rule 8.14, Agency Review, and Rule 8.18, Release of Disciplinary Complaints, Decisions, and Other Information, contribute to the protection of investors and the public interest by both aligning the Rules of the Exchange with the Rules of the Affiliate Exchanges and by removing duplicative

language from the Rules of the Exchange. The Exchange proposes to remove the entire text of both current Rule 8.14, regarding the right to agency review of Exchange disciplinary actions, and Rule 8.18, regarding the release of final disciplinary actions, because each of these rules are duplicative of the rights of Members under other Exchange Rules and the Exchange Act itself. The Exchange believes the proposed changes will continue to ensure fairness in the Exchange's disciplinary procedures because they do not remove or alter any of the rights of Members of associated persons. The Exchange believes that removing the text of each of these rules will provide clarity to investors regarding the disciplinary processes of the Exchange by eliminating duplicative, and potentially confusing, text from the Rules of the Exchange.

Further, the Exchange believes that revising current Rule 8.14, Agency Review, and replacing the existing text (which is proposed to be deleted) with rule text regarding reporting to the CRD that is substantially similar to Rule 13.4 of the Affiliated Exchanges, contributes to the protection of investors and the public interest by providing investors, the public, and Members with notice of the information the Exchange reports to the CRD regarding disciplinary matters. Together, these changes benefit investors and the public interest by providing additional clarity in the Exchange's rulebook and aligning the Exchange's Rules with that of its Affiliate Exchanges. The proposed addition of rule text regarding reporting to the CRD in proposed Rule 8.14 will also align the structure of Chapter 8 with that of the corresponding rulebooks of the Affiliate Exchanges, thus promoting consistency amongst the Exchange and its Affiliate Exchanges. Additionally, the introduction of the proposed rule text in Rule 8.14 following the deletion of existing rule text does not present any new or novel issues for the Commission to consider, as the proposed text is identical to text already reviewed by the Commission, however the Exchange notes that the proposed rule may differ slightly where necessary to conform to existing Exchange rule text.

Further, the Exchange believes the proposed changes to Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, contribute to the protection of investors and the public interest by both aligning the Rules and procedures of the Exchange with the Rules and procedures of the Affiliate Exchanges and by clearly setting forth the process and requirements of the imposition of fines for minor rule

violations. The Exchange is not proposing to amend any of the rates associated with the imposition of fines for minor rule violations, but rather seeks to clarify only how and when a fine may be imposed. Further, the Exchange seeks to provide additional detail about how a Member may contest a fine imposed by the Exchange. These proposed changes do not impose additional regulatory burdens on Members but instead provide greater clarity and reduce confusion by aligning the process of imposing a fine for a minor rule violation across the Exchange and its Affiliated Exchanges. By clarifying rules and reducing confusion, the Exchange believes the proposed changes to Rule 8.15 collectively ensure fairness in the disciplinary procedures of the Exchange. The proposed amendments to Rule 8.15 are based solely on existing Rule 13.15 of the Affiliated Exchanges. However, the language of the Exchange Rules and the Rules of the Affiliated Exchanges may differ slightly where necessary to conform to existing Exchange rule text or to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Additionally, the Exchange believes the proposed changes to align the language of the Rules of the Exchange with those of the Affiliated Exchanges promote consistency and improve understanding of the Rules across BZX Exchange and its Affiliated Exchanges. The proposed rule changes to Chapter 8 are based on the existing Rules of the Affiliated Exchanges. However, the language of the Exchange Rules and the Rules of the Affiliated Exchanges may differ slightly where necessary to conform to existing Exchange rule text or to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges. The Exchange believes aligning the Rules of the Exchange with the Rules of the Affiliated Exchanges will result in greater uniformity and less burdensome regulatory compliance for the Exchange and its Members. As such, the Exchange believes maintaining uniformity will foster cooperation and coordination with persons engaged in facilitating trading on the Exchange and its Affiliated Exchanges and will remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the proposed rule changes apply equally to all Members, persons associated with a Member, and former

Members in that each of these parties are subject to the proposed disciplinary rules, thereby ensuring fairness in the disciplinary procedures of the Exchange. As such, the Exchange believes the proposed rule changes also promote the just and equitable principles of trade and are not unfairly discriminatory.

The Exchange also believes that the proposed amendments will collectively contribute to the protection of investors and the public interest by making the Exchange's Rules easier to understand, standing alone and collectively with the rules of its Affiliated Exchanges. In addition, the proposed rule changes include other non-substantive changes throughout the rules that will protect investors and benefit market participants, as these changes simplify or clarify rules, delete duplicative rule provisions, conform paragraph numbering and lettering throughout the rules, use plain English, and conform language to the corresponding rules of its Affiliated Exchanges where feasible. By simplifying and clarifying rules, the Exchange believes the proposed changes also collectively ensure fairness in the disciplinary procedures of the Exchange.

Finally, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Members and associated persons with the Act, the rules and regulations thereunder, and the Rules of the Exchange. As stated, the proposed rule changes conform the Exchange's disciplinary procedures and Rules to the disciplinary procedures and Rules of its Affiliated Exchanges. Thus, the Exchange believes these proposed changes create uniformity, which allows for the Exchange to organize consistently with the Affiliated Exchanges and to more easily apply its disciplinary rules to Members of the Exchange and Trading Permit Holders on the Affiliated Exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes do not create an unnecessary or inappropriate intra-market burden on competition because the proposed changes will apply uniformly to all Members of the Exchange. Thus, the Exchange believes

this proposed rule changes will reduce the burden on Exchange participants by providing consistent and clear Rules among the Exchange and the Affiliated Exchanges. Further, the proposed changes are not designed to address any competitive issues. Indeed, the proposed rule changes do not create an unnecessary or inappropriate inter-market burden on competition because the proposed rule changes are intended to harmonize the Exchange Rules with that of the Affiliated Exchanges.

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 Act¹³⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³⁶

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)¹³⁷ 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.

¹³⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹³⁶ 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.

¹³⁷ 15 U.S.C. 78s(b)(2)(B).

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-2026-034 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-CboeBZX-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-CboeBZX-2026-034 and should be submitted on or before June 9, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-09961 Filed 5-18-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105497; File No. SR-24X-2026-17]

Self-Regulatory Organizations; 24X National Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend 24X Rule 1.5(c) To Extend by Seven (7) Months the Deadline by Which 24X Must File With the Commission the 24X Market Session Proposed Rule Change Regarding the Commencement of the 24X Market Session

May 15, 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 May 1, 2026, 24X National Exchange LLC ("24X" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend 24X Rule 1.5(c) to extend by seven months the deadline by which 24X must file with the SEC the 24X Market Session Proposed Rule Change regarding the commencement of the 24X Market Session. The proposed rule change is available on the Exchange's website at <https://equities.24exchange.com/regulation> 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 is filing with the Commission a proposed rule change to amend 24X Rule 1.5(c) to extend by seven months the date by which 24X must file with the SEC the 24X Market Session Proposed Rule Change regarding the commencement of the 24X Market Session. The proposed rule change would extend the filing deadline for the 24X Market Session Proposed Rule Change from May 27, 2026 to December 27, 2026 to allow additional time for the Equity Data Plans to make the necessary changes to accommodate the 24X Market Session.⁴

a. Background

The SEC approved rules for 24X to operate the 24X Market Session,⁵ which will operate between 8 p.m. and 4 a.m. Sunday, Monday, Tuesday, Wednesday, and Thursday nights that precede a U.S. Business Day⁶ subject to certain conditions. 24X Rules 1.5(c) and 11.16 require the concurrent operation of the Equity Data Plans before the operation of the 24X Market Session commences, and that 24X file the 24X Market Session Proposed Rule Change that would serve to provide notice to the Commission and the public of 24X's intention to commence operation of the 24X Market Session.

Specifically, 24X Rule 1.5(c) states that 24X will not start operating the 24X

⁴ 24X is seeking exemptive relief to permit the Exchange to commence operation during the 24X Market Session prior to the relevant Equity Data Plans being amended to collect, consolidate, process and disseminate quotation and transaction information at all times during the 24X Market Session. See Securities Exchange Act Rel. No. 104894 (Feb. 25, 2026), 91 FR 10169 (Mar. 2, 2026). 24X hopes the Commission will grant such relief in short order. Nevertheless, because of the 24X Rules currently in place that set forth a deadline of May 27, 2026 for filing the 24X Market Session Proposed Rule Change, 24X is submitting this filing to extend the deadline for filing the 24X Market Session Proposed Rule Change as discussed herein. Despite making this filing, 24X remains committed to its request for exemptive relief to commence operation of the 24X Market Session as quickly as possible, and encourages the Commission to grant the requested exemption as soon as possible.

⁵ See 24X Rule 1.5(c) defining the "24X Market Session."

⁶ 24X Rule 1.5(II) defines a "U.S. Business Day" as "any Monday, Tuesday, Wednesday, Thursday or Friday other than any of the following U.S. holidays if they are celebrated on a Monday, Tuesday, Wednesday, Thursday or Friday: New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Good Friday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day Eastern Time, or such other U.S. holiday(s) as published by the Exchange from time to time."

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹³⁸ 17 CFR 200.30-3(a)(12).

Market Session unless the Equity Data Plans “(1) have established a mechanism to collect, consolidate, process and disseminate quotation and transaction information at all times during the 24X Market Session that is equivalent to the mechanism established for Exchange Trading Hours other than the 24X Market Session, and (2) have provided the Exchange with notification that they are prepared to collect, consolidate, process and disseminate quotation and transaction information to accommodate the 24X Market Session.”

24X Rule 1.5(c) further requires 24X, prior to commencing the 24X Market Session, to “file a proposed rule change pursuant to Section 19(b) of the Exchange Act and the rules thereunder to amend its rules confirming that the Exchange is able to comply with its obligations under the Exchange Act and the rules thereunder during the 24X Market Session and that such Equity Data Plans are prepared to collect, consolidate, process and disseminate quotation and transaction information at all times during the 24X Market Session (“24X Market Session Proposed Rule Change”).” 24X Rule 1.5(c) further provides that “[t]he 24X Market Session Proposed Rule Change must be filed with the SEC within 18 months of the SEC’s approval of the Exchange’s application for registration as a national securities exchange. If the 24X Market Session Proposed Rule Change is not filed within 18 months of the SEC’s approval of the Exchange’s application for registration as a national securities exchange, the Exchange will promptly file a proposed rule change to remove the rules that apply to the 24X Market Session.”

In addition, 24X Rule 11.16 states that, “24X will not commence operations of the 24X Market Session until a proposed rule change as required under 24X Rule 1.5(c) has been approved, or has otherwise become effective, under Section 19(b) of the Exchange Act and the rules thereunder.”

b. Existing Deadline for Filing of 24X Market Session Proposed Rule Change

The Commission granted 24X’s application for registration as a national securities exchange on November 27, 2024;⁷ therefore, 18 months after such date is May 27, 2026. Therefore, the deadline for filing the 24X Market Session Proposed Rule Change as set forth in 24X Rule 1.5(c) is May 27, 2026.

c. Extension of Deadline To File the 24X Market Session Proposed Rule Change

The Exchange proposes to revise 24X Rule 1.5(c) to extend the deadline for filing the 24X Market Session Proposed Rule Change by seven months, from within 18 months of the SEC’s approval of the Exchange’s application for registration as a national securities exchange to within 25 months of the SEC’s approval of the Exchange’s application for registration as a national securities exchange. This would extend the deadline from May 27, 2026 to December 27, 2026. This seven-month extension would allow additional time for the Equity Data Plans to establish a mechanism to collect, consolidate, process and disseminate quotation and transaction information at all times during the 24X Market Session that is equivalent to the mechanism established for Exchange Trading Hours other than the 24X Market Session, and to provide notice to 24X of the establishment of such a mechanism.

24X proposes to replace the two references to the 18 month deadline in 24X Rule 1.5(c) with a reference to a 25 month deadline. Specifically, 24X proposes to replace the reference to 18 months with 25 months in the following sentences in 24X Rule 11.5(c):

The 24X Market Session Proposed Rule Change must be filed with the SEC within 18 months of the SEC’s approval of the Exchange’s application for registration as a national securities exchange. If the 24X Market Session Proposed Rule Change is not filed within 18 months of the SEC’s approval of the Exchange’s application for registration as a national securities exchange, the Exchange will promptly file a proposed rule change to remove the rules that apply to the 24X Market Session.”

With these changes, these sentences in 24X Rule 1.5(c) would read:

The 24X Market Session Proposed Rule Change must be filed with the SEC within 25 months of the SEC’s approval of the Exchange’s application for registration as a national securities exchange. If the 24X Market Session Proposed Rule Change is not filed within 25 months of the SEC’s approval of the Exchange’s application for registration as a national securities exchange, the Exchange will promptly file a proposed rule change to remove the rules that apply to the 24X Market Session.

The proposed brief, seven-month extension of the deadline for filing the 24X Market Session Proposed Rule Change would provide a reasonable accommodation to 24X as the innovator

for overnight exchange trading while continuing to satisfy the reasons cited by the Commission in approving the provisions related to the commencement of the 24X Market Session. In its approval order for 24X’s exchange registration, the SEC states that “[t]hese provisions relating to the force and effect of the 24X Market Session rules set forth in 24X Rule 11.16 help to balance the interest in providing the time needed for 24X to be able to comply with 24X Rule 1.5(c) with the interest in ensuring that the rules of an Exchange are effective and can be enforced by the Exchange.”

First, the seven additional months would provide 24X with the time needed to comply with 24X Rule 1.5(c). 24X understands that the Equity Data Plans aim to establish a mechanism to collect, consolidate, process and disseminate quotation and transaction information at all times during the 24X Market Session that is equivalent to the mechanism established for Exchange Trading Hours other than the 24X Market Session by December 6, 2026. Accordingly, extending the deadline for filing the 24X Market Session Proposed Rule Change to December 27, 2026 would provide sufficient time for the Equity Data Plans to complete the necessary changes for the 24X Market Session.

Second, the limited, defined period of time for the extension also would continue to satisfy the SEC’s “interest in ensuring that the rules of an Exchange are effective and can be enforced by the Exchange.” The short extension would continue to maintain the balance of providing 24X with time to implement the 24X Market Session while ensuring that 24X’s Rules are effective and can be enforced by the Exchange.

Third, the short extension of the deadline would avoid the time, expense and resources by 24X, a new entrant to the market, to file a proposed rule change to remove the rules that apply to the 24X Market Session, and then to refile such rules a short time later when the Equity Data Plans were ready. Such funds and resources instead may be used with regard to the operation and regulation of the Exchange.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Exchange Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act⁹ in particular, in that it is designed to prevent fraudulent and manipulative

⁷ Securities Exchange Act Rel. No. 101777 (Nov. 27, 2024), 89 FR 97092 (Dec. 6, 2024).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

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 mechanisms 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 Section 6(b)(5) of the Exchange Act¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change would further the objectives of Section 6(b)(1) of the Act,¹¹ in particular, in that such amendments enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed brief, seven-month extension of the deadline for filing the 24X Market Session Proposed Rule Change would provide a reasonable accommodation to 24X as the innovator for overnight exchange trading while continuing to satisfy the reasons cited by the Commission in approving the provisions related to the commencement of the 24X Market Session. The seven additional months would provide 24X with the time needed to comply with 24X Rule 1.5(c), as the Equity Data Plans have indicated that they would be ready to accommodate the 24X Market Session by December 2026. The proposed brief extension also would continue to maintain the balance of providing 24X with time to implement the 24X Market Session while ensuring that 24X's Rules are effective and can be enforced by the Exchange.

Furthermore, the short extension of the deadline would avoid the time, expense and resources by 24X, a new entrant to the market, to file a proposed rule change to remove the rules that apply to the 24X Market Session, and then to refile such rules a short time later when the Equity Data Plans were ready. Such funds and resources instead may be used with regard to the operation and regulation of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes that the proposed brief extension of the deadline for filing the 24X Market Session Proposed Rule Change would enhance competition. The extended deadline will provide 24X with the additional time necessary to commence operation in the overnight hours, thereby allowing the addition of exchange trading to the existing over-the-counter trading during those times. The expansion of trading by an exchange to the overnight hours is expected to attract additional trading interest and liquidity to the extended trading hours to the benefit of all market participants. Furthermore, by providing 24X, a new entrant to the exchange market, with additional time to address the regulatory requirements regarding the implementation of the 24X Market Session, the Exchange may avoid the expense of filing a proposed rule change to remove the rules that apply to the 24X Market Session, and then refile such rules a short time later when the Equity Data Plans are ready.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder¹³ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-

4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would provide an extension of the deadline for filing of the 24X Market Session Proposed Rule Change to provide the Equity Data Plans additional time to accommodate trading during the 24X Market Session. The proposed extension also would continue to maintain the balance of providing 24X with time to implement the 24X Market Session. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.¹⁶

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.¹⁷ If the Commission takes such action, the Commission shall 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-24X-2026-17 on the subject line.

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78s(b)(3)(C).

¹⁰ See *id.*

¹¹ 15 U.S.C. 78f(b)(1).

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 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.

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-24X-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-24X-2026-17 and should be submitted on or before June 9, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-09990 Filed 5-18-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-36155; File No. 812-16028]

U.S. Bancorp, et al.; Notice of Application and Temporary Order

May 15, 2026.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicants (defined below) have applied for a temporary order (the "Temporary Order") exempting Fund Servicing Applicants (defined below) from section 9(a) of the Act with respect to an injunction entered against BTIG, LLC on May 2, 2022, by the United States District Court for the Southern District of New York (the "District Court"), until the Commission takes final action on an application for a permanent order exempting the Fund Servicing Applicants and other Covered Persons

(defined below) from section 9(a) of the Act (the "Permanent Order," and with the Temporary Order, the "Requested Orders").

APPLICANTS: U.S. Bancorp Asset Management, Inc. ("USBAM"), U.S. Bancorp Investments, Inc. ("USBI", and together with USBAM, the "Fund Servicing Applicants"), and BTIG, LLC ("BTIG", and collectively with the Fund Servicing Applicants, the "Applicants") and U.S. Bancorp ("USB").¹

FILING DATE: The application was filed on May 15, 2026.

HEARING OR NOTIFICATION OF HEARING: The Temporary Order will be effective until such time as the Commission takes final action on the application by issuing an order granting the requested relief, unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at Secretaries-Office@sec.gov and serving the Applicant 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 June 9, 2026, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: Secretaries-Office@sec.gov. Applicants: Matthew Krush, U.S. Bancorp, 800 Nicollet Mall, Minneapolis, Minnesota 55402; Steven Druskin BTIG, LLC, 350 Bush Street, 9th Floor, San Francisco, California 94104; Counsel: Frederick Wertheim, Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004; Dalia Blass, Sullivan & Cromwell LLP, 1700 New York Avenue NW, Suite 700, Washington, DC 20006; Scott A. Moehrke, P.C. and Nicole Dornbusch Horowitz, Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, IL 60654.

¹ USB is a party to the Application solely for purposes of making the representations and agreeing to the conditions in the Application that apply to it.

FOR FURTHER INFORMATION CONTACT:

Jacob D. Krawitz, Senior Special Counsel, or Kaitlin C. Bottock, Assistant Chief Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application 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.

Applicants' Representations

1. USB, an international banking and financial services corporation headquartered in Minneapolis, Minnesota, is a financial holding company and bank holding company under the Bank Holding Company Act of 1956, as amended. USB and its subsidiaries provide a full range of financial services, including lending and depository services, cash management, capital markets, and trust and investment management services. USB and its subsidiaries also engage in credit card services, merchant and ATM processing, mortgage banking, insurance, brokerage and leasing.

2. USBAM, a Delaware corporation, is an investment adviser registered under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). As of October 31, 2025, USBAM had approximately \$420.4 billion of regulatory assets under management, of which about \$188.8 billion related to its advisory activities for registered investment companies.

3. USBI, a Delaware corporation, is a broker-dealer and FINRA member registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and an investment adviser registered under Advisers Act, as well as a municipal securities broker and a municipal securities dealer subject to the rules of the Municipal Securities Rulemaking Board.

4. BTIG, a Delaware limited liability company, is a broker-dealer and FINRA member registered under the Exchange Act. BTIG's key business lines include institutional equity and fixed income sales and trading, investment banking, research and strategy, outsource trading, and prime brokerage.

5. BTIG does not serve as an investment adviser or depositor of any registered investment company (a

¹⁸ 17 CFR 200.30-3(a)(12).

“RIC”), employee securities company (an “ESC”) or business development company (a “BDC”),² or as principal underwriter for any open-end management investment company registered under the Act (an “Open-End Fund”), registered unit investment trust (a “UIT”), or registered face-amount certificate company (a “FACC”) (such activities, collectively, “Fund Servicing Activities”).³ Applicants request that any relief granted by the Commission also apply, subject to the same terms and conditions specified in the application, to USB, USBAM, USBI, and any entity that may become an Affiliated Person of USB at any time in the future (together with the Applicants, the “Covered Persons”)⁴ with respect to any activity contemplated by Section 9(a) of the Act.⁵

6. On May 19, 2021, the Commission filed a complaint (the “Complaint”) in *Securities and Exchange Commission v. BTIG, LLC* Case No. 21–cv–4521 (S.D.N.Y.) (the “Action”) in the District Court, charging BTIG with violating Rules 200(g) and 203(b)(1) of Regulation SHO. The Complaint alleged the following: Regulation SHO regulates the short selling of securities and is designed, in part, to protect investors by restricting naked short selling and reducing failures to deliver. From December 2016 through July 2017, BTIG marked as “long” or “short exempt” over 90 equity sale orders from a single hedge fund customer in violation of Rule 200(g) of Regulation SHO. The customer had indicated that it was “long” the securities in question. BTIG’s customer was not “long” the shares of stock and was not “deemed to own” the shares of stock sold at the moment the sale orders were entered and was therefore “short” the stock at the time of each of those sale orders. Accordingly, BTIG should have marked its customer’s sale orders as “short.” BTIG was not entitled to simply rely on its customer’s representations concerning order marking and was obligated to independently verify that its customer was, in fact, long, before

marking the trades. On each of these occasions, BTIG also failed to borrow and locate shares before executing these short sales. As a result of its conduct, BTIG violated the order marking and locate requirements of Rules 200(g) and 203(b)(1) of Regulation SHO (the “Conduct”). The Applicants state that only a small fraction of BTIG’s equity trading and sales group’s hundreds of employees were involved with the single customer whose sale orders resulted in the Conduct.

7. After the filing of the Complaint, BTIG agreed to a settlement, under which BTIG submitted an executed written consent (the “Consent”). Pursuant to the Consent, BTIG consented to the entry of a final judgment, without admitting or denying the allegations in the Complaint (except as to jurisdiction).

8. On May 2, 2022, the District Court entered a judgment in the Action (the “Judgment”), enjoining BTIG from violating Rules 200(g) and 203(b)(1) of Regulation SHO, under the Exchange Act. Furthermore, pursuant to the Judgment, BTIG was required to disgorge \$315,048, pay \$64,258 in prejudgment interest, and pay a civil penalty of \$315,048. As a result, BTIG is currently disqualified from serving in the capacities specified in Section 9(a)(2) of the Act.

9. Applicants state that on January 12, 2026, Condor Trading, LP, the parent company of BTIG USB, Project Falon Merger Subsidiary L.P., a direct wholly owned subsidiary of USB, and CT Equity Rep, LLC entered into an Agreement and Plan of Merger (the “Transaction”). Applicants contend that upon the consummation of the Transaction, BTIG will become an indirect wholly owned subsidiary of USB and therefore an “affiliated person” within the meaning of section 2(a)(3) of the Act (an “Affiliated Person”) of each Fund Servicing Applicant.⁶

Applicants’ Legal Analysis

1. Section 9(a)(2) of the Act provides, in pertinent part, that a person may not serve or act as an investment adviser or depositor of any RIC or as principal underwriter for any Open-End Fund, UIT, or FACC, if such person “. . . by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer,

investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, or entity or person required to be registered under the Commodity Exchange Act . . . or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.” Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(2) to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines “affiliated person” to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person.

2. Section 9(c) of the Act provides that: “[t]he Commission shall by order grant [an] application [for relief from the prohibitions of subsection 9(a)], either unconditionally or on an appropriate temporary or other conditional basis, if it is established [i] that the prohibitions of subsection [9](a), as applied to such person, are unduly or disproportionately severe or [ii] that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.” Applicants have filed an application pursuant to section 9(c) seeking a Temporary Order and a Permanent Order exempting Fund Servicing Applicants and other Covered Persons from the disqualification provisions of section 9(a) of the Act. The Covered Persons may, if the Requested Orders are granted, in the future act in any of the capacities contemplated by section 9(a) of the Act subject to the applicable terms and conditions of the Requested Orders.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants assert that: (i) should the prohibitions of section 9(a) apply, which would result in the Applicants being unable to consummate the Transaction, the impact would be unduly or disproportionately severe, and (ii) that the Conduct did not constitute conduct that would make it against the public interest or protection of investors to grant the exemption.

4. Applicants state that the Conduct was confined solely to a small fraction of the employees in BTIG’s equity trading and sales group and occurred over eight years before the date of the Application, and before BTIG’s contemplated affiliation with USB and the Fund Servicing Applicants. Applicants further note that as USB and the Fund Servicing Applicants are currently not affiliated with BTIG, none

² Neither BDCs nor ESCs are specifically mentioned in section 9 but are nonetheless required to comply with its requirements by virtue of section 59 of the Act (for BDCs) and the terms of applicable exemptive relief (for ESCs).

³ The term “Fund” or “Funds” refers to any RIC, ESC, BDC, UIT or FACC for which a Covered Person currently provides, or may in the future provide, Fund Servicing Activities.

⁴ BTIG is an Applicant but does not and will not serve as investment adviser, depositor or principal underwriter to any registered investment company and is not a Covered Person.

⁵ Covered Persons may, if the Orders are granted, in the future act in any of the capacities contemplated by Section 9(a) of the Act subject to the applicable terms and conditions of the Orders.

⁶ Section 2(a)(3) of the Act defines “affiliated person” to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person.

of the current or former directors, officers or employees of USB or the Fund Servicing Applicants had any involvement in the Conduct.

5. Applicants state that assuming USB would consummate the Transaction without the grant of the requested Orders, the Fund Servicing Applicants would be barred under Section 9(a) from providing Fund Servicing Activities, and the effect on their respective businesses and employees would be unduly severe. The Applicants state that each of the Fund Servicing Applicants has committed substantial capital and other resources to establishing expertise in advising the Funds and underwriting the securities of Funds with a view to continuing and expanding their businesses, which are considered strategically important.

6. Applicants state that given the severity of the impact, an express condition to closing the Transaction is that the Applicants receive relief under section 9(c) of the Act. Applicants further assert that absent the grant of this Order, the Applicants would not consummate the Transaction, which is strategically important to USB. Applicants further state that the inability of the Fund Servicing Applicants to continue providing Fund Servicing Activities would result in the Funds and their shareholders (i) being deprived of the advisory or underwriting services that they have received for many years and (ii) potentially facing substantial costs, including costs related to identifying suitable successors, holding meetings of the Funds' boards of directors, and soliciting shareholders to approve new advisory and/or underwriting agreements. Applicants contend that if the Transaction does not close due to the failure to obtain the relief requested herein, USB will not achieve the anticipated strategic benefits associated with the consummation of the Transaction.

7. Applicants argue that the Conduct was of limited scope and duration. Applicants assert that Conduct involved trading by one BTIG customer, who has not been a customer of BTIG since August 2017, and pertained to only two issuers. The alleged Conduct concerned the accuracy of the sale order markings at the time the sales were ordered and the resulting failure to borrow or locate shares being sold short. Applicants state that only a small fraction of BTIG's equity trading and sales group's hundreds of employees were involved with the single customer whose sale orders resulted in the Conduct. Applicants note that the Conduct

involved nearly 160 million shares of stock in total, more than \$250 million in value, during a period where BTIG was executing trades for an average of 75 million shares per day with a notional value of over \$1.8 billion per day across its equity trading department.

8. Applicants assert that in the time since the Conduct occurred, BTIG has enhanced its training, employee education, compliance efforts, and trading supervisory procedures specifically in an effort to prevent any future Regulation SHO violations. Applicants further state that BTIG's remedial efforts in connection with the Conduct have been and will continue to be focused on all of the departments involved in the sale orders at issue in the Conduct.

9. Applicants state that: (i) none of the current or former directors, officers or employees of the Applicants (other than certain current and former personnel of BTIG who were not, are not, and will not be involved in Fund Servicing Activities) had any involvement in the Conduct; (ii) no person who has been or who subsequently may be identified by the Applicants or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct (other than certain current and former personnel of BTIG who were not, are not, and will not be involved in Fund Servicing Activities) will be an officer, director, or employee of an Applicant or of any Covered Person providing Fund Servicing Activities; (iii) no persons who otherwise were involved in the Conduct (other than certain current and former personnel of BTIG who were not, are not, and will not be involved in Fund Servicing Activities) have had, and will have any future, involvement in the Applicants' or Covered Persons' activities in any capacity described in Section 9(a) of the Act; and (iv) because the directors, officers and employees of USB and the Fund Servicing Applicants did not engage in the Conduct, shareholders of the Funds were not affected any differently than if the Funds had received services from any other non-affiliated investment adviser or principal underwriter.

Applicants' Conditions

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any temporary exemption granted pursuant to the Application will be without prejudice to, and will not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative

proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from Section 9(a) of the Act requested pursuant to the Application or the revocation or removal of any temporary exemptions granted under the Act in connection with the Application.

2. Neither the Applicants, USB, nor any of the other Covered Persons will employ any person to provide Fund Servicing Activities who previously has been or who subsequently may be identified by the Applicants or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to Section 9(c).

3. Each Applicant, USB, and any other Covered Person will adopt and implement policies and procedures reasonably designed to ensure that it will comply with the terms and conditions of the requested Orders within 60 days of the date of the Permanent Order.

4. The material terms of the Judgment will be complied with in all material respects.

5. The Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the requested Orders and Judgment within 30 days of discovery of the material violation.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Fund Servicing Applicants are granted a temporary exemption from the provisions of section 9(a), effective as the date of this order, solely with respect to the Judgment, subject to the representations and conditions in the application, until the Commission takes final action on the Applicants' application for a permanent order.

By the Commission.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-10015 Filed 5-18-26; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE**[Public Notice: 13013]****Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Café Society: Art and Sociability in Paris, 1855–1914” Exhibition**

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Café Society: Art and Sociability in Paris, 1855–1914” at the Dixon Gallery & Gardens, Memphis, Tennessee; the Joslyn Art Museum, Omaha, Nebraska; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Sherry C. Keneson-Hall,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2026–09980 Filed 5–18–26; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE**[Public Notice: 13020]****Determination and Certification of Countries Not Cooperating Fully With Antiterrorism Efforts**

Pursuant to section 40A of the Arms Export Control Act (22 U.S.C. 2781), and Executive Order 13637, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with U.S. antiterrorism efforts: Cuba, Democratic People’s Republic of Korea, Iran, and Venezuela.

This determination and certification shall be transmitted to the Congress and published in the **Federal Register**.

Dated: May 7, 2026.

Marco Rubio,*Secretary of State, U.S. Department of State.*

[FR Doc. 2026–09952 Filed 5–18–26; 8:45 am]

BILLING CODE 4710–AD–P

STATE JUSTICE INSTITUTE**SJI Board of Directors Meeting, Notice****AGENCY:** State Justice Institute.**ACTION:** Notice of meeting.

SUMMARY: The purpose of this meeting is to consider grant applications for the 3rd quarter of FY 2026, and other business.

DATES: The SJI Board of Directors will be meeting on Monday, June 15, 2026 at 1:00 p.m. CT.

ADDRESSES: Hotel on Phillips, 100 North Phillips Avenue, Sioux Falls, SD.

FOR FURTHER INFORMATION CONTACT:

Jonathan Mattiello, Executive Director, State Justice Institute, 12700 Fair Lakes Circle, Suite 340, Fairfax, VA 22033, 703–660–4979, contact@sjj.gov.

(Authority: 42 U.S.C. 10702(f))

Jonathan D. Mattiello,*Executive Director.*

[FR Doc. 2026–09970 Filed 5–18–26; 8:45 am]

BILLING CODE 6820–SC–P

TENNESSEE VALLEY AUTHORITY**Sunshine Act Meetings**

TIME AND DATE: 2:00 p.m. CT on May 21, 2026.

PLACE: Marshall County RSVP, Guntersville, Alabama.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Meeting No. 26–02

The TVA Board of Directors will hold a public meeting on May 21 at the Marshall County RSVP, 19272 US–431, in Guntersville, Ala. The meeting will be called to order at 2:00 p.m. CT to consider the agenda items listed below.

On May 21, at the Marshall County RSVP, the public may comment on any agenda item or subject at a Board-hosted public listening session which begins at 9:00 a.m. CT and will last until 11:00 a.m. Preregistration is required to address the Board.

Agenda

1. Approval of Minutes of the February 11, 2026 Board Meeting
2. Report of the People and Governance Committee
3. Report of the Audit, Risk, and Cybersecurity Committee
4. Report of the Operations and Nuclear Oversight Committee
5. Report of the External Stakeholders and Regulation Committee
6. Report of the Finance, Rates, and Portfolio Committee
7. Report from President and CEO
8. Information Items
 - A. Regulatory Task Force
 - B. Selection of Board Chair and Chair Elect
 - C. Board Practice—Use of TVA Aircraft
 - D. Appointment of Interim CEO
 - E. Regulatory Task Force—amended

CONTACT PERSON FOR MORE INFORMATION:

For more information: Please contact Melissa Greene, TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: May 14, 2026.

Edward C. Meade,*Agency Liaison.*

[FR Doc. 2026–10018 Filed 5–15–26; 4:15 pm]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****[Docket # FAA–2026–4006]****Notice of Draft FAA Order 5100–38E, Airport Improvement Program Handbook**

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Request for public comment.

SUMMARY: This notice invites comments on the draft of FAA Order 5100–38E, Airport Improvement Program Handbook. Once finalized, this Order will replace FAA Order 5100–38D, Change 1, which was issued on February 26, 2019.

DATES: Comments must be received on or before August 17, 2026.

ADDRESSES: You can obtain an electronic copy of draft FAA Order 5100–38E from the FAA’s website at https://www.faa.gov/airports/aip/aip_handbook.

Please submit your comments, identified by docket number FAA–2026–4006, using any of the following methods:

- **Government-Wide Rulemaking Website:** <https://www.regulations.gov>. Follow the instructions for submitting comments.
- **Email:** AIPhandbook@faa.gov.
- **Mail:** FAA Office of Airports, Airport Planning and Programming, Routing Symbol APP–540, 800 Independence Avenue SW, Washington, DC 20591.
- **Hand Delivery:** To FAA Office of Airports, Airport Planning and Programming, Routing Symbol APP–540, 800 Independence Avenue SW, Washington, DC 20591; between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Jesse Carriger, Acting Manager, Financial Assistance Division, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–9590 or AIPhandbook@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Airport Improvement Program (AIP), established by the Airport and Airway Improvement Act (AAIA) of 1982, as amended, and codified at 49 U.S.C. 47101 *et seq.*, serves as a primary funding guide for airport development and planning projects across the United States. The AIP Handbook, Order 5100–38D, Change 1, issued on February 26, 2019, incorporated legislative and policy updates through 2017 and provided comprehensive guidance on implementation of the AIP for FAA employees, FAA State Block Grant Program states, airports, consultants, and other stakeholders.

The current draft update is intended to replace Order 5100–38D, Change 1, reflecting significant legal and policy changes since 2017, including those introduced by the Federal Aviation Administration (FAA) Reauthorization

Acts of 2018 and 2024. In response to these changes, the Office of Airport Planning and Programming (APP), Financial Assistance Division, has undertaken a substantial revision of the Handbook. This update clarifies statutory requirements, incorporates recent legislative and regulatory changes, eliminates redundancies, streamlines Handbook structure, and enhances opportunities for efficiency. Material from Order 5100–38D, Change 1 that is not necessary for inclusion in the Order will be relocated to applicable sections on the FAA’s website.

Invitation for Public Comment

The FAA is seeking public comments on the draft AIP Handbook to ensure that the perspectives of all segments of the airport community are considered. We invite you to submit your feedback by the closing date of the comment period. All comments received by the closing date of the comment period will be reviewed when finalizing this Order. Comments submitted after the deadline may still be considered, but only if their inclusion does not delay the agency’s process for production of an updated Order.

Issued in Washington, DC, on May 15, 2026.

William Garrison,

Acting Director, FAA Office of Airport Planning and Programming.

[FR Doc. 2026–09971 Filed 5–18–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2026–1915]

Agency Information Collection

Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Experimental Aircraft: Letters of Deviation Authority (LODA)

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 Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 23, 2026. The collection involves the submission of an application to obtain

a Letter of Deviation Authority to permit flight instruction for compensation or hire aboard experimental-category aircraft under 14 CFR 91.319. The information to be collected will be used to determine whether such flight instruction can be conducted safely.

DATES: Written comments should be submitted by June 18, 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:

Jabari Raphael by email at: Jabari.Raphael@faa.gov; phone: 202–267–1088.

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: 2120–0812.

Title: Experimental Aircraft: Letters of Deviation Authority (LODA).

Form Numbers: There is no official form involved, but an applicant must submit a request for deviation authority in a form and manner acceptable to the Administrator at least 60 days before the date of intended operations. A request for deviation authority must contain a complete description of the proposed operation. Further application guidance can be found in Advisory Circular 91–94, which may be retrieved from https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1043235.

Type of Review: Renewal.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 23, 2026 (91 FR 8569). In 2004, the FAA published a final rule requiring operators of experimental aircraft to apply for a Letter of Deviation Authority (LODA) to conduct operations for compensation or hire under 14 CFR 19.319. See 69 FR 44771 (July 27, 2004). When publishing the 2004 final rule, the FAA inadvertently omitted its

submission to the OMB detailing the information collection burden under the Paperwork Reduction Act (PRA). See 69 FR at 44858 (explaining estimated PRA burden and OMB compliance requirements). The FAA corrected this technical oversight in 2022; see 87 FR 8335 (February 14, 2022), and the OMB approved the request as a standalone collection with control number 2120–0812. The FAA now seeks to renew that collection to enable certificated flight instructors to request permission to offer training for compensation or hire in experimental-category aircraft.

Respondents: 355 certificated flight instructors. There are approximately 177 active LODA holders for operations under 14 CFR 91.319, and the FAA anticipates approximately 170 new applications per year. Out of this population, the FAA anticipates 20 applications per year.

Frequency: As needed. The duration of a LODA issued under § 91.319 is four years.

Estimated Average Burden per Response: 15 hours of reporting activity and 14 hours of recordkeeping, for a total of 19 hours per response.

Estimated Total Annual Burden: 20*19 = 380 hours.

Issued in Washington, DC, on May 14, 2026.

D.C. Morris,

Aviation Safety Analyst, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2026–09953 Filed 5–18–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2025–4677; Summary Notice No. 2026–14]

Petition for Exemption; Summary of Petition Received; Frontier Airlines, Inc.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 8, 2026.

ADDRESSES: Send comments identified by docket number FAA–2025–4677 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

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

- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Sean O'Tormey, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, at 202–267–9677.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Dan A. Ngo,

Manager, Part 11 Petitions Branch, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2025–4677.

Petitioner: Frontier Airlines, Inc.

Section(s) of 14 CFR Affected:

§§ 121.599 and 121.655.

Description of Relief Sought: Frontier seeks to utilize the same conditions and

limitations outlined in Operation Specification A010, paragraph (e) to include part 121 domestic or supplemental operations within the United States and its territories. Frontier seeks this relief since Real-Time Mesoscale Analysis only addresses a failure of temperature and altimeter setting elements of the Meteorological Aerodrome Report but did not account for missing ceiling, visibility, or present weather information in the official Aviation Routine Weather Report.

[FR Doc. 2026–09940 Filed 5–18–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2026–1950]

Agency Information Collection Activities; Proposals, Submissions, and Approvals: Mitsubishi MU–2B Series Airplane Training Requirements

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The collection of information is necessary to document participation in, completion of, and compliance with the pilot training program for the MU–2B series airplane under subpart N of 14 CFR part 91.

DATES: Written comments should be submitted by June 18, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Kurt Skultin by email at: 9-AFS-800-correspondence@faa.gov; phone: (202) 267–1100.

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: 2120–0725.

Title: Mitsubishi MU–2B Series Airplane Special Training Requirements.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 2, 2026; 91 FR 10181. The agency will summarize comments in the request for OMB's clearance of this information collection.

In response to the increasing number of accidents and incidents involving the Mitsubishi MU–2B series airplane, the FAA began a safety evaluation of the MU–2B in July of 2005. As a result of this safety evaluation, on February 6, 2008, the FAA issued Special Federal Aviation Regulation (SFAR) No. 108—Mitsubishi MU–2B Series Special Training, Experience, and Operating Requirements. This SFAR established a standardized pilot training program. The collection of information is necessary to document participation in, completion of, and compliance with the pilot training program for the MU–2B under subpart N of part 91, issued on September 7, 2016, which superseded SFAR No. 108.

Respondents: Approximately 210 active MU–2 pilots, and approximately 11 part 91 training providers.

Frequency: Every year (pilots); every two years (training providers).

Estimated Average Burden per Response: Pilots: Logbook endorsement and training course final phase check = 10 minutes. Training providers: Submission of training program = 4 hours.

Estimated Total Annual Burden: Pilots: 35 hours. Training providers: 22 hours. Total: 57 hours.

Issued in Washington, DC, on May 14, 2026.

Everette C. Rochon, Jr.,

Manager, Training and Certification Group, General Aviation and Commercial Division, Office of Safety Standards, Flight Standards Service.

[FR Doc. 2026–09972 Filed 5–18–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Beautifying Transportation Infrastructure Council; Public Meeting

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of public meetings.

SUMMARY: The Office of the Secretary of Transportation (OST) announces the next public meetings of the Beautifying Transportation Infrastructure Council (Council) on May 27, 2026, and June 24, 2026. This notice announces the date, time, and location of the virtual meeting, which will be open to the public. The purpose of the Council is to advise the Secretary of Transportation on enhancing the aesthetic value of our Nation's transportation systems.

DATES: The meetings will be held on May 27, 2026, and June 24, 2026, beginning at 9:00 a.m. (EST) and ending at 4:00 p.m. (EST). The exact start and end times are subject to change; please monitor <https://www.transportation.gov/beautify-transportation/meetings> for the latest information.

ADDRESSES: The Council will meet virtually. The public may join the meetings virtually, with information available on <https://www.transportation.gov/beautify-transportation/meetings>.

FOR FURTHER INFORMATION CONTACT: The Council's Designated Federal Officer, Julianne Schwarzer, Office of the Assistant Secretary for Transportation Policy, Office of the Secretary, BeautifyTransportation@dot.gov or 617–999–9667.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Secretary of Transportation (Secretary) established the Council as a Federal Advisory Committee in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Ch. 10) to advise the Secretary of Transportation on enhancing the aesthetic value of our Nation's transportation systems. The Council provides recommendations on policies, designs, and funding priorities that beautify transportation infrastructure, including highways, bridges, and transit hubs, while maintaining safety and efficiency.

Agenda

At the meetings, the proposed agendas will cover the Call to Order, Official Statement of the Designated Federal Officer, Meeting Logistics,

Opening Remarks, Committee Business, and Review of Next Steps. The agendas are subject to change.

Public Participation

The meetings will be open to the public through a virtual meeting. Registration for the meetings can be found here: <https://www.transportation.gov/beautify-transportation/meetings>.

Members of the public may submit comments to the Committee in advance, as well as any requests for an electronic meeting accommodation consistent with the relevant sections of the Rehabilitation Act, as amended, 29 U.S.C. 794, by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than May 21, 2026 for the May 27, 2026 meeting, and no later than June 16, 2026 for the June 24, 2026 meeting.

All advance submissions will be reviewed by the Designated Federal Officer. If approved, advance submissions shall be circulated to the Council members for review prior to the meeting. All advance submissions will become part of the official record of the meeting.

Authority: The Council is a discretionary advisory committee under the authority of the U.S. Department of Transportation and was established in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. Ch. 10.

Owen Morgan,

Deputy Assistant Secretary for Transportation Policy.

[FR Doc. 2026–09982 Filed 5–18–26; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Extension of a Currently Approved Information Collection: Minority Bank Deposit Program (MBDP) Certification Form for Admission

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments

concerning the Minority Bank Deposit Program (MBDP) Certification Form for Admission.

DATES: Written comments should be received on or before July 20, 2026 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, PO Box 1328, Parkersburg, WV 26106–1328, or bruce.sharp@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: Minority Bank Deposit Program (MBDP) Certification Form for Admission.

OMB Number: 1530–0001.

Form Number: FS Form 3144.

Abstract: The information collected on this form is used by financial institutions to apply for participation in the Minority Bank Deposit Program. Institutions approved for acceptance in the program are entitled to special assistance and guidance from Federal agencies, State and local governments, and private sector organizations.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 72.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 54.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 14, 2026.

Bruce A. Sharp,
Bureau PRA Clearance Officer.

[FR Doc. 2026–09956 Filed 5–18–26; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
Yemen

James Wang,

International Tax Counsel, (Tax Policy).

[FR Doc. 2026–09989 Filed 5–18–26; 8:45 am]

BILLING CODE 4810–AK–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: May 27, 2026, 10:30 a.m.–2:30 p.m., Eastern time.

PLACE: This meeting will be held at the Residence Inn Downtown Hotel, 100 Sabin Street, Providence, RI 02903.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Governance Task Force (the “Task Force”) will conduct a meeting to continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—UCR Plan Governance Task Force Chair

The UCR Governance Task Force Chair will welcome attendees, call the meeting to order, call roll for the task force, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Task Force Agenda and Setting of Ground Rules—UCR Plan Governance Task Force Chair

For Discussion and Possible Task Force Action

The Governance Task Force Agenda will be reviewed, and the Task Force will consider adoption.

Ground Rules

➤ Task Force action only to be taken in designated areas on agenda.

IV. Approval of Minutes of the January 29, 2026, Task Force Meeting—UCR Governance Task Force Chair

For Discussion and Possible Task Force Action

Draft Minutes from the January 29, 2026 UCR Task Force meeting will be reviewed. The Task Force will consider action to approve.

V. Discussion of Certain Revisions to the UCR Agreement—UCR Governance Task Force Chair

The UCR Governance Task Force Chair will lead a discussion on possible revisions to the UCR Agreement.

VI. Other Business—UCR Plan Governance Task Force Chair

The UCR Plan Governance Task Force Chair will call for any other business, old or new, from the floor, including items from the previous Task Force meeting.

VII. Adjournment—UCR Plan Governance Task Force Chair

The UCR Plan Governance Task Force Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, May 13, 2026 at: <https://plan.ucr.gov>.

CONTACT PERSON FOR MORE INFORMATION:

Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, eleaman@board.ucr.gov.

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2026–10009 Filed 5–15–26; 4:15 pm]

BILLING CODE 4910–YL–P



FEDERAL REGISTER

Vol. 91

Tuesday,

No. 96

May 19, 2026

Part II

Department of Education

34 CFR Parts 600, 668, and 690

Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Pell Grant Exclusion Relating to Other Grant Aid; and Workforce Pell Grants; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 668, and 690

[Docket ID ED–2026–OPE–0133]

RIN 1840–AD99

Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Pell Grant Exclusion Relating to Other Grant Aid; and Workforce Pell Grants**AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Final rule.

SUMMARY: The Secretary of Education (Secretary) amends the regulations governing institutional eligibility, general provisions, and the Federal Pell Grant (Pell Grant) Program under title IV of the Higher Education Act (HEA) of 1965, as amended (the title IV, HEA programs). The final regulations implement statutory changes to the title IV, HEA programs included in the Working Families Tax Cuts Act (WFTCA), signed into law by President Trump on July 4, 2025. In the NPRM, we referenced the WFTCA as the “One Big Beautiful Bill”; however, for clarity and consistency in this final rule, we will instead use WFTCA. The WFTCA made numerous changes to the HEA, including changes to student eligibility requirements for the Pell Grant Program and the establishment of Workforce Pell Grants for students who enroll in a new type of eligible program called an “eligible workforce program,” intended to be a high-quality, performance-based, short-term program that supports America’s workforce needs.

DATES: This rule is effective July 20, 2026, except for amendatory instructions 10 and 13, which are effective May 19, 2026.

FOR FURTHER INFORMATION CONTACT: Aaron Washington, Office of Postsecondary Education, 400 Maryland Ave. SW, 5th Floor, Washington, DC 20202. Telephone: (202) 987–0911. Email: aaron.washington@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.

A brief summary of these final regulations is available at www.regulations.gov/docket/ED-2026-OPE-0133.

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I. Abbreviations

Department of Education (Department)
Working Families Tax Cuts Act (WFTCA)

Secretary of Education (Secretary)
Federal Pell Grant (Pell Grant) Program
Title IV of the Higher Education Act (title IV, HEA)

Cybersecurity and Infrastructure

Security Agency (CISA)

Cost of Attendance (COA)

Inspector General (OIG)

Department of Labor (DOL)

Federal Information Technology

Acquisition Reform Act (FITARA)

Eligibility and Certification Approval Report (ECAR)

Eligible Training Provider List (ETPL)

State Authorization Reciprocity

Agreement (SARA)

Historically Black Colleges and

Universities (HBCUs)

Tribal Colleges and Universities (TCUs)

Hispanic-Serving Institutions (HSIs)

Workforce Innovation and Opportunity Act (WIOA)

Prison Education Program (PEP)

Classification of Instructional Programs (CIP)

Online Program Management (OPM)

On-the-Job Learning (OJL)

II. Executive Summary

The Secretary codifies two changes made to the HEA by the WFTCA through these regulations. The two changes are:

- 1. *Pell Grant Ineligibility When Other Aid Covers Full Cost.* The WFTCA prevents students from qualifying for Pell Grant funds during any period for which they also receive grant or scholarship assistance from non-Federal sources—including States, eligible institutions, or private sources—that equals or exceeds their cost of attendance (COA) for such period.

2. *Workforce Pell Grants.* The WFTCA allows students to receive Pell Grants for eligible workforce programs that are 150–599 clock hours in length or an equivalent number of credit hours and that take at least 8 weeks but less than 15 weeks of instructional time to complete (also referred to as “Workforce Pell Grants”). The WFTCA establishes several other eligibility requirements for such programs, including approval by a Governor and the Secretary, and annual outcome metrics.

1. Summary of Major Provisions of This Regulatory Action Pell Grant Ineligibility When Other Aid Covers Full Cost

These final regulations:

- Unreserve § 690.5 and add language to prohibit a student from receiving a Pell Grant if the student received grant or scholarship assistance from non-Federal sources that equals or exceeds the student’s COA for the award year.

- Add § 690.80(d) to require an eligible institution, in such cases where a student would receive non-Federal grant or scholarship assistance that equals or exceeds the student’s COA, either to reduce that student’s non-Federal grant or scholarship assistance, insofar as such grant or assistance is within the institution’s control, or to return all Pell Grant funds disbursed to the student for the award year (if any funds are still undisbursed) and cancel any future disbursements of such funds.

Workforce Pell Grants

These final regulations:

- Amend § 600.10 to require the Secretary’s approval of each eligible workforce program in order to establish Pell Grant eligibility.

- Amend § 668.5 to limit the amount of an eligible workforce program that can be offered by an ineligible institution or organization through a written arrangement to 25 percent or less, unless the written arrangement is part of a Registered Apprenticeship.

- Amend § 668.8 to add eligible workforce programs as a new type of Pell Grant eligible program.

- Amend § 668.20 to prohibit an eligible institution from taking into account any noncredit, remedial, or reduced credit remedial coursework outside of required coursework (including a course in English as a second language) when determining enrollment intensity and COA for a student enrolled in an eligible workforce program, as defined under 34 CFR 690.92.

- Amend § 668.32 to prohibit an individual that is enrolled or accepted for enrollment in a program that leads

to a graduate credential or has attained a graduate credential from receiving a Pell Grant to enroll in an eligible workforce program.

- Add a definition of an eligible workforce program to § 690.2.
- Amend § 690.6 to allow an otherwise eligible student with a bachelor's degree to receive a Pell Grant to enroll in an eligible workforce program.
- Amend § 690.11 to prohibit a student from receiving concurrent Pell Grant awards for two or more different eligible programs.
- Add § 690.90 to provide a high-level scope and purpose of eligible workforce programs and clarify that eligible students in these programs are only eligible to receive Pell Grants and not any other title IV aid.
- Add § 690.91 to define key terms, including “cohort period,” “earnings measurement period,” “in-demand industry sector or occupation,” “Governor,” “recognized postsecondary credential,” “State board,” and “tuition and fees.”
- Add § 690.92(a) to establish that an eligible workforce program is an undergraduate program that is at least 8 but less than 15 weeks of instruction.
- Add § 690.92(b) to establish that an eligible workforce program is 150–599 clock hours, 4–15 semester or trimester hours, or 6–23 quarter hours.
- Add § 690.92(c) to prohibit correspondence courses, study abroad, or direct assessment in eligible workforce programs.
- Add § 690.92(d) to require program approval by the Governor of a State.
- Add § 690.92(e) to require program approval by the Secretary.
- Add § 690.92(f) to require eligible workforce programs to pass the value-added earnings metric.
- Add § 690.92(g) to prevent an eligible institution from offering an eligible workforce program if it has been subject to any suspension or emergency or termination action by the Secretary during the five years preceding the date of the determination.
- Add § 690.93(a) to codify statutory requirements for Governor approval, including that the eligible workforce program provides an education aligned with the requirements of high-skill, high-wage, or in-demand industry sections or occupations, meets the hiring needs of employers, leads to a recognized postsecondary credential that is stackable and portable (or prepares students for employment for which there is only one recognized postsecondary credential), and ensures that a student receives academic credit for the program for at least one

certificate or degree program at one or more eligible institutions.

- Add § 690.93(b) to require Governors to establish written policies and processes to evaluate whether a program meets the requirements under § 690.93(a), which includes requirements for institutions to submit the necessary information for the Governor to assess a program's completion rate and job placement rates; involve a process for an institution to appeal the Governor's determination; and require the Governor to submit an attestation that the State board was consulted when evaluating whether a program is an eligible workforce program.
- Add § 690.93(c) to prohibit the Governor from approving the program until it meets all the requirements under § 690.93(a).
- Add § 690.93(d) to require the Governor to provide the Secretary with a certification, including the components outlined in regulation, that an eligible workforce program was approved by the Governor and meets the requirements.
- Add § 690.93(e) to clarify that a Governor's approval expires with the expiration of the eligible institution's Program Participation Agreement.
- Add § 690.93(f) to establish a process in which a Governor provides a certification of continued approval of each eligible workforce program offered by the eligible institution prior to the expiration of an eligible institution's Program Participation Agreement.
- Add § 690.93(g) to treat a program that serves as a related instruction component of a Registered Apprenticeship Program as meeting the requirements of providing an education aligned with high-skill, high-wage, or in-demand industry sectors or occupations, and meeting the hiring needs of employers.
- Add § 690.93(h) to allow the Governors of two States to enter into a bilateral agreement regarding the enrollment of students located in one of those States into some or all the programs located in the other State.
- Add § 690.94(a) to require the Secretary to approve each program, after the Governor has approved the program. The program must meet the conditions under § 690.92(a) and (b) for the 12 months preceding the date on which the eligible institution applied for eligibility for the program. The program must also meet completion and job placement rates prior to application to the Department and each year subsequent to the eligible workforce program's approval.

- Add § 690.94(b) to require an eligible institution to submit to the Governor a list of students that completed the program in each award year, provide the necessary information to verify the job placement rate, and report the published tuition and fees for the eligible workforce program through a process the Secretary determines.
- Add § 690.94(c) to allow the Secretary to waive some or all the proposed requirements under § 690.94(a) and (b) related to submission of completion rates and the Governor's certification of job placement rates.
- Add § 690.94(d) to prohibit an eligible workforce program's tuition and fees from exceeding the value-added earnings of the program.
- Add § 690.94(e) to exclude certain categories of students from the numerator and denominator of the completion and placement rate calculations.
- Add § 690.95(a) to codify the value-added earnings process. An eligible workforce program's total published tuition and fees may not exceed the value-added earnings of students who are working, who received a Pell Grant for enrollment in the program, and who completed the program during the cohort period.
- Add § 690.95(b) to establish that an eligible workforce program's value-added earnings are determined by calculating the difference between the adjusted median earnings of student completers during the earnings measurement period as defined in § 690.91 and 150 percent of the U.S. Federal Poverty Guidelines applicable to a single individual for such tax year.
- Add § 690.95(c) to require the Secretary to publish the value-added earnings that will apply to the eligible workforce program for the upcoming award year no later than three months prior to the beginning of the award year.
- Add § 690.95(d) to require that an eligible institution keep published tuition and fees at or below the value-added earnings calculated for the program for all students who received a Pell Grant and first enroll in the eligible workforce program during the award year that begins following the annual release of the program's value-added earnings.
- Add § 690.95(e) to establish that programs that have a calculated value-added earnings of zero or a negative value are not eligible programs.
- Add § 690.95(f) to require an eligible institution to provide evidence, upon request, to the Secretary that its published tuition and fees do not exceed the published value-added earnings for that award year.

- Add § 690.95(g) to establish that the Secretary will calculate the value-added earnings for an eligible workforce program using the student completion data the eligible institution reported.

- Add § 690.95(h) to establish the number of students needed for the Secretary to calculate the value-added earnings for the program.

- Add § 690.95(i) to establish that the Federal agency with earnings data will provide the Department with median annual earnings of the students whom the Federal agency has matched with earnings data.

- Add § 690.95(j) to require the Secretary to include completers from all eligible workforce programs with the same six-digit Classification of Instructional Programs (CIP) code when calculating value-added earnings.

- Add § 690.95(k) to clarify that, if more than 50 percent of students in the eligible workforce program are not located in the State in which the eligible institution offering the program is located, the Department will not adjust the program's median earnings by the State and metropolitan area regional price parities of the Bureau of Economic Analysis.

- Add § 690.95(l) to exclude a student from the value-added earnings calculation if the student was enrolled in any other educational program during the calendar year for which the Secretary obtains earnings information.

- Add § 690.96(a) to establish a process for programs that lose eligibility. A program will become ineligible at the end of the payment period that begins following the date that the Governor acts to withdraw approval or the Governor fails to reapprove the program.

- Add § 690.96(b) to provide that, except in limited circumstances such as a pending appeal, a program will become ineligible at the end of the payment period that begins after the date that the Secretary determines that the eligible institution failed to meet the completion rate or job placement rate requirements.

- Add § 690.96(c) to provide that, if an eligible workforce program fails to meet the value-added earnings requirements, the program will become ineligible at the beginning of the award year following the release of the value-added earnings, and the Secretary will assess a liability to the eligible institution.

- Add § 690.97(a) to establish a process for an eligible workforce program to regain eligibility once it has lost it. This process would prohibit an eligible institution from reestablishing the eligibility of a failing program or

establish eligibility for a substantially similar program until two years following the date the program loses eligibility or the date the eligible institution voluntarily discontinues the failing eligible workforce program, whichever date is earlier.

- Add § 690.97(b) to establish that, if an eligible workforce program loses eligibility due to a loss of Governor approval, the program may reestablish eligibility after the Secretary receives the Governor's certification that the program has been approved, and after the Secretary determines the program has met eligibility criteria.

- Add § 690.97(c) to allow an eligible institution to request that a program's eligibility be reinstated if the program loses its eligibility due to the published tuition being higher than its value-added earnings.

2. Summary of Costs and Benefits

As further detailed in the *Regulatory Impact Analysis*, the Department estimates that the regulations will have significant impacts on students, educational institutions, employers, taxpayers, State governments, and the Department.

Under the final regulations, students will benefit from expanded access to Federal grant funds for new workforce programs that institutions are likely to offer—or may already offer—but that were previously ineligible for such funding. Students will also experience higher wages due to the skills and credentials they gain by attending eligible workforce programs, including receiving stackable credentials that will allow them to pursue further postsecondary education and workforce training. Employers will benefit from the final regulations because the regulations will increase the number of skilled workers in the labor market. Institutions will benefit from new enrollments and the resulting tuition revenues. State governments and taxpayers will also benefit from greater tax revenues and reduced expenditures on public assistance programs because of the higher wages experienced by those completing eligible workforce programs.

The Department will incur new costs to finance Pell Grants for eligible workforce programs, which are funded as part of the existing Pell Grant Program. The Department will incur new costs to implement the changes to the Pell Grant Program and monitor eligibility, as will State governments, who, if they or institutions within their State choose to participate, must certify eligible workforce programs and monitor their completion and job

placement outcomes. While taxpayers will bear the cost of financing Pell Grants to eligible workforce programs, they will also benefit indirectly from the earnings gain that Pell Grant recipients receive, such as through reduced use of public benefits programs for low-income households.

III. Purpose of This Regulatory Action

This action establishes regulations that address statutory changes to the HEA made by the WFTCA related to eligible workforce programs and a new limitation on Pell Grant eligibility for students who receive non-Federal grant or scholarship assistance that equals or exceeds their cost of attendance. The Department refers to these provisions as a whole as “Workforce Pell.”

Through this action, the Secretary seeks to faithfully implement the statutory requirements for eligible workforce programs while limiting administrative burden for institutions and providing flexibility for States to determine whether eligible workforce programs are adequately serving students and promoting regional economic growth. We also seek to provide simple and clear regulations for institutions to implement the new limitation on Pell Grant eligibility that will enable the Department to oversee those requirements effectively.

IV. Background

The WFTCA, which President Trump signed into law on July 4, 2025, made important changes to the title IV, HEA programs, including one of the most significant changes to the Pell Grant Program in its history to address America's workforce needs.

Specifically, the WFTCA expanded Pell Grant eligibility to eligible workforce programs. These programs are shorter in duration than the undergraduate programs currently eligible for Pell Grants, and they must meet specific accountability metrics related to graduate earnings, as well as indicia of employer demand—requirements that are not applicable to other eligible programs.

The WFTCA also added a new criterion for Pell Grant eligibility that prevents students from receiving Pell Grant funds if they also receive grant or scholarship aid from non-Federal sources—including States, institutions of higher education, and private sources—in a total amount that equals or exceeds their cost of attendance (COA). Eligible institutions determine the COA by establishing a budget for tuition and fees, books, supplies, housing, food, and other costs.

This final regulation complies with Section 492 of the HEA, which requires the Secretary to obtain public input and conduct negotiated rulemaking before issuing proposed regulations for the title IV, HEA programs. To meet those requirements and implement the new statutory directives provided for in the WFTCA, the Department convened the Accountability in Higher Education and Access through Demand-driven Workforce Pell (AHEAD) negotiated rulemaking committee, which reached consensus agreement on the entirety of the regulatory text that was included in the Notice of Proposed Rulemaking (NPRM).¹

HEA section 482(c)(2) permits the Secretary to designate a regulation as one that an entity subject to the regulations may choose to implement earlier and outline the conditions for early implementation. The Secretary is exercising her authority under HEA section 482(c) to permit early implementation of all regulations pertaining to eligible workforce programs beginning July 1, 2026. The Secretary will assume that any institution that selects to participate in Workforce Pell through a qualifying program on the ECAR between July 1, 2026, and July 20, 2026 has elected to implement the provisions early.

V. Authority for This Regulatory Action

The WFTCA amended portions of the HEA related to the title IV, HEA programs administered by the Department. The Secretary has been granted broad authority by Congress to implement Federal student aid programs under title IV of the HEA, including amendments made by the WFTCA. See 20 U.S.C. 1221e–3, *see also* 20 U.S.C. 1082, 3441, 3471, 3474. In order to carry out functions otherwise vested in the Secretary by law or by delegation of authority pursuant to law, and subject to limitations as may be otherwise imposed by law, the Secretary is authorized to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. See 20 U.S.C. 1221e–3. These programs include the Federal student financial assistance programs authorized by the HEA, as amended by the WFTCA.

Waiver of HEA Master Calendar Requirements

The Harmonious-Reading Canon provides that statutes should, when possible, be interpreted in a way that renders them compatible, not contradictory, but such an approach is not always possible if context and other considerations (including the application of other canons) make it impossible to do so, another approach to statutory interpretation, such as the General/Specific Canon must be applied. *See* Scalia & Garner, *Reading Law*, 155 (2012). The General/Specific Canon of statutory construction dictates that, in cases where a general prohibition is contradicted by a specific permission or a general permission that is contradicted by a specific prohibition, the more specific of the two provisions controls. *See* Scalia & Garner, *Reading Law*, 158 (2012). Because, as discussed below, the WFTCA contains provisions with effective dates that cannot possibly be implemented in regulation in accordance with the HEA's master calendar requirements, the WFTCA implicitly provides a limited waiver of the HEA's master calendar requirement, so far as it is necessary to promulgate regulations that give effect to those provisions. *See Dorsey v. United States*, 567 U.S. 260, 274 (2012) (stating that an agency's compliance with an existing statute "cannot justify a disregard of the will of Congress as manifested either expressly or by necessary implication in a subsequent enactment" (*quoting Great Northern R. Co. v. United States*, 208 U.S. 452, 465 (1908))).

Here, the WFTCA was enacted on July 4, 2025. The WFTCA directs the Department to implement roughly a dozen provisions by July 1, 2026. Many of these provisions are not self-executing and could not be implemented absent the Department promulgating regulations to provide details for institutions on how to comply with the WFTCA. Congress gave the Secretary discretion within the WFTCA to implement the provisions impacting the title IV, HEA programs and knew that its commands were not self-executing when directing the Secretary to take action. Congress expected the Secretary to act via rulemaking before July 1, 2026, to enable these provisions to actually go into effect.

The master calendar in the HEA provides that regulatory changes initiated by the Secretary affecting the title IV, HEA programs must be published in final form by November 1st in order for them to go into effect by July 1st of the following year. 20 U.S.C.

1089(c)(1). Section 492 of the HEA requires the Department to undertake negotiated rulemaking as part of any regulation under title IV of the HEA. In order to conduct negotiated rulemaking and meet Administrative Procedure Act (APA) requirements, the Department must have a public hearing (providing notice to the public), solicit nominations from the public to serve on a negotiated rulemaking committee, select non-Federal negotiators, hold negotiations, develop an NPRM, publish an NPRM (with at least a 30-day comment period), and then publish a final rule that responds to any substantive comments received. The fastest possible timeframe in which the negotiated rulemaking process for the rulemaking packages assigned to the AHEAD Committee could have occurred is 149 days, which is irreconcilable with the timeline allowed by the enactment of the WFTCA, due to the fact that there were 120 days between July 4, 2025, (the day the WFTCA was enacted), and November 1, 2025 (the publication date of the final rule required by the master calendar).

It would not have been possible for the Department to undertake every step of the negotiated rulemaking process by November 1, 2025, in order to implement the provisions that become effective in the WFTCA by July 1, 2026, which is the statutory effective date. Congress was aware of this temporal impossibility when they passed the WFTCA, yet Congress decided that these provisions would still go into effect on July 1, 2026. Because these provisions are not self-implementing and cannot go into effect unless the Department promulgates a final rule, the WFTCA implicitly waives the master calendar.

With important details unanswered by the plain text of the WFTCA, it is clear that the policy scheme set forth in the HEA made by the WFTCA cannot be implemented absent regulatory action by the Department. At the same time, even though the requirements of negotiated rulemaking are onerous, it is possible to undergo negotiated rulemaking and publish a final rule at least 30 days prior to the effective date of these WFTCA provisions on July 1, 2026. Therefore, the WFTCA does not waive negotiated rulemaking nor any provision in the APA. For provisions in the WFTCA that become effective July 1, 2027, and beyond, Congress did not implicitly repeal the master calendar because it is possible for the Department to publish a final rule that complies with the master calendar to implement those provisions.

¹ NPRM—Accountability in Higher Education and Access through Demand-Driven Workforce Pell; Pell Grant Exclusion Relating to Other Grant Aid; and Workforce Pell Grants—<https://www.Federalregister.gov/documents/2026/03/09/2026-04520/accountability-in-higher-education-and-access-through-demand-driven-workforce-pell-pell-grant>.

Severability

“It is axiomatic” that a regulation may be invalid in part but not in whole or as applied to one set of facts but not another. *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329 (2006). If a court finds one part of a regulation is unlawful, the “normal rule” is to enjoin only that part. *Id.* (quoting *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985)).

It is the Department’s intent that if any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

Statutes and regulations are severable if the separate provisions are “wholly independent of each other” and can operate independently. *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 502 (1985). That is the case here. No part herein will be affected if another part is found to be unlawful. Nor does the Department believe courts or regulated parties would be unable to apply the rule if one part is held invalid. *C.f. Dep’t of Educ. v. Louisiana*, 603 U.S. 866, 868 (2024) (per curiam) (denying the government’s request to stay a preliminary injunction against an entire rule where only parts were found to be invalid because “schools would face in determining how to apply the rule for a temporary period with some provisions in effect and some enjoined”).

VI. Analysis of Public Comment and Changes

On March 9, 2026, the Secretary published an NPRM for these regulations in the **Federal Register** (91 FR 11378). The Department received 440 comments on the proposed regulations.

The Department has grouped the comments by the regulatory section and by similar themes. We discuss substantive issues under the sections of the regulations to which they pertain. In instances where individual submissions appeared to be duplicates or near duplicates of comments prepared as part of a write-in campaign, the Department posted one representative sample comment along with the total comment count for that campaign to www.Regulations.gov. We considered these comments along with all the other comments received. In instances where individual submissions were bundled together (submitted as a single document or packaged together), the Department posted all the substantive comments included in the submissions along with the total comment count for

that document or package to www.Regulations.gov. Generally, we do not address minor, non-substantive changes (such as renumbering paragraphs, adding a word, or typographical errors) within this final rule.

1. Process for Out-of-Scope Comments

The Department does not typically address comments that are out of scope. For purposes of this final rule, out-of-scope comments are those that are not addressed in the NPRM altogether. Generally, comments that are outside of the scope of the NPRM are comments that do not discuss the content or impact of the proposed regulations or the Department’s evidence or reasons for the proposed regulations.

2. Public Comments

Responses to Comments Received on Directed Questions Written Arrangements To Provide Educational Programs (§ 668.5(c))

In the NPRM, the Department proposed to permit ineligible organizations to provide only 25 percent of an eligible workforce program under the written arrangement regulations under § 668.5(c). For other programs, ineligible organizations may offer up to 50 percent of a program through a written arrangement with an eligible institution. This may only occur if the ineligible organization and institution meet certain conditions and the institution’s accrediting agency has specifically determined that the institution’s arrangement meets the agency’s standards on written arrangements with ineligible organizations. The Department sought public comment regarding whether it should consider alternatives to the 25 percent limit.

Comments: Several commenters agreed with the Department’s proposed limitation on written arrangements with ineligible institutions or organizations. One commenter expressed support for the Department’s conservative approach while it awaits additional information in public comments. Other commenters stated that some institutions have outsourced large portions of academic programs to the online program management (OPM) industry. OPMs provide services including student recruitment, curriculum development, and even instruction, in the name of client institutions. The commenter stated that OPMs fail consumer protection standards, market aggressively, and target vulnerable students. The commenter stated that

accreditors lack the capacity to effectively monitor OPMs.

Other commenters stated that eligible workforce programs should only be able to have written arrangements with ineligible institutions for between 0–10 percent of the eligible workforce program. Several commenters believed that because local and area employers are the intended beneficiaries of trained skilled workers, they should not also profit from tuition revenue derived from written arrangements with institutions. The commenters believed that for-profit companies in education and workforce development are known for higher prices and costs, lower quality and learner experiences, lower completion rates, and more student complaints.

Discussion: The Department thanks commenters who provided views on its directed question, including commenters who support its proposed regulations. However, the Department’s views do not align with all the reasons stated for agreement with the provision. We reiterate that we recognize the potential value in partnerships between eligible institutions and certain ineligible organizations, such as employers and unions or non-title IV eligible Registered Apprenticeship related training instruction providers, that result in the enhanced quality of eligible workforce programs. We also do not agree that ineligible organizations should be limited to providing only a tiny fraction of the program, such as 10 percent, particularly in this context where employers should play a large role. Such an amount would be so small as to be used infrequently, if ever, by outside entities seeking to enter into an arrangement with an institution. The existing 25 percent threshold is well-understood by institutions and would be consistent with the basic threshold for other types of postsecondary programs.

Our concern is that the 49 percent allowance does not provide the same level of quality assurance for eligible workforce programs as it does for traditional academic programs, given the broad lack of experience in the accreditation industry in evaluating agreements for short-term programs. Moreover, the Department is concerned that the provision of eligible workforce programs by ineligible institutions and organizations could rapidly expand far beyond the intent of the statute. The Department’s regulations seek to achieve a balance between supporting valuable partnerships between industry and higher education to provide eligible workforce programs and prevent the rapid proliferation of low-quality programs that are not assessed carefully

by the traditional gatekeepers of eligibility for title IV, HEA funds.

Changes: None.

Comments: Many commenters stated that the proposed 25 percent limitation on instruction delivered through written arrangements with ineligible institutions or organizations unnecessarily restricts partnerships between eligible institutions and workforce training providers where much of the applied learning occurs. Several commenters offered the example of truck driving and the commercial driver's license (CDL) process, explaining that the CDL process often includes access to equipment, certified instructors, and training facilities that institutions cannot provide independently. Commenters also stated that careers in healthcare, construction, defense, national security, and office operations often require a significant amount of applied learning. For example, in the arboriculture industry, training is offered related to climbing systems, aerial lift operations, chainsaw safety, arboricultural practices, and electrical hazard awareness.

Many commenters also stated that the 25 percent cap is not required by statute and asserted that the Department is holding eligible workforce programs to a different standard than all other title IV, HEA eligible programs. Commenters recommended a broad range of options for the percentage of an eligible program that can be offered by an ineligible entity, ranging from 35–100 percent. Other commenters conditioned arrangements between 30–75 percent depending on how high-wage, high-skill, or in-demand the occupation is. They also recommended conditioning based on whether the institution offering the eligible workforce program was in good standing with the Department, the geographic location of the institution, if the ineligible organization is the employer for which the program prepares students, the program trains in artificial intelligence, if the program is in a correctional facility, if the program is endorsed by the State board, if the program partners with cohort-based workforce training organizations, and the accrediting agency's support for the program.

Several commenters recommended that the Department permit greater portions of programs to be offered by an ineligible entity through a written arrangement. These commenters suggested that if a program is part of a Registered Apprenticeship, the ineligible entity should be permitted to offer up to 100 percent of an eligible program.

Discussion: The Department is persuaded by the commenters that written arrangements with certain types of ineligible organizations should not be limited to providing only 25 percent of an eligible workforce program. The commenters make a strong case that certain arrangements and partnerships can greatly improve the likelihood that eligible workforce programs will lead to high-wage, high-skill, or in-demand jobs.

In the case of Registered Apprenticeships, we are also persuaded by commenters that the requirements and oversight for these industry-driven, high quality career pathways address the Department's concerns about quality assurance of services provided under written arrangements. We agree with the commenters who stated that Registered Apprenticeships already have a framework for oversight, clear definitions, and rigorous program parameters. The Department's proposed regulations, agreed upon by the entire negotiated rulemaking committee, already included a provision that acknowledges quality assurance checks intrinsic to Registered Apprenticeships. Registered Apprenticeships include a work process schedule co-designed with employers and approved by DOL's Office of Apprenticeship or a State Apprenticeship Agency and WIOA permits Registered Apprenticeships to be automatically included on the State and local Eligible Training Provider Lists. Indeed, for this reason, the Department already proposed regulations under § 690.93(g) that would allow a Governor to treat a program that is part of a Registered Apprenticeship as automatically meeting the hiring needs of employers.

However, the Department disagrees with commenters' assertion that written arrangements should be used to provide 50 percent or more of an eligible program. In order to participate in the title IV, HEA programs, an entity must meet the definition of institution of higher education under Section 101 or Section 102 of the Higher Education Act.² There are different types of institutions of higher education under these provision, but all institutions must “provide [] an educational program”³ or provide a “program of training”⁴ to students. And in all these instances, the subject the statute is referring to is the

institution—meaning the institution must provide the program or training to students. If the eligible institution enters into a contract that calls for 100 percent of the program or training to be provided by an ineligible third-party, the institution itself is not providing the training or program as required by Section 102. And as we have said in past regulations, “[t]he Department agrees that using written arrangements for all or nearly all of a program could raise questions about which entity confers the credential.”⁵ The Department has previously explored the possibility of allowing an ineligible entity to offer up to 100 percent of a program through a written arrangement, most recently in the September 2, 2020, regulations related to Distance Education and Innovation. However, the Department ultimately agreed with non-Federal negotiators that doing so would raise the question of whether the eligible institution was really offering the program, as opposed to an unaccredited partner entity.⁶

At the same time, the Department does not believe that Congress implicitly meant to (within Section 102) inhibit an institution from entering into written arrangements to provide some portion of the program or training. Some functions of the program and training can be provided by third parties as demonstrated by the current existence of written arrangements in other programs qualifying for title IV, HEA program funds. This may include written arrangements to provide technological services to students, or specialized training for students that the institution does not have the experience or ability to provide.

The Department believes that when at least half the program or training is provided by an ineligible provider, that the eligible institution ceases to functionally control most of the program. When 50 percent or more of the training is being provided by an ineligible entity, the institution ceases to offer the majority of the programming. The Department acknowledges that maintaining written arrangements for more than 50 percent of a program does not mean the institution is ceding all control to the ineligible provider. But at the same time, supervision alone is not enough. The HEA requires the *institution* to provide the training or program, not the ineligible provider. Written arrangements cannot be used as an end-around to evade the requirements of the

² Section 102 of the HEA includes institutions of higher education that are covered under Section 101. (“the term ‘institution of higher education’ for purposes of subchapter IV includes, in addition to the institutions covered by the definition in section 1001 of this title. . .”) 20 U.S.C. 1001–1002.

³ 20 U.S.C. 1001(a)(3)

⁴ 20 U.S.C. 1001(b)(1); 1002(b)(1); 1002(c)(1).

⁵ Distance Education and Innovation, 85 FR 54742, 54772 (Sept. 2, 2020).

⁶ See 85 FR 54804.

HEA that institutions provide the training or program.

Given all of the above, the Department has determined that ineligible institutions or organizations that provide training as part of Registered Apprenticeships should not be subject to the strict 25 percent limitation on providing an eligible workforce program. Instead, in these circumstances, ineligible institutions or organizations will be permitted to provide more than 25 percent, but less than 50 percent through a written arrangement. For all other fields of study and program types mentioned by the commenters, the Department remains concerned that allowing institutions to contract up to 49 percent of the eligible workforce program may be an indication that the institution does not have the capacity to offer the program fully had that written arrangement not been in place. The recommendations from other commenters, while in some cases providing a good rationale for the value of institution/employer partnerships, did not sufficiently address these concerns. Therefore, aside from the allowances we are providing for Registered Apprenticeships, we believe that this limitation is effective in assuring the quality of eligible workforce programs.

Changes: The Department has rewritten the regulations under 34 CFR 668.5(c)(3)(ii) to add a new paragraph (D) following paragraphs (A) through (C) in the current regulations. The new paragraph (D) would allow an ineligible institution or organization, if the other conditions in 34 CFR 668.5(c) were met, to offer more than 25 percent, but less than 50 percent of an eligible workforce program, if the program qualifies as a related instruction component for a Registered Apprenticeship, as defined in 29 CFR part 29.

Comments: Several commenters asked for guidance clarifying how the written arrangement percentage is calculated across instruction, curriculum, and support services.

Discussion: The regulations under 34 CFR 668.5(g) provide a clear and specific method for calculating the percentage of a program that is offered by an ineligible organization or institution. To determine that percentage, an institution must divide the number of semester, trimester, or quarter credit hours, clock hours, or the equivalent that is provided by the ineligible organization or organizations by the total number of semester, trimester, or quarter credit hours, clock hours, or the equivalent required for completion of the program. A course is

provided by an ineligible institution or organization if the organization with which the institution has a written arrangement has authority over the design, administration, or instruction in the course, including, but not limited to—

- (1) Establishing the requirements for successful completion of the course;
- (2) Delivering instruction in the course; or
- (3) Assessing student learning.

For more information on written arrangements please see the most recent version of the Federal Student Aid Handbook that discusses written arrangements.

In reviewing public comments on this topic, the Department noticed that some commenters may be confused about the extent of the limitation on the amount of a program that can be offered by an ineligible institution or organization under 34 CFR 668.5(c). If a program that is eligible for title IV, HEA funds is combined with job training as part of a broader training experience, such as an apprenticeship, only the portion of the experience that comprises an eligible workforce program and qualifies a student for Pell Grant funds is subject to the limitation. Hours spent on job training that is not part of the eligible workforce program, and therefore does not qualify for Pell Grant funds, are not subject to any limitations.

For example, one commenter, arguing for an increase in the allowable percentage, indicated that related instruction in their Registered Apprenticeship program occurs at the beginning and is provided entirely by the institution, with the remaining job training conducted by other entities, including employers. In that situation, using the criteria described above, the Department would view the program as being provided entirely by the institution, and not subject to the written arrangement limitations.

Changes: None.

Ineligibility Due to Non-Federal Grant or Scholarship Assistance (§ 690.5)

The Department proposed to add language to prohibit a student from receiving a Pell Grant if the student received grant or scholarship assistance from non-Federal sources that equals or exceeds the student's COA for the award year. The proposed regulatory language was very similar to the statutory language. In the NPRM, the Department expressed concern about the potential for abuse of this provision, particularly when an institution has the ability to alter institutional aid or a student's cost of attendance by a very small amount in order to avoid causing the student to

become ineligible for Pell Grant funds. The Department sought public comments about potential options to prevent such gaming, including oversight mechanisms.

Comments: Many commenters stated that the Department's regulations, which mirrored the statute, should not be altered, including to prevent gaming or abuse of the provision. Other commenters appeared to be confused by the provision, and a large number of questions were submitted. These commenters believed that the provision would unfairly limit a student's aid such that the student would no longer be able to receive a Pell Grant if the student received any amount of grant or scholarship assistance, as opposed to only losing Pell Grant eligibility for the award year. Two commenters were concerned that if the Department were to implement a new oversight mechanism to prevent gaming that it could impose burden on institutions and students. They suggested that it would be sufficiently cautionary to affirm that professional judgment (PJ) adjustments to COA must meet existing case-by-case documentation standards under the HEA and that the Department considers such adjustments during program reviews.

One commenter concluded that institutions using PJ to boost COA by a small amount was less likely to occur than simply reducing institutional or other aid by a small amount. They noted that in cases of PJ, the statutory documentation standards govern such decisions, which can be easily audited. They suggested that the Department consider using available student aid data to identify institutions that appear to be systematically tailoring non-Federal aid to be within \$50 (or some other small amount) of meeting COA. The commenter stated that the Department could also require institutions to document the methodologies used to determine non-Federal aid and then conduct risk-based audits of institutions that appear to use gaming practices.

Discussion: The Department stated in the NPRM, and we reiterate here, that if a student's entire COA for an award year is met with non-Federal grant or scholarship aid, that student is not eligible for a Pell Grant for that award year. However, the student would retain Pell Grant eligibility for subsequent award years if the student has remaining lifetime eligibility.

The Department disagrees with commenters who argued that additional oversight of this provision is not warranted. Although we agree that the provision will only affect a small

number of individuals, it is the Department's responsibility to ensure the integrity of the title IV, HEA programs, including all statutory requirements.

We appreciate the suggestions from commenters regarding ways that the Department could evaluate implementation of this provision using administrative data or other oversight tools. The Department plans to establish an oversight process to identify cases in which institutions are abusing the provision and will take commenters' suggestions into account as it does so.

Unfortunately, commenters were unable to offer suggestions for regulatory changes that could prevent or reduce the likelihood of abuse, and the Department continues to interpret the statutory language as not expansive enough to allow the Department to limit a student's Pell Grant eligibility to the student's COA minus the total amount of the student's non-Federal grant aid. Therefore, we have made no changes to this regulatory language, but, as described above, we will develop oversight procedures to monitor its implementation at postsecondary institutions.

Changes: None.

Components Determined by Governors: Bilateral Agreements (§ 690.93(h))

The Department proposed during negotiated rulemaking to allow two Governors to enter into a bilateral agreement for an eligible institution in one State to offer an eligible workforce program to students in another State through distance education so that students may use Pell Grant funds to attend a program located in another State. Bilateral agreements allow the Governors of two States to determine that an eligible workforce program meets the workforce needs of both States while also preventing the rapid proliferation of such programs among States where the program's training is not as valuable. The Department included a directed question about how to balance its concerns without making it overly burdensome to create and expand high-quality programs.

Comments: A few commenters agreed with the Department's proposal because a multilateral approach risks allowing programs to operate in States where they offer limited workforce value, undermining the program's foundational purpose. The core eligibility criteria for eligible workforce programs—alignment with high-skill, high-wage, or in-demand occupations; meeting the hiring needs of employers; and preparing students for a stackable credential—are inherently local

determinations that reflect State-specific labor market conditions. The commenters asserted that bilateral agreements ensure that a State Governor executes a meaningful check that a given program meets that State's workforce needs.

Discussion: The Department agrees and thanks the commenters for their support.

Changes: None.

Comments: Many commenters disagreed with the Department's prohibition of multi-lateral agreements. Commenters believed that guardrails already exist through current reciprocity frameworks and this prohibition is applied unnecessarily to eligible workforce programs. One commenter stated that the Department created a policy separate from the realities of budgets and staffing, and the WFTCA offered no new resources to States to build or operate the Department's proposed framework for bilateral agreements to offer eligible workforce programs to students located in other States. The commenter recommended that the Department partner with State authorization experts, consider a separate rulemaking, delay this component of the regulations, bundle it into a future rulemaking session, and rely on NC-SARA in the meantime.

Several other comments stated Governors should be given discretion to determine the most effective structure for interstate agreements to meet the needs of their States. They asserted that bilateral agreements are unnecessarily limiting, in part because State boundaries do not neatly align with or adequately capture the nuances of workforce needs. The commenters argued that a bilateral agreement structure risks imposing additional layers of bureaucracy that could stifle innovation and limit opportunities for students.

Some other commenters offered alternatives, such as allowing multilateral agreements that have documented success, offering national portable credentials, allowing multilateral agreements for programs in national defense training or programs that have high-demand sector placements, automatically allowing multilateral agreements after three years after the program was approved, automatically allowing multilateral agreements after 2029, or allowing multilateral agreements between institutions that are within a specific region of the United States. Another commenter requested that the Department create and manage a multilateral eligible workforce program reciprocity agreement.

Discussion: As explained in the NPRM, the Department has concerns regarding the potential for rapid proliferation of eligible workforce programs offered through distance education (§ 600.2) and the need for appropriate safeguards. The NC-SARA framework, in which a non-governmental organization oversees multi-lateral agreements among many States, does not currently provide adequate safeguards to prevent this kind of rapid expansion, particularly given the potential for eligible workforce programs to be offered to students in States where the training is not needed for the regional economy. Eligible workforce programs are unique in that the Governor must certify that the program provides an education aligned with the requirements of high-skill, high-wage, or in-demand industry sectors or occupations and that the program meets the hiring requirements of potential employers in the sectors or occupations. Under currently established multilateral agreements for State authorization generally, an institution based in one State could offer an eligible workforce program through distance education to an individual residing in a State with completing different needs. For example, in-demand sectors or occupations in Alaska may be different from in-demand sectors or occupations in Puerto Rico. Students should not exhaust their limited Pell Grant funds on programs that will not result in entry into the workforce in a field in which the program was preparing them. Bilateral agreements are necessary to ensure that a Governor has reviewed and certified eligible workforce programs offered to students through distance education in different States.

The commenters also did not sufficiently address the Department's primary concerns related to inter-State offerings of eligible workforce programs; *i.e.*, the fact that the law requires each State to make a determination about whether a program meets the job training needs of the regional economy, and an agreement like NC-SARA—even if provided only for a particular industry—would not obligate each State to make that determination. Likewise, the Department generally cannot develop and manage a model like NC-SARA; because nothing in the WFTCA would permit such a framework and would therefore be an overreach of the Department's authority.

Nothing in this rule prohibits State Governors from entering into bilateral agreements with numerous other States. We believe that bilateral agreements are a reasonable undertaking and the

burden associated with establishing such agreements has value of its own, improving the likelihood that the programs qualifying for Pell Grant funds are in high-skill, high-wage, and in-demand sectors or occupations. Additionally, once established, the bilateral agreements may be maintained indefinitely, so long as the States continue to agree that the programs meet the statutory and regulatory requirements. This would allow industries, such as defense, to work within that framework as long as necessary.

We decline the commenters' recommendations to delay implementation of these provisions. The WFTCA has a statutorily mandated effective date for eligible workforce programs of July 1, 2026. We are unable to postpone the specific regulations surrounding bilateral agreements, as we do not have the authority to do so.

Changes: None.

Comments: One commenter asked whether programs approved in one State may receive reciprocal recognition in partner States.

Discussion: Programs approved in one State do not automatically receive reciprocal recognition in partner States and may only receive such recognition if a bilateral agreement also exists between Governors of each State. In order for an institution to establish eligibility for title IV, HEA funds for a student located in another State enrolled through distance education, the Governors of both States need to fulfill all the requirements described in § 690.93(h).

Changes: None.

Comments: One commenter recommended that the Department publish a public-facing registry of Governor-approved programs under bilateral agreements searchable by State, occupation, and credential type.

Discussion: The Department declines to regulate itself by establishing a requirement to publish Governor-approved programs, in particular because it will not have information about these programs prior to an application to the Department for the program to become eligible for title IV, HEA funds. However, we will consider publishing a list of eligible workforce programs that includes the States where they are located. Under § 690.93(h), the rule already requires Governors to publicly publish bilateral agreements.

Changes: None.

Comments: A few commenters were opposed to bilateral or multilateral agreements. One commenter stated that the WFTCA requires States to play an active role in assessing programs in the

higher education sector to safeguard critical student financial aid and ensure the goals of the Workforce Pell Grant program are met. Commenters stated that allowing bilateral agreements risks dilution of local labor-market relevance and that the WFTCA neither contemplates nor provides exceptions to the general rule that Governors must assess labor markets and workforce programs in their States.

Discussion: The Department does not believe that the bilateral framework will dilute local labor-markets. The Department was very intentional in requiring that Governor of the State determine that the program being offered through distance education to individuals in his or her State meets applicable criteria under § 690.93(a) prior to certifying the program under a bilateral agreement.

Changes: None.

Comments: One commenter was concerned that Governors may refuse to enter into an agreement with another State based on political or ideological disagreements. The commenter suggested limiting discretionary denial based on non-objective criteria.

Discussion: Governors have authority and autonomy regarding whether to enter into a bilateral agreement with the Governor of another State. The Department believes this is the clearest reading of the statute and necessarily means that States can use a variety of criteria to decide whether to enter into a bilateral agreement with another State and does not intend to limit discretionary denial in this way.

Changes: None.

Comments: One commenter was concerned that institutions will try and game completion rates through selective enrollment. Institutions could improve completion rates by refusing to enroll students who may be most likely to drop out, concentrating enrollment make-up to the most academically motivated students while turning away the most economically vulnerable applicants. The commenter was also concerned that job placement rates could be gamed through temporary employment. The commenter demanded that bilateral agreement programs be subject to the job placement rate requirements of the State where the student is located, not the State where the institution is located.

Discussion: The Department declines to accommodate the commenter's demand. We have included a provision under § 690.93(h)(3) that states "[t]he bilateral agreement includes provisions for data-sharing among the States for purposes of completion and placement rate calculations". The Department

intends to release sub regulatory guidance containing more specifics how the completion and job placement rates are calculated for States with bilateral agreements and believes this guidance will prevent institutions from 'gaming' this provision.

Changes: None.

Comments: One commenter stated that the Department should require that bilateral agreements be time-limited and subject to regular renewal, with the renewal process requiring updated labor market data demonstrating the program's continued relevance.

Discussion: Eligible workforce programs approved under a bilateral agreement are still subject to § 690.93 (e), which states that the Governor's approval expires at the expiration of the institution's Program Participation Agreement and § 690.93 (f), which says prior to the expiration of an institution's Program Participation Agreement, the Governor must provide, through a process determined by the Secretary, a certification of continued approval of each eligible workforce program offered by the institution. Therefore, the Department believes the commenter's concern is already addressed through the regulations.

Changes: None.

Comments: One commenter stated that any bilateral agreement should require the receiving State's Governor to independently verify and clearly justify that the program aligns with that State's labor market needs, rather than simply accepting the originating State's determination.

Discussion: We decline the commenter's recommendation because such requirement is already established under § 690.93(h)(1).

Changes: None.

Comments: One commenter stated that bilateral agreements should include specific consumer protections for distance education students, including requirements that institutions clearly disclose to students whether the program is designed for the labor market in the originating State, provide information about job placement rates and earnings outcomes disaggregated by the State in which students are located, and disclose any additional anticipated costs to students.

Discussion: We decline the commenter's recommendation because programs included in a bilateral agreement are subject to all the outcomes measures, including job placement, completion, and value-added earnings. Given that all of these measures already exist, and because the bilateral agreement requirements are already specifically designed to protect

students enrolled in distance education programs, the Department does not believe that the value associated with making such disclosures merits the additional burden on States that such a requirement would impose.

Changes: None.

Comments: One commenter stated that Department should explicitly prohibit multilateral agreements and ensure that the bilateral framework cannot be used as a backdoor to the nationwide proliferation of Workforce Pell-eligible distance education programs that lack any connection to State and local labor markets.

Discussion: Multilateral agreements are prohibited under this regulation. The Department believes that regulatory requirements ensuring that the Governor of each State that is part of a bilateral agreement has considered the occupation(s) or sector(s) on their State's list of areas that are high-skill, high-wage, or in-demand prevent the rapid proliferation of low-quality programs that do not meet labor needs in each State where the agreement applies.

Changes: None.

Value-Added Earnings: Interim Value-Added Earnings Metric (§ 690.95(a))

The Department sought feedback from commenters on whether an interim value-added earnings metric should be computed. We requested feedback on whether this was necessary to at the very least, make those applying for workforce programs aware of the potential earnings outcomes. The Department also requested comments on whether an eligible institution's workforce programs should be held accountable in any way to said interim earnings metric prior to the official calculation of the value-added earnings metric.

Comments: Several commenters recommended that the Department not adopt an interim value-added earnings metric. They noted that most eligible workforce programs will need time to refine implementation after the program is launched. The commenters did not believe there would be an appropriate interim metric that would be both meaningful and readily attainable for institutions or States during the program's early years.

One commenter stated that the Department should only go as far as developing an optional, nonbinding advisory tool or framework.

Discussion: The Department agrees with the commenters that establishing a value-added earnings framework during the initial several years of implementation of these provisions is

not feasible and would not provide an appropriate evaluation of the program's effectiveness or outcomes. We do not intend to establish a framework for an optional advisory process, although such an optional framework would be permitted if States or other non-Federal entities wish to establish such a process.

Changes: None.

Comments: One commenter recommended that the Department adopt an interim methodology for prison education programs because eligible workforce programs that enroll confined or incarcerated students beginning in 2026–27 will operate without any accountability benchmark until 2030–31. They noted this would create a four-year window during which programs with poor earnings outcomes could expand substantially at Pell Grant expense.

Discussion: The Department declines to create different interim calculations for specific programs, in this case, prison education programs. The administration of a separate calculation would be overly burdensome for both the Department and prison education programs. Note that, in order for a confined or incarcerated individual to receive a Pell Grant, the individual must be enrolled in a prison education program (PEP). A PEP has its own regulatory framework in 34 CFR 668 Subpart P. This includes approval by the Federal Bureau of Prisons, or State Department of Corrections and a best interest determination that must be concluded prior to the expiration of each postsecondary institution's program participation agreement. A PEP that is an eligible workforce program will need to comply with all the regulations under 34 CFR 668 Subpart P and 34 CFR 690 Subpart H. Therefore, there will be sufficient accountability for such program, even in the absence of an interim value-added earnings calculation.

Changes: None.

Comments: Under § 690.93(d)(9) the Department requires a Governor to take into consideration the cost of the program and the anticipated wages of the industry or occupation prior to the initial determination of the program's value-added earnings. One commenter stated that, given that States are already required to take such costs into consideration, the Department should require a Governor certification under § 690.93(d)(9) to include a published comparison of program tuition to median entry-level wages for the occupations the program prepares students for, using Bureau of Labor Statistics Occupational Employment and Wage Statistics (OEWS) data or

equivalent State data sources. The commenter asserted that this comparison should be made publicly available alongside the Governor's certification and updated annually.

Discussion: The Department declines to adopt the commenter's suggestion to require Governors to publish the evaluation under § 690.93(d)(9) publicly. The value-added earnings calculation is standardized across all eligible workforce programs, however, the Governor's review of eligible workforce programs prior to the 2030–31 award year is not standardized; each Governor will review eligible workforce programs in accordance with their own established standards and available data. Until the value-added earnings metric is calculated for the first time in 2030–31, we are extending as much flexibility to Governors as possible.

Changes: None.

Comments: Several commenters stated that the Department should encourage States to calculate interim value-added earnings for each eligible workforce program. Commenters said that the interim calculation should not affect Pell Grant eligibility.

One commenter noted that a data source that could be used for an interim value-added earnings calculation is State unemployment insurance (UI) systems. The commenter also stated that the Department should explore other sources of administrative data that may be able to produce interim value-added earnings estimates, such as the Internal Revenue Service (IRS) or the Post-Secondary Employment Outcomes (PSEO) data system. A separate commenter noted that, as an already existing data source, the interim calculations should be published in the College Scorecard.

A few other commenters encouraged the Department to create a standardized interim value-added earnings metric that requires eligible workforce programs to demonstrate their economic value to students before the full implementation of the value-added earnings calculation. Additionally, the Department should collect such data and make it publicly available at least annually, so that students, taxpayers, and researchers can access pertinent information on program approvals, earnings, and State interpretations of “high-skill, high-wage, or in-demand” occupations. The commenters additionally encouraged the Department to require States to submit proposals outlining how they plan to ensure compliance with the value-added earnings metric between July 1, 2026, and the 2030–31 award year, taking into account the data sources available to

them in their respective contexts. They believed these plans should include measures of program earnings at least annually, with directions on how the data are to be collected and incorporated into the State-level approval process. They further noted that the Department should require States to share plans for increasing their data capacity to be in full compliance with the value-added earnings metric by the end of the three-year interim period.

Discussion: We encourage States to calculate an interim value-added earnings metric using available administrative data, including but not limited to data available in State UI tax systems. If a Governor chooses to formally calculate interim value-added earnings, we also encourage that the result be published publicly. Only Governors have sufficient information to determine if their administrative data is sufficient to provide accurate, comprehensive information to consumers regarding interim outcomes for these programs.

Passing or failing such an interim metric would not affect Pell Grant eligibility for the eligible workforce program, but it would demonstrate to the Governor, institutions, and students whether the program is assisting completers in obtaining employment in high-wage fields or occupations. Interim calculations done by the Governor will not be submitted to the Department; therefore, it is unlikely that IRS or PSEO data can be used or publicly published. Use of Federal data would likely require a memorandum of understanding (MOU) to be ratified between the Department and the Department of Treasury or Census Bureau. Because the Department does not have the authority to require an interim value-added earnings calculation, and the Department does not know how many Governors will seek to create an interim value-added earnings calculation, nor how many would wish to rely on Federal data for those calculations, the Department believes that it would be impractical to commit to working with another Federal agency to furnish such data.

In the proposed and final regulations, we believe that we have sufficiently mitigated the downsides of the necessary delay of the value-added earnings calculation by requiring a Governor to certify that he or she will take into consideration the cost of the program and the anticipated wages of the industry or occupation prior to when the initial determination of the program's value-adding earnings is made under 34 CFR 690.95. This requirement was specifically added at

the request of non-Federal negotiators in acknowledgement of the period when a program would not be assessed using the value-added earnings metric. Finally, as an additional measure to improve public understanding of these programs as early as possible, the Department intends to publish for the general public the results of value-added earnings calculations, including median earnings, for all eligible workforce programs as soon as they become available.

The Department will not require States to submit proposals outlining how they plan to ensure compliance with an interim value-added earnings calculation, because we do not have the legal authority to require an interim calculation, nor subject a program's eligibility to an interim calculation. We also do not see a need to require States to share plans for increasing their data capacity to be in full compliance with the value-added earnings metric by the 2030–31 award year because the Department, rather than States or Governors, will calculate the value-added earnings.

Changes: None.

Value-Added Earnings: Exclusion of Certain Students in the Completer Cohort (§ 690.95(a))

Institutions must keep the tuition and fees for an eligible workforce program below the program's calculated value-added earnings. Value-added earnings are calculated by determining the difference between adjusted median earnings of program completers and 150 percent of the poverty guideline for a single individual. The Department sought feedback from the community on whether certain students should be excluded from the value-added earnings metric when assembling completer cohorts, including currently enrolled students.

Comments: Many commenters recommended excluding currently enrolled students from the value-added earnings metric. Commenters noted that eligible workforce programs are intended to lead to a credential that is stackable and portable. They argued that institutions should not be penalized when students choose to continue their postsecondary enrollment in other programs after graduating from an eligible workforce program, and that including such students would necessarily deflate program earnings outcomes since currently enrolled students generally earn less than students who are not enrolled.

Discussion: The Department is persuaded by the commenters who proposed excluding currently enrolled

students from the value-added earnings metric. In addition to the points raised about credential stackability, the Department believes that this decision is relatively administratively easy to execute, since the Department maintains enrollment data for students who received title IV, HEA funds and can therefore remove such students from a cohort.

There are significant differences between excluding currently enrolled students from the value-added earnings cohort and excluding them from the job placement rate. Notably, it would usually be much more difficult for institutions to abuse the value-added earnings metric by ensuring continued enrollment for potentially up to several years (until the earnings measurement year). This differs from the job placement metric, which until the 2028–29 award year is measured in the second quarter after the individual exits the program and would therefore be easier for institutions to potentially manipulate. Additionally, including enrolled students in the job placement metric reduces the likelihood that institutions could easily manipulate the value-added earnings metric by encouraging students to move directly from an eligible workforce program into another program.

Changes: The Department amends the regulations to include paragraph (l) under § 690.95 that states, "The Secretary excludes a student from the value-added earnings calculation if the Secretary determines that the student was enrolled in any other educational program at the institution or at another eligible institution during the calendar year for which the Secretary obtains earnings information under paragraphs (g) and (h) this section."

Comments: One commenter recommended three exclusions that reflect documented barriers specific to formerly confined or incarcerated individuals that are entirely outside of a postsecondary institution's control. The exclusions they commended included:

- Students subject to active occupational licensing restrictions. The commenter believed that counting these students in the value-added earnings cohort at suppressed wages punishes programs for the collateral consequences of the criminal justice system, not for poor educational outcomes;

- Students subject to active parole or probation conditions that restrict employment. The commenter contextualized this request by noting that supervision conditions frequently prohibit employment in certain

industries, with certain employers, or during certain hours; and

- Students who completed the program within a correctional facility and who were not released until more than 90 days after the cohort period ended. They noted, that for in-facility programs, students may complete training 6–18 months before their release date. Their post-completion employment opportunity depends entirely on their release date, not their completion date. Measuring earnings in the second quarter after program exit—when the student may still be incarcerated—structurally produces a zero-earnings result for students who have not had any opportunity to enter the labor market.

Discussion: The Department notes that, for all these recommendations, in the value-added earnings metric, a completer is not included in the median earnings until three full years after program completion. Also, an individual that is not employed is not included in the median earnings, as only individuals that are working are included in this metric.

We decline exclusions for currently or formerly incarcerated students from the value-added earnings metrics. Under the regulations for prison education programs at § 668.238(a)(7), postsecondary institutions are prohibited from enrolling a confined or incarcerated individual into PEPs designed to lead to licensure or employment for a specific job or occupation if such job or occupation typically involves prohibitions on the licensure or employment of formerly confined or incarcerated individuals.

It is incumbent upon the postsecondary institution to counsel a student regarding the viability of their post-graduation employment prospects in relation to any parole or probation conditions that restrict employment. If a completer still has a restriction or condition during the time when value-added earnings for the program is calculated then the program may not best suit the students' need. Pell Grant eligibility is limited; therefore, students should not exhaust eligibility on eligible workforce programs that may not lead to employment after completion.

We decline the third recommendation because the Department calculates the value-added earnings three years after completion of the eligible workforce program, which aligns with the first full tax year following the award year in which the student completed the eligible workforce program. Offering an eligible workforce program is voluntary; it is incumbent upon an institution to decide if they are able to offer an

eligible workforce program that also functions as a prison education program complying with all statutory and regulatory requirements.

Changes: None.

Comments: A few commenters stated that students that are currently enrolled should not be excluded from value-added earnings because the goal of an eligible workforce program is to get completers into the workforce as soon as possible, because value-added earnings are calculated using median earnings of those who completed the program three years prior, commenters believed that was an ample amount of time to secure employment.

Discussion: The Department disagrees with the commenter who urged the Department to continue including currently enrolled students in the value-added earnings metric. The Department did take the commenter's concern into consideration, and we chose not to exclude currently enrolled individuals from the placement rate calculation because, in addition to operational challenges we believe that would be substantially more likely to cause institutions to establish eligible workforce programs that are designed to move students into continued enrollment rather than the workforce.

Changes: The Department will exclude students enrolled in an educational program during the earnings measurement period, or the next full tax year, from median earnings when the value-added earnings metric is calculated.

Comments: One commenter recommended treating students that are currently enrolled as a partial value of 0.5. For example, students continuing in education would count for 0.5 in the denominator. The commenter argues that this would have the effect of tempering negative impacts from a subset of students directly transitioning to new programs out of an eligible workforce program, while also disincentivizing the creation of programs that funnel students into additional enrollment instead of the workforce.

Discussion: The Department does not believe we have the legal authority to treat a student that is enrolled in a program as a partial value. We decline the recommendation because the commenter did not provide any legislative or regulatory examples of such a proposal currently existing or being legally supportable.

While the Department believes that there is a basis for excluding certain individuals from the calculation from a program's value-adding earnings entirely, such as in the case of students

who completed a program and are now enrolled in another educational program, the statute does not provide any basis for weighting any individual (or category of individuals) included in the calculation of a program's value-adding earnings differently from any other individuals included in the same calculation. See HEA Sec.

481(b)(3)(A)(iv)(IV). Because of this, the Department believes that it would be improper to attempt to add such a factor into the calculation, much less determine what weighting value should be ascribed to currently enrolled students (or any other class of individuals).

Changes: None.

Comments: One commenter recommended that the Department exclude individuals in subsidized employment placements required by TANF, Medicaid work requirements, or court-ordered service programs.

Discussion: We decline to exclude these individuals. If graduates do not obtain employment, but instead need to access public benefits, that should be reflected in median earnings so as to accurately describe student outcomes.

Changes: None.

Comments: One commenter recommended that value-added earnings results be disaggregated and published by employment status (full-time/part-time) and by caregiver-identified status where data permit, so that programs serving predominantly part-time workers are evaluated in the appropriate context.

Discussion: We decline the commenter's recommendation. The statute does not distinguish between full-time or part-time positions. The purpose of receiving Pell Grant funds under the Workforce Pell provisions is to obtain high-wage employment after completing the program. The value-added earnings calculation is a standardized method for evaluating earnings. The Department has provided various exceptions that include exclusions for individuals who are not working. The Department does not believe that part-time employment can be accurately and consistently distinguished from employment that is low-wage, and we therefore do not believe it would be useful to further disaggregate value-added earnings results in the manner described by the commenter.

Changes: None.

Value-Added Earnings: Process for Combining Multiple Cohorts (§ 690.95(h))

The Department sought feedback from relevant stakeholders regarding the

process of computing the value-added earnings metric for programs with small numbers of students. The Department was particularly interested in feedback pertaining to its proposed method for aggregating multiple years of cohorts together to increase cohort sizes.

Comments: A few commenters proposed that the Department modify the method it uses to aggregate completers from small programs to reach the minimum cohort size needed for the value-added earnings calculation. Some commenters advocated that the Department use completers from the cohort period and up to four additional award years, for a maximum of five award years. One commenter argued that this process would be advantageous because programs in emerging fields (such as artificial intelligence (AI)) may have small cohort sizes initially. Alternatively, one commenter argued against this approach, noting that expanding the cohort aggregation process to include additional years—beyond four years of program completers—would not realistically represent the present-day outcomes of the program.

Other commenters expressed concern that the cohort aggregation process proposed for calculating the value-added earnings metric does not match the cohort aggregation process in the recently released STATS and Earnings Accountability NPRM (91 FR 21088), published April 20, 2026. One commenter noted that maintaining different cohort aggregation processes will create unnecessary administrative burden on the Department. Another commenter noted that consistent cohort aggregation processes are critical for giving students clear and consistent information about program outcomes. Both commenters advocated for the simpler two-year and four-year cohort aggregation structure that was previously used in the 2014 and 2023 gainful employment regulations. Commenters noted that this approach would be simpler, reduce burden on the Department, better facilitate comparability of earnings across time, and reduce year-to-year variability in how a program's earnings are measured.

Another commenter was similarly concerned about the misalignment in cohort aggregation processes across this regulation and the proposed cohort aggregation process from the consensus language for the STATS and Earnings Accountability regulations. To address this, the commenter recommended changing the cohort aggregation process to match the process in the recently released STATS and Earnings

Accountability NPRM. Under this approach, the commenter proposed that the Department could aggregate cohorts at the six-digit Classification of Instructional Program (CIP) code level across eight years to reach a minimum threshold of 30 completers for calculating value-added earnings. Should that number not be reached, completers at the four-digit CIP code and credential level would be added. If the minimum number of completers was still not reached, then the process would repeat at the two-digit CIP code and credential level.

Discussion: The Department agrees with commenters who suggested simplifying and aligning the cohort aggregation process with the processes used in prior regulations. The Department disagrees with commenters who suggested adding a fifth award year to the cohort aggregation process and with commenters who suggested aggregating cohorts to the four-digit and two-digit CIP code level. The Department considered several factors when making these determinations.

First, the Department agrees that a revised process will reduce administrative burden. The current cohort aggregation process included four individual steps, iteratively aggregating completers from the cohort period and three prior award years. The Department agrees with commenters who contemplated combining the last two steps into a single step (adding completers from the second and third prior award years at the same time, rather than individually). Such an approach reduces the amount of burden on the Department when creating program completer lists, since it would not have to design an individual process to add completers from the second and third prior award years individually.

Second, the Department agrees that aligning the cohort aggregation processes will provide clearer information to students. The simplified cohort aggregation process contemplated by commenters will better ensure that earnings information is consistently reported to students, since the Department would no longer need to maintain two separate cohort aggregation processes. Furthermore, a streamlined process will reduce complexity for the Department, who would otherwise have to design and administer two distinct cohort aggregation processes.

Third, the Department agrees that a streamlined process will improve cohort consistency over time, allowing for more consistent earnings comparisons over time. The simplified cohort aggregation process contemplated by

commenters will enhance the likelihood that cohorts are consistently aggregated to the same level each year, thereby reducing the possibility of year-to-year fluctuations due to differences in cohorts that are included in any one particular year.

Lastly, the Department agrees with commenters who argued to align the cohort aggregation processes from this regulation with the cohort aggregation process used in the STATS and Earnings Accountability NPRM. As part of this alignment process, the Department believes it is necessary to lower the cohort aggregation threshold for these regulations in this final rule from 50 to 30, which will allow the Department to use the same cohort aggregation process across both regulations, thereby forming consistent cohorts.

The Department disagrees with commenters who proposed adding a fifth year to the cohort aggregation process and with commenters who proposed aggregating up to the four-digit and two-digit CIP code level. Aggregating for additional years beyond the fourth prior year risks reducing the ability of the Department to measure a program's present-day outcomes. Similarly, because eligible workforce programs are relatively short in duration, the Department is concerned that aggregating cohorts using four-digit and two-digit CIP codes will risk combining program outcomes that are from entirely different types of programs, which may unfairly benefit or disadvantage certain types of programs.

Changes: The Department will update the regulations under § 690.95(h) to account for an additional year when combining cohorts. We amend paragraph (h)(1), (h)(2), (h)(3), strike paragraph (h)(4), and redesignate (h)(5) to (h)(4) as follows:

(h)(1) If the final list of students who completed the program during the cohort period includes at least 30 students, the Secretary sends information about those individuals to the Federal agency with earnings data;

(2) If the final list of students who completed the program during the cohort period does not include at least 30 students, the Secretary adds students who completed the same program during the first award year prior to the cohort period. If the combined number of completers from both award years includes at least 30 students, the Secretary sends information about those individuals to the Federal agency with earnings data;

(3) If the final list of students who completed the program during the cohort period and the first award year

prior to the cohort period does not include at least 30 students, the Secretary adds students who completed the same program during the second and third award years prior to the cohort period. If the combined number of completers from all four award years includes at least 30 students, the Secretary sends information about those individuals to the Federal agency with earnings data;

(4) If the final list of students who completed the program during the cohort period and the first, second, and third award years prior to the cohort period does not include at least 30 students, the Secretary does not calculate value-added earnings for the program for that award year.

Comments: In response to the directed question, one commenter asked if the Department needs to—or should—create carveouts for certain fields or rural public institutions. The commenter used an example of a Hydrogeology program, which may graduate less than 50 students over a three-year period. The commenter also noted that, for such programs, two or three years of program or student data is needed before they can understand what the right ‘regulatory specificity’ is. They also asked if, for such programs, language could be built that functions more as a temporary framework or guidance that can be modified in the future.

Discussion: The Department disagrees with the commenter. Using enrollment in undergraduate certificate programs, the Department estimated the size of existing short-term certificate programs. For that reason, we do not believe it is necessary to wait for two to three years of program or student data, as the commenter requested, to determine an appropriate cohort aggregation procedure. Furthermore, the Department does not believe it has the authority to delay the implementation of these regulations due to the hypothetical example raised by the commenter, nor does it have the authority to create exemptions to the cohort aggregation process for specific institutions or programs based on their location.

Changes: None.

Value-Added Earnings: Programs Serving Out-of-State Students (§ 690.95(k))

The Department sought feedback on its proposal that, if more than 50 percent of students enrolled in an eligible workforce program are not located in the State in which the eligible institution offering the program is located, the Department will not adjust the program’s median earnings by the State and metropolitan area regional

price parities of the Bureau of Economic Analysis when calculating the value-added earnings measurement.

Comments: While some commenters supported the Department’s position, several commenters disagreed with the Department’s proposal. These commenters stated that the Department should not default to national median earnings for programs serving mobile or out-of-State students without an approved State alternative methodology, as national benchmarks may not reflect the economic value of programs aligned with States’ regional labor markets. One commenter suggested that the Department allow institutions to appeal a determination regarding the student location if the institution can prove that more than 50 percent of students in the eligible workforce program are located in the State in which the eligible institution offering the program is located. They described this appeal as strictly limited to institutions with more than 50 percent of students outside the State. In the instance of an appeal, the commenters proposed that institutions could use IRS data to confirm the students’ location.

Discussion: We decline the commenter’s recommendation. We believe that adding an appeals process would add significant, additional burden to the process. The standardized method that requires using the student’s address or State of legal residence as reported on their Free Application for Federal Student Aid (FAFSA®) form at the time of enrollment will result in consistent application of the regulation.

During negotiated rulemaking, the Department proposed to use information provided on the FAFSA form by an applicant regarding their permanent address as the means of determining the State in which the student is located. We chose this method in part because of precedence for the use of this method in the Financial Value Transparency and Gainful Employment metric calculation process, with the attendant savings in operational costs, as well as because the Department’s strong view is that institutions should not be granted the ability to interpret an individual’s true “location” due to the likelihood that some institutions would use such discretion to place students in a State that would be most beneficial to the program’s value-added earnings calculation. For this reason, the Department continues to believe that the best indication of a permanent location must be provided by the individuals themselves—who do not have an incentive to choose a State that best benefits the program and the

institution—and not by institutions, which do have such an incentive.

Changes: None.

Comments: One commenter stated that the approach introduces a separate structure for determining student location that may not align with these established institutional determinations. They noted that the reported State of residence on the FAFSA form may not reflect a student’s actual physical location during enrollment or the labor market in which the student ultimately earns wages. As a result, institutions may face conflicting Federal expectations regarding how student location is defined and applied. The commenter recommended that the Department:

- Define determination of “student location” consistently across 690.95(k), 600.9(c)(2), and 668.43(c)(3)(ii), or explicitly distinguish the purposes and definitions if differences are necessary.
- Permit institutions to rely on student location determinations already made for compliance with 600.9(c)(2) and 668.43(c)(3)(ii), where those determinations are based on documented and consistently applied institutional policies; and
- Provide clear guidance on how discrepancies between Federal data sources and institutional records will be resolved, including which source will be considered authoritative for purposes of value-added earnings calculations.

Another commenter recommended that the Department allow institutions to use verified institutional records to determine student location, where available. In addition, they believed the Department should consider flexible reporting options for students experiencing homelessness, such as allowing institutions to identify students as in-State or out-of-State based on enrollment or service data, rather than relying solely on addresses reported on the FAFSA form. The commenter stated that FAFSA data are not a reliable location indicator for students experiencing homelessness.

Discussion: We decline the commenters’ suggestions. The standardized method of using the student’s address or State of legal residence as reported on their FAFSA form at the time of enrollment, will result in consistent application of the regulation. That said, the Department appreciates these comments and commits to evaluating its instructions for students to enter a permanent address on the FAFSA form in light of its importance for the process of calculating value-added earnings and other uses for the STATS and Earnings Accountability process.

The regulations under 34 CFR 600.9(c)(2), and 668.43(c)(3)(ii) were designed for a different purpose than these requirements; specifically, those regulations were designed to establish where an individual is located for State authorization purposes and for purposes of determining whether an institution was required to ensure that licensing requirements for a particular State were met if a student was located in that State. These requirements give the institution more control over the process of determining a student's location for this purpose, and the Department continues to believe that they are reasonable for that purpose to ensure that a program does not lose eligibility due to a technicality. Conversely, these regulations pertain to a process for determining where a student is located for purposes of the value-added earnings calculation, where the benefit of using an individual's indication of their personal address outweighs the benefit of an institution having control over that process, particularly given the potential for institutional gaming of that process, as described in the Department's response to the comment above.

Furthermore, the Department does not believe that a clear, consistent method exists to establish the specific location of an individual who is homeless, and the potential benefit of establishing a complicated framework for addressing such cases for the purposes of the value-added earnings calculation does not outweigh the significant costs, complexity, and burden associated with establishing an alternative process for determining their location. Many homeless individuals change locations within the same State and lack access to transportation; others may shift location across State lines and lack a permanent location.

Changes: None.

Responses to Comments Received on NPRM

General Comments

Comments: Many commenters urged the Department to strengthen engagement with the Department of Labor, Department of Health and Human Services, the Small Business Administration, employers, businesses, adult education providers, State higher educational officials, correctional facilities, State workforce boards, Governors, US territories, accrediting agencies, nonprofit workforce organizations, organizations that work with unaccompanied homeless youth, postsecondary institutions, and other stakeholders to promote the successful

implementation of eligible workforce programs.

Commenters requested the Department release sub regulatory guidance on all provisions in the final regulations, including clarification on the Department of Labor's (DOL) role in the rules and if DOL or the Department of Education has the ultimate authority over eligible workforce programs. A few commenters also requested a unified data reporting pathway so that institutions report program data once, to avoid having to report to both DOL and the Department of Education.

Many commenters requested more guidance on other provisions outside of the regulations that impact student, program, and institutional eligibility, including areas such as satisfactory academic progress, ability to benefit, eligible career pathway programs, prison education programs, and written arrangements. Commenters also requested examples of how Governors will calculate outcome measures. Commenters recommended additional written guidance be provided through various publications including the Federal Student Aid (FSA) Handbook, frequently asked questions, Dear Colleague Letters, or Electronic Announcements. They also recommended that the Department conduct webinars and workshops with stakeholders.

Several commenters also stressed that the Department prioritize the timely release of final regulations, release technical specifications, and provide interim guidance to support implementation. Commenters also requested guidance, systems, and communications tailored to the new eligible workforce program student population, particularly those in PEPs and in the military. Commenters warned that although each proposed eligible workforce program requirement may seem reasonable on its own, the combined effect could sharply reduce the number of programs able or willing to participate, especially early on. The commenters expressed concern that programs that are high-quality but have limited administrative capacity may be discouraged from applying under a brand-new, fast-moving eligibility system. The commenters claimed that many States may still be determining how to structure and resource their new responsibilities, and that the lack of clear Federal guidance may increase the likelihood of inconsistent implementation, delays, and confusion for students. The commenters believed this uncertainty may ultimately deter institutions from seeking approval,

which limits the intent and goals of eligible workforce programs.

Discussion: The Department commits to continue collaboration with stakeholders, monitor implementation closely, and prepare additional guidance or resources to ensure consistent and timely access to Pell Grants in eligible workforce programs across all States and institutions. The Department believes this final regulation provides additional clarity and guidance and we commit to providing follow-up resources as needed by eligible workforce programs writ large. The structure of these regulations provides eligible workforce programs with the time and flexibility needed to adapt their programs to meet the requirements of this final rule.

Changes: None.

Comments: A few commenters expressed concern that expanding Pell Grant eligibility to workforce programs could increase overall Pell Grant expenditures, particularly during a time when the Pell Grant program is projected to face funding shortfalls. The commenter urged the Department to work closely with Congress to secure sustainable long-term funding for both traditional Pell Grants and Pell Grants funding for eligible workforce programs. The commenter also suggested several potential policy changes for broader Pell Grant reform, including modifying the Pell Grant eligibility formula to better target aid to the neediest students, redesigning the year-round Pell Grant model to distribute benefits more broadly, and restructuring Pell Grants as a multiyear grant to promote persistence and completion.

Discussion: The Department recognizes that the statutory expansion of Pell Grant eligibility for eligible workforce programs may influence program expenditures, as estimated in Table 4.1 in the Regulatory Impact Analysis. The Department will continue to work closely with Congress, which holds the authority to appropriate additional resources, and will provide timely information to support informed budgetary decision-making. With respect to the commenters' suggested broader reforms, such as modifying the Pell Grant eligibility formula, redesigning the year-round Pell Grant structure, or establishing multiyear Pell Grant awards, these policy considerations extend beyond the scope of this rulemaking. Any such changes would require separate statutory or regulatory action and cannot be adopted within this final rule.

Changes: None.

Comments: One commenter was particularly concerned with the

influence of foreign adversaries over the United States. The commenter was acutely interested in the role eligible workforce programs could play in national defense. For example, the commenter stated that the Department should create more checks to ensure that foreign adversaries do not have undue influence in eligible workforce programs, such as requiring the Department to create a National Security Workforce Priority list and a Workforce Pell Grant Foreign Payment Monitoring Protocol. The commenter also suggested the Department conduct threat assessments of eligible workforce programs in collaboration with the Federal Bureau of Investigations and annual consultation with the Department of War. The commenter was also interested in how artificial intelligence could be used by foreign adversaries for economic warfare.

Finally, the commenter stated that the Department did not consider several additional statutes when drafting the NPRM and must add policies, frameworks, and reviews to the final regulation that consider applicable statutes including the CHIPS Act, the Foreign Agents Registration Act, the Economic Espionage Act, Federal Information Technology Acquisition Reform Act, Defend Trade Secrets Act, the Wolf Amendments framework, Bank Secrecy Act, International Emergency Economic Powers Act, Evidence-Based Policymaking Act, Federal Acquisition Regulations, and the Government Performance and Results Act.

Discussion: The Department declines the commenter's requests. Throughout the 60-comment submission that included hundreds of demands, the commenter did not provide one example of current foreign influence that would warrant inclusion of the recommendations in the final rule. While the commenter did mention the Confucius Institutes, as of 2023, according to the Government Accountability Office, there were fewer than five Confucius Institutes still active within the United States. Most importantly, an eligible workforce program cannot be offered by a Confucius Institute because it is not an eligible institution. The Department expects postsecondary institutions to comply with all applicable Federal laws. The Department does not have enforcement authority over most of the Federal laws the commenter included in the submission. The appropriate Federal agency with jurisdiction will oversee proper enforcement of such laws and the Department is committed to working with any Federal agency that seeks assistance in enforcing Federal laws.

Section 117 of the HEA requires institutions of higher education to report covered gifts and contracts from foreign entities to the Department. We recently released guidance on a new Reporting Portal for Reporting of Foreign Gifts and Contracts under Section 117 of the HEA to increase transparency and oversight of these transactions.⁷

Changes: None.

Comments: Two commenters urged the Department to make eligible workforce programs effective immediately, rather than waiting until July 2026. Drawing on personal experience with months-long WIOA processing delays after being laid off, one commenter argued that the current system keeps qualified workers from starting training in a timely manner. The commenter further argued that accelerating Pell Grants for eligible workforce programs would allow displaced workers to enroll directly in short-term college programs without having to navigate slow, burdensome approval pipelines.

Discussion: The Department appreciates the commenter's experience and agrees that timely access to high-quality workforce training is critical for displaced workers seeking to re-enter the labor market. However, the effective date is shaped by statutory requirements, system-readiness constraints, and the timeline necessary for States and institutions to build and certify eligible workforce programs.

Changes: None.

Comments: One commenter urged the Department to require institutions offering eligible workforce programs to proactively inform students about the full range of Federal, State, and local public benefits and supports for which they may be eligible. The commenter asserted that, because eligible workforce program students are low-income and face substantial non-tuition costs and often cannot access Federal student loans, students may face significant financial gaps that could push them toward predatory private loans or excessive work hours. The commenter recommended requiring institutions to provide clear benefits information to all eligible workforce program students; designate a staff member or office responsible for connecting them to benefits such as SNAP, TANF, CCDF, Medicaid, the Earned Income Tax

Credit, and the Child Tax Credit; and report how they are informing students of such options.

Discussion: We recognize that students in short-term programs may experience non-tuition costs. We also agree that students may benefit from information about Federal, State, and local public benefit programs for which they may be eligible. At the same time, the Department declines to establish a new regulatory requirement that institutions provide individualized benefits counseling, designate a dedicated benefits access office, or report benefits outreach activities as a condition of Pell Grant funding for eligible workforce programs. The statutory framework for eligible workforce programs under the WFTCA does not provide authority for the Department to impose such requirements on institutions, nor does it require institutions to administer, screen for, or coordinate eligibility across public benefits such as SNAP, TANF, CCDF, Medicaid, or tax credits. These benefits are administered under separate Federal and State authorities, each with their own eligibility structures and verification processes. Nevertheless, we reiterate that institutions retain broad discretion to offer student support services, including referrals to public benefit programs, financial coaching, or emergency aid, as part of their existing student services infrastructure. Many institutions already assist students in connecting to external supports, and we encourage institutions and States to continue these efforts where feasible.

Changes: None.

Comments: A few commenters urged the Department to adopt strong oversight and safeguards as it implements eligible workforce programs. The commenters warned that expanding Pell Grants to short-term workforce programs introduces significant risks, as similar expansions in the past enabled predatory, low-quality, high-cost programs, particularly among for-profit institutions and newer online credential providers (e.g., tech bootcamps, OPM-run programs), to prey on unsuspecting students.

The commenters cited several examples of abuse, including deceptive marketing, inflated job-placement rates, misuse of income-share agreements, lack of transparency, weak instruction, and revenue-sharing arrangements that divert Federal funds away from accredited institutions. The commenters argued that strict guardrails are necessary to ensure eligible workforce programs will not supercharge the ability for low-quality educational

⁷ Electronic Announcement General-25-46: <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2025-12-01/new-reporting-portal-reporting-foreign-gifts-and-contracts-under-section-117-higher-education-act-1965-implementation-planned-january-2026-and-reminder-january-reporting-deadline>.

providers to participate in potentially predatory behaviors, reiterating that student protection must be the Department's priority.

Discussion: Safeguarding students and protecting Federal funds remain central priorities for the Department.

As described throughout this final rule, the Department has established a comprehensive accountability framework for eligible workforce programs designed to prevent low-quality or predatory programs from gaining or maintaining Pell Grant eligibility. These safeguards include Governor certification requirements under § 690.93 to ensure programs align with high-skill, high-wage, or in-demand occupations, Secretary-determined performance requirements under § 690.94, including minimum completion and job placement thresholds, a value-added earnings metric under § 690.95 to verify that programs lead to earnings meaningfully higher than the poverty line, clear limitations on written arrangements and restrictions on the role of ineligible entities, consistent with the Department's broader oversight of third-party program delivery, and prohibitions on reestablishing failing or substantially similar programs for two years under § 690.97. Collectively, these measures are intended to ensure that only high-quality workforce programs serving students' interests can receive Pell Grant funds, while preventing providers, whether for-profit, online, or operating through contractual arrangements, from exploiting the new program structure.

Changes: None.

Comments: One commenter argued that, for eligible workforce programs to receive Pell Grants and be effective, the Department must be fully functional and capable of implementing the program. The commenter expressed strong concern that the dismantling of the Department will undermine the Department's ability to carry out the law. They criticized the reductions in force and efforts to move Federal Student Aid operations to the Department of the Treasury and note that these structural changes were not addressed in the NPRM.

Alternatively, a different commenter supported the Department's efforts to fully implement the Workforce Pell Grant provisions at current staffing levels. The commenter stated that the Department should leverage its existing capacity which will promote continuity, reduce administrative fragmentation, and minimize implementation risk. The commenter stated that the introduction of new personnel is neither necessary

nor wise, particularly because it could cause duplicative functions or dilute accountability within established operational structures.

Discussion: The Department disagrees with the commenter's assertion that it does not have sufficient staff to implement the Workforce Pell Grant law and regulations. Furthermore, the Department affirms its commitment to implementing eligible workforce programs faithfully, transparently, and in accordance with all statutory requirements. We will continue to coordinate across offices, provide technical assistance to States, institutions, and accrediting agencies, and maintain the infrastructure necessary to safeguard title IV, HEA funds and support students' access to high-quality workforce training programs. This commitment will remain regardless of any operational shifts.

The Department thanks the other commenter for their support of our efforts to implement the Workforce Pell Grant provisions under current operational conditions.

Changes: None.

Comments: One commenter recommended the Department to clearly state that developing eligible workforce programs is voluntary for both States and institutions. The commenter also requested that programs be allowed to withdraw from participation for any reason, not just solely due to failure to meet eligibility requirements.

Discussion: Developing eligible workforce programs is indeed voluntary for both States and institutions. States are not required to approve eligible workforce programs, and institutions are not required to seek approval or offer eligible workforce programs. This voluntary approach is consistent with the statutory structure, which allows States and institutions to determine whether participation aligns with their workforce development strategies and institutional priorities. Regarding program withdrawal, the Department agrees that institutions should have the flexibility to discontinue eligible workforce programs for any reason. The regulations do not restrict withdrawal solely to cases of failure to meet eligibility requirements. Institutions may choose to withdraw an eligible workforce program from participation in the Pell Grant program at their discretion, whether due to changes in institutional priorities, program restructuring, or other considerations. If a program is withdrawn, the institution must follow the appropriate notification and reporting procedures to ensure compliance with Federal requirements

and to protect the interests of enrolled students.

Changes: None.

Comments: A few commenters recommended the development of a centralized, public-facing list of eligible workforce programs approved for participation in the Pell Grant program. One commenter asserted that such a list would ensure students are well supported in navigating these new programs and opportunities. The commenter recommended that the Department utilize the Federal Student Aid Data Center to provide students and employees with a trusted resource to verify the program's eligibility. Another commenter requested that the list be searchable by State, occupation, and credential type.

Discussion: While the Department declines to add specific regulatory language to this rule regarding the commenter's recommendation, we do commit to exploring the possibility of releasing information about approved eligible workforce programs as soon as it becomes available. Additionally, in the preamble to the NPRM, we strongly encouraged Governors to maintain and publish a list of eligible workforce programs in their State.

The Committee on Appropriations for Departments of Labor, Health and Human Services, and Education, and related agencies directed the Department to collect and report to Congress a complete list of institutions of higher education and programs that have gained eligibility for Workforce Pell Grants, and the Department will explore the possibility of releasing such information to the broader public when it provides the information to Congress.

Changes: None.

Comments: Several commenters requested that the Department require specific curriculum or instruction in every eligible workforce program, such as problem solving and teamwork.

Discussion: The Department does not regulate, control, or direct the curriculum and instructional materials used by higher education institutions and is primarily concerned with the eligible workforce program meeting our eligibility requirements outlined in 34 CFR 690 Subpart H. Governors will determine in-demand occupations, which will focus the institutions' program offerings in areas that will help graduates gain high-wage employment.

Changes: None.

General Agreement With the Proposed Regulations

Comments: Many commenters expressed appreciation for the Department's efforts to expand access to

Pell Grants through the eligible workforce program initiative. A few commenters strongly supported the inclusion of Registered Apprenticeships within this framework, with one noting that recognizing Registered Apprenticeship completion as a recognized postsecondary credential and enabling related instruction to qualify for Pell Grant funding in eligible workforce programs represents an important step toward strengthening workforce development in skilled trades.

Several commenters supported using Pell Grants to cover transportation programs, noting that the cost of these programs can be unaffordable for many students. The commenters believed this final rule will help address critical workforce shortages in essential industries like trucking.

Discussion: The Department thanks the commenters for their support.

Changes: None.

General Opposition to the Proposed Regulations

Comments: One commenter expressed opposition to government funding for higher education, arguing that it leads to higher costs. Instead, the commenter suggested providing free, public continuing education for workforce training or higher education.

Discussion: Congress has expressly directed the Department to implement statutory changes that expand Pell Grant eligibility to eligible workforce programs and to establish accountability requirements for those programs. Decisions about replacing or restructuring Federal student financial aid programs fall within Congress's legislative authority, not the Department's regulatory authority.

Changes: None.

Comments: One commenter erroneously believed Pell Grants would be eliminated with this final rule.

Discussion: This final rule does not eliminate the Pell Grant program. Rather, it allows students to receive Pell Grants for programs that were previously ineligible. These programs, referred to as "eligible workforce programs," are intended to be high-quality, performance-based, short-term programs that support America's workforce needs.

Changes: None.

Rulemaking

Comments: One commenter stated that Congress would have put a waiver to the master calendar requirements in statute, if its intention was for the Department to implement these regulations on July 1, 2026. Given this,

the commenter believed that the final rules issued in 2026 should have an implementation date of July 1, 2027, at the earliest. The commenter stated that abiding by the master calendar gives institutions the proper amount of time to prepare for the changes implemented by the Department, adequately inform students and families of the changes to their student aid, and plan for the smoothest possible transition.

Discussion: We decline the commenter's suggestion. Section 401(k) of the HEA states that "For the award year beginning on July 1, 2026, and each subsequent award year, the Secretary shall award grants (to be known as 'Workforce Pell Grants') to eligible students under paragraph (2) in accordance with this subsection." We intend to implement these final regulations on July 1, 2026.

Changes: None.

Comments: Several commenters were pleased with the negotiated rulemaking process. However, one commenter urged the Department to provide more time for future negotiated rulemakings so that appointed experts can fully understand the issues, consult stakeholders, and work toward consensus. The commenter also stressed the need for broader and more comprehensive institutional representation on the negotiating committee.

Discussion: The Department strives to balance the need for thorough deliberation with statutory timelines and administrative requirements, and we select negotiators with the goal of ensuring balanced representation across the communities most affected by the regulations. We will continue to apply this principle in future rulemakings to ensure negotiators have sufficient time to review materials, consult with stakeholders, and engage meaningfully in the discussions.

Changes: None.

Pell Grant Ineligibility Due to Non-Federal Grant or Scholarship Assistance (§ 690.5(a) and (b))

Comments: There was a general understanding that this regulation implements the new provision in the HEA established by the WFTCA. One commenter agreed with the provision because it would be a responsible allocation of Federal dollars by declining Pell Grants in cases where students' cost of attendance is already met and using those funds for students who have need instead.

Discussion: The Department thanks commenters for their understanding of the issue.

Changes: None.

Comments: A few commenters urged the Department to clarify how the new Pell Grant ineligibility rule for students who receive non-Federal grants equaling or exceeding their cost of attendance will interact with State "last-dollar" grant programs and Promise programs. One commenter asked the Department to confirm that these programs may continue operating as last-dollar aid without jeopardizing Pell Grant eligibility as long as total non-Federal aid remains below COA. The commenter noted that the NPRM's request for ideas to prevent "gaming" is unnecessary because the statute already provides adequate oversight mechanisms, and Congress did not create new reporting or enforcement requirements for this provision. The commenter also highlighted potential inequities: institutions can adjust their own aid to avoid overawards, but they cannot adjust private or external scholarships which means students with identical financial circumstances could receive different Pell Grant outcomes. The commenter recommended the Department create clear guidance and communication materials for external scholarship providers.

Additionally, the commenter asked for clarification surrounding how WIOA funds should be treated under the new rule, given WIOA's historical use as last-dollar aid. The commenter urged the Department to explicitly exclude WIOA funding from counting as non-Federal aid for Pell Grant eligibility purposes. Finally, the commenter requested clarification on how to handle cases where a student's Pell Grant eligibility increases after all aid has been disbursed and non-Federal aid already meets COA. The commenter asked the Department to specify whether institutions may disburse the additional Pell Grant amount or must first reduce non-Federal aid before releasing additional Pell Grant funds.

Other commenters also requested that WIOA funds be allowed to work together with Pell Grants and that the Department publish guidance explaining how to braid such funding effectively while minimizing administrative burden on institutions and students. Commenters encouraged the Department of Education to build on its collaboration with the DOL in this effort.

One commenter was unclear about how grant and scholarship assistance would be defined in the regulations.

Discussion: The Department clarifies that grant and scholarship assistance is aid that does not have to be repaid. It encompasses dollars that are explicitly

called grants and scholarships as well as funds that are not, such as tuition reimbursements. “Last-dollar” grant and scholarship programs, including WIOA funds, will continue to be packaged as they have been; the difference is that now once all non-Federal grant and scholarship aid equals or exceeds the COA, the student becomes ineligible for a Pell grant. In many cases, the relevance of this provision will be clear early—for example, students who receive a “full-ride” scholarship will not be eligible for a Pell Grant, and the institution will be aware of that at the beginning of the year. When non-Federal grants and scholarships accumulate over the award year, the institution will need to check with each receipt of funds to ensure that they do not total an amount that equals or exceeds the COA; if it does and Pell Grant funds remain to be disbursed, the institution will need to adjust the amount to below the COA for the student to retain the Pell Grant. Barring that, the Pell Grant must be returned, as explained in § 690.80. Note that institutions are used to monitoring late-arriving aid because they are required to address potential overpayments at any time during the payment period.⁸

Because WIOA funds are provided through the DOL, they are considered Federal dollars, even though they are distributed by the States, and do not count toward the total of non-Federal scholarship and grant aid. To the extent that any funds are directly traceable to the U.S. Government, those would also be Federal dollars that do not count toward the relevant total. If funds are directly traceable to States or other non-Federal sources, they would count toward the total and in a sufficient amount will result in Pell Grant ineligibility.

Changes: None.

Comments: Several commenters expressed concern that the new Pell Grant exclusion might have the harmful effect of discouraging existing support from non-Federal sources or would otherwise interrupt the flow of that support. The types of support referenced by the commenters included employer sponsorships, philanthropic assistance, and local workforce development funding. The commenters stated that participants in workforce training programs have costs beyond tuition and fees, including transportation, childcare, and housing, etc., that are associated with

participating in training. They claimed that removing Pell Grant eligibility would especially harm needy students, who have earned their scholarships and grants, while allowing Pell Grants to work alongside other funds would ensure those students can complete their programs successfully.

Some commenters thought that the new rule effectively changed Pell Grants from being “first-dollar” to “last-dollar” aid. They noted that this would be a significant change because it would replace Federal entitlement aid with private and institutional funds.

Some commenters misunderstood the provision and its implications. For example, one worried that the rule could unintentionally penalize programs that are most effectively serving participants facing the greatest barriers. They offered an example in which a student who received transportation support, tool allowances, and a housing stipend from a State emergency assistance program (all non-Federal grant or scholarship aid) “could be deemed ineligible for Pell if the combined amount approaches their COA, even if none of these funds are paying for training itself.”

One of the commenters requested that there be a carveout for defense worker educational benefits and that State workforce development grants specifically designed to supplement Federal financial aid be excluded from the calculation if the State grant’s authorizing legislation includes a Federal aid preservation clause.

Another commenter asked that State assistance that is designed to offset a component of the COA be excluded from this determination.

Finally, one commenter asserted that high-need populations frequently receive non-Federal aid exceeding the COA “by design,” which, under the new law and regulation, would cause them to lose Pell Grant eligibility.

Discussion: The Department does not agree that funders would be inclined to retract aid for students who become ineligible for Pell Grants because their COA is covered. A logical conclusion on the part of funding providers would be that their funding is even more important given that the student will not receive a Pell Grant. The opposite case would seem to make such funding more likely to disappear: if the COA were mostly or entirely covered by a Pell Grant, the student would then be in less need of the non-Federal funding.

Under the new law and regulations, scholarship providers, States, employers, institutions, and any other non-Federal funder of higher education are free to provide students with as

much grant or scholarship assistance as they desire, to include more than the student’s COA if they choose, but students will not be eligible to receive a Pell Grant in those cases. The implication of the new law is clear: Pell Grants are intended to cover the costs of higher education for needy students; they are not intended to be a financial reward for students who have no need, and, by definition, students whose entire COA has been met or exceeded by non-Federal grant or scholarship dollars have no financial need or unmet educational expenses as defined under the law.

Also, some commenters demonstrated a lack of understanding of exactly what the COA entails, which is more than just tuition and fees. It typically includes an allotment for food, housing, transportation, and childcare, as well as other costs that are associated with obtaining an education. When the COA is fully funded, the assumption is that all costs that will be incurred while the student is enrolled in the program will be met. When the normal COA for a student in a given program does not anticipate special circumstances and there are extra costs, such as abnormally high medical bills to the student or a family member, financial aid administrators at the school are permitted to exercise PJ to adjust for such circumstances and increase the COA if warranted.

Regarding the commenter who worried that the rule could unintentionally penalize programs that are most effectively serving participants facing the greatest barriers, their logic was flawed in that, if the combined non-Federal funds only approach the COA but do not equal or exceed it, the Pell Grant remains intact. Indeed, in the example the commenter provided, if none of the funds are paying for training—which is the largest or second-largest element in the COA—it is a given that the combined aid is not close to reaching the COA.

The reasoning above demonstrates both the value and importance of the new Pell Grant exclusion. When students’ COA has been met or exceeded (with dollars that they do not have to pay back or work for), the total cost of obtaining their education is covered and more funding is unnecessary.

Further, the Department notes that the exclusion is related to non-Federal grant and scholarship aid. The Department wrote in the NPRM that we also propose to clarify that grant or scholarship assistance from non-Federal sources does not include sources that Section 480(i) of the HEA excludes from “other

⁸ Federal Student Aid Handbook—Volume 3, Chapter 3—Packaging Aid—https://fsapartners.ed.gov/knowledge-center/fsa-handbook/2025-2026/vol3/ch3-packaging-aid#pid_1455637.

financial assistance.” We codified this in § 690.5(b), and it includes tax credits under section 25A of the Internal Revenue Code (IRC), distributions under section 529 of the IRC or Coverdell Education Savings Accounts, and emergency financial assistance provided to students for unexpected expenses that are a component of the cost of attendance. We do not have the authority to make other exclusions recommended by the commenter that are not prescribed in statute. The law does not provide carveouts for State grants or defense worker education benefits.

The Department takes issue with the commenters’ claim that Pell Grants are no longer “first-dollar” aid. This is not the case. Pell Grants (when not automatically determined according to HEA rules) are still calculated by subtracting the Student Aid Index from the maximum Pell Grant for the award year; other aid is not accounted for. What the new law and regulations establish is that, when students’ combined non-Federal grant and scholarship aid is equal to or exceeds the COA, the student will receive no Pell Grant. Aid administrators will package students normally, Pell Grant first and then other aid, and as soon as it is clear that the non-Federal grants and scholarships will equal or exceed the COA, the Pell Grant is removed, or the other aid is adjusted as explained under § 690.80(d). Often, though, as we stated above, the aid office will be able to determine which students may face this situation at the outset. Students will not be considered for a Pell Grant when they receive a “full ride” scholarship that covers the entirety of their COA. It is the case that for the relatively few students who become ineligible for a Pell Grant because their entire education costs are met in this way, Federal aid will have been displaced by private or institutional dollars.

Finally, it is not our understanding that high-need students frequently receive non-Federal grant aid in excess of the COA “by design.” State and private funders have a strong vested interest in not exceeding the amount required for students to complete their education, as it preserves limited funds for other students who do have need. To the extent that these providers deliberately fund students over the COA, they will cause them to lose Pell Grant eligibility for said award year.

It is more likely that funding programs function in the manner that one State higher education agency described to the Department. They have programs that provide last-dollar aid to students who receive Pell Grants and

that cover the balance, up to the COA, after the Pell Grant has been applied. In such a situation, there is no danger to the student’s Pell Grant eligibility because the State grant is in an amount less than the COA by the value of the Pell Grant.

To provide an illustrative example, a student with a COA of \$12,000 receives a \$7,000 Pell Grant. The State higher education agency then provides a \$5,000 grant to cover the student’s remaining costs. This procedure has been the case and will continue to be so under the new rules. But assume that after aid has been awarded and some of it disbursed that the student receives a \$6,000 private scholarship. If under the State’s rules, the student is permitted to keep its grant, the Pell Grant also remains intact because the combined State grant and private scholarship is \$11,000, which is \$1,000 less than the COA. If the private scholarship was \$8,000 and the total of non-Federal aid was \$13,000 and the scholarship could not be adjusted, the school would need to reduce the amount of the State grant by more than \$1,000 (so that the total is less than \$12,000) if it has the authority to do so. If it can’t reduce the State grant and the total cannot otherwise be brought under \$12,000, under § 690.80(d) the entirety of the Pell Grant would need to be returned. This assumes that Pell Grant dollars remain to be disbursed. If the entire Pell Grant had been disbursed when the private scholarship was received, the school would not need to do anything.

Changes: None.

Comments: One commenter was opposed to the regulation because they believed it would harm the neediest of students. By excluding students from Pell Grant eligibility when their non-Federal grant aid exceeds cost of attendance, the commenter believed the rule effectively penalizes low-income students for securing State, institutional, or private scholarships, and aid they depend on to cover basic living expenses, which is not fully reflected in cost-of-attendance formulas.

Discussion: As a foundational matter, the Federal student financial assistance programs are designed to cover educational expenses. As explained in the previous section, this rule will not deprive Pell Grant-eligible students of funds needed to cover the cost of their education. Cost of attendance includes tuition and fees, housing, food, books, supplies, and several other allowable costs.⁹ If a student receives non-Federal

grant or scholarship assistance that in total is greater than or equal to the COA, there is no need to be met. If the student were to receive a Pell Grant in this instance, it would cause his or her need to be exceeded. For example, a student enrolls in a one-year program at a university, and the total cost of the program is \$20,000, which includes \$2,000 in tuition and fees, \$500 in books, \$13,000 in housing, and \$4,500 in food. If the student receives a non-Federal scholarship for \$20,000, his entire cost is covered by the non-Federal scholarship. The student would not be eligible for a Pell Grant in this case.

Changes: None.

Comments: One commenter was concerned about the new rule because there will be a cliff effect in that students whose other grant aid is one dollar less than the COA will receive a full Pell Grant, while those whose grant aid is one dollar over the COA will get no Pell Grant. As the commenter observed, “This approach is inequitable and may discourage institutions, States, and foundations from offering generous scholarships.” The commenter suggested a more gradual approach to reducing Pell Grant dollars or, if the law does not allow for that, the Department should “implement oversight measures to prevent manipulation of scholarship amounts.”

Discussion: The commenter touches on the possible gaming that we raised in our directed question about this issue. As we note above, however, the new regulation remains as drafted in the NPRM because we believe that is the surest reading of the statute. The Department will consider possible oversight measures in the future if the potential problem we have foreseen actually arises.

Changes: None.

Comments: One commenter was concerned that the flexibility afforded to schools in determining their COA could “result in inconsistent or inaccurate calculation of non-tuition expenses for short-term programs, particularly those related to basic needs.” If COA determinations do not reflect the true cost, students could face unmet financial need. To address this concern, the commenter asked that “the Department either (a) remove this provision for the Workforce Pell Grant program or (b) revise it to replace ‘cost of attendance’ with ‘tuition’ in the context of Workforce Pell Grant.”

Another commenter similarly asserted that COA budgets are often understated,

⁹ Federal Student Aid Handbook—Volume 3, Chapter 2—Cost of Attendance—[https://](https://fsapartners.ed.gov/knowledge-center/fsa-handbook/2025-2026/vol3/ch2-cost-attendance-budget)

fsapartners.ed.gov/knowledge-center/fsa-handbook/2025-2026/vol3/ch2-cost-attendance-budget.

leaving the possibility that students have unmet costs.

Discussion: Institutions have long had considerable discretion, as outlined by the law, in how they create their COA budgets, and those do include non-tuition expenses. As noted above, the use of COA is intended to cover the complete cost for a student to attend the educational program. However, the Department cannot correct for what may be inconsistent approaches from one school to the next that are allowable under the law. In general, schools are incentivized to ensure that their COA does not leave unmet financial need; doing otherwise puts students in stressful financial situations that distract them from their program of study and that they feel obliged to rectify, such as by requesting a PJ adjustment. When students believe that their budgets are inadequate, they are able to request PJ adjustments to them, as we explain above, but such adjustments are intended for the special circumstances of individual students and not as a general corrective for COA budgets that are lacking. Also, the Department's oversight of PJ discourages its overuse.

As for the suggestions, the HEA does not allow for revising the new provision or excluding eligible workforce programs from it. Moreover, it is not clear how the suggestion under (b) to replace COA with tuition in the context of Workforce Pell Grants would help since that would involve reducing the amount at which other grant aid would cause the student to lose Pell Grant eligibility.

Changes: None.

Comments: One commenter stated that the treatment of Workforce Pell Grants received by students who are simultaneously receiving employer-paid educational assistance under IRC Sec. 127 (up to \$5,250 annually excluded from income) is unclear in the proposed rule. The commenter asked, "If an employer's Sec. 127 educational assistance plan covers the full cost of an employee's Workforce Pell Grant program, must the institution return the Workforce Pell Grant?" The commenter requested that:

- the final rule contains explicit guidance on the interaction between Workforce Pell Grants and IRC Sec. 127 employer educational assistance,
- employer educational assistance not be counted as non-Federal grant or scholarship assistance for purposes of the Pell Grant exclusion rule, and
- the Department coordinate with the IRS and Treasury to ensure that students receiving employer-sponsored Workforce Pell Grant program training

can stack Sec. 127 benefits and Pell Grants without losing eligibility for either.

Discussion: Employer-provided educational assistance counts as non-Federal scholarship aid for the purpose of the Pell Grant exclusion. There is no provision in the law to exclude that type of assistance, and, as we note above, the Department is not at liberty to exclude it from counting as one of the many types of non-Federal grants and scholarships students can receive. It would be impossible for the Department to attempt to provide an exhaustive list here of all types of relevant aid.

As for students losing eligibility for employer-provided education assistance, nothing in this rulemaking necessitates that outcome; it is up to employers whether they will provide that aid. The new regulations will solely impose Pell Grant ineligibility in those cases when the COA is covered or exceeded by non-Federal grants or scholarships. See the above discussion regarding why this still leaves students entirely able to pay for their education. Also, in cases where students in workforce programs have their whole COA paid for with, for example, employer assistance, their limited Pell Grant eligibility is preserved for any later programs that they might enroll in, such as a bachelor's degree program.

Changes: None.

Comments: Another commenter also expressed concern that employer-provided tuition benefits would unduly cause students/employees to lose Pell Grants that typically cover expenses such as transportation and housing. They suggested that the Department (1) exempt employer-provided tuition assistance from the non-Federal aid exclusion; (2) provide clear guidance distinguishing tuition assistance from wages; (3) clarify how partial employer tuition assistance should be treated in Pell Grant eligibility calculations; and (4) permit students to remain eligible for Pell Grants for non-tuition components of the COA such as transportation and housing, even where employer-provided assistance fully covers tuition cost.

Discussion: As noted above, employer-provided tuition assistance would count as non-Federal scholarship aid. Such tuition assistance is not wages, nor do wages count in the calculation for determining this new Pell Grant ineligibility provision. Partial tuition assistance by definition would not make a student Pell Grant-ineligible since it would not cover the COA. Finally, in situations where the employer-provided assistance fully covers tuition but no other elements of the COA, the student would remain

eligible for Pell Grants unless there were other non-Federal grant or scholarship aid that, combined with the employer assistance, equaled or exceeded the COA.

Changes: None.

Pell Grant Ineligibility Due to Non-Federal Grant or Scholarship Assistance (§ 690.80(d))

Comments: One commenter asked for guidance regarding an example they provided involving subsequent ISIR transactions that show increased Pell Grant eligibility after funds have already been disbursed and packaging completed. The example they provided described a student with a \$20,000 COA that receives \$18,000 in non-Federal grant aid and \$3,000 in Pell Grant funds, which are fully disbursed. A subsequent non-Federal scholarship of \$2,000 brings the total of such aid to \$20,000. A later ISIR transaction then increases the student's Pell eligibility to \$5,000. The commenter requested that the Department clarify what happens in this scenario.

Discussion: Because the late-arriving scholarship increases the total non-Federal grant aid so that it equals the COA, and an additional transaction was made that increased the student's Pell Grant by \$2,000, § 690.80(d) applies. The school can reduce the non-Federal aid to below the COA and award the additional Pell funds. If it cannot or chooses not to do so, the entire Pell Grant must be returned, and the student's COA would be met by the \$20,000 in non-Federal aid.

If there had been no subsequent transaction that resulted in additional Pell Grant eligibility—all the Pell Grant funds had been disbursed already—the school would not have needed to do anything when the additional non-Federal scholarship arrived even though it caused the total amount of such aid to equal the COA.

Changes: None.

Eligible Workforce Programs

Date, Extent, Duration, and Consequence of Eligibility (§ 600.10(c))

Comments: A few commenters stated that a risk of the proposed framework is that institutional eligibility for an eligible workforce program bypasses the accreditor quality assurance process because the Secretary's program review does not incorporate accreditor assessment of program quality.

Discussion: As discussed in the NPRM, an eligible institution must be able to demonstrate that each program (including eligible workforce programs, collectively or individually) is formally

accredited and included within its grant of accreditation. The Department does not require the accrediting agency to approve each eligible workforce program individually, and an accrediting agency recognized by the Department may establish its own internal processes regarding the approval of eligible workforce programs, which must follow its established review procedures for substantive changes set forth in § 602.22. If an accrediting agency decides to approve one or more eligible workforce programs separately or based on established policies that require eligible institutions to make a substantive change request to add an eligible workforce program, the accrediting agency may do so. Such approval may come before or after approval by the Governor (but must be provided prior to Department approval). There is not a need to add additional regulatory language requiring accreditation because existing regulations cover this requirement.

Changes: None.

Comments: A few commenters stated that the current proposal unnecessarily restricts program eligibility to accredited institutions participating in title IV, HEA programs which risks excluding a large segment of high-performing workforce training providers already validated through State workforce systems. Several commenters urged the Department to allow State-approved Eligible Training Provider List (ETPL) programs to qualify for Workforce Pell Grant eligibility, regardless of institutional accreditation status, provided they meet all other programmatic and accountability requirements. A different commenter stated that ETPL programs offered at eligible institutions should automatically receive Governor and Department approval. Other commenters asked that ineligible organizations that provide social services to communities, such as after-school care, healthcare, and security, be Pell Grant eligible.

Discussion: We decline the commenters' recommendations. The Department does not have authority to create a separate eligibility pathway or designate additional categories of programs outside of the Workforce Pell Grant statutes. A student (§ 668.32), program (§ 668.8), and postsecondary institution (34 CFR 600) must meet all Pell Grant eligibility requirements.

Section 102(a) of the HEA defines institutions of higher education eligible to disburse title IV, HEA assistance to enrolled students. Also, paragraph (a)(5) of section 101 states that such institutions must be “. . . accredited by

a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.”

We acknowledge that there may be similarities between programs on a State ETPL and eligible workforce programs; however, there are also differences between the statutory requirements for the two types of programs. WIOA, which includes the ETPL provisions, and the HEA, which includes provisions for Pell Grant eligibility and eligible workforce programs, are different statutes. Governors and the Department must ensure that a program on a State ETPL meets all the requirements under the HEA to become an eligible workforce program.

Changes: None.

Comments: One commenter asked if there would be pilot opportunities or phased implementation for institutions and requested the Department clarify this.

Discussion: No, there will not be pilot opportunities or phased implementation. All institutions wishing to offer an eligible workforce program will have to follow the same procedures and processes outlined in regulations.

Changes: None.

Comments: One commenter stated that many institutional accreditors do not currently include noncredit programs in their scope of review. This creates an “accreditation bottleneck,” as the commenter termed it, and noted this creates a structural barrier that may prevent otherwise high-quality programs from accessing Pell Grants for eligible workforce programs. The commenter recommended that the Department explicitly encourage institutional accreditors to develop expedited review processes for eligible workforce programs and acknowledge the role that specialized programmatic accreditors can play in providing program-level quality assurance for workforce training in emerging fields. The commenter stated that the Department's own Fund for the Improvement of Postsecondary Education grant has invested in building this capacity.

Discussion: While the Department cannot require additional structure outside the statutory framework, we will consider how we might provide sub-

regulatory guidance that helps accrediting agencies develop the expertise necessary to fulfill their role in ensuring the quality of eligible workforce programs in a timely manner.

The Department announced the Accreditation, Innovation, and Modernization (AIM) committee on January 27, 2026.¹⁰ Those interested in the regulatory process related to accrediting agencies may wish to follow the rulemaking process.¹¹ Additionally, the Department has taken administrative steps to clarify and streamline the process for new accrediting agencies to enter the market.

Changes: None.

Comments: One commenter urged the Department to go beyond the preamble and include clear regulatory expectations that accreditors must review Workforce Pell Grant programs—including non-credit programs—and update their scopes of recognition accordingly. The commenter stated that doing so will close a critical oversight gap, strengthen program quality, and ensure that this new expansion of Pell Grant eligibility is implemented with the rigor and accountability that students and taxpayers deserve. The commenter mentioned the Department could mirror requirements under the prison education regulations in 34 CFR Subpart P or require accreditor approval of the first three eligible workforce programs that an institution offers.

Discussion: We decline the commenter's suggestion because the authorizing statute does not specify how accrediting agencies should review programs. We believe that an accrediting agency is equipped to establish its own internal processes regarding the approval of eligible workforce programs. There is a specific provision in the authorizing statute for prison education programs that requires consideration of accrediting agencies: an institution is prohibited from offering a prison education program if “during the 5 years preceding the date of the determination” the institution was subject to “any adverse action by the institution's accrediting agency or association.” The Department also notes that we are required to approve every eligible workforce program, unlike prison education programs.

Changes: None.

¹⁰ AIM **Federal Register** notice—<https://www.Federalregister.gov/documents/2026/01/27/2026-01620/intent-to-establish-negotiated-rulemaking-committee>.

¹¹ AIM website—<https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-education-policy/negotiated-rulemaking-higher-education-2026>.

Comments: One commenter recommended that the Department explore ways to better align the eligible workforce program and PEP approval processes to reduce duplicative burden on experienced correctional education providers. The commenter stated that the Department should consider integrating the eligible workforce program approval into the existing PEP application.

Discussion: The Department declines to combine the eligible workforce program and PEP process because they are two distinct program types with unique sets of statutory and regulatory requirements.

Changes: None.

Limitations on Remedial Coursework That Is Eligible for Title IV, HEA Program Assistance (§ 668.20(b) and (g))

Comments: One commenter thanked the Department for allowing remedial coursework for clock-hour programs and asked that we codify that allowance in regulation.

Discussion: In the preamble to the NPRM, the Department proposed that an eligible institution may not take into account, when calculating title IV, HEA program awards, any noncredit or reduced credit remedial coursework (including a course in English as a second language) when determining enrollment intensity and COA for a student enrolled in an eligible workforce program, as defined under 34 CFR 690.92, that is offered in credit hours.

After further internal discussion, the Department determined that, normally, programs offered in clock hours may include remedial coursework up to the thresholds outlined in 34 CFR 668.20(e). Our proposed language limited the prohibition on remedial coursework to programs offered in credit hours. The WFTCA states that “. . . the provisions of subsection (d)(2) shall not be applicable to eligible workforce programs. . . .” Section 401 (d)(2) of the HEA states noncredit, remedial, and study abroad courses can be included in a student’s Pell Grant eligibility. Therefore, these types of courses cannot be included in a student’s Pell Grant eligibility in an eligible workforce program. Nothing in Section 401 (d)(2) differentiates between credit or clock-hour programs. We do not believe the statute allows the Department to limit the prohibition on remedial coursework to only credit-hour programs. The Department clarifies in the final rule that eligible workforce programs offered in credit hours or clock hours are prohibited from including remedial coursework in a student’s eligibility.

Changes: The regulations will revise § 668.20(g) to clarify that an institution may not take into account any noncredit, remedial or reduced credit remedial course for a student enrolled in an eligible workforce program. The regulations will no longer distinguish between credit or clock hour programs; however, they will continue to permit consideration of clock-hour, non-remedial coursework in both types of programs.

Comments: A few commenters requested that the Department clarify in the final rule or sub-regulatory guidance that clock-hour programs are not subject to the prohibition on institutions considering noncredit or partial credit remedial coursework when calculating title IV, HEA program award amounts.

Discussion: We stated in the NPRM—“The Department clarified during negotiated rulemaking that the prohibition on noncredit courses is not in reference to programs offered using clock hours.” Eligible workforce programs can be offered in credit hours or clock hours. Neither the statute nor the regulations prevent a non-credit clock hour program from qualifying as an eligible workforce program. However, the statute and regulations do prohibit an institution from considering remedial coursework in a clock hour program when determining a student’s eligibility for title IV, HEA program funds.

Changes: None.

Comments: One commenter asked the Department to clarify the level of non-credit to credit articulation that is required for eligibility. Other commenters asked for additional guidance regarding which noncredit programs would be considered eligible workforce programs.

Discussion: These regulations do not require an institution to perform noncredit to credit articulation for every eligible workforce program. However, the rule does prohibit remedial coursework, including coursework that leads to partial credit or coursework that does not lead to academic credit, from being included in an eligible workforce program, as described in the statute. For practical purposes, this means that an institution cannot include in its calculation of a student’s eligibility for Pell Grant funds any coursework not required for completion of the program. The only coursework that can make up the eligible workforce program is the coursework that is a part of the formal program of study.

In order to qualify as eligible workforce programs, clock hour programs would need to fulfill the normal requirements for program

eligibility as well as the new and unique requirements for eligible workforce programs. The normal requirements for program eligibility require, among other things, that the clock hour program lead to a recognized credential conferred by the eligible institution. Therefore, as long as the clock hour program meets all the applicable requirements, including leading to a credential provided by the institution, it does not have to confer credit in order to qualify as an eligible workforce program.

Changes: None.

Comments: A few commenters asked the Department to provide clear pathways for noncredit, employer-led programs to qualify, particularly where they demonstrate strong workforce outcomes.

Another commenter stated that prohibited programs that are fully noncredit but that lead to licensure should be eligible for Pell Grants. The commenter stated that individuals who complete the noncredit programs are fully licensed and go right into the workforce. Credit is not necessary to obtain employment in their chosen field.

A different commenter stated that this provision could limit access for students who need basic skills, ESL, or contextualized learning to succeed.

Discussion: A noncredit employer-led program cannot be Pell Grant eligible. First, the program cannot be employer-led. An eligible institution (e.g., college or university) can enter into a written arrangement as prescribed in § 668.5 with an ineligible organization such as an employer (see section § 668.5 for more information), but the employer cannot offer an eligible workforce program. The HEA requires a program to be offered by an eligible institution that is accredited and authorized by a State, and it requires completion of the program to ultimately result in the conferral of academic credit, either at the institution or at another eligible institution. The Department has no authority to extend eligibility more broadly to other providers.

Changes: None.

Student Eligibility (§ 668.32(c))

Comments: One commenter stated that the prohibition against an individual with a graduate credential receiving a Pell Grant to enroll in an eligible workforce program is clearly stated in the statute. The commenter wanted to know how reporting would work operationally. The commenter stated that questions on the FAFSA are confusing and there is no FAFSA question about graduate credentials.

Discussion: The Department is working to update our systems and processes to account for eligible workforce programs. Although we cannot provide more information about operations within this rule or its preamble, we commit to releasing guidance to the community as necessary.

Changes: None.

Comments: One commenter stated that the Department should let eligible workforce programs operate within standard-term rules if they are operating under Pell Grant Formula 1 or 2.

Discussion: Regarding Pell Grant formulas and program type or academic calendar requirements, the commenter is correct that under § 668.4 and § 690.63 there are specific limitations that prevent Pell Grant formulas 1, 2 and 5 from being used with workforce programs due to length and coursework restrictions. For example, an eligible workforce program cannot use Pell Grant formula 1, even if it contains a standard term, since Pell Grant formula 1 requires a program to consist of at least 30 instructional weeks in duration. Similarly, Pell Grant formula 2 cannot be utilized since that formula would require two standard terms to exist within an eligible workforce program which cannot occur due to program length restrictions. And of course, Pell Grant Formula 5 cannot be applied since that pertains to correspondence programs and workforce programs are prohibited from containing any correspondence courses.

Therefore, when determining Pell Grant award amounts for eligible workforce programs, institutions will be required to use Pell Grant formula 3 for term-based programs and Pell Grant formula 4 for nonterm credit-hour and clock-hour programs. In addition, though it is possible to have a single term workforce program, it is important to keep in mind that under § 690.63(f), a single Pell Grant disbursement may not exceed 50 percent of a Pell Grant annual award. If this occurs, an institution would be required to make at least two disbursements.

These limitations exist because no allowances or exceptions were established in the WFTCA for eligible workforce programs when using the existing Pell Grant formulas. With that said, it is important to remember that an institution is permitted to have multiple types of academic calendars including term-based and nonterm based programs and can use different Pell Grant formulas with separate academic programs.

Changes: None.

Comments: Several commenters expressed support for allowing bachelor's degree holders to receive Workforce Pell Grants.

Discussion: The Department thanks the commenters for their support.

Changes: None.

Comments: One commenter recommended prohibiting individuals who have bachelor's degrees from receiving a Pell Grant to enroll in an eligible workforce program. The commenter stated that extending eligibility to bachelor's degree holders represents a significant departure from the long-standing statutory prohibition. The commenter also noted the risks of expanding eligibility, particularly at a time when the Pell Grant program faces a projected shortfall and resources must be carefully targeted to those with the greatest need.

Discussion: We decline the commenter's recommendation. The WFTCA makes specific reference to the prohibition of an individual accepted for enrollment in a program of study that leads to a graduate credential or an individual that has already obtained a graduate credential. The statute is silent on bachelor's degrees, therefore, without a clear prohibition, individuals with bachelor's degrees may receive a Pell Grant for the specific purpose of enrolling in an eligible workforce program. We are excited to provide individuals with bachelor's degrees the opportunity to reskill or upskill to better compete on a national and global scale.

We disagree with the commenter's assertion that extending eligibility to bachelor's degree holders represents a significant departure from the long-standing statutory prohibition. Currently, under Section 401(d)(4) of the HEA and § 690.6(c) students with a bachelor's degree can receive a Federal Pell Grant for a post-baccalaureate teacher certification program.

The Department responded to concerns about the projected shortfall under the "General Comments" section above.

Changes: None.

Comments: A few commenters encouraged the Department to adopt additional safeguards to disaggregate outcomes data by requiring separate reporting for bachelor's degree holders and non-bachelor's degree holders. Another commenter stated that the Department should require institutions to report the percentage of students in a program who hold a bachelor's degree as a transparency metric. This would allow policymakers, students, and the public to assess whether eligible workforce programs are delivering real value to the intended population. In

addition, the commenter stated that the Department should establish clear thresholds to prevent institutions from disproportionately enrolling individuals with prior degrees.

Discussion: Neither the statute nor the regulations contain provisions that require such disaggregation. We decline to create additional burden for the Department and institutions. Eligible workforce programs are not only subject to a value-added earnings metric, but also job placement and completion rate calculations. Those outcome metrics represent a higher standard than most other programs, including direct assessment programs, eligible career pathway programs, and prison education programs.

Changes: None.

Comments: A few commenters recommended allowing individuals who already hold graduate degrees to participate in Workforce Pell Grants.

Discussion: The statute does not permit the Department to adopt the commenters' suggestion. Section 401(k)(2)(B) of the HEA, added by Section 83002(a) of the WFTCA, states that a student is not eligible for a Pell Grant in an eligible workforce program if the student is enrolled, or accepted for enrollment, in a program of study that leads to a graduate credential, or if the student has obtained a graduate credential.

Changes: None.

Comments: One commenter stated that the Department must explicitly codify, through regulatory or sub-regulatory guidance, that postbaccalaureate teacher licensure and certification are not considered graduate credential programs for the purposes of this rule.

Discussion: Postbaccalaureate teacher licensure and certification are not considered graduate credentials. We stated in the NPRM that a *graduate credential* includes, but is not limited to, a graduate degree such as a master's degree or doctoral degree, a first-professional degree such as a Doctor of Medicine (MD), Doctor of Dental Surgery (DDS), or Juris Doctor (JD), a graduate certificate (including a postgraduate certificate), or another professional credential that is above the undergraduate level. A *graduate credential* does not include an undergraduate post-baccalaureate certificate.

Changes: None.

Comments: One commenter stated that the Department should clarify in the final rule that students enrolled in a program meeting all Federal criteria under § 690.92 are eligible for a Pell Grant retroactively to the start of the

payment period in which they enrolled, provided State certification is completed within that payment period.

Discussion: Students become eligible for a Pell Grant in the payment period during which the workforce program is approved by the Secretary.

Changes: None.

Duration of Student Eligibility (§ 690.6(a) and (f))

Comments: One commenter stated that eligible workforce programs can be a successful pathway for identifying students that will successfully graduate from a four-year program, especially in STEM. The commenter recommended adding a requirement that students with less than a bachelor's degree have their ACT or SAT recorded and reported. Students with test scores above the average nationwide test scores of students attending four-year public institution should then be advised that they have the ability to complete a four-year college degree.

Discussion: The Department does not have the authority to require students to report their ACT or SAT scores as part of enrolling in an eligible workforce program. The SAT and ACT exams are generally used as part of college admissions standards. The Department has limited authority in an institution's admissions criteria. The Department's authority is generally limited to student eligibility for the programs that we administer, such as the Pell Grant program. For more information on student eligibility for a Pell Grant, please review Volume 1 of the most recent FSA Handbook.¹²

Changes: None.

Federal Pell Grant Payments From More Than One Institution (§ 690.11)

Comments: A few commenters recommended adding language to § 690.11(b) to clarify that students receiving a Pell Grant to enroll in an eligible workforce program may still receive non-title IV aid and support. One commenter stated that these supports include public benefits such as housing assistance, SNAP, TANF, WIOA, institutional emergency aid, and private or State grants and scholarships. The commenter also recommended explicitly stating that students in eligible workforce programs remain eligible for wraparound supports, such as food pantries, housing assistance, transportation, childcare, and case management, on the same basis as other students.

Discussion: The Department does not have authority over SNAP, TANF, WIOA, or wraparound supports; therefore, we cannot speak to an individual's continued eligibility for those programs if the student receives a Pell Grant.

The Department notes that there is a prohibition on receipt of Pell Grant funds under § 690.5 if a student receives non-Federal grant or scholarship assistance that meets or exceeds the student's cost of attendance. SNAP, TANF and WIOA are Federal programs, therefore, a student's receipt of aid from those programs would not affect a student's eligibility for a Pell Grant. We explained in the preamble to the NPRM that the regular exclusions from "other financial assistance" enumerated in Section 480(i) of the HEA would not be treated as non-Federal grant or scholarship assistance under this provision. For example, in Section 480(i), the NPRM states "emergency financial assistance provided to the student for unexpected expenses that are a component of the student's COA, and not otherwise considered when the determination of the student's need is made . . ." is not considered grant or scholarship assistance. The Department does not have the authority to exclude other types of non-Federal grant or scholarship assistance not specifically stated in the statute.

Finally, a student can receive non-title IV support such as a private grant, State grant, or private scholarship when enrolling in an eligible workforce program. We encourage students to seek out resources that will assist them in their educational endeavors; however, if the student's total non-Federal grants and scholarship assistance for an award year equal or exceed the student's cost of attendance, the student will not be eligible to receive a Pell Grant.

Changes: None.

Scope and Purpose (§ 690.90)

Comments: One commenter stated that the Department should reconsider the blanket exclusion of eligible workforce programs from the Federal Supplemental Educational Opportunity Grant (FSEOG) and Federal Work-Study (FWS) programs. The commenter argued that this would help ensure that these programs provide low-debt pathways towards a credential.

Discussion: The Department does not have the authority to make such a change. The statute (Section 401(k) of the HEA) clearly indicates that an individual that enrolls in an eligible workforce program is eligible for a Pell Grant but does not refer to any other title IV, HEA program. Program

eligibility requirements for all other title IV, HEA programs are described under Section 481(b) of the HEA, and that section requires additional weeks and hours for academic programs to qualify.

Changes: None.

Comments: Several commenters were concerned that defining eligible workforce programs as only eligible to participate in the Pell Grant program will significantly hamper students' ability to access and afford such programs, which undermines Congressional intent. One commenter requested that the Department:

- Disclose the number of institutions and programs that participate in the title IV, HEA programs under the existing short-term Direct Loan program provisions;
- Advise Congress on technical correction language that could satisfactorily merge eligible workforce programs and short-term Direct Loan programs and also consider making students in such programs also eligible for other title IV, HEA programs to enhance affordability; and
- Write the final rule to automatically be amended to merge eligible workforce programs with short-term Direct Loan programs in the case of Congressional action without requiring additional rulemaking.

Another commenter requested that the Department add the following language to § 690.90: "In some instances, a student attending an eligible workforce program may also be eligible to borrow under the William D. Ford Direct Loan Program if the workforce program simultaneously meets the criteria applied to an eligible short-term educational program under 34 CFR 668.8(d)–(g)."

Discussion: As of April 2, 2026, there are 63 unduplicated schools offering short-term programs qualifying for Direct Loan funds and 80 such programs altogether.

As discussed in the NPRM,¹³ the Department believes that allowing programs that include between 300 and 599 clock hours to qualify for both the Pell Grant and Direct Loan programs would run counter to the intent of the statutory provisions of workforce programs, which build on an existing framework for funding job training programs under WIOA and have alternative sources of funding. We reject the commenter's suggestion to add language to the regulation that would permit an eligible workforce program to qualify for Direct Loan eligibility if it meets the requirements under § 668.8(d)–(g). The completion and

¹² FSA Handbook, Volume 1—<https://fsapartners.ed.gov/knowledge-center/fsa-handbook>.

¹³ 91 FR 11389

placement rate methodology for eligible workforce programs and short-term Direct Loan programs is different, and the methodology as it pertains to Direct Loan programs is out of the scope of these regulations. We will provide flexibility to Governors regarding the calculation of those rates for eligible workforce programs until the 2029–30 award year to encourage institutional offering of eligible workforce programs.

We decline the commenter's suggestion regarding advising Congress on a technical correction because we do not agree with the recommendation for the reasons described in the preamble to the NPRM.

Changes: None.

Comments: Several commenters stated that institutions or the Department should be required to provide clear, accessible advisement on the short- and long-term implications of Pell Grant usage, including effects on lifetime eligibility limits.

Discussion: Per the NPRM, the Department already provides information on lifetime eligibility limits, usually referred to as the Pell Grant “Lifetime Eligibility Used” (Pell LEU) to all students, so a disclosure specific to eligible workforce programs is not necessary. Comments on the FAFSA Submission Summary inform students of their approximate Pell Grant usage at 50 percent intervals. For example, a student between 100 percent and 150 percent would see a comment reading “The limit to the total amount of Federal Pell Grants that a student may receive is the equivalent of six school years. Based upon information reported to the National Student Loan Data System (NSLDS®) database by the schools you have attended, you have received Pell Grants for the equivalent of between one and one and one-half years.” Second, the Department is concerned that a disclosure such as this could be perceived as a warning to students not to enroll or continue in their program rather than solely an indication of the years of Pell Grants they have remaining. The Department prefers that students work directly with their institution's financial aid offices regarding their Federal financial aid eligibility.

Changes: None.

Definitions—Cohort Period (§ 690.91)

Comments: One commenter stated that the cohort period is insufficient because: (1) security clearance processing averages 12–24 months, (2) DOD and DARPA funded programs often use multi-year bridge periods between training completion and full performance employment and (3)

defense-track graduates may accept lower initial-year compensation in exchange for career trajectory positions whose long-term value is not captured in short cohort windows.

Discussion: We decline the commenter's suggestion because the statute clearly defines the cohort period. Section 481(b)(3)(B) of the HEA, added by Section 83002(b) of the WFTCA, states that for each award year, the total amount of the published tuition and fees of an eligible workforce program for such year may not exceed the “value-added earnings” of students who received Federal financial aid and who completed the program three years prior to the award year.

Changes: None.

Comments: One commenter recommended that the Department measure outcomes based on the time from individual enrollment or completion because adult learners often follow nonlinear educational pathways, requiring accountability frameworks that recognize stop-out and re-entry patterns.

Discussion: We must decline the commenter's suggestion. Section 481(b)(3) of the HEA requires an analysis of earnings for individuals who completed their eligible workforce programs, “. . . 3 years prior to the award year, as such earnings are determined. . . .” Therefore, the Department cannot make such a change as the current timeline is a statutory requirement.

Changes: None.

Definitions—In-demand industry sector or occupation (§ 690.91)

Comments: One commenter requested greater clarity on this definition. The commenter was concerned that some States may use these terms as entry barriers and artificially limit Pell Grants to favored occupations.

Discussion: We decline to add additional regulatory text because Section 481(b)(3)(B) of the HEA, as added by Section 83002(b) of the WFTCA, states that the term in-demand sector or occupation has the meaning given in Section 3 of WIOA. We have used the exact definition in WIOA in these final regulations.

We believe that Governors are very familiar with the phrase “in-demand industry sector or occupation” because they are required to identify those occupations under their WIOA State plans. A WIOA State plan is a plan submitted to the DOL and the Department by each US State and other qualifying areas that outlines its workforce development system's four-year strategy.

Ultimately, under § 690.93(a), Governors certify programs prior to final approval by the Department for Pell Grant eligibility. The Department does not seek to limit a Governor's authority to make decisions about in-demand occupations in their States. Under § 690.93(b), Governors are required to publicly publish the methodology they used to determine which occupations in their States are in-demand.

Changes: None.

Comments: One commenter stated that each Governor will apply the definition of “in-demand industry sector or occupation” differently. This will result in many different definitions of what constitutes an in-demand occupation for eligible workforce programs.

Discussion: Section 481(b)(3)(B) of the HEA, as added by Section 83002(b) of the WFTCA, states that the term in-demand sector or occupation has the meaning given in Section 3 of WIOA. The Department will not define “in-demand industry sector or occupation” beyond the WIOA definition.

Changes: None.

Comments: One commenter stated that the Department should ensure the definition reflects regional labor market conditions, including the use of local labor market data and employer engagement processes.

Discussion: The definition already describes exactly what the commenter is requesting—(1) An industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or (2) An occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate. As such, the Department will not make a change to the regulations here as what the commenter has requested is already in place.

Changes: None.

Comments: One commenter stated that the definition of “high-skill, high-wage, or in-demand” occupations varies significantly by region. Rural labor markets differ substantially from metropolitan areas, and a uniform Federal standard may not accurately reflect regional workforce realities. They stated that flexibility in defining in-

demand occupations at the State or regional level is critical.

Another commenter stated that the Department should also provide baseline Federal guidance to promote greater consistency across States while preserving flexibility to reflect regional economic conditions. Without these updates, reliance on static or outdated labor market projections may result in misalignment between training programs and actual workforce needs.

Discussion: The Department is required by statute to use the definition in WIOA. The HEA does not prescribe specific in-demand industry sector or occupations, but instead it gives Governors the flexibility to determine what those occupations are based on the definition.

Changes: None.

Definitions—Governor (§ 690.91)

Comments: A few commenters had concerns with the definition of “Governor” as it relates to Tribal Colleges and Universities. One commenter demanded that the Department conduct Tribal consultation under Executive Order 13175 before the final rule is published, given that Tribal governments are among the entities that would be required to process program approvals and that tribal colleges may seek workforce program eligibility.

Another commenter requested that the Department change the regulatory language from “(2) If an institution is located on Tribal lands, the Tribal government” to “(2) The chartering Tribal Government(s) for a Tribal College or University, as defined in section 316(b)(3)(A) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)(3)(A))” because this definition takes into account instances where a consortium of Tribes may be the chartering entities for a Tribal college or university rather than a single Tribe. The commenter believes that their proposed definition will ensure that all Tribal colleges and universities fall under the same regulatory structure for participation in the Workforce Pell Grant program and that they may work with their chartering Tribal Government(s).

The commenter also requested that the Department consider a requirement for a Tribal government to have the choice to consult with either a State board or a designated entity within their Tribal community. The commenter also requested that the Department provide maximum flexibility to Tribal governments to determine what constitutes sufficient consultation.

Discussion: The Department notes that Executive Order 13175 states, “is

intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.” Therefore, the Department does not believe that commenter has any legal basis to make such a demand, regardless of whether Executive Order 13175 is applicable to this rulemaking action or not.

Executive Order 13175 states that, in formulating or implementing policies that have tribal implications, agencies shall recognize the right of the Indian tribes to self-government and supports tribal sovereignty and self-determination. Executive Order 13175 states, in part, “with respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion.”

We believe that these principles have been upheld throughout this process and that no consultation with tribal officials is required by Executive Order 13175. Tribes are not mentioned in the WFTCA; however, traditionally, for purposes of the title IV, HEA programs, Tribes have had autonomy to make decisions regarding the authorization of postsecondary eligible institutions. See 34 CFR 600.9(a)(2)(ii). In the NPRM, the Department notes that we considered the impact to Tribes and have added language to acknowledge their ultimate authority over determinations of approved programs. Tribes would still need to consult with the State board, as required by statute and under proposed § 690.93(a), in order to approve the program. Only consultation is necessary, Tribes do not have to accept the recommendation of the State board. The Department believes this compromise achieves the goal of maintaining Tribal sovereignty over these decisions while also ensuring State boards are consulted as required by the statute.

Changes: None.

Comments: One commenter recommended that the Department amend the regulations to make the eligible workforce programs available to eligible students and institutions in the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI). The commenter believes the right of these Freely Associated States to offer eligible workforce programs is enshrined in the Compacts of Free Association. The commenter also urged that the WFTCA does not require the Department to use the definition of Governor in WIOA, which excludes the

FSM and the RMI from participation in WIOA programs. The commenter stated the Department should use the definition of a “State” in the HEA that includes the FSM and RMI. The commenter acknowledges that approval of a program requires the Governor to consult a State board. Neither the FSM nor the RMI have State boards under WIOA. The commenter proposed that States that do not participate in WIOA should have the Governor or Chief Executive consult with a duly constituted board with similar membership and overall aims of ensuring alignment with workforce needs. The commenter argued that these boards may look slightly different but would accomplish the same purpose and would be compliant with WFTCA.

Discussion: The Department declines the commenter’s suggestion. Section 209(b)(1)(D) of Public Law 118–42 provides that postsecondary institutions located in the Freely Associated States may participate in the Pell Grants, Federal Work Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs,¹⁴ however, even the commenter acknowledged that Governors must consult with the State board as defined under WIOA, and offered suggestions on how to except the Freely Associated States from the statutory requirement. Because the FSM and RMI do not have State boards as defined under WIOA, they cannot fulfill the consultation requirement in statute.

All citizens of the Freely Associated States meet citizenship eligibility requirements for the Pell Grant program. Citizens of the RMI and FSM may receive a Pell Grant to enroll in an eligible workforce program at an eligible institution that is not located in the RMI or the FSM.

Changes: None.

Comments: One commenter ask for asked for clarification on the term “outlying areas.”

Discussion: Section 3(45) of WIOA defines the outlying areas as: American Samoa, Guam, the Northern Mariana Islands, Palau, and the U.S. Virgin Islands.

Changes: None.

Definitions—Recognized Postsecondary Credential (§ 690.91)

Comments: A few commenters recommended amending the definition to include nationally recognized career-readiness certification and a range of industry-recognized credentials.

¹⁴ Electronic Announcement (GENERAL-24-50)—<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2024-04-29/state-tuition-and-title-iv-eligibility-citizens-freely-associated-states>.

Commenters stated that these types of certifications enhance employability and earnings potential.

Discussion: We decline the commenter's recommendation. The definition of recognized postsecondary credential already states that it includes "...an industry-recognized certificate or certification". We believe that Governors are very familiar with recognized postsecondary credentials because they are required to identify those credentials under WIOA for performance accountability purposes.

Ultimately, under § 690.93(a), Governors certify programs prior to final approval by the Department for Pell Grant eligibility. The Department does not seek to limit a Governor's authority to make decisions about a recognized postsecondary credential in their State. Also, for transparency, under § 690.93(b), Governors are required to publicly publish how the State will determine whether the expected competencies for which the recognized postsecondary credential intends, align with the competencies needed in such high-skill, high-wage, or in-demand sectors and occupations.

Changes: None.

Comments: A few commenters recommended adding "diploma" throughout the regulations wherever academic "certificates and degrees" are referenced or whenever major examples of postsecondary credentials are mentioned.

Discussion: The Department cannot account for every type of credential awarded in every State or eligible area. The definition of a recognized postsecondary credential is "A credential consisting of an industry-recognized certificate or certification, a certificate of completion of a Registered Apprenticeship under 29 CFR part 29, a license recognized by the State involved or Federal Government, or an associate or baccalaureate degree". Under section § 690.93(a) the Governor is tasked with ensuring that the program leads to a recognized postsecondary credential; therefore, it is in the Governor's authority to determine that a diploma is a recognized postsecondary credential in that State.

Changes: None.

Definitions—Tuition and fees (§ 690.91)

Comments: A few commenters stated that some institutions' structure course material costs as institutional charges, entering into arrangements with publishers or vendors to provide required materials and billing students for those materials as part of their institutional fees, and therefore controlled by the institution. The

commenter asked the Department to confirm that the cap on tuition and fees under the value-added earnings calculation would apply to those costs regardless of how they are labeled or what they cover.

The commenter recommended that the Department require disclosure of whether required course materials are bundled into institutional charges or charged separately, and what options students have to obtain required materials at lower or no cost.

Discussion: Any costs for an eligible workforce program that would be considered part of tuition and fees, or other institutional charges (including books and supplies in certain circumstances) will be included in the amounts of tuition and fees that are subject to the value-added earnings cap on tuition and fees. Costs for books, supplies, or other course-related materials are subject to the cap if students lack a "real and reasonable" opportunity to purchase them elsewhere, or if they are bundled into tuition, because these costs are considered institutional charges.

The Department declines to require additional disclosures beyond those already required under the cash management regulations in 34 CFR 668 Subpart K for course materials that are bundled into institutional charges. Any such disclosure requirements would be outside the scope of these regulations.

Changes: None.

Comments: One commenter requested that personal large screen computers and devices qualify as "supplies" within the definition of tuition and fees for students enrolled in eligible workforce programs.

Discussion: We decline the commenter's suggestions. Supplies are a separate allowable cost within a student's cost of attendance. Unless they meet the definition of "institutional charges" as described above, supplies are separate and apart from tuition and fees. The value-added earnings calculation represents a cap on tuition and fees, not supplies.

Changes: None.

Eligible Workforce Program—General Comments (§ 690.92)

Comments: A few commenters wanted to clarify the flexibility approved eligible workforce programs have to update, revise, or otherwise modify their curriculum content in response to evolving employer skill needs and labor market conditions.

Discussion: Under the proposed framework, institutions retain flexibility to revise, refine, and modernize their program curriculum to ensure alignment

with current industry standards and workforce needs. We recognize that employer expectations and regional labor market dynamics can change quickly, and programs must be able to adapt to remain relevant and to support positive student outcomes.

At the same time, any curricular modifications must remain consistent with the program information and assurances provided at the time of approval. Institutions are not required to seek reapproval for routine updates that do not alter the program's core competencies, objectives, or structure. However, more substantive changes, such as those that modify program length, credential level, or the competencies that form the basis of eligibility, may require notification or resubmission so that the Department can ensure that the program continues to meet all statutory and regulatory requirements. The Department aims to balance necessary institutional flexibility with appropriate safeguards to ensure program quality, transparency, and accountability.

Changes: None.

Comments: Several commenters argued that the proposed regulations should require additional guardrails to adequately protect students from fraud, abuse, and low-quality programs. Specifically, one commenter recommended that institutions subject to recent significant oversight actions such as the revocation, withdrawal, or termination of institutional accreditation, or comparable adverse actions taken by State authorizing agencies be barred from establishing workforce programs. The commenter asserts that allowing such institutions to access Pell Grant funds for workforce programs exposes students to heightened risk and undermines the integrity of the program. They argued that restricting eligibility for institutions with serious recent compliance or quality issues is a necessary safeguard to ensure that only institutions meeting basic standards of accountability and student protection are permitted to offer eligible workforce programs.

Discussion: As described in existing program integrity regulations, including the administrative capability and financial responsibility standards, the Department already evaluates whether institutions have been subject to serious adverse actions by State or Federal agencies or by accrediting agencies, and uses that information in determining institutional eligibility and oversight status.

The Department agrees that maintaining strong guardrails is essential to protecting students and

safeguarding Federal funds; however, the Department declines to adopt a categorical prohibition that would automatically bar institutions with recent oversight actions from offering eligible workforce programs. Instead, the Department will continue to rely on its existing authorities to assess institutional risk, take action when needed to protect students from fraud or abuse, and ensure that only institutions that meet core quality and accountability standards participate in Federal student aid programs.

Changes: None.

Comments: One commenter urged the Department to ensure that the Pell Grant's eligibility criteria for eligible workforce programs explicitly accommodate short-term programs that teach tradespeople to deploy AI systems for business operations to address the non-employer business crisis and enable self-employment and micro-enterprise formation in high-demand trade occupations.

Discussion: The Department appreciates the commenter's interest in ensuring that short-term training programs focused on deploying AI systems for business operations may participate as an eligible workforce program. As noted elsewhere in this rule, eligible workforce programs must meet all requirements established under the HEA as amended by the WFTCA, including approval by a Governor and the Secretary, and meet required outcome metrics. To the extent that a short-term program teaching AI-related skills meets all statutory and regulatory requirements for an eligible workforce program, including program length, alignment with high-skill, high-wage, in-demand sectors or occupations as determined by the Governor, and successful completion and job placement outcomes, it may qualify for Pell Grant funds. Decisions regarding whether AI-related training aligns with in-demand industry sectors or occupations fall within the processes defined for Governors under § 690.93.

Changes: None.

Comments: One commenter expressed concern about the Department's interpretation of the statutory phrase "upon completion" in the eligible workforce program eligibility section. The commenter explains that in many short-term workforce programs, credential assessments are often administered after the instructional program ends and not necessarily within the program's 8 to 14 week duration. Because institutions do not control the scheduling or availability of external testing bodies, requiring credential attainment within the

program window would be unrealistic and unfair. The commenter recommends that the Department allow institutions a reasonable period after program completion (such as three months) for students to test for and earn their third-party credential, rather than strictly adhering to the program's instructional timeline.

The commenter also expressed concern about the significant administrative burden community colleges will face when implementing Pell Grants for eligible workforce programs, especially regarding manual updates to the FAFSA form. They explain that, based on information shared at the Federal Student Aid (FSA) conference in Spring 2026, financial aid administrators will be required to manually check a box on each FAFSA form to indicate that a student is enrolled in an eligible workforce program and then manually uncheck it if the student withdraws. The commenter emphasizes that this process will require staffing capacity that many institutions simply do not have. The commenter additionally noted that no additional funding is being provided to support the implementation of eligible workforce programs. The commenters urged the Federal government to avoid imposing new requirements in regulations or guidance that would add substantial administrative burdens to institutions that are already overstretched.

Discussion: There are two credentialing components of an eligible workforce program that must be considered: (1) the requirement that the program qualifies for title IV, HEA program funds; and (2) the requirement for a Governor's certification. Regarding the requirement pertaining to title IV, HEA program funds, under § 668.8(c) an eligible program provided by an eligible institution must lead to an associate, bachelor's, professional, graduate degree, certificate or nondegree recognized credential. Institutions cannot have a practice of waiting months after the individual has completed the eligible workforce program to award a credential. The credential must be awarded to the student upon successful completion of the program.

That said, the Department does not expect an institution to award a credential until the student has fulfilled all the program's requirements, which could include assessments that take place after the completion of coursework. The Department expects an institution to ensure that such assessments take place at a reasonable time soon after the student's completion

of a program to prevent a student from being unable to make use of the training they recently completed.

Regarding the Governor's certification, the Governor must certify that eligible workforce programs lead to a recognized postsecondary credential as defined under § 690.91. The recognized postsecondary credential does not have to be the same credential that is awarded to the student upon successful completion of the eligible workforce program, as the recognized postsecondary credential an eligible workforce program leads to could be conferred by an entity that is not the institution and may require additional steps to be completed by the student before the credential is awarded. For example, an eligible workforce program that serves as the related instruction component of a Registered Apprenticeship program leads to the recognized postsecondary credential of a Registered Apprenticeship certificate of completion. However, the recognized postsecondary credential is only awarded after the student completes both the related instruction component (in this case offered as the eligible workforce program) and the OJL learning component specified in the Registered Apprenticeship program's approved standards. Note that in a circumstance where receipt of a credential for completion of the eligible workforce program does not occur at the same time that the student receives the recognized postsecondary credential, a student would be included in the placement rate calculation two quarters after the student exits or completes the eligible workforce program. Both the requirement for title IV, HEA eligibility and the Governor's requirements can be the same credential, certification, degree or diploma. However, for an individual credential to satisfy both requirements it must meet all the requirements of both regulations under § 668.8(c) and § 690.91 and must be awarded to the student upon successful completion of all requirements for the eligible workforce program.

Regarding concerns about administrative burden, the Department is working diligently to ensure that all internal systems are updated to accommodate the statutory changes. As with any new program, there will be new reporting requirements to ensure statutory and regulatory compliance. For example, the Department must be able to identify eligible workforce program completers in order to calculate the value-added earnings under § 690.95.

Changes: None.

Comments: One commenter was concerned that while their program satisfies the program-length and credit-hour requirements under § 690.92, their school cannot apply for approval of an eligible workforce program because Governor certification and Secretary approval processes do not yet exist. They argued that institutions should not be penalized by delays outside their control and that the Department should avoid adding regulatory rigidity on top of the statutory time constraints. To address these concerns, the commenter recommended that the Department create a provisional eligibility pathway for programs that already meet the substantive criteria in §§ 690.92 and 690.93(a) but are waiting on State-level certification. The commenters suggested that provisional approval would allow Pell Grant disbursement, with the understanding that it could be revoked if certification is later denied. The commenter also recommends publishing a clear timeline for Secretary approval decisions for programs submitted in the 2026–27 award year, and waiving the § 690.94(a) requirement that programs demonstrate 12 months of completion and job-placement outcomes during the first award year (2026–27), since no institution can produce retrospective outcomes for program types that did not legally exist before WFTCA.

Discussion: The Department declines the commenter's suggestions. The Department is obligated to administer eligibility for Workforce Pell Grants consistent with the statutory and regulatory structure established by Congress. Under § 690.93 and § 690.94, Governor certification must precede the Secretary's approval of a program, and the Secretary may approve a program only after determining that all statutory and regulatory requirements have been satisfied, including the certification steps assigned to State authorities. Additionally, statute does not permit the Secretary to approve or provisionally approve programs that have not completed the mandatory State-level certification under § 690.93. The Secretary's authority to determine program eligibility is bounded by explicit statutory criteria and cannot be expanded through regulation to allow approval prior to completion of the required State processes. The Department also notes that the statutory framework requires the Secretary to consider specific outcome metrics prior to approval and on an annual basis thereafter.

Changes: None.

Comments: One commenter raised concerns about State-specific rules that may make eligible workforce program

guidelines less favorable to postsecondary career centers. The commenter provided an example of eligible workforce programs in Ohio that would be required to align to other "stackable" credentials and would be discouraged from offering programs that are "dead ends for students." The commenter is concerned this could offer an unfair justification to disallow the use of Pell Grants for CDL (or other short-term postsecondary programs) if CDL programs (or other similar programs) are not aligned with college credit. The commenter asserted that career centers have long viewed their mandate to offer programming that aligns with industry needs. The commenter stated that their institutions are accredited by ACCSC and COE, which helps ensure Pell Grant funds are being spent on training programs aligned with in-demand careers as 70% or more of graduates meet the accreditation standard of receiving related employment.

Discussion: The Department appreciates the commenter's concerns regarding how State-specific policies such as those in Ohio that emphasize stackability and alignment with credit-bearing pathways may affect the approval of certain short-term programs, including CDL training offered by career centers. However, the Department does not direct how States implement their review frameworks beyond the requirements in § 690.93. States may adopt more detailed policies, provided they remain consistent with the statute and regulations. Nothing in this rule prohibits the approval of CDL or similar short term workforce programs so long as they meet the statutory requirements. CDL programs may satisfy those requirements if the Governor determines that the program aligns with an in-demand occupation, meets employer hiring requirements, and results in a credential that is recognized and portable within the occupation, even if it does not carry college credit. The regulations do not require that credentials be credit-bearing, nor do they require alignment with a degree pathway in every instance. Rather, the Governor must determine that completers can receive academic credit toward at least one certificate or degree if the student chooses to pursue further education. A workforce credential may satisfy this requirement through articulation, transfer-of-credit agreements, or other documented pathways. States retain flexibility in determining how such credit recognition is established. Additionally, the Department recognizes that many

accredited postsecondary career centers may meet accreditation standards requiring high rates of related employment, however, accreditation alone does not substitute for the Governor's statutory role in certifying eligible workforce programs.

Changes: None.

Comments: One commenter urged the Department to add a new paragraph § 690.92 (h) to read: Does not offer, or affiliate with any company that offers, financing for the program using a private educational loan, including an income share agreement or any similar type of credit product, other than loans or payment plans that charge no interest to the student. The commenter argued that the eligible workforce program rule should include strong protections to prevent institutions from steering students into risky or high-cost private financing products. They noted that previous short-term workforce-training pilots showed students often needed to borrow to complete programs, even though earnings gains were modest, creating a risk of unmanageable debt. To address this, the commenter urged the Department to prohibit institutions from entering into any arrangements such as preferred-lender relationships with entities offering private financing for eligible workforce programs. This would include private loans, income-share agreements, and outcome-based financing products. They contend such safeguards are necessary to protect students in short-term workforce programs from being pushed toward harmful debt.

Discussion: We decline the commenter's suggestions. The statutory framework in section 481(b)(3) of the HEA defines the required elements of an eligible workforce program, and the Department is not authorized to expand those criteria to impose additional restrictions on institutional financing arrangements. Existing consumer protection provisions under the HEA, including requirements governing preferred lender relationships and disclosures, already apply to institutions that choose to offer or facilitate private financing. Adding an eligibility condition unrelated to the statutory definition of an eligible workforce program would exceed the Department's authority and risk creating inconsistency with long-standing Title IV structures.

Changes: None.

Eligible Workforce Program (§ 690.92(a) and (b))

Comments: Many commenters requested that the Department expand the proposed eligible workforce program

length. Commenters are concerned that the program length limits may unintentionally exclude high-quality workforce programs, particularly those in healthcare, manufacturing, commercial driving, construction, and other skilled trades. The commenters encouraged targeted flexibility for high-quality programs that exceed or fall below this timeframe. Several commenters also recommended that the Department allow for modular or segmented program structures that align with apprenticeship models, including the ability to recognize portions of multi-year programs as eligible workforce programs. A few commenters requested that the Department clarify that program eligibility is determined based on total instructional hours completed so program duration may extend beyond the nominal range when necessitated by part-time enrollment, temporary interruptions, or similar circumstances, provided that the program remains otherwise compliant. Other commenters urged the Department to provide flexibility to pre-apprenticeship programs that may fall short of the program length minimums.

A few commenters requested the Department expand an eligible workforce program's length to 80–599 clock hours and 8–29 weeks. One commenter argued that expanding the program length would allow many more workforce programs to become eligible, especially at community colleges, and qualify for Pell Grant funding. The commenter mentioned that the current regulations do not accommodate programs designed for part-time students, stating that most adult learners enroll in evening or weekend courses and meet two nights per week. The commenter also pointed out that the current 10 hour per week assumption is unrealistic and misaligned with community college students' schedules.

Another commenter recommended changing the maximum length of instruction for eligible workforce programs from the proposed 14 weeks to 24 weeks. The commenter argued that this would allow underemployed individuals to work part-time while attending training, as condensing a 600-hour training course to 14 weeks would require training for 8 or more hours a day. The commenter also asserted that extending the program length aligns with the inclusion of related technical instruction in Registered Apprenticeship programs, which allows an employee to work full-time but attend training over 9–12 months, with typically only 144 hours of instruction.

A different commenter stated that the majority of students who participate in

workforce development courses are adults who work during the day and that trade classes such as HVAC, Plumbing, Carpentry, Welding, Machining Technology require 16 to 17 weeks for all relevant material to be covered.

Discussion: We decline the commenters' recommendations to extend the program length limits. The Department cannot adopt the commenters suggested changes because the statutory framework established by WFTCA sets explicit minimum and maximum program lengths for eligible workforce programs. Section 481(b)(3)(A) of the HEA, as amended by the WFTCA, requires that an eligible workforce program includes at least 150 but less than 600 clock hours of instruction and at least 8 but less than 15 weeks of instructional time. The Department does not have the discretion to expand either the lower or upper bounds of these ranges. Similarly, while the Department recognizes that many adult students enroll part time, the Department cannot alter the statutory requirement that workforce programs fall within a specified timeframe window. Institutions and Governors retain flexibility to design programs that meet statutory requirements while serving part-time or working students, but the Department cannot adopt an alternative structure that would conflict with the statute. Programs that do not meet the statutory thresholds may continue to pursue other Federal, State, or employer-sponsored funding sources, but they cannot be designated as eligible workforce programs for the purpose of receiving Pell Grant funding for eligible enrolled students.

Moreover, we recognize that some training models, such as related technical instruction in Registered Apprenticeship programs, may span longer periods, and so we want to reiterate how we count instructional time. For all eligible programs, "a week of instructional time" is defined in two ways under 34 CFR 668.3(b). The term can mean any period of seven consecutive days in which at least one day of regularly scheduled instruction or examinations occurs, or, after the last scheduled day of classes for a term or payment period, at least one scheduled day of study for examinations occurs. For a program offered using asynchronous coursework, it can also mean any period of seven consecutive days in which the institution makes available the instructional materials, other resources, and instructor support necessary for academic engagement and completion of course objectives. This period must also be one in which the

institution expects enrolled students to perform educational activities demonstrating academic engagement during the week. For purposes of consistency and integrity in the title IV, HEA programs, this definition is used in the context of eligible workforce programs as well. The HEA, as amended by the WFTCA, does not require a program to run for a sequential time, therefore, it is acceptable for an eligible workforce program to have non-sequential weeks of instructional time, as defined in the previous paragraph. The program would be considered an eligible workforce program as long as the weeks of instructional time used to determine the students' Pell Grant eligibility is less than 15 weeks. For example, non-sequential weeks of coursework that occur over a year but only include 14 weeks of instructional time (as defined under 34 CFR 668.3(b)) applicable to the student's Pell Grant eligibility is acceptable.

We also understand that in rare instances some students may take slightly longer than 14 weeks of instructional time to complete their eligible workforce programs. This could be due to illness or other unforeseen circumstances in the student's life. An individual student may take longer than the published duration of the eligible workforce program; however, this cannot be the norm for most students. If most students in the program take more than 14 weeks of instructional time to complete the program, then the program is not less than 15 weeks of instructional time, and the school's program length must be adjusted accordingly. This ensures that institutions do not circumvent the maximum length requirement by declaring a program to be less than 15 weeks, when in practice it takes most students longer than that to complete it. At the same time, this approach allows institutions to provide flexible arrangements to students who have difficult life circumstances unrelated to the program.

Changes: None.

Comments: One commenter sought clarification as to whether a 2000-hour program that includes 196 hours of front-loaded related technical instruction (*i.e.*, classroom/lab instruction and practicum), along with employer-led, work-based, paid learning for the balance of apprenticeship hours would qualify as an eligible workforce program for Pell Grant purposes. The commenter asserted that their apprenticeships meet the requirements for inclusion on the ETPL and have received substantial direct and sub-granted funding from DOL. The

commenter noted that their programs have consistently exceeded WIOA and grant-mandated performance requirements and have met all administrative requirements associated with the expenditure of Federal funds.

Another commenter recommended that the Department recognize competency-based completion as an alternative basis for program length eligibility, using Registered Apprenticeship competency standards as benchmarks and accept workforce-specific accreditation standards as an alternative compliance pathway. The commenter requested clear conversion guidance for time-based programs covering hybrid instruction and work-based learning hours.

A different commenter argued that OA Circular 2026–01 (published by the DOL's Office of Apprenticeship), explicitly clarifies that 144 annual related technical instruction hours has always been a recommendation under 29 CFR 29.5(b)(4), not a regulatory floor, which means that competency-based (CB) programs have no fixed hour count at all. The commenter argued that front-loading and out-of-class instruction are also explicitly permitted, and that this creates a direct inter-agency conflict: proposing a new rigid clock-hour floor at the same time that the DOL is moving away from fixed hours. The commenter noted that a Registered Apprenticeship delivering related technical instruction through a CB framework—which OA has actively encouraged—cannot demonstrate compliance with a minimum clock-hour requirement that is structurally incompatible with how the program is designed. The commenter requested inter-agency consistency.

Another commenter explained that CDL training programs generally range from three to eight weeks, but that the shorter programs may fall below the eight-week minimum required for Pell Grant eligibility as an eligible workforce program. They noted that programs including hazmat endorsements or meeting entry-level driver training (ELDT) requirements tend to be longer and more comprehensive, making them more likely to meet statutory duration requirements. The commenter requested that the Department clarify how hours for endorsement preparation and ELDT components should be counted toward a program's total length.

Discussion: A Registered Apprenticeship program's related instruction could qualify as an eligible workforce program. The related instruction component of a Registered Apprenticeship program could be delivered through several eligible

workforce programs if each eligible workforce program is at least 150 clock hours or its equivalent in credit hours. For example, if a 4-year Registered Apprenticeship program has 600 clock-hours of related instruction, with 150 clock-hours each year, this could be delivered across four separate eligible workforce programs. As noted in our NPRM, all programs that serve as a related instruction component of a RAP meet the requirements in § 690.93 (a)(1) and (2), and as long as the program serving as a related instruction component meets other requirements, including the program length requirements in § 690.92 (a) and (b), receives Governor approval (§ 690.93) and the Secretary's approval (§ 690.94), and meets the value-added earnings requirements in § 690.95, the program serving as a related instruction component may be eligible for Pell Grants as an eligible workforce program. While the commenter is correct that certain program design and delivery flexibilities that are available to Registered Apprenticeship programs are inconsistent with the requirements for an eligible workforce program, this is due to the statutory framework for eligible workforce programs established in the WFTCA and not something the Department has the discretion to address.

As a general principle, program length is determined based on all instructional hours that are required for a student to complete the program as it is approved and offered by the institution. When ELDT components are integrated into the required curriculum rather than offered as optional or stand-alone modules, those hours may be counted toward the program's total instructional time, provided they are necessary for program completion.

The Department will offer further clarification in future guidance to support providers in structuring programs that align with statutory thresholds while maintaining appropriate rigor and industry relevance.

Changes: None.

Comments: A few commenters were concerned about the maximum length for eligible programs being 599 clock hours or the equivalent. One commenter asked the Department to acknowledge in the final rule's preamble that many defense manufacturing training programs, particularly those involving Computer Numerical Control (CNC) machining, nondestructive testing (NDT), welding to American Welding Society (AWS) or military specifications, and composite fabrication for aerospace applications,

require instructional hours at or near 600 clock hours. The commenter asserted that programs operating at the upper boundary of the eligibility window will need to compress content or omit material that is standard in industry-recognized credentials for defense applications. The commenter asked the Department to encourage Governors and State workforce boards to consider this tension when evaluating eligible workforce programs under § 690.93 and encouraged the Department to signal its intent to work with Congress on future adjustments to the clock-hour ceiling, should evidence indicate that defense-critical training programs are being constrained by it. Another commenter stated that related technical instruction designed to lead to a bachelor's degree cannot be structured within 599 clock hours.

A different commenter stated that the rule does not consider clock hour requirements that each State mandates for legal practice. The commenter added that most trade schools must comply with State requirements for State licensure. For example, in Colorado, a massage therapist must obtain a minimum of 650 hours to be licensed in Colorado, while an esthetician needs 600 hours. The commenter stated that if the government makes Pell Grant funding unachievable, some trade schools may be forced to close. The commenter requested that the eligible workforce program minimum and maximum clock-hour requirements be re-evaluated with State requirements in mind.

Discussion: The Department appreciates the commenter's perspective on the instructional demands of defense manufacturing training programs, including CNC machining, nondestructive testing, welding, and aerospace related composite fabrication. We recognize that many high-skill technical training programs, particularly those tied to defense critical occupations, may require substantial instructional time and that some institutions structure these programs at or near 600 clock hours. Although we understand the commenter's concern that some programs may feel pressure to compress or omit content to fit within the statutory window, decisions about modifying the clock hour ceiling for eligible workforce programs rest solely with Congress. Accordingly, the Department cannot commit to pursuing legislative changes nor encourage Governors or State workforce boards to interpret the statute beyond its plain terms. Governors retain flexibility under § 690.93 to evaluate whether programs align with high-skill, high-wage, or in-

demand sectors and occupations, and may consider a wide range of labor market and employer validated information as part of that process. But neither Governors nor the Department may approve a workforce program that exceeds the statutory program length limits.

Furthermore, it is not mandatory for a trade school to alter its existing programs that qualify for title IV, HEA program assistance so that they meet the shorter length requirements for eligible workforce programs. Trade schools that participate in the title IV, HEA programs can maintain their current program offerings and clock-hour requirements. For example, an institution offering a program that is at least 600 clock hours and 15 weeks of instruction in length would be permitted to continue offering that program (assuming it continues to meet all other title IV, HEA requirements), and that program would not be subject to any of the requirements under § 690 Subpart H.

Changes: None.

Comments: A few commenters argued that the NPRM used outdated clock-to-credit-hour conversion ratios (37.5 and 25) to translate the statutory 150–599 clock-hour limits into semester and quarter credit ranges for Pell Grant eligibility in eligible workforce programs. One commenter pointed out that because the Department updated these ratios in § 668.8(k)–(l) to 30 and 20, the NPRM’s reliance on the older formulas creates inconsistencies with how institutions convert hours for other non-degree programs. The commenter is concerned that discrepancy could cause programs to appear eligible or ineligible incorrectly, leading to inequitable treatment and practical design challenges for institutions. The commenter urged the Department to clarify which conversion ratios apply, and if the legacy ratios were used mistakenly, to publish corrected thresholds. At the same time, the commenter recommended keeping the NPRM’s program length limits (4–15 semester credits and 6–23 quarter credits) since some institutions have already begun designing programs around these ranges. The commenter also requested explicit guidance confirming that institutions should use the existing regulatory conversion formula when determining Pell Grant eligibility in eligible workforce programs to ensure consistent and accurate implementation across sectors.

Discussion: The principles for the clock-to-credit conversion under 668.8(k) and (l) are distinct from establishing the equivalent number of credit hour to clock hour requirements

in the eligible workforce program authorizing statute. In the NPRM, the Department stated that we used the same methodology for establishing the equivalences under 668.8(d), that is 37.5 for semester/trimester hours and 25 for quarter hours. We provided an example of how the clock-to-credit conversion applies during negotiated rulemaking under Materials distributed by the Department during Day 1: Calculation of a Federal Pell Grant for an Eligible Workforce Program. The conversion is designed to set a lower limit of clock hours for title IV, HEA program purposes for programs that do not lead to a degree or that are not fully acceptable into a degree program.

Changes: None.

Comments: One commenter expressed concern regarding low-quality credential mills in defense technology fields. The commenter proposed a tiered minimum clock hour structure: Tier 1 (basic workforce skills): 150–299 hours, eligible for Pell Grants as an eligible workforce program with standard accountability; Tier 2 (intermediate technical skills in in-demand fields): 300–499 hours, eligible for enhanced Pell Grant award amounts (up to 150 percent of a standard Pell Grant); and Tier 3 (advanced technical skills in National Security Workforce Priority CIP codes): 500–599 hours, eligible for Defense Workforce Pell Grants with alternative accountability metrics and DOD consultation requirement.

Discussion: We decline the commenter’s proposal. Section 481(b)(3)(A) of the HEA, as added by Section 83002(b) of the WFTCA, states that an eligible workforce program must be at least 150 clock hours of instruction, but less than 600 clock hours of instruction, or an equivalent number of credit hours and be offered by an eligible institution during a minimum of 8 weeks, but less than 15 weeks. The statute does not authorize the Department to create a tiered system of Pell Grant award amounts, alternative metrics, or DOD consultation requirements.

Changes: None.

Comments: One commenter stated that, given the existence of partial credits, it is notable that the language that the Department had seemed to use during rulemaking describing quarter credits was “6 to 23” but actually should be “6 to less-than 24 quarter credits” when describing the maximum number of quarter credit hours. Another commenter points out that the NPRM proposes a ceiling of 599 clock hours, instead of the statutory 600 clock hours. The commenter requests that the Department confirm whether this one-

hour reduction from the statutory ceiling is intentional, and if so, identify the policy rationale.

Discussion: The regulatory language mirrors the statute; § 690.92 (b)(i) states that an eligible workforce program “Is at least 150 clock hours but less than 600 clock hours, while § 690.92 (b)(iii) states that such a program is “. . . at least 6 but less than 24 quarter hours . . .”

Changes: None.

Comments: A few commenters proposed replacing “and” with “or” between paragraphs § 690.92 (a) and (b) to increase flexibility. One commenter believes requiring both 150–599 hours and a minimum of 8 weeks but less than 15 weeks creates unnecessary and restrictive scheduling challenges. The commenter argued that using only clock hours as the primary mechanism for both program length and the calculation of students’ Pell Grant eligibility will better ensure comparability and fairness across programs with different instruction delivery schedules. A few commenters also pointed out that 599 clock hours/14 weeks would mean 42.8 hours/week, and one commenter asked for clarification on how hours may be distributed.

Another commenter asserted that using both thresholds may unintentionally exclude high-quality training programs that are designed in direct partnership with industry and aligned to current hiring needs. The commenter stated that some programs fall below the proposed minimum thresholds not because they lack rigor or value, but because they are intentionally designed to deliver targeted, job-relevant skills as efficiently as possible. The commenter argues that requiring programs to meet a fixed number of hours may necessitate the addition of content that is not essential to job readiness, creating unnecessary costs for learners and delays for employers seeking to fill open positions. The commenter believes allowing this flexibility would better align eligible workforce programs with the realities of today’s labor market and support more effective partnerships between employers and education providers.

Discussion: We decline the recommendations to allow an eligible workforce program to meet one of the length conditions but not the other because the WFTCA requires both conditions in § 690.92 (a) and (b) to be met for the program to be considered an eligible workforce program. Regarding the comment about scheduling concerns, we want to reiterate that in the context of eligible workforce programs, the HEA, as amended by the WFTCA, does not require a program to

run for a sequential time. Therefore, it is acceptable for an eligible workforce program to have non-sequential weeks of instructional time. A program would be considered an eligible workforce program as long as the weeks of instructional time used to determine the students' Pell Grant eligibility are less than 15 weeks. For example, non-sequential weeks of coursework that occur over a year but only include 14 weeks of instructional time (as defined under 34 CFR 668.3(b)) applicable to the student's Pell Grant eligibility is acceptable. We believe this flexibility will help address scheduling concerns.

Changes: None.

Comments: One commenter approved of the minimum length of workforce programs being set at 8 weeks because they believe it will help prevent a longstanding problem of low-quality CDL mills that undertrain new commercial motor vehicle operators in three-to-six-week courses. The commenter asserted that this accelerated model is a direct contributor to preventable truck crashes and fatalities. The commenter also stated that for more than three decades, the false "truck driver shortage" narrative has fueled a cottage industry of low-quality CDL mills sustained by government job training funds and predatory tuition-repayment agreements. The commenter was also concerned that CDL mills inflate instructional hours by counting watching videos, sitting in a classroom without an instructor, waiting for a truck, and riding along instead of driving. The commenter believed that a clear and enforceable definition of instruction is needed so that the clock-hour requirements will not be meaningless, and because such tactics have been used for decades to game WIOA and State grants requirements. The commenter argued that employment outcomes, not course completion, must be the primary measure of program quality.

The commenter further suggested that to prevent Pell Grant exploitation in eligible workforce programs, the Department must implement strong oversight to include unannounced audits of actual instructional hours, verification of behind-the-wheel time per student, independent validation of job placement outcomes, clear definitions of "instruction" versus "idle time," and penalties for schools that manipulate data.

Discussion: The Department thanks the commenter for supporting the minimum length of eligible workforce programs. Regarding the potential concerns for CDL mills suggested, it is not clear exactly how that would occur

given the constraints of the rules outlining eligible workforce programs. A situation where students were enrolled in two instances of the same program to shorten its length would violate the restriction on concurrent enrollment in § 690.11(b). Also, the minimums in § 690.92 would apply—e.g., students would have to take at least 150 clock hours over at least 8 weeks of instruction.

Existing regulations at 34 CFR 600.2 define clock hours and credit hours, and the requirements under those definitions preclude the kind of gaming of the meaning of instruction that the commenter described.

As for what outcome metrics should determine program quality and eligibility, the new regulations enforce not only a specific program completion percentage but also a job placement percentage (as the commenter seems to affirm) as well as a value-added earnings metric. Finally, on the commenter's suggestions for audits and penalties, the new programs will be subject to the established rules and requirements of other title IV, HEA programs, which include not only oversight by the Department but by accreditors and States too. We think that these established oversight requirements, in addition to the new program-specific regulations, will be sufficient quality enforcement mechanisms for eligible workforce programs.

Changes: None.

Comments: One commenter recommended that hours spent on employer-connected projects supervised by industry specialists count toward clock-hour requirements.

Discussion: All clock hours earned by the student must be associated with the actual eligible workforce program. Under 34 CFR 600.2 a clock-hour is defined, in part, as a 50- to 60-minute class, lecture, or recitation in a 60-minute period or a 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period. In addition, as outlined in these regulations regarding written arrangements, in most cases an eligible workforce program can consist of up to 25 percent of instruction taught by an ineligible institution or organization (e.g., employer, etc.), unless it serves as a related instruction component of a Registered Apprenticeship program, as defined in 29 CFR part 29.2, which allows an ineligible entity to provide more than 25 percent but less than 50 percent of the program. Therefore, as long as the employer-connected projects are formally part of the student's program of study and the hours earned

fall within the written arrangement thresholds, it is possible for a student to earn clock hours connected with employer instruction.

Changes: None.

Eligible Workforce Program (§ 690.92(c))

Comments: A few commenters urged the Department to remove the NPRM's categorical exclusion of direct assessment coursework from eligible workforce programs, arguing that neither the WFTCA statute nor title IV regulations support such a prohibition. One commenter argued that Congress intentionally excluded only correspondence courses (not direct assessment) and historically has treated direct assessment as an approved instructional modality integrated into title IV, HEA programs through Department-approved credit- and clock-hour equivalencies. The commenter argued that excluding direct assessment contradicts longstanding regulatory interpretation, undermines congressional intent to expand flexible, workforce-aligned pathways, and disregards the strengths of competency-based programs designed for working adults. The commenter asserted that approved direct assessment programs already undergo rigorous oversight and that concerns about uniform progress measurement are unfounded given existing title IV mechanisms.

Discussion: The Department declines the recommendation to remove the prohibition on direct assessment programs. We acknowledge the value these programs can provide for adult learners and workforce-aligned education; however, as noted, the Department interprets the WFTCA's amendments to the HEA as expressly limiting eligible workforce programs to those measured in credit hours, clock hours, or their statutory equivalents, and not to alternative measures of progress such as competency-based direct assessment. Although direct assessment programs may incorporate equivalency frameworks under 34 CFR 668.10, these frameworks serve distinct functions within the broader title IV, HEA program system and do not override the specific statutory language governing eligible workforce programs. The Department must therefore implement the program in a manner consistent with the explicit terms and conditions Congress established. The Department also notes that the accountability structure for eligible workforce programs, focused on completion, employment, and earnings measures, relies on consistent, comparable definitions of program length and student progress. The

Department believes that adhering closely to statutory clock- and credit-hour constructs is necessary to ensure consistency, prevent inadvertent eligibility expansions beyond Congressional authorization, and support smooth implementation by States, institutions, and accreditors.

Changes: None.

Comments: One commenter requested that the Department confirm that the statutory study abroad exclusion applies to traditional postsecondary study abroad programs and does not extend to multi-State related technical instruction delivery, international employer OJL components, or any other registered apprenticeship program that bears no operational resemblance to study abroad as that term is used in the postsecondary context. The commenter also argued that the prohibitions on correspondence courses and direct assessment are regulatory implementation choices, and not statutory mandates. Therefore, the commenter requested that the Department revise or carve out Registered Apprenticeship related technical instruction. The commenter noted that OA Circular 2026–01 explicitly lists out-of-class work including self-study, correspondence courses, and electronic media as counting toward related technical instruction hours, and that § 690.92(c) would prohibit instruction methods OA has affirmatively authorized for registered programs. The commenter stated that OA’s competency-based (CB) registration framework is, by definition, a direct assessment model where competency is demonstrated without fixed credit or clock hours. The commenter argued that prohibiting direct assessment at the Department level categorically disqualifies CB apprenticeship related technical instruction from becoming an eligible workforce program, including programs OA has actively promoted and funded. Finally, the commenter argued that Circular 2026–01’s front-loading and out-of-class provisions explicitly anticipate hybrid and distance related technical instruction delivery, and that § 690.92(c)’s modality restrictions could restrict these OA-authorized delivery approaches.

Discussion: The Department declines to revise § 690.92(c) or carve out registered apprenticeship related technical instruction from the statutory restrictions. Section 401(k) of the HEA, as amended, expressly prohibits eligible workforce programs from offering study-abroad coursework, correspondence courses, or direct assessment coursework. These prohibitions are

statutory mandates and not matters of regulatory discretion.

Changes: None.

Eligible Workforce Program (§ 690.92(d), (e), and (f))

Comments: Many commenters expressed concerns that the dual approval requirements in 34 CFR 690.92(d), (e), and the outcome requirement under (f) may become administratively burdensome and could limit the availability of eligible workforce programs.

Discussion: The requirements under § 690.93, § 690.94 and § 690.95 are statutory and cannot be eliminated.

Change: None.

Eligible Workforce Program (§ 690.92(g))

Comments: One commenter agreed with the provision that prohibits institutions from offering an eligible workforce program if it has been subject to suspension, emergency, or termination action by the Secretary during the 5 years preceding the date of the determination. The commenter asked several clarifying questions and made several recommendations, including for the provision to be expanded to include HEA Sec. 117 enforcement actions, NDAA Sec. 1085 compliance failures, DOJ FARA enforcement actions, and BIS/OFAC sanctions actions against the institution or its key personnel. The commenter also suggested a mandatory self-disclosure requirement for any institution that has been the subject of any Federal enforcement action in the prior 5 years and submitted a workforce program for Department approval.

Discussion: The Department declines to make changes based on the commenter’s demands. As noted in the NPRM the Department was simply mirroring this provision with the provision under the PEP regulations. Additionally, mandatory self-disclosure of Departmental actions in the last five years is unnecessary because the Department already maintains records of actions that it takes against eligible institutions so disclosures would be redundant. Furthermore, to address the commenter’s clarifying questions:

(1) Does a suspension that was appealed and reversed count toward the 5-year prohibition? No.

(2) Does a termination for a single program (not the institution’s entire title IV, HEA program eligibility) count toward the institution-wide eligible workforce program prohibition? No.

(3) Does an emergency action that was resolved by consent agreement before becoming a final order count? No.

(4) Do actions against predecessor institutions or acquired programs count against current institutional eligibility?—We need more information to provide an answer to this question. If this situation arises, the Department will review and provide feedback.

Changes: None.

Comments: One commenter argued that § 690.92(g) is overly broad and could force program suspension based on minor or unresolved compliance issues. The commenter also believes that the five-year prohibition is disproportionate relative to other regulations and should be aligned with the two-year prohibition under section 690.97(a). The commenter also noted that the statute does not expressly impose such a bar on eligible workforce programs.

Discussion: The Department’s intent is not to require program suspension for minor or technical compliance issues, nor to impose disproportionate consequences for issues that can be promptly resolved. Rather, § 690.92(g) is designed to address significant or sustained noncompliance issues that raise questions about program integrity or about the institution’s ability to deliver the approved eligible workforce program in accordance with statutory and regulatory requirements. Regarding the duration of the prohibition, the five-year period in § 690.92(g) reflects the seriousness of circumstances in which a program is suspended due to noncompliance with the foundational conditions for participation. This period is intended to ensure that institutions take necessary corrective actions and that students are protected from repeated or systemic deficiencies. The Department believes that this approach is consistent with its broad responsibility to safeguard program quality and appropriate use of Federal funds.

While the commenter notes that the statute does not expressly impose such a prohibition, the Secretary has authority to promulgate regulations governing the manner of operations of the applicable programs administered by the Department (*See* 20 U.S.C. 1221e–3). These programs include the Federal student financial assistance programs authorized by the HEA, as amended by the WFTCA, such as the Pell Grant program.

Changes: None.

Comments: One commenter argued that the rule should explicitly bar “risky” institutions from being able to provide Pell Grants to students enrolled in eligible workforce programs. They proposed that § 690.92(g) be strengthened to disqualify any

institution that, within the previous five years, has experienced a revocation, suspension, withdrawal, or termination of institutional accreditation or State authorization. They also urged the Department to consider additional indicators of risk such as placement on Heightened Cash Monitoring, findings of fraud or misconduct by regulators or courts, or loss of programmatic accreditation as potential grounds for ineligibility. To implement this approach, the commenter suggested adding specific disqualification language to § 690.92(g) to ensure that institutions with demonstrated compliance or oversight problems cannot offer eligible workforce programs. The commenter's suggested language was: (g) is offered by an institution that, during the five years preceding the date of the determination, has not been subject to: (i) any revocation, suspension or termination of programs under this title; (ii) any revocation, withdrawal or termination of accreditation by an institutional accreditor; or (iii) any revocation, suspension, withdrawal, or termination of State authorization by a State authorizing agency.

Discussion: We decline the commenter's suggestion and believe there are sufficient guardrails in these final regulations. Commenters will note that eligible workforce programs require three separate outcomes metrics, approval by the Governor and the Department, and periodic reapproval by the Governor prior to the expiration of the institution's Program Participation Agreement.

Changes: None.

Components Determined by the Governor (§ 690.93(a))

Comments: One commenter pointed out that some students in eligible workforce programs will be eligible for both Pell Grants and WIOA funding. The commenter requested that States add a question to their Eligible Training Provider system for new course offerings to indicate if the training is eligible for Pell Grants. The commenter argues that this will ensure appropriate distribution of funds.

Discussion: We encourage States to acknowledge whether or not a program qualifies for Pell Grant funds to make the process easier for prospective students to understand, but we do not intend to make this a requirement. The statutory framework established by the WFTCA and implemented in this final rule outlines specific requirements for Governor approval, Secretary approval, and annual program accountability, but it does not authorize the Department to

prescribe operational changes to State WIOA data systems. States retain the flexibility to manage their Eligible Training Provider Lists (ETPLs) and related systems in a manner that aligns with their own administrative processes and workforce needs. Although States may choose to incorporate Pell Grant and eligible workforce program information into their ETPL systems, doing so is not required under the HEA or this regulation. The Department will continue to work collaboratively with the DOL on eligible workforce program implementation and recognizes that States may independently adopt coordination strategies, such as adding new ETPL fields, if they determine such steps will support effective program administration.

Changes: None.

Comments: Many commenters recommended requiring stakeholders other than the State board to be consulted as a part of the Governor's certification process including: State higher education executive officers, other State officials, local workforce boards, private sector partners, elementary and secondary school teachers, adult education providers, nonprofit organizations, WIOA providers, employers, associations, the artificial intelligence industry, the Department of War, and State legislatures. Some commenters also recommended that entities other than the Governor be able to certify the program.

Discussion: We decline the commenters' recommendations. Section 481(b)(3)(A)(iii) of the HEA, added by Section 83002(b) of the WFTCA, states that after consultation with the appropriate State board, the Governor must approve the program. The Governor is ultimately responsible for the decision whether to certify the program and is only legally required to consult with the State board. The State board cannot certify the program in place of the Governor. The Governor has the authority to work with any other organization during the certification process; however, neither the law nor the Department's regulations require the Governor to do so.

During negotiated rulemaking there was broad representation from State workforce agencies and workforce development boards, State grant agencies, and other State and non-profit higher education financing organizations, and State higher education executive officers, State authorizing agencies, and other State regulators that provided important feedback and agreement with our proposal.

The Department also intends to continue our collaboration with the Department of Labor, and we will release guidance as necessary to assist Governors in certifying programs.

Changes: None.

Comments: One commenter recommended that the Department encourage Governors to assess device access gaps in their eligible program populations and to consider partnerships with computer ownership ecosystem organizations—nonprofit organizations that refurbish and distribute computers, connect recipients with technical support, and build sustainable local device access networks—as part of their broader student support strategy.

Discussion: We believe the commenter's suggestion is outside of the scope of the regulations.

Changes: None.

Comments: Several commenters questioned the legal basis for Governor certification of each program. Commenters were concerned that the denial is unappealable and that the requirement is burdensome. In a separate comment, the same commenter demanded that the Department publish a major questions analysis in the final rule specifically addressing whether the Supreme Court's holdings in *Biden v. Nebraska*, 600 U.S. 477 (2023) and *West Virginia v. EPA*, 597 U.S. 697 (2022) require Congress to expressly authorize the Governor veto architecture before it can be implemented.

Discussion: The Department maintains that all regulations promulgated under this rulemaking do not raise constitutional issues, including the components to be determined by the Governor. The major questions doctrine discussed in the cases cited by one commenter applies when an administrative agency is interpreting a statute to determine the scope of its own authority. See *Biden v. Nebraska* at 504–06; *West Virginia v. EPA* at 721. It provides that an agency must point to “clear congressional authorization” when the agency claims extraordinary authority to resolve issues of “deep economic and political significance.” *Biden v. Nebraska* at 506 (internal quotation marks omitted). The commenter fails to explain why a doctrine that cabins the authority of an agency applies to the provision at issue. This provision places requirements on the Governors; it does not grant authority to an agency. The WFTCA requires the Governor to certify all eligible workforce programs meet specific conditions. Section 481(b)(3)(A)(iii) of the HEA, added by Section 83002(b) of the WFTCA, states

that after consultation with the appropriate State board, the Governor determines that the program meets specific requirements outlined in statute and copied under § 690.93(a).

Furthermore, to the extent that the commenter is actually concerned about the non-delegation doctrine (as opposed to the major question doctrine), the Department does not believe that the doctrine is violated because the Secretary retains ultimate authority to approve programs and distribute funds. See *Fed. Commc'ns Comm'n v. Consumers' Rsch.*, 606 U.S. 656, 694 (2025). The Department also notes the States have long played a role in determining whether an institution is eligible to participate in title IV, HEA programs. See, e.g., 20 U.S.C. 1001(a)(2) and 1002(a)(1).

The Governor has the statutory mandate to certify each program. The Department will not mandate a standardized appeals process; however, under § 690.93(b)(3) Governors are required to publish the process and timeline for the Governor's consultation with the State board and a determination that a program meets the requirements, and the process for an institution to appeal that determination and that such process shall include clear, transparent, and timely procedures that are applied consistently and equitably at all eligible institutions.

Changes: None.

Comments: Many commenters stated that there is considerable overlap in requirements for eligible workforce programs and programs authorized under the Carl D. Perkins Career and Technical Education Act (Perkins V) and the Workforce Innovation and Opportunity Act (WIOA). Commenters claimed that programs authorized under Perkins V and WIOA have been vetted for quality and outcomes relating to workforce preparation. Commenters suggested that programs authorized under Perkins V and WIOA be eligible for automatic certification from the Governor. The commenters stated automatic certification would reduce burden on institutions, Governors, and the Federal Government. It would also expedite the timeframe for certification of eligible workforce programs.

Other commenters provided a wide range of programs that should receive expedited or automatic certifications including programs in teacher education and healthcare or programs that received programmatic accreditor approval.

Discussion: We decline the commenters' suggestions. The Department appreciates that there are similarities in programs funded under

Perkins V and WIOA; however, the commenters should note that eligible workforce programs are authorized under the Higher Education Act (HEA). Governors cannot rely on approval of programs under different statutes to supplant any and all review requirements outlined under the HEA. We have made concessions where possible; for example, under § 690.93 (g) a program that serves as a related instruction component of a Registered Apprenticeship Program meets the requirements of paragraphs (a)(1) and (a)(2) of this section.

The Department also appreciates the request that programs related to certain sectors or occupations receive expedited certification; however, we decline to require Governors to expedite approvals of certain programs. We believe that Governors are best suited to create policies and timelines for approval and assessments of programs in their States.

The Department is developing an official form¹⁵ that Governors must use to certify that the program meets all the requirements under § 690.93(a). The form will be in plain language and published prior to July 1, 2026.

Changes: None.

Comments: Many commenters urged the Department to either define or provide clear guidance about the "stackable and portable" provision under § 690.93(a)(3)(i) that states an eligible workforce program can lead to a recognized postsecondary credential that is stackable and portable across more than one employer.

Discussion: We decline to define stackable and portable in regulation. Creating a Federal definition may conflict with the definition of stackable and portable that Governors may have already created under their WIOA State plans. We also believe that Governors should have the flexibility to determine stackability and portability as it relates to their specific populations. The Department provided a link¹⁶ to DOL guidance in the NPRM that provides detailed guidance on stackable and portable credentials. The Department also intends to continue collaborating with DOL and will provide additional public guidance as necessary. Note that the program does not have to only lead to a recognized postsecondary credential that is stackable and portable

across more than one employer. Alternatively, that program could prepare students for employment in an occupation for which there is only one recognized postsecondary credential.

Changes: None.

Comments: One commenter encouraged the Department to provide guidance on meaningful employer engagement, support sector partnerships, and elevate models that successfully integrate industry input into workforce training programs. Another commenter urged the Department to make technical assistance available so States can take full advantage of the flexibilities in implementation and conduct iterative evaluations as learner and provider data become available.

Another commenter similarly suggested the Department:

- Seek direct employer involvement in curriculum alignment, ongoing feedback loops between education and industry;
- Seek regional collaboration with multiple sectors;
- Publish clear guidance on how employers should be engaged at the State and program level;
- Support sector partnerships and regional collaboration models; and
- Provide Federal leadership in elevating best practices and reducing barriers to employer participation.

Discussion: The Department may provide guidance as needed; however, paragraph (a)(2) of this section requires Governors to consult with the State board to certify that the program "[m]eets the hiring requirements of potential employers . . .". We believe that there is a sufficient requirement already in the regulation that establishes employer input and each individual State and the outlying area will have unique processes for engaging with employers. The Department does not seek to infringe on the autonomy of Governors by prescribing strict or confusing guidance at the Federal level.

Changes: None.

Comments: Several commenters requested that the Department allow eligible workforce programs that do not confer academic credit but still deliver measurable workforce outcomes.

Discussion: We decline the commenters' recommendation. Section 481(a)(4) of the HEA states that one of the requirements of an eligible workforce program is ". . . that a student, upon completion of the program and enrollment in such a related certificate or degree program, will receive academic credit for the Workforce Pell Grant program that will be accepted toward meeting such

¹⁵ State Workforce Program Certification—<https://www.Federalregister.gov/documents/2026/03/20/2026-05528/agency-information-collection-activities-comment-request-state-workforce-program-certification>

¹⁶ Dep't of Labor, Training and Employment Notice No. 25–19, (June 8, 2020), available at https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEN/2020/TEN_25-19.pdf

certificate or degree program requirements . . .". Completion of an eligible workforce program must lead to academic credit, either at the same institution or another institution.

Changes: None.

Comments: One commenter stated that the Department should clarify that credits awarded for Workforce Pell Grant programs must apply toward the core program requirements of the related certificate or degree program, not simply count as elective credits.

Discussion: The Department declines the suggestion. The provisions under paragraph (a) will remain as close to the statute as possible. Governors have the authority to set the recommended requirement in their States if they wish.

Changes: None.

Comments: One commenter requested that the Department remove the requirement that programs must be aligned with high-skill, high-wage, or in-demand industry sectors. The commenter stated that the requirement should be replaced with objective criteria such as: Registered Apprenticeship status, completion rate targets, and positive value-added earnings. The commenter also requested that all U.S. Department of Labor Registered Apprenticeships that have operated for at least 24 months with verified completion data should be automatically eligible for Workforce Pell Grants, bypassing gubernatorial certification.

Discussion: We decline the commenters' recommendations. Section 481(b)(3)(A)(iii) of the HEA, added by Section 83002(b) of the WFTCA, states that after consultation with the appropriate State board, the Governor must approve the program. The Governor is ultimately responsible for the decision whether to certify the program.

Changes: None.

Comment: One commenter recommended explicitly requiring Governors to evaluate whether programs are reasonably expected to pass the value-added earnings test under § 690.95.

Discussion: We decline the commenter's recommendation. Under § 690.93(d)(9), we require the Governor to certify that he or she will take into consideration the cost of the program and the anticipated wages of the industry or occupation prior to the initial determination of the program's value-adding earnings is made under 34 CFR 690.95.

Changes: None.

Comments: One commenter urged the Department to define in the final regulations what evidence is sufficient

to demonstrate stackability from credit articulation so that institutions can structure their programs with confidence and avoid duplicative or contradictory compliance burdens.

Discussion: We decline the commenter's recommendation because Governors will establish these requirements under their written policies. Under § 690.93(b), Governors are required to have a written policy for determining if a credential is stackable and portable. Governors are also required to have a written policy for institutions to establish that an eligible workforce program will ensure the award of academic credit towards a certificate or degree program upon a student's successful completion of the eligible workforce program and enrollment in such certificate or degree program, and that such credit will be accepted at one or more eligible institutions through written agreements, including established articulation agreements, transfer-of-credit agreements, consortium or partnership agreements, or similar arrangements.

Changes: None.

Comments: One commenter urged the Department to confirm that when a registered apprenticeship program's related instruction has already achieved Workforce Pell Grant eligibility in one State, a Governor in another State may treat that determination as satisfying § 690.93(a)(3) and (a)(4) for the same program.

Discussion: We decline the commenter's recommendation. The Governor of each State is required to ensure that each program offered in his or her State meets the requirements under § 690.93(a). A Governor cannot automatically accept that a program approved in one State will meet the needs of students in his or her State without a separate review or the existence of a bilateral agreement. Two Governors can establish a bilateral agreement under § 690.93(h) to offer eligible workforce programs through distance education to individuals not located in the State where the institution is located, under which some or all of the programs approved by the Governor of one State can be offered to individuals in the other State without a separate review if the program prepares students for employment in an occupation or industry that is on the list of high-skill, high-wage, or in-demand sectors or occupations in the state where the student is located.

Changes: None.

Comments: One commenter urged the Department to clarify in the final rule that consultation with the State board under § 690.93 requires documentation

and substantive engagement not merely a notification.

Discussion: We decline the commenter's suggestion. We believe that Governors need autonomy and flexibility to engage with the State board as the Governors deem appropriate. As long as the State board is consulted the Governor will have fulfilled the regulatory requirements.

Changes: None.

Comments: One commenter recommended that the Department define the requirement for "stackable and portable" credentials as equivalent to the provision that requires completion of an eligible workforce program to lead to academic credit. The commenter argued that although the two components are distinct requirements in the statute, in practice they reflect the same underlying concept: enabling students to build toward additional credentials. The commenter also recommended that the Department extend the statutory exception for single-credential occupations to both provisions.

Discussion: The requirements for a recognized postsecondary credential to be "stackable and portable across more than one employer" under Section 481(b)(3)(A)(iii)(III) and the requirement for such a credential to prepare students "to pursue 1 or more certificate or degree programs at 1 or more institutions of higher education" under subsequent paragraph (IV) are distinct statutory requirements. The Department and the Secretary cannot make them equivalent without rendering one of the two concepts meaningless.

Additionally, even assuming that the Secretary had such power, equivalence between the two concepts could only reasonably be applied to the concept of "stackable," since the statute refers to portability "across more than one employer."

Finally, the Department has stated repeatedly that our intent is to ensure that States have flexibility in the way that they define such concepts, and defining the two things in the same way would prevent States from defining them differently in accordance with their preferences and distinct needs.

Changes: None.

Comments: One commenter suggested that the Department permit eligible workforce programs to satisfy the academic credit requirement through formal articulation agreements that are under development. The commenter also recommended that a credential prepares students for credit-bearing programs, even when academic credit is awarded upon subsequent enrollment. Finally, the commenter encouraged the

Department to recognize industry and training programs that have been evaluated for academic articulation using established standards such as the American Council on Education (ACE) Learning Evaluation.

Discussion: The Department declines the commenter's recommendations. If an articulation agreement is still in the proposal phase and has not been ratified, it provides students with no assurance that they will receive credit at another institution for completion of the program. We also do not believe that such an allowance could be supported under the statute, which requires that credit "will be accepted" toward meeting certificate or degree program requirements. The institution cannot know with certainty that credits will be accepted without a ratified agreement.

Per the statute, academic credit must be awarded upon completion of the eligible workforce program, not upon enrollment in a subsequent program as the commenter suggested. Finally, this provision is certified by the Governor. The Department cannot mandate that Governors accept standards established by a non-Federal entity such as ACE; however, they may use ACE standards as a resource or guidance in establishing their own certification policies.

Changes: None.

Components Determined by the Governor (§ 690.93(b))

Comments: One commenter recommended that the Governor's written policy requires documentation of specific employer commitments to hire or interview graduates of the program, rather than general attestations of workforce demand. The commenter also recommended that the Department, in sub-regulatory guidance, encourage Governors to accept programmatic accreditation from specialized accreditors as evidence of program quality when evaluating the hiring requirements criterion. A program that has undergone rigorous review by an accreditor with subject-matter expertise in the relevant field provides a stronger quality signal than one that has been reviewed only at the institutional level by an accreditor that may lack technical expertise in the program's field of instruction.

Discussion: The Department declines the commenter's suggestions. We believe that it is an overreach of our authority to require employers to agree to hire or interview graduates of the program and the Department has no mechanism to oversee such a requirement. The commenter's suggestion would require that the Department revoke Pell Grant eligibility

from an eligible workforce program for which an employer did not offer an interview or job offer to a graduate, and this would be complex, disruptive, and costly to oversee and enforce effectively. Job placement requirements under § 690.94(a) must be fulfilled annually, and the Department believes these are sufficient guardrails to ensure that Pell Grant funds are provided to eligible workforce programs that lead to job placement. Additionally, the regulations under 690.93(b)(1)(ii)(B) state that Governors must publish policies that incorporate direct input from employers, which may be secured from the State board and local workforce development boards, industry or sector partnerships, sponsors of Registered Apprenticeship programs, joint labor-management partnerships, or through other methodologies established by the State.

We also decline the request for sub-regulatory guidance that encourages Governors to accept programmatic accreditation from specialized accrediting agencies as evidence of program quality when evaluating the hiring requirements criterion. Governors have the flexibility in their States to determine the underlying process that informs their certifications of programs. The Governors can use accreditation from programmatic accrediting agencies as a part of the certification process for programs.

Changes: None.

Comments: Several commenters stated that the requirement to publish written policies is too burdensome and will delay the certification of programs. The commenters assert that States that do not collect data will need to establish data sharing agreements with other State agencies and postsecondary institutions.

One commenter recommended that the Department require that a Governor's written process includes documentation of the data-sharing agreements necessary to calculate completion and placement rates. This commenter recommended that the process specify which agencies must be parties to those agreements, what data elements must flow, and at what intervals. The commenter also recommended that Department further clarify that data-sharing agreements between Governors and private-sector outcomes tracking platforms that maintain cross-agency data on behalf of program participants satisfy this requirement—provided the platform meets Federal data privacy and security standards under FERPA and applicable State law.

Discussion: The Department declines to require Governors to publish the data-

sharing agreements necessary to calculate completion and placement rates because the agreements may contain confidential student wage information or other sensitive information that could compromise student privacy.

We acknowledge that it may take time for Governors to develop and publish policies; however, we believe that the publication of certification policies is an important step in transparency and standardization of the certification process in the State. We acknowledge that some States may have limited public-sector data infrastructure to calculate job placement and completion rates. If a State has a ratified contract or ratified memorandum of understanding with a private-sector outcomes tracking platform, then that would satisfy job placement and completion requirements specified under § 690.94(a) that the Governor use administrative data in the outcomes calculations.

Changes: None.

Comments: One commenter asked how Governor approval processes would be standardized across States.

Discussion: First, a degree of standardization among States will result from the process under § 690.93(a). That section prescribes the statutory and regulatory requirements for Governors to evaluate prior to certifying a program. Additionally, under § 690.93(b) Governors are required to publish their policies for certifying programs, which will provide information to Governors of other States and is likely to result in adoption of similar processes among States with similar needs and resources.

However, the Department does not believe that standardization among States with respect to approval processes is necessarily beneficial in all circumstances. Our stated intent in developing these regulations is to ensure that States have adequate flexibility to design approval processes commensurate with their economic needs and administrative resources, which precludes a degree of standardization. Therefore, the Department will not standardize the process beyond the current requirements.

Changes: None.

Comments: Several commenters encouraged the Department to require Governors, in their written policies, to give favorable consideration to institutions that have in-demand programs such as teaching programs and programs preparing healthcare workers, or programs that offer free or subsidized bridge or remedial programs alongside eligible workforce programs. The commenters argue that this wraparound

educational support improves outcomes.

Discussion: We decline the commenters' recommendation. The statute does not authorize the Department to require that Governors give special preference to specific programs, and such an approach would also impose the Federal government's opinions about what constitutes high-need, high-skill, or in-demand occupations or sectors, a responsibility that the statute specifically delegates to States. Also, we remind the commenter that, per § 668.20, remedial coursework cannot be included in a student's Pell Grant eligibility for an eligible workforce program.

Changes: None.

Comments: Several commenters recommended that the Department require strict timelines for Governor approval to reduce variability and uncertainty.

Discussion: We decline the commenter's recommendations. We do not wish to require standardized timeframes or application procedures on all 50 State Governors and chief executives of outlying areas. We believe this would be overly prescriptive and may negatively impact Governors' ability to fully analyze programs that are submitted to them for approval. Additionally, the only way to enforce this timeline would be to restrict institutions in the State from offering eligible workforce programs if the Governors did not adhere to prescribed Federal timelines, which would not be a desirable outcome from either the perspective of the State or Federal governments.

Changes: None.

Comments: One commenter stated that the regulatory text must be revised to clarify that high-skill and high-wage determinations are made pursuant to Perkins V rather than WIOA. The commenter recommended that we add the following to the end of (b)(1)(i): “. . . and the development and submission of the State Plan under Sec. 122 of the Carl D. Perkins Career and Technical Education Act (20 U.S.C. 2342);”.

Discussion: The parenthetical the first sentence of the paragraph says: “(as identified by the State pursuant to section 122 of the Carl D. Perkins Career and Technical Education Act (20 U.S.C. 2342))”. The Department believes that parenthetical makes it clear that these determinations are made pursuant to that portion of the law.

Changes: None.

Comments: One commenter requested that the Department encourage Governors to develop lists of high-skill,

high-wage and in-demand occupations and sectors using high-quality, real-time labor market information from the best available public and private-sector data, including data obtained through public-private partnerships, to assess evolving skill needs and labor market demand.

Discussion: We agree with the commenter and encourage Governors to use high-quality data in developing their lists of occupations and sectors meeting these criteria. We will also consider incorporating this best practice into sub-regulatory guidance for States in the future.

Changes: None.

Components Determined by the Governor (§ 690.93(d))

Comments: Many commenters asked the Department to eliminate or amend the program eligibility requirements that must be met 12 months prior to approval to allow institutions to be nimble to evolving industry needs. The commenters argue that a high-quality program may have been offered for many years, and slight program modifications that might result in a restart of the 12-month clock would delay approval and create barriers for students to access these proven programs.

Commenters provided many recommendations on the provision, including that the Department:

- Consider a process through which programs the Governor determines are substantially similar to programs that meet the requirement may remain eligible;
- Consider alternative pathways for promising new programs to receive Pell Grant support during a probationary period, subject to outcomes-based review;
- Allow the program to simply exist for at least one year at the time of certification regardless of if it meets the regulatory requirements under 690.93(a);
- Allow programs to exist at some point in the previous year and currently meet the regulatory requirements.

Another commenter stated that some programs are modified to meet the requirements of the eligible workforce program regulations which may entail strict State approvals for the program. The commenter requested preamble language around what changes the Department would consider to be substantive; for example, program time, credit- or clock-hour thresholds, CIP/SOC codes, or substantive name changes.

Discussion: The 12-month period is required under the HEA—“ . . . the program has been offered by the eligible

institution for not less than 1 year . . . ”. The program must meet the requirements under § 690.93(a) for at least 12 months. If a program does not meet the requirements on July 1, 2026, the institution must wait to submit the program to the Governor for certification until it meets the 12-month requirement. Modifications to a program are acceptable as long as the modifications do not cause the program to no longer meet the standards in § 690.93(a). The Governor is not required to determine if the program meets time or clock- or credit-hour thresholds, or to investigate issues related to the program's CIP or SOC code because those areas will be reviewed by the Secretary. The Governor's responsibility is to certify that the program meets the requirements under paragraph § 690.93(a) for the 12 months preceding his or her certification.

Note that the program is not required to continuously enroll students for the entire 12 months, but for any periodic program offerings during the last 12 months of the program's existence, the program must have met the requirements under § 690.93(a). For example, an 8-week, 150 clock hour welding program is offered by an eligible institution two times per year, one starting in January 2027 and one starting in September 2027. The eligible institution submits its request for certification to the Governor in January 2028. The Governor can certify that the program meets all requirements because the program has been in existence for a year, even though the program was only offered in January and September 2027.

Changes: None.

Comments: One commenter requested that the Department remove references to the Department of Labor. The commenter stated that the statutory text authorizing the program, does not contain a single reference to the Secretary of Labor or the U.S. Department of Labor. The commenter also stated that establishing the Secretary of Labor as co-administrator of the program would make an already exceptionally complex process convoluted and more confusing for Governors.

Discussion: Throughout the rulemaking process, drafting of NPRM and final rule, the Department has collaborated with the Department of Labor. We believe the references to the DOL in the regulatory text are necessary to maintain this important and necessary collaboration. We will be sure to streamline the process and will avoid duplicative processes across agencies.

Changes: None.

Comments: Two commenters suggested requiring that programs be offered for at least one year in the same modality (for example, using distance education or in person) before they are approved. One commenter stated that research indicates that outcomes may be weaker for students enrolled in exclusively online programs relative to students enrolled in in-person programs. The commenter stated that the final rules should require that programs be offered for at least one year under the same modality (e.g., distance education or in-person), in evaluating their eligibility for Workforce Pell Grants. Another commenter argued that student outcomes can vary depending on program modality, requiring the program to be offered for at least one year under the same modality would provide helpful information for students about their likely outcomes when they choose a program.

Discussion: The Department declines the commenters' recommendations. The Governor is only tasked with ensuring that the program meets the Statutory requirements under § 690.93(a). Additionally, the establishment of requirements for bilateral agreements between State Governors ensures that there is additional level of scrutiny on programs offered through distance education and a greater likelihood that both States are aware of the modality that the program is using. The Department does not believe a separate limitation is necessary, and establishing a guardrail in this context would limit a Governor's ability to determine whether a program was appropriate for their State regardless of modality.

Changes: None.

Components Determined by the Governor (§ 690.93(e))

Comments: Several commenters asked the Department to remove requirements that the Governor must reapprove the program prior to the expiration of the Program Participation Agreement. Program Participation agreements are at the institutional level and operate on varying timelines, which would result in inconsistent and arbitrary reapproval cycles across eligible workforce programs. Commenters believed that the provision adds unnecessary administrative complexity that risks diverting resources to a Program Participation Agreement-driven reapproval process that could create delays in program approvals and reapprovals.

Discussion: The Department declines the commenter's recommendation. Per the NPRM, the Department seeks to ensure that the Governor remains active

in the oversight and accountability of an eligible workforce program. After the Governor approves the program, the eligible institution will apply to the Secretary for approval. After the Secretary approves the program, it would become an eligible workforce program. The Department does not believe that approval of the eligible workforce program should last in perpetuity without any further evaluations by the Governor.

Changes: None.

Comments: One commenter stated that the rule should require annual recertification of approval by Governors.

Discussion: The Department declines the recommendation because we believe that it would be overly burdensome for Governors and would not result in substantially improved oversight, either by Governors or the Department. This rule requires that Governors (1) certify all programs (2) certify job placement rates annually (3) until 2028–29 certify completion rates annually and (4) recertify the program prior to the expiration of the Program Participation Agreement. We believe this is sufficient oversight.

Changes: None.

Comments: One commenter recommended that institutions be required, as part of their Program Participation Agreement, to certify annually that Workforce Pell Grant programs continue to meet completion, placement, and other statutory requirements. Because Workforce Pell Grant programs are short in duration and outcomes may change quickly based on labor market conditions or program design, annual certification would provide an additional safeguard to ensure that institutions are actively monitoring program performance and compliance with statutory requirements.

Discussion: The Department declines the commenter's recommendation because we believe it will be overly burdensome in addition to the existing requirements. Governors will provide annual certification on job placement in perpetuity and completion rate certification until the 2028–29 award year. We believe this is sufficient and in accordance with the statute. *Changes:* None.

Components Determined by the Governor (§ 690.93(g))

Comments: None.

Discussion: In the Department's proposed regulations, paragraph § 690.93(g) stated "A program that serves as a related technical instruction component of a Registered Apprenticeship Program meets the requirements of paragraph (a)(1) and

(a)(2) of this section." We have updated the phrase "related technical instruction" to "related instruction" in the final rule because that is the precise term used in 29 CFR part 29. This is a technical change and does not substantively change the regulation.

Changes: Paragraph § 690.93(g) will read: "(g) A program that serves as a related instruction component of a Registered Apprenticeship Program meets the requirements of paragraph (a)(1) and (a)(2) of this section."

Comments: Several commenters requested that the Department provide more clarification on the related instruction component of a Registered Apprenticeship, especially if taught via distance education.

Discussion: The related instruction component of a Registered Apprenticeship will typically be the component of the Registered Apprenticeship that qualifies for Pell Grant funds. However, on-the-job training under a Registered Apprenticeship program may also be part of an eligible workforce program so long as any included training hours are associated with either credit or clock hours that are required to complete the eligible workforce program. Additionally, any weeks during which such training takes place must be included in the total weeks of instruction in the program.

There is no Department of Education restriction on offering the related instruction component through distance education; however, institutions should consult with the Department of Labor, State laws, or other Federal laws, prior to offering the related instruction component through distance education. Note that if the distance education component is being offered to individuals not located in the State, then the Governor will need to ratify a bilateral agreement under § 690.93 (h). An alternative might be to simply seek approval in multiple States directly by obtaining approval from the Governors of those other States.

Changes: None.

Components Determined by the Secretary—General Comments (§ 690.94)

Comments: One commenter stated that the NPRM discloses no Inspector General (OIG) audit framework for any of the data (completion, job placement, and value-added earnings). The commenter stated that an institution whose program is at risk of losing eligibility due to a low job placement rate has a powerful financial incentive to inflate that rate by claiming placements that did not occur, by

counting temporary or part-time employment as full placement, or by coaching graduates to falsely report job placements. The commenter demanded that the Department:

- Include an explicit OIG audit rights provision requiring institutions and Governors to maintain all program approval documentation, job placement verification records, and completion rate data for 7 years and to make them available to the Department's OIG upon request.
- Require certified job placement rates be supported by third-party verifiable evidence such as employer verification letters, State unemployment insurance cross-reference data, or linked IRS W-2 data (not self-reported by institutions).
- Include a fraud risk assessment for each program's job placement rate reporting methodology.
- Publish an eligible workforce program fraud detection program including anomaly-detection algorithms that flag programs with statistically improbable completion or placement rate improvements.

Discussion: The Department currently maintains specific regulations on record retention under 34 CFR 668.24, and we decline to amend those regulations regarding eligible workforce programs because such a change was not discussed during negotiated rulemaking and is out of the scope of these rules. Additionally, we believe that existing record retention requirements are sufficient for this purpose.

Regarding the suggestions related to the OIG, the Department does not typically publish OIG audit frameworks in regulation because the OIG is an independent office within Federal agencies tasked with detecting and preventing fraud, waste, and abuse. During an audit or investigation, postsecondary institutions are required to make information available to the OIG upon request. Additionally, in carrying out its duties and responsibilities, the OIG is authorized to request from any Federal, State, or local government agency the information and assistance it deems necessary. *See* 5 U.S.C. 406(a)(3). This would include the OIG requesting information and assistance from any Federal, State, or local agency involved in the Workforce Pell Grant program.

Finally, regarding the concern that institutions will attempt to manipulate job placement rates of their eligible workforce programs, please note that the regulation requires the Governor to certify job placement using administrative data. This means an institution cannot self-certify job

placement, but instead the Governor must establish a process to obtain administrative data, such as UI wage data, in order to certify job placement for an eligible workforce program each year.

Changes: None.

Comments: One commenter was concerned that the review by the Secretary is not broad enough to ensure that all State programs are properly aligned with the regulations. They recommended that section 690.94 include the Secretary's evaluation and approval of the Governors' certification process.

The commenter was also concerned about the administrative burden and implementation delay tied to individual program approval. The proposed regulations require the Secretary to approve each individual eligible workforce program, as opposed to only the first program offered by an institution.

Discussion: Section 690.93 allows the Departments of Education and Labor to request the Governor's documentation of his or her process as well as "Such other information as the Secretary of Education or Secretary of Labor may require." While the regulations give latitude to Governors in the exercise of their obligations regarding Workforce Pell Grants, the Department does possess oversight authority.

As for the Department approving every program, we indicated in the NPRM preamble that "After internal discussion, we determined that the WFTCA requires the Secretary to approve each eligible workforce program. Section 481(b)(3) of the HEA states '. . . after the Governor of such State makes the determination that the program meets the requirements . . . the Secretary determines that . . .' the program meets other requirements like the minimum and maximum number of hours and weeks in the program. The Department interprets that language to mean that the Secretary is required to proactively ensure that the program meets all the statutory and regulatory requirements to become an eligible workforce program.

Changes: None.

Comments: One commenter expressed concern that institutions would direct students to risky loan options to help pay for eligible workforce programs. The commenter recommended that the Department prohibit schools in § 690.94 from entering into any arrangements or affiliations with anyone offering financing for the school's eligible workforce programs via private loans or unproven products like income share agreements and outcomes-based loans.

Discussion: The Department declines these suggestions. We do not have authority to establish limits on a student's choice to borrow a private loan or enter into an income share agreement, nor to establish greater limitations on an institution's ability to establish relationships with lenders beyond the requirements that already exist under the Truth in Lending Act and the regulations under 34 CFR part 601. We also do not believe such guardrails are necessary given the availability of other types of funding for such programs.

Changes: None.

Components Determined by the Secretary—(§ 690.94(a))

Comments: One commenter requested that for 2026–27 only the Department should waive the requirement under § 690.94(a) that a program demonstrate completion and job placement rates for the 12 months preceding the institution's application for approval. They asserted that no institution could have 12 months of pre-application outcome data for a program type that did not exist before the law created it.

Discussion: The completion and placement rates under § 690.94(a) do not apply to the 12-month period prior to the establishment of the program. However, under § 690.94(a)(2)(i), for the 2026–27, 2027–28, and 2028–29 award years the Governor must certify that, based on the Governor's analysis using administrative data, the program meets the completion and placement rate requirements *prior* to becoming eligible for title IV, HEA program funds for the first time. The Governor must use the most recent available data for this purpose, which is from the most recent 12 months of available administrative data.

Changes: None.

Comments: Several commenters pointed out that the job placement rate is calculated based on all program exiters rather than completers. Commenters asserted this contradicts the authorizing statute, which states that a program must have a "verified job placement rate of at least 70 percent, measured 180 days after completion."

Discussion: The language of the regulation uses "exiting" for students who were in the program in the three years prior to 2029–2030 and "successfully completing" for those after that period. The first three years also permit employment in any job to count in the placement rate for the metric, while after that period the job must be in a field related or comparable to the program's training. The Department explained this in the

preamble of the NPRM, where we stated, “The Department chose this approach because all States currently report on this indicator for their WIOA programs and should be able to use existing administrative data sources, including wage records, and collection methodologies to assess and certify this requirement. Congress provided that this program should go into effect beginning on July 1, 2026, and the Department is making this accommodation to ensure that the program can be operational beginning on that effective date and while the states transition to using completion data. Without a temporary change here, the program would be functionally ineffective and non-operable until such data is collected which runs counter to the structure of the statute. The use of administrative data sources reduces data collection burden for the Governor as well as provides a highly credible source for determination of participant employment. WIOA currently requires reporting on all participants who finish (withdraw, transfer, complete) a program, not just those who successfully complete it, and the Department proposes to align directly with the WIOA indicator.” We have not changed our opinion on this issue.

Changes: None.

Comments: Several commenters disagreed with the regulatory requirement that, after the 2028–29 award year, only those employed in the occupation(s) for which the program prepares students count towards the job placement calculation. They asserted that this is contrary to the statute, which lacks such a requirement.

Discussion: The Department concluded that because of the language of the law that requires the eligible workforce program to provide “an education aligned with the requirements of high-skill, high-wage or in-demand industry sectors or occupations” and that requires the value-added earnings metric, the expectation is that students who complete the program be employed in a related occupation. A program completer employed (or retaining prior employment) in a food service job could not appropriately be considered a “verified job placement” of an eligible workforce program that prepares students for an in-demand occupation within the aviation sector. Additionally, the regulation allows for the job to be “a comparable high-skill, high-wage, or in-demand occupation,” and this comparability is determined by the Governor. Therefore, there is some latitude for employment in similar if not the same occupation that the program prepares students for or in a different

occupation that is still directly tied to the training. Finally, in the WFTCA, Congress used the term “job placement rate,” which the Department has previously interpreted to mean placement within the occupation for which students are training for or in a related comparable occupation.¹⁷ See the preamble of the NPRM for more information on this specific issue.

Changes: None.

Comments: One commenter was concerned that institutions will try and game completion rates through selective enrollment and institutions would try to improve completion rates by refusing to enroll students likely to drop out and instead concentrate on enrolling the most motivated students while turning away the most economically vulnerable applicants. The commenter was also concerned that job placement rates could be gamed through temporary employment. Institutions could count any paid employment in the placement rate, including a graduate’s pre-existing part-time job, or a temporary holiday retail position. The commenter proposed that:

- The completion rate calculation must include all students who enrolled, not just those who met a satisfactory academic progress threshold;
- The job placement rate must count only full-time employment (30+ hours per week) in a position requiring the skills taught in the program, verified against State UI wage records or the National Directory of New Hires within 6 months of graduation; and
- Anomaly detection algorithms must flag programs with year-over-year completion rate increases exceeding 15 percentage points as candidates for fraud review.

Discussion: The Department declines the commenter’s suggestions. We believe that the completion and job placement rates as defined in these final regulations are sufficiently rigorous. It is impossible for the regulations to address every specific circumstance; therefore, the Department will defer to duly elected Governors to certify completion and job placement rates through the 2028–29 award year. For the 2029–30 award year and beyond, the Governor will continue to certify job placement rates by ensuring completers are employed in an occupation for which the program prepares students, or a comparable high-skill, high-wage, or in-demand occupation.

The Department will continue to provide guidance to Governors regarding the completion and job placement rates. Institutions are also

required to submit annual audits to the Department and, if necessary, may also be subject to Department-initiated compliance reviews.

Anyone who suspects fraud, waste, or abuse may contact the Department’s Office of Inspector General.

Changes: None.

Comments: One commenter thought that the three-year delay of employment in a program-related field for the placement metric allows for poor outcomes that do not serve students. They recommended several criteria for jobs in the first three years, such as advancement potential, alignment with the training, minimum time in the job, and minimum quality thresholds. They also recommended that the placement metric include disaggregated reporting by, for example, student population, to allow for distinguishing programs that serve a large percentage of high-barrier students.

Discussion: The decision to allow a three-year initial period in which the job placement metric would look at employment generally rather than specific employment related to the program was reached during negotiated rulemaking. The consensus was that because the necessary systems for administering eligible workforce programs would take time to develop, some flexibility was needed in the initial phase for the job placement metric.

Also, adding to reporting requirements, such as disaggregation, will introduce more complexity to a process that will already be challenging to implement. We decline to require it at the outset of establishing eligible workforce programs, though our approach and concerns could change in the future.

Changes: None.

Comments: Several commenters asked that the Department clarify that self-employment (including the formation or operation of a sole proprietorship, LLC, or other micro-enterprise) count as employment for the job placement metric.

Discussion: The Department agrees with the commenters that self-employment does count as being placed in a job and would count toward meeting the 70 percent placement requirement. Self-employed individuals often spend more time in their job than those who are employees of another business. The plain-language definition of “employed” includes self-employment; thus, a reader can infer from the current regulatory text that self-employed individuals would count toward a program’s job placement requirement. The Department notes that

¹⁷ 34 CFR 668.8(g).

self-employment is not typically available in administrative data related to employment and therefore is an example of a scenario where supplemental data would need to be collected in order to verify employment outcomes, and that such usage of supplemental data is permissible under the final rule. We do not believe an amendment to the language of the regulation is necessary.

Changes: None.

Comments: Two commenters suggested that a system similar to the Federal Employment Data Exchange System (FEDES) would be helpful for wage and employment information if it were reestablished. They also mentioned the State Wage Interchange System (SWIS) as a source of relevant information.

Discussion: The Department thanks the commenters for their input. We will consider and use appropriate sources for the information necessary to implement the various aspects of eligible workforce programs.

Changes: None.

Comments: One commenter agreed that the allowance of Governors to certify completion and placement rates with available data was sensible, especially given that “most States do not have a Statewide longitudinal data system (SLDS) capable of producing the calculations the final framework will require the flexibility provided for the initial three award years gives States time to build that infrastructure.” However, the commenter noted that there is a potential cliff effect after three years due to States not being able to create the necessary infrastructure by the transition in 2029–30 to the full framework. This drop-off will not be due to faulty programs but to the lack of that infrastructure. The problem is more acute for programs inside correctional facilities, which operate under siloed systems that do not talk to each other in a standardized format.

The commenter suggested that the Department should elucidate, in sub-regulatory guidance, the specific data elements a Governor’s certification must document during the 2026–27 through 2028–29 period and provide a clear mapping from those elements to the full § 690.94(a)(2)(ii) calculation that takes effect in 2029–30. The commenter argued that providing this information would allow institutions to develop data collection practices from the first day of enrollment in alignment with the final standard and not require retrofitting documentation years later. The commenter also suggested that the Department “explicitly affirm that private-sector outcomes tracking

platforms that meet the data element requirements—including completion documentation, credential attainment, employer placement, UI wage record integration, and 36-month longitudinal tracking—satisfy the evidentiary standard for Governor certification.” The commenter asserted that this would accelerate data infrastructure deployment in States that lack the public-sector capacity to build these systems before July 1, 2026.

Discussion: The Department thanks the commenter for these suggestions. Because Governors have significant discretion in how they will fulfill their eligible workforce program obligations, especially in the first three years, they are authorized to take advantage of available resources that will help them with those obligations, including private-sector data that the Governors believe to be reliable. Governors are free to follow the suggestions here to be as effective and efficient in managing eligible workforce programs in the near future as well as at the transition in 2029–30. However, with this final rule, the Department is not prescribing additional specific requirements beyond the current regulations that Governors and institutions must follow in their administration of eligible workforce programs pertaining to the data infrastructure.

We also note that the Department is currently preparing a Governor certification form that will clearly describe the elements that a Governor must certify for an eligible workforce program to be approved by the Department for the purposes of the title IV, HEA programs. This form will provide many of the benefits, such as certainty about specific requirements, sought by the commenter.

Changes: None.

Comments: One commenter, a nonprofit organization that supports defense manufacturing communities in the U.S., observed that the timeline of 180 days post-program completion for acquiring a job does not work well with jobs that require a security clearance. As the commenter observed, many positions in defense manufacturing require at least a Secret-level security clearance, and the Defense Counterintelligence and Security Agency (DCSA) currently processes Secret-level clearances 6 to 12 months from the date employers submit the investigation request. Top Secret clearances can take 12 to 18 months or longer. This means that most (if not almost all) students who receive a conditional offer of employment contingent on obtaining a Secret- or Top Secret-level clearance will count as non-

placements for the rate calculation. As the commenter explained, “The clearance timeline is controlled entirely by DCSA, a Federal agency, and is outside the control of the student, the employer, and the educational institution.” This incongruity between the job placement timeline and that for acquiring a security clearance will have the perverse effect of disincentivizing the creation of eligible workforce programs in industries that require security clearances, at a time when the current administration has made workforce development for defense manufacturing a top priority.

The commenter offered two possible solutions, working either together or alone. First, the commenter stated that because the situation described is one that is outside the control of students, institutions, and employers, and lack of control was a key reason behind the Department’s choice of placement rate exclusions in § 690.94(e), adding to that list positions that require a security clearance would make sense and would solve the problem. The commenter suggested the following addition to the section:

(5) Has received a documented conditional offer of employment in the occupation for which the eligible workforce program provides training, where commencement of employment is contingent upon completion of a personnel security investigation conducted by the Defense Counterintelligence and Security Agency or its successor agency, and such investigation remains pending at the conclusion of the applicable measurement period.

The commenter argued that this exclusion would appropriately remove affected job seekers from the placement calculation.

Second, as an addition to the above or as an alternative, the commenter suggested that the Department “amend § 690.94(a)(2) to extend the job placement measurement window from 180 days to 365 days for programs in occupations that the Governor or State workforce board has identified as requiring a security clearance as a standard condition of employment.” Under this approach, the commenter stated that clearance-dependent placements would be counted when they actually occur rather than be excluded from the calculation entirely.

Discussion: The Department appreciates the thoughtful argument for considering the special case of program completers in fields that require security clearances. We agree that students who complete a program in such a field and have a conditional job offer should not

count as non-placements for the relevant metric. However, we do not believe that creating another class of excluded students in § 690.94(e) is justified. Instead, we will note here, and in future guidance, that students who receive tentative job offers that are contingent upon the receipt of a security clearance that is still outstanding at the end of the placement period will count as job placements for the calculation.

Changes: None.

Comments: One commenter, a provider of educational assessments, explained that while the 70 percent completion and placement rates do provide rigor that will support program quality, the placement figure could be too high a bar during economic downturns and in the face of the impending effects that AI will have on the job market. They suggested that the Department “consider using a broad and proven career-readiness certification as a proxy for this requirement during potentially challenging economic periods.” This would help ensure that students have the skills to complete the training program and become employed. Programs could still demonstrate the value they are delivering without their eligibility being tied to labor demands they do not control. They opined that high-quality work-readiness assessments, by themselves and in addition to industry-specific certifications, can support strong outcomes. They also offered that an assessment that they provide could be useful in this regard. It results in the National Career Readiness Certificate (NCRC), a goal of which is “helping learners demonstrate the cross-sector foundational skills employers value and supporting stronger employment outcomes.”

Discussion: The 70 percent job placement rate requirement is statutory; it was added to HEA Section 481 by the WFTCA. The Department cannot create an alternative to that metric through regulation. However, that does not preclude programs from making use of the kind of assessment that the commenter mentioned.

Changes: None.

Comments: One commenter asked, “What systems are expected for tracking job placement and earnings outcomes?”

Discussion: The new regulations under § 690.94(a)(2)(ii)(B) give Governors latitude for how to track job placement after 2028–29; they state that the rate will be “determined through a certification from the Governor, based on the Governor’s analysis using available administrative data, including wage records.” As we noted in the NPRM preamble, we understand that

establishing new data systems regarding the job placement rate is a major undertaking, so we have proposed flexibility for three full award years, and we also acknowledge that some States may need additional time. Governors may contact the Secretary to request an additional year of flexibility in calculating job placement rates after the 2028–29 award year.

As for tracking earnings, the new regulations explain under § 690.94(a)(2) that the Department will obtain from a “Federal agency with earnings data the median annual earnings of the students” on the program completers list that we provide. Section 690.95 explains the whole value-added earning process.

Changes: None.

Comments: One commenter noted that the regulations call for Governors to use administrative data, such as “enhanced wage records” to determine, starting with the 2029–30 award year, the job placement rate in an occupation for which the program prepared the student. The commenter went on to stress the importance of the Department and DOL continuing their partnership and providing opportunities to accelerate State adoption of enhanced wage records. They recommended an internal review of programs currently authorized whose funds may be expanded for this purpose and affirmed that DOL has already established a precedent by expanding the use of Workforce Data Quality Initiative (WDQI) grants for enhancing and modernizing State wage records. The commenter stated that the Department could do the same by prioritizing enhancing wage records under the Statewide Longitudinal Data Systems (SLDS) grants, which would align with ED’s Supplemental Priority on Career Pathways and Workforce. Wage record enhancements and integration of these data within education and workforce systems would help States determine which programs meet the requirements of an eligible workforce program.

The commenter also suggested that the Department and DOL support States by facilitating the interstate exchange of wage data for eligible workforce programs, which the commenter argued would ensure that States report job placement rates for all students, including those outside of the State where they completed their program. The commenter posited that this is the reason DOL created the State Wage Interchange System (SWIS) and concluded that without the Department and DOL’s facilitation of a national interstate agreement on wage data, States would be left to create bilateral agreements and a secure exchange of

data—administrative burdens that “would likely result in underreported earnings and misconceptions of underperformance.”

Discussion: The Department thanks the commenter for the observations and suggestions. The new regulations do mention “wage records” sans “enhanced,” but they are written generally enough to allow for the kind of enhancement that the commenter encourages, and we are determined to continue to work with DOL to create an infrastructure that will foster the creation and continuance of productive workforce programs.

Changes: None.

Comments: Multiple commenters requested that the Department publish the program completion and job placement metrics for eligible workforce programs.

Discussion: As we noted in the NPRM, a negotiator requested during rulemaking that we publish the completion and job placement rates for transparency purposes. We did not commit to that in regulation or in the NPRM preamble, but we noted that we would explore the benefits and practicability of publishing rates in the future. Our position on that has not changed.

Changes: None.

Comments: One commenter, representing a State community college system, noted that they have been successful in delivering high-quality programs in conjunction with employers. However, they have not been requiring SSNs for the majority of non-credit programs and therefore would struggle to verify the employment rate of completers from previous cohorts, making valuable programs ineligible for approval until the 2027–28 school year despite meeting all other requirements. They recommended either suspending or providing a waiver for the requirement for 2026–27 until such data can be collected and verified.

Also, according to the commenter, the requirement after 2028–29 by which learners are to be employed in the occupation(s) for which they were trained will require significant technical alteration to unemployment wage reporting systems and likely a legislative change. The commenter asserted that if the State is unable to achieve both things, the programs would become ineligible workforce programs and lose access to Pell Grant funding. Without significant funding and political support, this State and others would not be able to meet the requirement. The Secretary should provide a mechanism that allows States

to demonstrate efforts in these areas and receive a waiver when those efforts fail.

Discussion: As noted in § 690.94(c), the Secretary may waive some or all of the requirements under paragraphs (a) and (b) of that section related to submission of completion rates and the Governor's certification of job placement rates if the Secretary determines that completion or placement rates will be calculated under a separate process established by the Secretary. In the case of the job placement rate certification post-2028–29, the Secretary can determine that the Governor is making progress towards making such certification but will need an additional award year using the pre-2028–29 certification. We expect these flexibilities to operate in cases such as those the commenter described. Additionally, the Department notes that enhancing Unemployment Insurance wage records to include occupation data is merely one way for States to determine if a program completer meets the job placement rate post-2028–29. The Governor could determine that the State will verify job placement within a comparable high-wage occupation through an earnings threshold for placements aligned with the State's definition of "high-wage."

Changes: None.

Comments: One commenter expressed concern that requirements under the Secretary's review will be administratively burdensome to institutions and limit the availability of eligible programs. Also, the 70 percent completion and job placement rate requirement may present challenges in sectors that are characterized by seasonal employment patterns and project-based work.

Discussion: As noted above, there are flexibilities built into the regulations to allow for the implementation of this new type of program, and the Department expects to use that latitude as warranted. That said, the completion and placement percentages are required in the statute and cannot be changed.

Changes: None.

Comments: One commenter, while generally agreeing with the completion and placement metrics, affirmed that 70 percent is too strict for "high-barrier populations" such as those with felony records, recovering from addiction, or lacking reliable housing. In each case there are factors that can negatively affect program persistence or the search for employment, and this is not necessarily a reflection on the program's quality. The commenter suggested that the Department conduct a study of programs that serve a significant percentage (e.g., 25) of such students to

see if there are alternative benchmarks that could be used for programs with high-barrier enrollment but that still indicate sufficient program quality.

Another commenter also suggested adopting some risk adjustment, safe harbors, or expanded exclusions to account for the added risk that attaches to programs serving high-barrier populations.

Still another asked that the Department allow in regulation for the completion and placement rates to be lower than 70 percent in this situation.

Discussion: The WFTCA established the 70 percent thresholds for eligible workforce programs and did not include a carveout for those that serve distinct populations of students. Therefore, we do not think there is statutory authority to establish alternative metrics or lower rates for programs that serve significant percentages of high-barrier students.

Changes: None.

Comments: One commenter suggested that the required thresholds could be so rigid that they may incentivize schools to modify programs in ways that improve the relevant outcomes but that reduce educational quality. For example, schools might narrow admissions criteria, compress curricula, or deprioritize essential competencies to meet completion, placement, or earnings benchmarks. They recommended that the Department issue clearer guidance to States, provide transitional flexibilities and phased implementation, and consider possible safe harbors for established high-quality programs in high-demand sectors.

Discussion: The regulations do include considerable flexibility for programs and States, especially in the early years of establishing eligible workforce programs, but there is no statutory provision for setting aside the metrics as explained in the law and these regulations. Certain activities by schools are outside the control of the Department, such as having narrow admissions criteria, while others such as reducing program quality seem unlikely, and even if they did occur, the job placement and value-added earnings metrics would serve as correctives to program weakening especially since students graduating from perceived substandard programs will have difficulty finding work in jobs that pay well enough.

Changes: None.

Comments: One commenter appreciated the 70 percent completion and placement thresholds as well-calibrated. However, they also asserted that because the rule does not specify data formats, transmission frequency, or interoperability standards for

institutional reporting to Governors, each State will build tracking systems, creating fragmentation that increases compliance costs. Standardized data schemes would be critical in countering this problem, so the commenter encouraged the Department to issue technical guidance on reporting formats with the final rule.

Discussion: With the rollout of eligible workforce programs, the Department intends to provide not only these regulations and policy guidance to States and institutions but also technical guidance that will assist with the efficient and effective implementation of these new programs.

Changes: None.

Comments: One commenter asked that the Department provide technical assistance, model approval templates, model data-sharing agreements, and peer-learning opportunities so that States can learn from one another as they build sustainable systems. According to the commenter, the Department should also facilitate secure, appropriate sharing of relevant datasets with the DOL and other Federal agencies as well as with States to reduce burden.

Discussion: As noted elsewhere, we intend to provide further guidance regarding both the policy and technical aspects of the implementation of eligible workforce programs, and we will continue to accept input from the community about that.

Changes: None.

Comments: A few commenters warned that the requirement that 70 percent of program completers obtain employment introduces practical concerns. Rural institutions often serve students who cross State lines for employment, making outcomes tracking difficult without a national or interoperable data system, which does not exist. Also, the infrastructure and data systems necessary to track student employment vary widely by State. As a result, institutions may be held accountable for outcomes they cannot reliably measure. One commenter believes that the DOL asserted that the national adoption of usable enhanced wage records would require legislative action in 40 or more States, followed by a period of testing and implementation. In addition, not all students enrolled in short-term programs are seeking immediate employment; many are upskilling or adding credentials to existing careers. The proposed metric does not account for these legitimate and valuable student choices.

Discussion: The current lack of data systems is a known factor and one that will be addressed as the initial years of

the first phase of eligible workforce programs development. There are flexibilities, such as the provision under § 690.94(c), built into that development to account for this and other current insufficiencies. As noted above, the Department intends to work with DOL, States, and schools to bring about the necessary technology so that all involved with eligible workforce programs are well served.

No doubt many students enroll in current short-term programs (which do not have a statutorily required job placement measure) to upskill or add credentials, and those are legitimate motivations for continuing education. What we are saying is that for *these* short-term programs, eligible workforce programs, swift placement in a well-paying, in-demand job is the primary end, as we have explained elsewhere. This must be top of mind in the design and operation of, and the participation in, these programs. Students looking for educational opportunities that provide immediate continuing coursework after program completion and that are not contingent on specific metrics may choose from all the other available educational programs offered at postsecondary institutions.

Changes: None.

Comments: One commenter asserted that narrowing the job placement metric to focus on job placement regardless of occupation would reduce complexity and result in more uniformity across States and programs. They asked that the Department remove the requirement that placement be “in the occupation” as well as the “comparable” occupation language.

Discussion: The statutory language for eligible workforce programs emphasizes that such programs train individuals in certain in-demand fields and gives Governors authority to make the relevant certifications. There is no statutory justification for counting unrelated positions following the completion of an eligible workforce program towards the job placement metric, and the Department intends to align the regulation with the statute after providing a reasonable period of time for States to develop the necessary reporting infrastructure.

Changes: None.

Comments: One commenter noted that current data systems that would be used in support of the metrics have limitations: wage data are lagged, occupational alignment is difficult to verify, interstate and self-employment outcomes are hard to capture, and verification can be resource intensive. Because of this, the commenter recommended the following to improve

accuracy while reducing administrative burden: allowing multiple methods of outcome verification, including wage records, employer verification, apprenticeship and sector partnership data; leveraging existing WIOA and ETPL reporting systems; phasing in earnings-based accountability under § 690.95 to avoid reliance on incomplete early data; and using eligible workforce program implementation as an opportunity to strengthen workforce data infrastructure.

Discussion: The Department disagrees with the commenter’s assertions. The commenter mistakenly believes that the burden to calculate earnings-based metrics falls on State governments. This is inaccurate. Instead, wage data will be computed by the Department in conjunction with a Federal agency with earnings data. These wage data, which are inclusive of self-employment income, will be of the highest quality since they will be based on individuals’ tax records. Further, many States have data systems in place to track employment, which may serve as the basis for verifying job placement rates. The Department has taken numerous steps to mitigate burden on various entities and does not believe the changes recommended by the commenter are necessary or appropriate.

Changes: None.

Comments: One commenter asked to modify § 690.94(c) so that the Department could waive or modify, for a limited transition period, some or all requirements under § 690.94(a) and (b) during the first two award years if a State demonstrates that necessary cross-agency data linkages or wage record matching processes are not operational. A waiver would include interim reporting requirements and a plan for full compliance.

Discussion: The Department declines to make this change because we think that the current § 690.94(c) allows for sufficient flexibility in the determination of the performance metrics. Additional forms of flexibility would also require additional time and resources from Department personnel who review requests for such waivers that we do not believe are merited.

Changes: None.

Comments: One commenter, representing a U.S. Territory, asked for flexibility for the completion and placement rate metrics because it has not had to certify these measures before; it has limited data and capacity to match participants with wage records; many of its programs have small cohorts in which one or two participants could be the difference between passing and failing; many participants seek

employment outside the territory, making it hard to verify wage records; and seasonal and limited local openings make it difficult to achieve in the short term a passing percentage when otherwise the program will have good long-term outcomes.

Another commenter also pointed out the statistical volatility with small cohort sizes and the negative effect on the completion and placement rates. They recommended that the Governor’s certification authority under § 690.93 serve as the primary quality assurance mechanism rather than apply automatic ineligibility thresholds to samples too small to produce statistically reliable rates.

Discussion: Participation in the program established by these final regulations is voluntary; if a State or territory determines it does not have the capacity or resources to carry out the program’s eligibility requirements, nothing in this final regulation forces it to do so. The Department also notes that, with smaller cohort sizes, it will be easier to verify job placement rates and completion rates as there are fewer students the State or territory is responsible for tracking.

The Department further notes that tracking completion and job placement rates is particularly important for small programs, as other accountability metrics in these final regulations (such as the value-added earnings metric) will not cover very small programs. As discussed in the NPRM and during the negotiated rulemaking session, these outcome metrics are essential components in ensuring these short-term programs lead to strong outcomes. Furthermore, these metrics are required by statute.

Changes: None.

Comments: Two commenters, one a State higher education agency and the other a State community college board, were concerned about the job placement reporting that will begin with the 2029–30 academic year. Currently, the commenters’ State does not have the ability to access the data needed, so they asked that the requirement be phased in during a longer time period to allow the State to be able to set up the necessary data infrastructure.

Discussion: The Department noted in § 690.94(c)(2) that in the case of the job placement rate certification in question, the Secretary may determine that a Governor is making progress towards making such certification but needs an additional award year using the certification for the first three years of establishing eligible workforce programs. If it becomes clear by that time (ca. 2031) that States are still

having difficulties, the Department can revisit the issue.

Changes: None.

Comments: Two commenters asked for clarification about whether a person who was continuously employed in the same job during and after the eligible workforce program would count as a placement for the metric. One of the commenters asked whether eligible workforce programs can be used for upskilling in the same job or if the intent is for a student to obtain a new job post-graduation.

Discussion: Neither the law nor the regulations are prescriptive regarding whether a placement must involve a new employer or occupation, or whether it can be the same occupation that the student had when first enrolling in the eligible workforce program. As long as the student's post-graduation job meets the requirements in § 690.94(a), it would count as a placement for the purpose of the metric.

Changes: None.

Comments: One commenter asked what the terms "program completion" and "exiting" mean, especially in the context of incarcerated students. The commenter indicated that, for incarcerated students, both terms include the date a person becomes legally available for employment.

Discussion: These terms have commonly understood meanings. Program completion means the student has met all the necessary requirements of the program, and exiting means the student is no longer in the program, whether it was completed or not.

Changes: None.

Comments: A few commenters argued in favor of attestation of completion and placement rates by independent auditors. One also asserted that the certification of those rates by the Governors in § 690.93 and § 690.94 goes beyond the language of the law, which indicates that the Secretary determines those data. See HEA Section 481(b)(3)(A)(iv).

Discussion: The Department disagrees with the commenter that regulatory requirements for auditor attestation of State-calculated completion and placement rates are necessary. The Department expects to perform oversight of State-calculated completion and placement rates to improve the likelihood that such rates are being calculated in accordance with the law and regulations.

Changes: None.

Comments: A few commenters were concerned about how Governors would acquire and use the necessary administrative data to certify completion and placement rates.

Discussion: The Department believes that Governors are best positioned to certify this information. As noted above, this will include, in the case of the placement rate, wage records, potentially enhanced, as well as other information they possess that would be relevant. We do offer a technical amendment to 690.94(a)(2)(i) by removing the phrase "using administrative data, including wage records" and placing it under subparagraph (B) so that it applies specifically to job placement since wage records will serve that purpose, as we have discussed earlier, rather than the completion rate. Completion information is housed at the institution and in State datasets.

Changes: 34 CFR 690.94(a)(2)(i) will now read: "For the 2026–27, 2027–28, and 2028–29 award years only, as determined through a certification from the Governor, based on the Governor's analysis, that the program meets the following standards—(A) A completion rate of at least 70 percent, within 150 percent of the normal time to completion; and

(B) A job placement rate of at least 70 percent, calculated as the percentage of students that are employed during the second quarter after exiting the program, using administrative data, including wage records;".

Components Determined by the Secretary—(§ 690.94(b))

Comments: One commenter worried about the reporting requirements for institutions in this section given their limitations in accessing timely and complete data. The commenter suggested that fulfilling the requirements be a joint venture shared by State systems and DOL.

Discussion: The tasks in § 690.94 are a joint venture. Section 690.94(b) instructs institutions to report the published tuition and fees for the eligible workforce program (through a process determined by the Secretary) and to submit to the Governor a list of students that completed the program during the award year and the information necessary for the Governor to verify the job placement rate. And under § 690.94(a) it is the Governor's analysis using administrative data, including wage records, that establishes that the program meets the relevant standards.

Changes: None.

Comments: One commenter asked that, for the completers' list, the Department require institutions to report the share of students without prior educational attainment at entry to provide context for outcomes, such as

when programs are most effective supporting career progress for those already making a reasonable wage.

Discussion: The Department declines this request because such a reporting requirement would require new definitions and would add administrative burden for institutions. At a later time, the Department will consider other reporting and data collection mechanisms to provide the public with valuable information about eligible workforce programs.

Changes: None.

Components Determined by the Secretary—(§ 690.94(c))

Comments: One commenter referenced § 690.94(c)(1) and stated that the regulations allow the Department to establish another method for computing placement rates. They urged us to consider utilizing a process at the Federal level similar to the one proposed for generating value-added earnings. To do so, we would either tap into a Federal data source that includes employment as well as earnings data, or simply use earnings as a proxy for placement, which would be possible if the "in-occupation" element is dropped from the placement rate, which the commenter argued for. Performing this computation at the Federal level using the same data generated for value-added earnings would greatly alleviate burdens otherwise placed on the States and would capture data on students regardless of where they live and work. Federal sources would also capture entrepreneurs, Federal employees, and others who may not be part of State unemployment insurance records.

Discussion: The Department believes that Governors are best suited to certify job placement and completion rates because they have direct access to administrative data necessary to calculate the rates. Governors are also best suited to interact directly with institutions under the purview of their State's authorization. As we have explained elsewhere in this final rule, we have good reason to require in-occupation employment for the job placement metric beginning in 2029–30. However, § 690.94(c)(1) provides flexibility to consider other possibilities in the future that might facilitate the operation of eligible workforce programs without sacrificing proper oversight.

Changes: None.

Comments: One commenter observed that the waiver process under § 690.94(c) creates a sequencing problem: the institution must first satisfy all requirements at the State level, the Governor must certify that the program meets all applicable criteria,

including placement rate criteria, and only then does the program proceed to the Secretary for Federal approval. The Secretary's waiver authority is not a factor until after the Governor has already completed a full review and certification. But the Governor's certification itself requires taking placement rate requirements into account. An institution has no way to know whether a waiver will apply to its program. A Governor has no basis on which to certify placement rate compliance in anticipation of a waiver process whose criteria, scope, and timeline have not been defined. The commenter urged the Department to publish sub-regulatory guidance prior to the first award year that clearly defines the waiver process under § 690.94(c), including the criteria the Secretary will use, how institutions or Governors may initiate a waiver request, and what the timeline for a waiver determination will be relative to the State approval process.

Discussion: The Department expects that Governors and institutions will seek a waiver once they are aware that the standard procedures related to completion and placement rates under § 690.94(a) and (b) will be a problem and prior to the situation that the commenter describes. We intend to provide more information about the waiver process in the future.

Changes: None.

Components Determined by the Secretary—(§ 690.94(e))

Comments: Several commenters were concerned that the accountability metrics will not properly account for the unique conditions of the incarcerated and asked for modifications or carveouts for that group. One commenter, an organization that deals with the reentry of incarcerated individuals, approved of the Department's exclusion of incarcerated persons from the completion and placement rate calculations. However, they noted that more information is needed, and they asked for an expansion of the incarcerated category.

The commenter believes that, because the regulations do not specify how institutions and Governors will document the exclusion, there will be inconsistent application of it by programs that serve incarcerated students, and there will be an arbitrary variation in the metrics for such programs. Governors certifying job placement rates will not have a standardized methodology for identifying students who become incarcerated after program completion because wage records do not capture that status.

The commenter recommended that the Department provide "sub-regulatory guidance specifying that institutions may document incarceration status through matching against Department of Corrections (DOC) custody records, State VINE (Victim Information and Notification Everyday) notification systems, or National Corrections Reporting Program data." The commenter also suggests that the Department specify that students who are incarcerated after completing the program but before the earnings measurement period are excluded from the value-added earnings cohort as well as the completion and placement rate calculations.

Also, the commenter stated that the Department should expand the exclusion to cover students who are placed on parole or community supervision and whose supervision conditions restrict employment in the credential's target occupation because this is a documented barrier for those in skilled trades and construction, where employers are often prohibited by contract or licensing requirements from hiring individuals under active supervision. According to the commenter's professional experience in a few States, 12–18% of program completers who were incarcerated face supervision restrictions that limit their access to the specific occupations for which they were trained. The commenter asserted that counting such students as placement failures would unfairly disadvantage programs serving that population.

Discussion: As Governors have latitude in documenting other requirements related to eligible workforce programs, they will also have latitude in determining how to document the incarceration exclusion. We accept the commenters' suggestions of sources that can document incarcerated status and intend to provide additional guidance in the future to help institutions with that task.

Students who are incarcerated after completing their program but before the earnings measurement period are not likely to be counted in the value-added earnings metric because presumably such former students will not be employed and will be left out of the calculation anyway.

Regarding the expansion of incarcerated individuals to include persons who have supervision restrictions that can affect their employment or otherwise provide carveouts for students who were incarcerated, this would involve adding a category to the current list of exclusions since such former students

are not incarcerated. The Department has no plans to increase that list for now. A supervision restriction does not mean that a person cannot obtain employment, it means there may be conditions on their release. It is an institution's responsibility to advise a prospective student on employment outcomes for a prospective program because Pell Grant funds are limited. If an individual would face difficulties obtaining employment post completion due to restrictions, then the program may not be in the individual's best interest.

Changes: None.

Comments: Numerous commenters recommended that the Department add to the list of those who are excluded from the completion and placement rates students who have continued their education immediately after completing the workforce program. They asserted that because of the portability and stackability of workforce programs and their potential to lead to certificate or degree programs, the intent of the law is plain: continuing education is one expected outcome of Workforce Pell Grant programs. Also, the commenters stated that research has shown that there is a positive relationship between educational attainment and economic outcomes. Therefore, one commenter argued, proposed performance measures should allow for continued education to be considered a positive program outcome and not one that could work against the continuation of workforce programs. The commenter stated that the Department could instead offer alternative calculations or waivers when continued education is commonly and intentionally chosen.

Several commenters observed that excluding continuing students from the placement calculation is also negative because it fails to register what is a positive outcome of the Workforce Pell Grant program; they recommended counting such students the same as job placements in the calculation.

Other commenters suggested that the Department disaggregate job placements between employment and further education or training or non-placements between unemployment and further education.

Discussion: The Department acknowledges that eligible workforce programs are intended to be stackable and portable, but we decline the commenters' recommendations. Per the NPRM, the Department stated that the primary intent of a workforce program is to obtain a job upon completion. While institutions must ensure the stackability of the recognized postsecondary credential when

developing or enhancing programs, in the Department's view, the primary focus should be for graduates to obtain a job in the occupation(s) the program prepares students for after program completion. The importance of the job placement rate metric in the statute supports the idea that the intended goal for students is to become employed not long after completing the workforce program in a job related to the eligible workforce program. Additionally, the value-added earnings metric in the statute is designed to ensure that graduates earn enough to justify the program's cost. We also wrote that, for students who want to enroll in further education than what workforce programs typically provide, the students have access to all other, longer title IV eligible programs. The Department believes that the primary focus of obtaining employment is not inconsistent with the requirements for an eligible program to lead to a recognized postsecondary credential that is stackable and prepares students to pursue one or more certificate or degree programs. Instead, the overall objective is for students to gain the specific skills needed to enter high-skill, high-wage, or in-demand occupations or industries while also ensuring that, when a student continues their education to upskill throughout the course of their career, they can easily build upon the education received through the eligible workforce program. For these reasons the Department has significant concerns about excluding currently enrolled students from the job placement rate metric and rejects the commenters' recommendation. Similarly, the Department also declines the suggestion to further disaggregate job placement rates and continued enrollment because of these concerns related to burden and feasibility.

Changes: None.

Comments: Another commenter agreed with the Department's justification for not having in the list of exclusions students who continue their education but also offered an alternative: have students who are continuing in another program after completing the workforce program count as 0.5 students for the purpose of the job placement metric. This would provide a middle ground that is less likely to cause programs to fail the metric and allow some students to at least pursue more education before entering the job market. He provided a couple of numerical examples to demonstrate how it would work.

Discussion: While we appreciate the commenter's novel suggestion as a compromise for what was a lengthy

discussion during negotiations, we decline to change the list of exclusions to include students in continued education for the reasons stated above. Furthermore, for the reasons described above, the Department does not believe it has the authority to count students who continue their education as 0.5 for the purpose of the placement rate metric.

Changes: None.

Value-Added Earnings—General Comments (§ 690.95)

Comments: One commenter stated that security clearances can take a substantial amount of time for individuals working in the defense industry. If completers experience delayed entry into defense employment because of clearance process, their earnings during the measurement period may be zero. The commenter recommended that the Department consider this interaction.

Discussion: The Department declines to make changes to the regulations based on the commenter's statements. Section 481(b)(3) of the HEA, added by Section 83002(b)(3)(A)(iv)(IV) of the WFTCA, states that for each award year the total amount of the published tuition and fees of an eligible workforce program cannot exceed the value-added earnings of students who received Federal financial aid and who completed the program three years prior to the award year. Per the NPRM, during negotiated rulemaking several non-Federal negotiators requested that the Department stress in regulation that the cohort period only include individuals that completed the eligible workforce program three "full" award years prior to the current award year. Negotiators believed that unless the Department defined the cohort period in this way, we could have included the earnings of individuals that completed the program, but their earnings would not reflect the full impact of having participated in an eligible workforce program. By establishing an earnings measurement period that is the first full tax year following the award year in which the student completed the eligible workforce program, we ensure that a program completer has an amount of time between the completion of the eligible workforce program and obtaining a job that appropriately captures corresponding increases in income associated with completion of the program. Even an extended period when an individual was awaiting a security clearance would not cause an individual's earnings to be limited under the timeline that the Department has established.

Changes: None.

Comments: Several commenters requested that data be published publicly. A commenter asked the Department to disaggregate outcome data by race, age, income, and justice-system involvement.

Discussion: The Department may make available information pertaining to the value-added earnings measure; however, the Department declines to disaggregate the data beyond statutory requirements. This proposal raises significant concerns about student privacy, particularly for eligible workforce programs with small numbers of completers and for all eligible workforce programs where the number of individuals who may be involved with the justice system is small. There are also legal limitations to the Department's ability to use student-level data for purposes that are not strictly necessary to administer the title IV, HEA programs.

Changes: None.

Comments: One commenter asked who will calculate value-added earnings.

Discussion: The Department will calculate and publish the value-added earnings in conjunction with a Federal agency with earnings data.

Changes: None.

Comments: Commenters stated that institutions will need clear guidance on how to report tuition and fees to the Department. One commenter stated that clear direction will be critical to ensure consistent implementation across institutions and to avoid confusion about how tuition and fees should be matched to student-level earnings in the value-added earnings calculation. The commenter requested that guidance clarify how the value-added earnings threshold operates in the context of differential tuition.

Discussion: Value-added earnings will not be calculated until 2030. This provides the Department with ample time to work with stakeholders and release guidance on the value-added earnings framework. We will release sub-regulatory guidance and implement systems' changes as necessary to effectuate the value-added earnings metric.

Changes: None.

Value-Added Earnings (§ 690.95(a))

Comments: Many commenters encouraged the Department to provide flexibility in the application of the value-added earnings metric, including consideration of alternative or supplemental measures of program success where appropriate. The commenters also recommended that the

Department consider phased implementation or pilot approaches to allow institutions and States to adapt to these requirements over time. Commenters were concerned that the value-added earnings calculation does not consider the populations that may have lower wages including confined or incarcerated individuals, individuals in occupations like teaching and healthcare, underrepresented populations, U.S. territories, and workers in rural or remote regions of the United States.

A few commenters were concerned that the value-added earnings metric places too much emphasis on short-term wages. Commenters stated that socially important occupations such as human services and public sector roles may not produce high wages. The commenter urged the Department to adopt a broader accountability framework that includes completion, persistence, employer satisfaction, and longer-term wage growth.

Some commenters asked the Department to develop a supplemental relative earnings gain metric for programs serving documented high-barrier populations. Other commenters suggested alternative calculations that the Department should adopt. Examples of commenters' suggestions include:

- Measuring the percentage increase in earnings from pre-enrollment to post-completion;
- Drawing upon different cohort data aggregation models that are currently codified in the Department's regulations for foreign medical schools at 34 CFR 600.55(f)(4)(ii);
- Extending the timeframe for retrieving median earnings. For example, using 5- or 10-year median earnings for individuals working in healthcare, supplemented by shorter-term data where available;
- Incorporating small-State and small-cohort adjustments;
- Permitting States to supply supplemental wage record data or other State administrative data for both interim and ongoing earnings analysis;
- Excluding confined or incarcerated individuals enrolled in an eligible prison education program from the value-added earning calculation; and
- Exceptions for Historically Black Colleges and Universities (HBCUs), Tribal Colleges and Universities (TCUs), and Hispanic-Serving Institutions (HSIs) that have smaller student bodies, serve more economically disadvantaged students, and operate in regional labor markets with lower median wages.

Discussion: The Department declines the commenters' recommendations. Section 481(b)(3) of the HEA, as added

by Section 83002(b)(3)(A)(iv)(IV) of the WFTCA, states that a value-added earnings metric will be computed for eligible workforce programs by calculating the median earnings of students who completed the program, adjusted by the State and metropolitan area regional price parities based on the location of the program. The statute then directs the Secretary to subtract from that value 150 percent of the poverty guidelines to arrive at the value-added earnings for the eligible workforce program.

The Department does not have the authority to amend a statutorily mandated formula. Please note that the value-added earnings formula takes into account many of the commenters' concerns: (1) It will not be published until 2030, and we have declined to require an interim calculation; (2) It only considers the earnings of individuals who completed the eligible workforce program, while all other individuals who did not complete or withdrew from the program are not included in the median earnings; (3) The median earnings is adjusted by State and metropolitan area regional price parities; (4) It only considers earnings from those who are working at the time that the calculation is conducted, while individuals who are not working at the time the calculation is conducted are excluded from median earnings; (5) Individuals enrolled in any educational program at an institution eligible for title IV, HEA funds (regardless of whether the program itself qualifies for title IV, HEA funds) when the value-added earnings are calculated are excluded from the calculation; and (6) if the cohort is still too small after the cohort expansion under (h), the value-added earnings will not be calculated for that year and the program will remain eligible for Pell Grant funds. On this statutory basis and for these reasons, the Department believes this value-added metric is fair and accurate, and it will not be adjusted further in the final rule.

Changes: None.

Value-Added Earnings (\$ 690.95(b))

Comments: A few commenters requested adjustments to the poverty line adjustment. Some commenters felt that the adjustment sets a low bar for programs to meet, while others felt that it sets a high bar that may be difficult to meet for some eligible workforce programs.

Discussion: The Department declines the commenter's suggestion. Section 481(b)(3) of the HEA, added by Section 83002(b)(3)(A)(iv)(IV) of the WFTCA, states that the figure must be "150

percent of the poverty line applicable to a single individual as determined under section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) for such year."

Changes: None.

Comments: Some commenters had concerns about the use of State and metropolitan area regional price parities to adjust median earnings. Commenters believed that rural areas with lower median wages will generate lower value-added earnings thresholds, which limits the tuition that rural programs can charge, which limits the viability of operating rural programs. One commenter stated that Governors in States with large rural populations will face pressure to approve programs that serve urban labor markets where job placement rates are high and earnings are strong, while rural workforce training programs that serve the same national defense and critical infrastructure needs with geographically dispersed graduates will struggle to meet the same performance thresholds.

Discussion: The Department believes the commenters are mistaken. Rural programs will not be disadvantaged when the value-added earnings are calculated since program earnings are adjusted for regional price differences using metropolitan or State regional price parities. Thus, rural areas (where earnings outcomes may be lower) are upwardly adjusted to account for the prices in the regional area. Additionally, section 481(b)(3) of the HEA, as added by Section 83002(b)(3)(A)(iv)(IV) of the WFTCA, states that a value-added earnings measurement will be computed for workforce programs in part by calculating the median earnings of applicable students as adjusted by the State and metropolitan area regional price parities based on the location of the program. We do not have the authority to amend a statutorily mandated formula in the way that the commenters propose.

Changes: None.

Comment: One commenter proposed measuring earnings three years after the date on which graduates complete their program. The commenter argued that this measure would better reflect Congressional intent and would harmonize the earnings measure across the value-added earning metric from section 83002 of the WFTCA with the earnings premium metric from section 84001 of WFTCA. The commenter also requested that the Department produce a tuition-to-discretionary earnings measure as soon as practicable, and to use the earnings outcomes of eligible workforce programs in program recertification processes.

Discussion: The Department appreciates the commenter's concern about ensuring that eligible workforce programs provide meaningful value to students. While we share those concerns, we disagree with the commenter's notion that our process for measuring earnings is inconsistent with Congressional intent. The Department notes that the statutory language used in Sec. 83002 differs from that of Sec. 84001, which is why the Department uses different methods for measuring earning years. In Sec. 83002 (the section describing the value-added earnings metric), the statute says that the earnings measure will be based on students who "completed the program 3 years prior to the award year," which is consistent with the process the Department has proposed. For example, in 2030, the Department would calculate the value-added earnings metric from earnings in tax year 2028 based on students who completed the program 3 years prior (*i.e.*, those who completed during the 2026–27 award year).

This differs from the process proposed in the STATS and Earnings Accountability NPRM due to the different language used by Congress in Sec. 84001. In that section, Congress specifically includes the phrase "before the year of determination" to signal how years should be counted. Because of the difference in language used across the two different sections of the statute, the Department does not believe it is appropriate to harmonize the way that earnings years are counted.

The Department also appreciates the commenter's concern about producing earnings metrics as soon as practicable. The Department agrees with this concern, and as noted in the NPRM, will publish the earnings-related metrics for eligible workforce programs as soon as practicable, and we will continue to use all relevant information when reviewing programs in the recertification process.

Changes: None.

Comment: One commenter requested that the Department clarify in its final rule how the regional price parity (RPP) for the metropolitan area of the program (or of the State, if the regional price parity for the metropolitan area is not available) will be computed, asking whether the Department intends to multiple or divide to make such an adjustment. The commenter also argued that, for programs not located in a metropolitan statistical area, the Department should use the regional price parity for the non-metropolitan areas of the State rather than the State-level regional price parity.

Discussion: The Department thanks the commenter for the opportunity to clarify. To conduct the adjustment, the Department will divide the median earnings outcome by the relevant regional price parity. Specifically, the calculation for the value-added earnings metric will be the following:

- Value-added earnings = (Adjusted Median Earnings) – (150% Poverty Threshold)
- where adjusted median earnings value is computed as:
- (Adjusted Median Earnings) = (Median Earnings) × (100/Regional Price Parity)

where a Regional Price Parity of 100 would represent the national regional price parity.

We disagree with the commenter's recommendation to use the regional price parity associated with non-metropolitan areas of the State for cases where programs are not located in a metropolitan statistical area. The statute clearly states that the Department will use the *State*-level regional price parities in these instances.

Changes: None.

Value-Added Earnings (§ 690.95(c))

Comments: Some commenters stated that tuition and fees at most institutions nationwide are required to be set and approved by an institution's Board of Trustees for each academic year, often more than three months in advance of the next academic year. Therefore, a minimum of three months advance notice falls short of adequate lead time. Commenters stated that the Department should provide these calculations no less than six months prior to each academic year, giving institutions the much-needed time to establish tuition and fee structures.

Discussion: The Department declines the commenter's recommendation. We will make efforts to provide the value-added earnings as early as possible, particularly given the regulatory text requiring release of that information no later than three months prior to the beginning of the award year. An institution's Board of Trustees may set tuition and fees for an eligible workforce program at any time; however, if that tuition and fees is higher than the value-added earnings for a given eligible workforce program, the institution would have a choice: it could reduce the tuition and fees to no more than the value-added earnings, or it could continue to operate the program without Pell Grant eligibility.

Changes: None.

Value-Added Earnings (§ 690.95(d))

Comment: One commenter proposed that, for the purposes of calculating the value-added earnings metric, that tuition be defined precisely the same as already established in 34 CFR 668.408(a)(2)(vi), specifically, as "the total tuition and fees assessed to the student for the award year." The commenter argued that this would provide needed clarity for institutions and prevent the need for sub-regulatory guidance to clarify this in the future.

Discussion: The Department does not plan to adopt this change but will keep the commenter's recommendation for consistency in mind for the STATS and Earnings Accountability NPRM and, as much as circumstances allow, will seek to make the definition of "tuition and fees" in those regulations as consistent as possible with the definition in these regulations.

Changes: None.

Value-Added Earnings (§ 690.95(h))

Comments: A few commenters were concerned that if an eligible workforce program cannot generate a sufficient number of completers across the cohort expansion for the Secretary to calculate value-added earnings for the program, then a program with no calculated value-added earnings would lose Pell Grant eligibility.

Discussion: If there are an insufficient number of completers to calculate the value-added earnings, even after the cohort expansion, the Department would simply not calculate a value-added earnings metric for that year. In that situation, the program would not lose Pell Grant eligibility.

Changes: None.

Comments: A few commenters were concerned that the cohort expansion process takes into account the earnings of individuals who completed an eligible workforce program up to seven years prior. Commenters were concerned that data from the value-added earnings would not be indicative of completers' actual earnings potential of the eligible workforce program. Commenters claimed that the same group of students already measured would be reincluded for every cohort expansion. Commenters urged the Department to create alternate methodologies to calculate value-added earnings for programs with small cohorts.

Discussion: Please see responses under § 690.95(h) of the directed questions sections for information on changes to the cohort expansion. There is a mandate in the authorizing statute to calculate value-added earnings. In

any instance that the cohort is too small, the Department must take into consideration previous completers because the consequence of not doing so would be that the Department would be unable to calculate the value-added earnings metric for programs with smaller cohorts.

The Department also notes that, at most, completers from 4 prior years could be included in the cohort (assuming programs are aggregated to the fullest extent), not 7 prior years. The Department further notes that aggregating multiple cohorts of completers (for small programs) is a feature of the regulation, not a deficit, since aggregating multiple years of completers can help smooth over year-to-year variations in earnings outcomes caused by labor market fluctuations.

Changes: None.

Value-Added Earnings (§ 690.95(j))

Comments: A few commenters urged the Department to allow programs to appeal or request reconsideration if CIP code aggregation produces misleading results for graduates.

Discussion: The Department declines the commenters' recommendation to allow for an appeals process to the value-added earnings metric for several reasons. First, an appeals process would add significant burden and complexity to the process. Second, unlike Section 84001 of WFTCA, Section 83002 did not include an appeals requirement, suggesting that Congress did not intend for this measure to be appealed.

Third, the earnings data used in the value-added earnings metric are computed by a Federal agency with earnings data, which is subject to strict privacy constraints. Fourth, the Department will not allow reconsiderations of the value-added earnings metric because we are providing institutions 60 days to make corrections to the completers list under § 690.95(g)(1)(ii). If corrections are made or the original list is correct, the Department would consider the institution to have substantiated the information, obviating the need for reconsideration.

Changes: None.

Comments: Several commenters requested that the Department remove the requirement that all programs under the same six-digit CIP code be required to reduce tuition and fees below the value-added earnings. One commenter stated that at the six-digit CIP code level programs could be substantively different in purpose, geography, or delivery model.

Discussion: The Department cannot adopt the commenters' suggestion

because they are mistaken. The National Center for Education Statistics defines the six-digit CIP code level as the most detailed level for grouping highly similar programs.¹⁸ Programs sharing the same six-digit CIP code and credential level are highly similar in nature; therefore, the Department contends that these programs should be subject to the same value-added earnings metric. This also reduces the likelihood that an institution will attempt to create multiple similar programs with small cohorts under the same 6-digit CIP code in an effort to avoid having a value-added earnings metric calculated for the program, or to improve the results of the metric for one of several programs.

Changes: None.

Loss of Eligibility—General Comments (§ 690.96)

Comments: A few commenters strongly supported the accountability framework established in § 690.96. One commenter asserted that when institutions set program prices above their value and more than what the law allows, they impose real costs on students and taxpayers. Another commenter expressed their belief that this provision will help prevent bad actors from re-entering the system under different names.

Discussion: The Department thanks the commenters for their support.

Changes: None.

Comments: One commenter observed that the Department uses the term “failing program” inconsistently across § 690.96, § 690.97, and other title IV, HEA program regulations (*i.e.*, 34 CFR 668.16(t) and 668.171(c)(2)(iii)). They argued that the term is unclear and overly negative and recommended defining it precisely or replacing it with more neutral terms (*e.g.*, “vulnerable program,” “at risk program,” “program on the bubble”). The commenter highlighted that “failing” is used in different ways, sometimes referring to a program that fails earnings metrics twice in three years, other times referring to a program that fails once and is vulnerable, or to one discontinued voluntarily before determination of eligibility.

Discussion: The Department declines the commenter's recommendation. The phrase “failing program” was used in the preamble to the NPRM to describe a program that did not meet the outcome metrics as proposed. The

phrase “failing program” is accurate. If a program does not meet the outcomes metrics (value-added earnings, job placement, and completion), then the program would fail, and would subsequently become ineligible to participate in the Pell Grant program. A program that does not meet the outcomes metrics is not “at-risk” or “vulnerable”, because that would imply that the program could continue to be a Pell Grant eligible program. The only method for a failing program to regain eligibility is to follow the requirements under § 690.97.

Changes: None.

Comments: One commenter noted that a regular review with supplemental guidance would allow the Department to better understand the long-standing and current review processes that accreditors have in place for short-term and workforce programs.

Discussion: The Department believes that its existing recognition review cycle, monitoring activities, and established documentation requirements already provide a sufficient framework for understanding accreditor review processes.

Changes: None.

Comments: One commenter noted that while Governors may have appeal processes, the proposed rule does not establish Department-level appeal procedures for programs losing eligibility, even though the Department will determine completion rates beginning in the 2029–30 award year. The commenter recommends clarifying when appeals apply and who adjudicates them.

Another commenter argued that the proposed rule on loss of Pell Grant eligibility for Workforce programs lacks adequate due process protection, including notice, opportunity to correct data, and a formal administrative hearing before termination of eligibility. The commenter proposed:

- A mandatory 90-day notice-and-cure period before loss of eligibility under § 690.96, during which the institution may submit corrected completion rate, job placement rate, or earnings data;
- An administrative hearing right before final loss of eligibility determination;
- An expedited reinstatement pathway for programs whose loss of eligibility was based on data error rather than genuine program failure; and
- A stay of loss of eligibility pending appeal for programs that demonstrate the error was in ED's data calculation, and not the institution's reporting.

Discussion: The Department declines the commenters' suggestions. The

¹⁸ See page 2 of https://nces.ed.gov/ipeds/cipcode/Files/2020_CIP_Introduction.pdf, where six-digit CIP codes are referred to as “the most detailed program classifications within the CIP.”

Department does not establish a separate, Department-level appeal process for programs that lose eligibility based on these Federal performance metrics. Instead, institutions may challenge the Department's determinations through existing administrative processes only when they believe the Department has made an error in the calculation or use of required data. For example, under § 690.95(g)(1)(ii) institutions have 60 days to correct the list of completers before the Department requests median earnings from the Federal agency with earnings data. The Department's determinations rely on standardized, Federally reported data rather than subjective program evaluations; therefore, we do not believe additional Department-level appeal procedures are necessary.

Under § 690.96(b) the Department provides that an institution may appeal completion and job placement rates to the certifying Governor, “. . . except that the Secretary will not make such a determination while a program's eligibility, approval, or reported completion rate of job placement rate is in an appeal status or awaiting the Governor's final approval determination.” We believe that this meets the statutory threshold for appeal consideration.

Changes: None.

Comments: One commenter asked for clarification on how program performance and failure would be defined under the rule. The commenter was unclear as to whether performance metrics would be based on initial enrollment numbers, completion rates, or post-program employment outcomes, and whether failure to place participants in jobs will be considered a determining factor.

Discussion: Programmatic loss of eligibility is covered under § 690.96, which explains when ineligibility occurs if the program fails the Governor-determined requirements under § 690.93, the Secretary-determined requirements are under § 690.94, and the value-added earnings metric are under § 690.95.

Changes: None.

Comments: A few commenters argued that the withdrawal provisions rely too heavily on short-term completion, job placement, and earnings metrics that do not accurately reflect the circumstances of many learners, especially those balancing work, caregiving, transportation challenges, or irregular schedules. They noted that short-term programs often serve individuals with complex participation patterns and that rigid metrics could unintentionally

discourage institutions from enrolling learners who need flexibility, thereby narrowing access. The commenters also cautioned that rapid eligibility loss under §§ 690.96 and 690.97 may push providers to prioritize risk avoidance rather than student access, despite the reality that many workforce pathways are intentionally designed as longer-term, stackable credential sequences created in partnership with employers. To address these concerns, the commenters recommended adding flexibility or contextual adjustments to the accountability system. The commenters noted possible approaches include recognizing part-time enrollment patterns, considering documented external barriers, or allowing institutions to submit supplemental narrative explanations for performance variations. They also recommended that students who continue their education be counted favorably in job placement metrics, potentially through waivers or alternative calculations for programs with strong outcomes but high rates of continued education.

Discussion: While the Department recognizes that many eligible workforce programs serve learners with diverse needs and that stackable program structures often support continued education as a positive outcome, the Department believes that maintaining clear, consistent, and measurable performance standards is essential to safeguarding both program integrity and student value. The regulations are designed to ensure that programs receiving Federal funds reliably support students in obtaining employment aligned with their training, while still permitting institutions to design flexible delivery models that respond to learner needs. Although the Department does not adopt the commenters' suggestions, the Department will continue to monitor implementation and consider whether additional guidance is warranted to support equitable accountability across varied program structures.

Changes: None.

Loss of Eligibility (§ 690.96(a))

Comments: One commenter asserts that a Governor's decision to approve or withdraw approval of eligible workforce programs should be final. They argue that the statute intentionally assigns approval authority to Governors because States understand local labor market needs. The commenter believes the Department should establish a national minimum standard but should not override the Governor's decision, as the statute does not grant the Secretary

authority to overturn State determinations.

Discussion: The Department declines the commenter's recommendation because the regulations do not have a provision in which the Department would overrule a Governor's decision to withdraw recognition. Also, the statute provides a Secretarial approval role. The Department does not agree that State decisions can override the Secretary's authority and therefore declines to adopt the recommendation to make a Governor's decision binding.

Changes: None.

Loss of Eligibility (§ 690.96(b))

Comments: Several commenters were concerned that if a Workforce Pell Grant program loses eligibility while students are still enrolled, learners could abruptly lose Pell Grant funding and be forced to stop their training, delay completion, or assume unexpected financial burdens. The commenters argued that students should not bear consequences if eligibility loss stems from institutional or State compliance issues rather than student performance. The commenters highlighted that without a required teach-out or continuation process students lack basic protections from such disruptions. To address this risk, the commenter recommended that the Department require institutions whose programs lose eligibility implement a teach-out plan or otherwise ensure continued financial support for currently enrolled students until they complete the program. They asserted that a teach-out plan provides a structured pathway allowing students to finish their training at the same institution or a comparable approved provider without added cost, thereby safeguarding students' investment of time and effort and preventing interruptions in their education.

Other commenters argued that the immediate loss of eligibility triggered by failing a completion or job placement threshold creates significant volatility, especially for small programs where the failure of a single student can swing results. They noted that such volatility imposes real costs and disruptions on States, institutions, and prospective students who may have arranged work schedules, childcare, or other commitments prior to enrollment. To address this, the commenters proposed a warning-year system: programs that fall below the 70 percent threshold would be placed on probation for one year and would only lose eligibility if they fail again the following year. They noted that this approach aligns with common accreditor practice and

provides programs a fair chance to correct issues before facing the two-year ineligibility period under § 690.97(a).

Another set of commenters were concerned that Workforce Pell Grant programs can lose eligibility by failures driven by economic conditions outside institutional control, such as labor-market downturns. The commenters noted that recent national reports show weak job prospects for graduates even without a recession, and warned that during recessions or regional slowdowns, the required 70% job placement rate may be unattainable in fields commonly served by Workforce Pell Grant (e.g., construction, manufacturing). The commenters also emphasized that there has been no comprehensive study confirming that Congress's statutory outcome expectations are realistically achievable across economic cycles. The accountability model, they argued, fails to account for labor-market volatility, yet penalizes institutions as if performance were fully within their control. To address these concerns, the commenters recommended giving each approved workforce program a set eligibility period, during which institutions would be held harmless from loss of eligibility even if metrics later fall short. Under this approach, failure to meet metrics would affect future eligibility only, preventing sudden disruption to programs and avoiding punitive consequences tied to broader economic forces that institutions cannot influence.

Discussion: The Department declines the recommendations. The existing framework provides institutions with flexibility to support students in the event of eligibility loss, and the Department believes that establishing a mandatory, uniform teach-out or continued-funding requirement for Workforce Pell Grant programs would be operationally burdensome and beyond the intended scope of this rule. The regulatory structure is designed to maintain a clear and predictable accountability system that protects students while preserving institutional flexibility, and therefore the Department also declines to adopt a probationary or warning-year system. With respect to commenters' concerns about broader labor-market fluctuations, the statutory performance requirements for Workforce Pell Grant programs are designed to ensure that participating programs demonstrate value and lead to employment even in varied labor-market environments. The Department does not have the authority to suspend or modify the statutory thresholds during economic downturns, nor to

provide an eligibility safe harbor once a program becomes ineligible. The Department will continue to monitor implementation and consider whether additional guidance or best-practice recommendations may help institutions minimize student disruption in circumstances where programs lose eligibility.

Changes: None.

Loss of Eligibility (§ 690.96(c))

Comments: One commenter argued that the regulation should state that the Department will “attempt to recover” liabilities rather than “collect” them, because actual collection is not always possible. The commenter argued that the Department prematurely assumes it will collect liabilities when, under existing Pell Grant regulations, institutions must first report and return overpayments through the Common Origination and Disbursement (COD) system. The commenter indicated that only after that process, and only if institutions fail to return funds, does the Department initiate liability recovery.

Discussion: The Department declines to make the suggested change. We believe the current terminology appropriately reflects both the Department's obligations and longstanding title IV administrative processes. While we acknowledge that actual collection may not always be possible, the Department is nonetheless required to pursue recovery of improperly spent Federal funds. The use of “collect” in § 690.96(c) does not predetermine that all liabilities will in fact be recovered; rather, it reflects the Department's responsibility to initiate and carry out the established collection process when an institution fails to meet its regulatory obligations.

Changes: None.

Comments: A few commenters sought clarity about whether institutions could face retroactive liability for failing the value-added earnings metric during the multi-year transition period before the first official value-added earnings thresholds are published. They interpreted § 690.96(c) to mean that starting in the 2030–31 award year the Department will publish each program's value-added earnings threshold annually and assess liability only if an institution exceeds that threshold in the following award year. However, commenters were concerned that language in the NPRM referencing liability in the “first award year” is ambiguous and could be misread to imply that liability applies to Pell Grant funds disbursed before value-added earnings thresholds exist, which would unfairly impose retroactive penalties on

programs that acted in good faith during the transition.

The commenters therefore urged the Department to clarify in the final rule that no value-added earnings liability applies to any award year prior to the first publication of value-added earnings for a program, and that “first award year” should unequivocally mean the first year in which a published value-added earnings threshold is in effect—not the program's first year of Pell Grant eligibility.

Discussion: As described in the NPRM, the phrase “first award year” refers to the first award year in which a published value-added earnings threshold is operative for compliance purposes, not the program's first year of Pell Grant eligibility. Consistent with this intent, institutions will not incur liability for Pell Grant funds disbursed in award years preceding the initial publication of a program's value-added earnings. In the NPRM we provided an illustrative example of § 690.96(c)(2)—value-added earnings provided during the 2029–30 award year would apply to a program's tuition and fees for the 2030–31 award year. If the institution charges \$5,000 in tuition and fees for the eligible workforce program during the 2029–30 award year but the value-added earnings for the eligible workforce program is \$2,500, for the remainder of the 2029–30 award year, the institution can continue charging enrolled students \$5,000 in tuition and fees. However, for the 2030–31 award year, the institution must reduce its tuition and fees to a maximum of \$2,500 or voluntarily withdraw its program from eligibility for Pell Grant funds. If the institution continues to charge students \$5,000 in tuition and fees and offers Pell Grants to enrolled students during the 2030–31 award year, the Secretary will assess a liability for the amounts of Pell Grants disbursed for students enrolled in the program for that award year.

Changes: None.

Comments: One commenter notes that, under the proposed rule, a program would lose eligibility at the start of an award year if its tuition and fees exceed its value-added earnings or if the program's value-added earnings are zero or negative. In such cases, the Department would also assess institutional liability for Pell Grants disbursed during that award year. The commenter urges the Department to ensure that this period does not count against a student's Pell LEU, arguing that students should not be penalized when a program becomes ineligible due to value-added earnings-based determinations.

Discussion: As noted in the NPRM, when a program's value-added earnings are zero or negative or when its tuition and fees exceed its published value-added earnings, the program becomes ineligible at the start of the subsequent award year, and the institution (not the student) is responsible for any associated Pell Grant liability assessed for that award year. The Department agrees that students should not be penalized for institutional noncompliance or for value-added earnings-based determinations that occur after students have already received aid in good faith. Consistent with this principle, students would have their Pell LEU restored.

Changes: None.

Regaining Eligibility—General Comments (§ 690.97)

Comments: A few commenters supported the Department's proposal. One commenter agreed that four-digit CIP codes strike the right balance by avoiding the over-aggregation of two-digit families and the excessive fragmentation of six-digit codes, while ensuring meaningful distinctions among program areas. The commenter stated that using four-digit codes enhances the accuracy and integrity of outcomes-based metrics, prevents institutions from relabeling essentially identical programs, and aligns with existing Department practice across accountability frameworks. The commenter urged the Department to retain the four-digit CIP methodology in the final rule because it provides clarity, comparability, and reliable program classification for institutions, regulators, and students.

Discussion: The Department thanks the commenters for their support.

Changes: None.

Regaining Eligibility (§ 690.97(a))

Comments: One commenter expressed their belief that there needs to be consistency within the CIP code language throughout the final regulations. The commenter believed the agreement to go from four digits to six digits was reached during negotiations to ensure a more specific classification for the instruction provided with the individual programs.

Discussion: We believe the commenter is referring to the requirement that if an eligible workforce program loses eligibility based on the Secretary's determination that the program's completion rate or job placement rate failed to meet the requirements under 34 CFR 690.94(a)(2) or the institution voluntarily discontinues a failing eligible workforce

program, the institution may not seek to reestablish the eligibility of the failing program, or to establish eligibility for a substantially similar program sharing both (1) the same four-digit CIP code, and (2) identical SOC codes according to the CIP SOC Crosswalk that is provided by a Federal agency, until two years following the earlier of the date the program loses eligibility under 34 CFR 690.96(b) or the date the institution voluntarily discontinues the failing workforce program.

The reference to the four-digit CIP code was intentional; therefore, we decline the commenter's recommendation. As we described in the NPRM, several negotiators expressed concern that the Department's original proposal to rely solely on four-digit CIP codes as the criterion for determining program eligibility was overly broad and could lead to program misclassification, inhibit innovation, and impose undue restrictions based on imprecise categorizations. After discussing several alternatives with the committee, the Department agreed to revise its proposed approach to include only programs with the same four-digit CIP code that led to employment in occupations with identical SOC codes. We believe that this compromise position is a more flexible framework to ensure accurate classification and to support the development of programs that meet workforce needs while maintaining accountability. We use the six-digit CIP code in reference to the value-added earnings metric with is separate for the completion and job placement metrics.

Changes: None.

Comments: A few commenters recommend that the Department strengthen its proposal for regaining eligibility after a program fails the completion or job placement test. The commenters are concerned that the current approach creates a loophole because institutions are allowed to reestablish programs in the same field of study if the new program does not list identical SOC occupation codes. One commenter warns that institutions could relaunch failing or discontinued programs under the same four-digit CIP code simply by selecting a different SOC code, even if the new program is nearly identical to the one that failed. The commenter argues that this would allow institutions to make superficial changes such as relabeling a truck-driving program under a related SOC code for bus drivers or shuttle drivers without addressing underlying quality problems, thereby continuing to enroll students in low-earning programs. One commenter argues that negotiators reached

consensus on a stronger standard: institutions should be prohibited from restarting a failing program under the same four-digit CIP code if the new program shares any SOC codes with the failing six-digit CIP program. The commenter strongly urges the Department to apply this approach to Workforce Pell Grant programs, ensuring consistency across title IV, HEA program accountability systems. The commenter further recommends that the Department explicitly bar institutions from offering any substantially similar low-earning program whether similar in curriculum, employment trajectory, or occupational alignment after a program has failed. In their view, this is necessary to prevent institutions from exploiting SOC-based loopholes, ensure true program improvement, and protect taxpayers and students from repeated cycles of poor outcomes.

Another commenter proposed that the Department should limit the ability for colleges to restart programs in the same four-digit CIP code as a program that lost eligibility. This commenter also recommends extending the limitation on when programs could regain eligibility, increasing the prohibition from two to three years. Additionally, the commenter suggested that programs should not be able to be created in the same four-digit CIP if one of their programs fail the value-added earnings metric.

Discussion: The Department appreciates the commenters' concerns about preventing colleges from evading the accountability metrics to be an eligible workforce program, and the Department shares this concern. These regulations are being established with the intention of preventing institutions from circumventing accountability requirements and ensuring that only high-quality, performance-based programs remain eligible for Workforce Pell Grants. We do not inadvertently want to allow institutions to repackage failing programs under new SOC codes without substantive changes to program content or outcomes. The Department will continue to monitor implementation closely and use its existing authorities to address attempts to evade accountability, including circumstances in which a newly proposed program is substantially similar in curriculum or occupational focus to one that previously failed to meet required thresholds.

Furthermore, the Department clarifies that if institutions start and then end a program before the earnings outcomes are measured (including for the purpose of trying to circumvent the value-added

earnings metric), the Department will use the earnings outcomes for the program's former completers to establish limits on the amount of tuition and fees that can be charged for the program.

The Department disagrees with the suggestion to use the value-added earnings metric as a trigger for preventing new programs from being created in the same CIP code. The Department has established a process to prevent colleges from re-starting programs in the same CIP based on job placement rates and completion rates, which we believe is sufficient to prevent potential gaming.

Changes: None.

Comments: One commenter was concerned that institutions will try and game completion rates through selective enrollment and institutions would improve completion rates by refusing to enroll students likely to drop out, concentrating enrollment in the most motivated students while turning away the most economically vulnerable applicants. The commenter was also concerned that job placement rates could be gamed through temporary employment. The commenter demanded that a program re-designation with a new CIP code does not reset the cohort if the new program shares more than 50 percent of curriculum content with the prior program.

Discussion: The Department declines the commenter's suggestions. We believe the completion and job placement rate requirements set forth in these final regulations, along with Governor certification for the 2026–27 through 2028–29 award years, provide sufficiently rigorous safeguards against manipulation. Beginning in the 2029–30 award year, job placement must be verified using available administrative data and must reflect employment in the occupation(s) for which the program prepares students or a comparable high-skill, high-wage, or in-demand occupation, which mitigates the concern that institutions will rely on temporary or incidental employment to satisfy the placement requirement. With respect to cohort resetting, § 690.97(a) already prohibits an institution from reestablishing eligibility for a failing program or establishing eligibility for a substantially similar program until two years have elapsed.

Changes: None.

Comments: Several commenters asked the Department to define the term “substantially similar.” One commenter explained that institutions need clarity on when changes to a program create a truly new program versus a modified version considered similar for

regulatory purposes. The commenter recommended that the Department issue a non-exhaustive list of factors institutions should use in determining similarity, such as CIP code, credential type, instructional content, and target occupation.

Discussion: As mentioned in the NPRM, a program is considered substantially similar if it shares both the same four-digit CIP code and identical SOC codes under the Federal CIP–SOC crosswalk, and we do not believe additional regulatory language is necessary.

Changes: None.

Comments: One commenter is concerned about the proposed two-year prohibition on reestablishing eligibility for failing Workforce Pell Grant programs under § 690.97(a). They argue that the timeline is too long given the short-term, fast-changing nature of workforce programs and the rapidly evolving labor-market needs they are intended to meet. According to the commenter, a two-year ineligibility period may be appropriate for longer degree-granting programs but is disproportionate for shorter workforce programs that must adapt quickly to employer demand. Therefore, the commenter recommended reducing the ineligibility period to one year to allow programs to respond more rapidly to workforce needs and regain eligibility sooner after making improvements.

Discussion: The Department declines to shorten the re-establishment timeline. A shorter period, such as the one-year prohibition recommended by commenters, would reduce the incentive for institutions to fully address quality concerns and could lead to rapid cycling of program failures and restarts, undermining the integrity of the Workforce Pell Grant program.

Changes: None.

Regulatory Impact Analysis

Executive Orders 12866 and 13563

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product), or adversely affect in a material way the economy, a

sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles stated in the Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

The Department estimates the net budget impact to be \$3.2 billion for FY 2027 to FY 2036. Quantified economic impacts include annualized transfers of \$294 million at 3 percent discounting and \$289 million at 7 percent discounting for FY 2027 to FY 2036, paperwork burden (\$13.9/\$13.6 million) administrative updates to Government systems (\$0.6/\$0.7 million), staffing (\$2.3/\$2.5 million), and contract costs for ongoing systems operation and maintenance costs (\$2.14/\$2.09 million) at 3 percent and 7 percent discounting for FY 2026 to FY 2035, respectively. The administrative costs are annualized based on a window from FY 2026 to FY 2035 based on Federal Student Aid's anticipated timeframe for updates. Transfers annualized based on the FY 2027–FY 2036 budget window for the President's Budget2027 baseline (PB_2027). Therefore, based on our estimates, the Office of Information and Regulatory Affairs (OIRA) has determined that this proposed rule is “economically significant” under section 3(f)(1) of E.O. 12866 and subject to OMB review.

This final regulation is considered an Executive Order 14192 regulatory action. The Department estimates that this rule generates \$17.6 million in annualized costs at a 7% discount rate, discounted relative to year 2024, over a perpetual time horizon.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and considering—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

Consistent with OMB Circular A–4, we compare these final regulations to the current regulations. In this regulatory impact analysis, we discuss the need for regulatory action, potential costs and benefits, net budget impacts, and the regulatory alternatives we considered.

Elsewhere in this section under *Paperwork Reduction Act of 1995*, we identify and explain burdens specifically associated with information collection requirements.

1. Need for Regulatory Action

These final regulations are needed to implement statutory changes in the WFTCA that expand the Pell Grant Program as of July 1, 2026, to include students who attend eligible workforce programs. The final regulations also implement a separate provision under the WFTCA preventing a student from receiving a Pell Grant if the student's non-Federal financial assistance equals or exceeds their cost of attendance. Note this regulatory impact analysis is limited to the provisions in the WFTCA that establish Pell Grant eligibility for eligible workforce programs and excludes any analysis of the provisions affecting Pell Grant reductions for students receiving other aid that fully

covers their cost of attendance. The Department estimates that the potential costs, benefits, transfers, and net budget effects of the Pell Grant reduction provision are de minimis.

The Department has limited discretion in implementing many provisions in the WFTCA with respect to establishing a process to allow eligible workforce programs to receive Pell Grants. Most of the changes included in these final regulations simply modify the Department's regulations to reflect statutory changes made by the WFTCA.

Responses to Comments Received in NPRM on the Regulatory Impact Analysis

Comments: One commenter stated that the Unfunded Mandates Reform Act (2 U.S.C. 1531) requires agencies to assess the effects of regulatory actions on State, local, and tribal governments and prepare a written statement for any rule that would impose costs exceeding \$100 million annually. The commenter stated that the rule would cost \$500 million in the first year and provided estimates of costs as follows—at 200 staff hours per entity at \$75 per hour, this costs \$840,000 nationally and for State board consultation: each program approval requires State board involvement. The commenter also stated that if 5,000 programs seek approval nationally in Year 1, at 8 staff hours per consultation at \$75 per hour, this costs \$3,000,000 nationally, for Governor certification preparation: 5,000 certifications at 4 hours each at \$75 per hour = \$1,500,000 nationally, for annual re-certification for an expanded program base in Year 3 and beyond: potentially \$10,000,000 annually, and for IT system development to track program approvals, certifications, bilateral agreements, and re-certifications: \$5,000,000 to \$50,000,000 nationally. The commenter had the following proposals:

- A complete UMRA cost analysis published in the **Federal Register** with a 60-day comment period before the Workforce Pell Grant final rule is published.
- Congressional notification under UMRA Sec. 202 if the rule imposes costs exceeding the UMRA threshold.
- A proposed appropriation to fund Governor's administration of the requirements.

In a separate comment, the same commenter stated the Congressional Review Act requires agencies to submit major rules with an economic annual effect of \$100 million or more to Congress and the GAO before they take effect. The commenter demanded that

the Department submit the final rule to Congress and GAO as a CRA major rule before it takes effect.

Discussion: The Department declines the commenter's suggestions. The Department notes that the commenter did not provide any sources, documentation, or evidence to support the assertions they made pertaining to the amount of the staff hours, hourly rates, or number of programs that they used to claim the proposed rule would result in \$500 million in first-year compliance costs. The commenter fails to explain the basis for the differing costs and does not provide sources for the Department's consideration. The Department does not have the authority to appropriate funds to Governors, only the Congress had the power to appropriate funds. Section 481(b)(3)(A)(iii) of the HEA, added by Section 83002(b) of the WFTCA, states that after consultation with the appropriate State board, the Governor approves the program, therefore, Congress mandated that the programs be certified by the Governor.

Changes: None.

Comments: One commenter stated that the Regulatory Flexibility Act/RFA (5 U.S.C. Secs. 601–612) requires agencies to analyze the economic impact of proposed rules on small entities and to consider alternatives that achieve regulatory objectives with less burden on small businesses. The NPRM proposes new eligibility requirements that will impose major compliance costs specifically on small workforce training providers.

The commenter believed that under § 690.95(h), if an eligible workforce program cannot generate a list of at least 30 completers across a 4-year cohort combination, the Secretary does not calculate value-added earnings for the program. The commenter believed that a program that does not pass the value-added earnings requirement is ineligible to participate in the Pell Grant program. The commenter believes that failure due to the lack of a sufficient cohort is a violation of the RFA. The commenter has the following proposals:

- A complete RFA small entity analysis covering all categories of small workforce training providers including for-profit training companies, SBIR awardees, community-based training organizations, apprenticeship sponsors, and tribal education entities.

- An RFA impact statement specifically addressing how the proposed rules will affect small defense technology training companies including SBIR Phase II awardees with fewer than 50 employees.

Discussion: The Department declines the commenter's demands. Beginning on page 11425 of the NPRM the Department noted that "... the Secretary certifies, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities. For the purposes of this certification the Department has defined "significant economic impact" as increasing or reducing a small entity's revenues by more than 3 percent, and a "substantial number of small entities" as more the 5 percent of institutions that meet the Department's definition of a small entity. The Department estimates that fewer than 5 percent of small entities would see their revenues affected by more than 3 percent as a result of the proposed rule.

Changes: None.

Comments: One commenter stated that the Department's proposed rule does not include a cost-benefit analysis under OMB Circular A-4 comparing the expected credential quality and workforce outcomes of 150-hour programs versus 400-hour programs versus 550-hour programs. Without this analysis, the rule is arbitrary. The commenter stated that the Department has no evidence-based reason to set the minimum at 150 hours rather than 250 or 350 hours for specific CIP code categories. The commenter asked for an analysis of:

- Completer earnings by program length tier;
- Expected employer satisfaction rates by program length tier;
- Expected credential portability and stacking potential by program length tier; and
- Expected adversary-quality risk by program length tier (longer programs have more time for adversary-affiliated content injection).

In a separate comment, the same commenter stated that Executive Order 12866 and OMB Circular A-4 require significant Federal rules to include a rigorous cost-benefit analysis comparing the net social benefits of the proposed rule against its costs and against alternative approaches. The commenter raised that:

- OIRA require the Department to supplement the cost-benefit analysis with quantified estimates of (1) State government compliance costs under the Governor certification architecture, (2) fraud risk leakage under the proposed completion and placement rate framework, (3) adversary-nation risk cost of operating Workforce Pell Grant programs without provider screening, and (4) the relative fraud risk of 150-

hour versus 350-hour program minimum designs;

- The supplemental cost-benefit analysis be published for public comment before the final rule is published; and
- OIRA condition approval of the final rule on the Department providing a complete quantified cost-benefit analysis that addresses all demands.

Discussion: The Department declines to make changes based on the commenter's suggestions. The Department fulfilled the requirements of Executive Order 12866 and OMB Circular A-4 in our Regulatory Impact Analysis in the NPRM. Further, section 481(b)(3)(A) of the HEA, as added by Section 83002(b) of the WFTCA, states that an eligible workforce program must be at least 150 clock hours of instruction, but less than 600 clock hours of instruction, or an equivalent number of credit hours and be offered by an eligible institution during a minimum of 8 weeks, but less than 15 weeks. The Department does not have the authority to circumvent the statute by creating alternative clock-hour minimums or maximums or establishing a tier clock-hour program framework. Furthermore, the Department notes that it provided a justification regarding the assumptions it used regarding program lengths given the limitations of available Federal data (see the discussion leading up to tables 3.1 and 3.2). For those reasons, the commenter's suggestions would not be feasible or appropriate.

Changes: None.

Comments: One commenter stated that the Regulatory Impact Analysis and cost-benefit framework make no reference to 19 U.S.C. 1307, UFLPA, or Executive Order 13126, which together prohibit Federal programs from supporting supply chains contaminated by forced labor. The commenter also stated that the analysis estimates \$3 billion in Federal outlays over FY 2026–FY 2035 and projects significant benefits to students, employers, and taxpayers. However, the analysis does not account for:

- Whether program equipment procurement involves goods produced with forced labor;
- Whether value-added earnings calculations are distorted by artificially suppressed input costs in forced labor-linked supply chains; or
- Whether the Federal government's investment in workforce programs may indirectly support procurement ecosystems that violate 19 U.S.C. 1307.

The commenter asserts that under the Foundations for Evidence-Based Policymaking Act (44 U.S.C. 3520), Federal regulatory impact analyses must

support sound causal inference and that the RIA omits a known and documented cost distortion factor does not satisfy this standard.

Discussion: The Department rejects the commenter's assertions. The regulatory impact analysis accounted for all statutorily required components. The US Customs and Border Patrol enforce 19 U.S.C. 1307 and UFLPA, not the U.S. Department of Education. The Department of Education expects that all eligible institutions comply with all applicable Federal laws, but we decline to comment on laws or policies that we do not enforce. Executive Order 13126 is in regard to specific prohibitions on procurement of goods. The DOL maintains this list,¹⁹ and Department is not procuring goods in this regulation.

Changes: None.

Comments: One commenter suggested that the Department should provide sensitivity analyses to show the possibility of lower student participation in the first years, higher participation in the outyears, and higher average awards. The commenter speculates that for-profit institutions will charge more and possibly take advantage of the lag in losing eligibility. The commenter also says the Department fails to mention the Pell Grant shortfall. Finally, the commenter points to the findings of the Institute of Education Sciences (IES) study on the experimental site and questioned the estimated tax revenue gains from completers' higher earnings.

Discussion: The Department appreciates the suggestions for sensitivity analyses regarding the number of students and award size; however, we do not believe it is necessary. While it is plausible that enrollment will ramp up in the outyears, we believe the guardrails for this program will adequately prevent against significantly increased student participation in low-quality programs. Furthermore, an increase in costs speculated by the commenter would not have a substantial impact on the shortfall over a 10-year period. The commenter asserts that the IES study found no increase in earnings over the medium or long term, however that is a misunderstanding of the IES study. That study did not examine the effect of short-term programs relative to pre-program earnings. Rather, it examines the post-enrollment earnings of individuals who attend short-term programs by comparing the earnings outcomes of students who received a grant to those that did not. The

¹⁹ For more information, see www.dol.gov/agencies/ilab/reports/child-labor/list-of-products.

Department does not believe this is an appropriate counterfactual to estimate the earnings gains associated with short-term programs. Instead, the Department cites numerous empirical studies that examine the earnings gains of graduates who attended short-term certificate programs relative to their own pre-enrollment earnings levels. Finally, the

commenter questioned the accuracy of the Department's estimate that the proposed rule would result in higher tax revenue due to an increase in grant recipients' earnings. The Department acknowledges the concerns about accuracy and was careful to note in the Regulatory Impact Analysis that the revenue estimate was for illustrative

purposes only and not included in the net budget impact.

Changes: None.

Summary of the Final Regulations

A summary of the final regulations is listed in Table 2.1.

TABLE 2.1—SUMMARY OF KEY CHANGES IN THE FINAL REGULATIONS

Provision	Regulatory section	Description of provision
Pell Grants and Eligible Workforce Programs		
Date, extent, duration, and consequence of eligibility.	§ 600.10	Requires the Secretary's approval of each eligible workforce program in order to establish Pell Grant eligibility
Written arrangements to provide educational programs.	§ 668.5	Limits the amount of an eligible workforce program that can be offered by an ineligible institution or organization through a written arrangement to 25 percent or less. The final regulation is updated to permit an exception in which a written arrangement can allow an ineligible entity to offer more than 25 percent but less than 50 percent of the educational program with the approval of the institution's accrediting agency. A written arrangement for an eligible workforce program may only exceed the 25 percent threshold if it serves as the related instruction component of a Registered Apprenticeship program, as defined in 29 CFR Part 29.2.
Eligible program	§ 668.8	Adds eligible workforce programs as a new type of Pell Grant eligible program.
Limitations on remedial coursework that is eligible for title IV, HEA program assistance.	§ 668.20	Prohibits noncredit, remedial, and English as a second language coursework from inclusion in the calculation of title IV awards for students enrolled in an eligible workforce program. The final regulation is updated to prohibit remedial coursework for clock-hour programs in addition to the preexisting prohibition on remedial coursework in credit-hour programs.
Student eligibility	§ 668.32	Prohibits an individual that is enrolled or accepted for enrollment in a program that leads to a graduate credential or has attained a graduate credential from receiving a Pell Grant to enroll in an eligible workforce program.
Definitions	§ 690.2	Adds a definition of an eligible workforce program to § 690.2.
Ineligibility due to grant or scholarship assistance from non-Federal grants.	§ 690.5	Prohibits a student from receiving a Pell Grant if the student received grant or scholarship assistance from non-Federal sources that equals or exceeds the student's COA for the award year.
Duration of student eligibility	§ 690.6	Allows an otherwise eligible student with a bachelor's degree to receive a Pell Grant to enroll in an eligible workforce program.
Federal Pell Grant payments from more than one institution.	§ 690.11	Prohibits a student from receiving concurrent Pell Grant awards for two or more different eligible programs.
Recalculation of a Federal Pell Grant	§ 690.80	Requires an eligible institution to reduce a student's non-Federal grant or scholarship assistance or return all the Pell Grant funds and cancel any future disbursements of such funds if a student receives non-Federal grant or scholarship assistance that equals or exceeds the student's COA.
Scope and purpose	§ 690.90	Provides a high-level scope and purpose of eligible workforce programs and clarify that eligible students in these programs are only eligible to receive Pell Grants and not any other title IV aid.
Definitions	§ 690.91	Defines key terms, including "cohort period," "earnings measurement period," "in-demand industry sector or occupation," "Governor," "recognized postsecondary credential," "State board," and "tuition and fees."
Eligible workforce program	§ 690.92	Establishes that an eligible workforce program is an undergraduate program that is at least 8 but less than 15 weeks of instruction and is 150–599 clock hours, 4–15 semester or trimester hours, or 6–23 quarter hours. Prohibits correspondence courses, study abroad, or direct assessment in eligible workforce programs. Prevents an eligible institution from offering an eligible workforce program if it has been subject to any suspension, emergency action, or termination action by the Secretary during the five years preceding the date of the determination.

TABLE 2.1—SUMMARY OF KEY CHANGES IN THE FINAL REGULATIONS—Continued

Provision	Regulatory section	Description of provision
Components determined by Governors	§ 690.93	Requires the Governor to approve each program by confirming that the eligible workforce program provides an education aligned with the requirements of high-skill, high-wage, or in-demand industry sections or occupations, meets the hiring needs of employers, leads to a recognized postsecondary credential that is stackable and portable (or prepares students for employment for which there is only one recognized postsecondary credential), and ensures that a student receives academic credit for the program for at least one certificate or degree program at one or more eligible institutions. Requires Governors to establish written policies and processes to evaluate whether a program meets the requirements. Establishes a process in which a Governor provides a certification of continued approval of each eligible workforce program offered by the eligible institution prior to the expiration of an eligible institution's Program Participation Agreement. Ensures programs serving as related instruction for Registered Apprenticeship Programs meet certain approval criteria. Allows the Governors of two States to enter into a bilateral agreement regarding the enrollment of students located in one of those States into some or all the programs located in the other State.
Components determined by the Secretary	§ 690.94	Requires the Secretary to approve each program, after the Governor has approved the program. Requires the program to meet eligibility conditions for the 12 months preceding the date on which the eligible institution applied for eligibility for the program. Requires the program to meet completion and job placement rates prior to application to the Department and each year subsequent to the eligible workforce program's approval. Creates procedures for submission of the completion and job placement rates, such as flexibilities through the 2029–30 award years, waivers and exclusions for certain groups of students in the calculations.
Value-added earnings	§ 690.95	Prohibits an eligible workforce program's total published tuition and fees from exceeding the value-added earnings for all students who first enroll in the eligible workforce program during the award year that begins following the annual release of the program's value-added earnings. Establishes that value-added earnings are determined by calculating the difference between the adjusted median earnings of student completers (who are working) during the earnings measurement period and 150 percent of the Federal Poverty Line applicable to a single individual for such tax year. Establishes the number of students needed for the Secretary to calculate the value-added earnings for the eligible workforce program. Establishes that programs that have a value-added earnings of zero or a negative value are not eligible programs. This final regulation is updated to (1) exclude the earnings of individuals who are enrolled in an educational program when the value-added earnings metric is calculated and (2) Simplify the cohort expansion process when there are not enough completers in a cohort to calculate value-added earnings.
Loss of eligibility	§ 690.96	Establishes a process for programs that lose eligibility. A program will become ineligible at the end of the payment period that begins following the date that the Governor acts to withdraw approval, the Governor fails to reapprove the program, or the Secretary determines that the eligible institution failed to meet the completion rate or job placement rate requirements. Provides that if an eligible workforce program fails to meet the value-added earnings requirements, the program will become ineligible at the beginning of the award year following the release of the value-added earnings, and the Secretary will assess a liability to the eligible institution.
Regaining eligibility	§ 690.97	Establishes a process for an eligible workforce program to regain eligibility once it has lost it. Prohibits an eligible institution from reestablishing the eligibility of a failing program or establishing eligibility for a substantially similar program until two years following the date the program loses eligibility or the date the eligible institution voluntarily discontinues the failing eligible workforce program, whichever date is earlier. Establishes that if an eligible workforce program loses eligibility due to a loss of Governor approval, the program may reestablish eligibility after the Secretary receives the Governor's certification that the program has been approved, and after the Secretary determines the program has met eligibility criteria. Allows an eligible institution to request that a program's eligibility be reinstated if the program loses its eligibility due to the published tuition being higher than its value-added earnings.

3. Discussion of Costs and Benefits

These final regulations establishing Pell Grants for eligible workforce programs will result in benefits to students, employers, institutions of higher education, and taxpayers.

Additionally, the Department, States, and eligible institutions will bear new administrative costs to implement the program. Note that costs for one party which are completely offset by benefits to another party are classified as

transfers, as required by OMB Circular A–4. Transfers and the net budget impacts of these final regulations are discussed later in this RIA.

Prior to the enactment of the WFTCA, Pell Grants were restricted to programs

that were at least 600 clock hours, (16 semester or trimester credit hours) in length during a minimum of 15 weeks of instruction or programs that were at least 300 clock hours (8 semester or trimester credit hours) during a minimum of 10 weeks of instruction, provided that they admit only students who have completed the equivalent of an associate degree.

The WFTCA included statutory changes to expand the Pell Grant Program as of July 1, 2026, to allow workforce programs with a shorter duration to be eligible for Pell Grants if those programs also meet additional requirements to be considered eligible workforce programs. Specifically, eligible workforce programs must meet a minimum and maximum length requirement, including duration in calendar time (8–14 weeks of instruction), as well as clock hours (150–599 clock hours) or credit hours (4–15 semester/trimester hours and 6–24 quarter hours). Eligible workforce programs must also align with high-skill, high-wage, or in-demand industry occupations and meet the hiring needs of employers as determined and approved by the State Governor in the State in which the program is offered. The credential must be stackable and portable or prepare students for employment for which there is only one recognized postsecondary credential.

Eligible workforce programs also must meet several outcome and quality assurance rules that are not currently required of other programs for Pell Grant eligibility. Specifically, eligible workforce programs must have completion rates and job placement rates of at least 70 percent. Computing and verifying these outcome-based metrics will be administered by Governors and the Department. Additionally, the program's published tuition and fees may not exceed the value-added earnings of Pell Grant recipients who complete the program, adjusted according to the relevant price parity (Metropolitan Statistical Area, State, or National). Value-added earnings are defined as the median earnings of working individuals, less the 150 percent of the poverty line for a single individual. The Department will compute the value-added earnings metric and assess whether programs are in compliance.

Costs of the Final Regulations

These final regulations will impose costs on the Department, Governors, and eligible institutions. These costs are discussed in order.

First, these final regulations will create new administrative costs for the

Department related to operating the Pell Grant Program. We estimate that, based on comparable changes made in the past, those administrative costs would average \$5.3 million (using a 3 percent discount rate) in systems and other changes on an annualized basis over the 2026–2035 period (Table 4.2). These are costs associated with activities such as collecting data and making alterations to Department systems.

Most of these estimated costs will be incurred during the first two years of implementation. The Department is developing its own internal systems and working with a Federal agency with earnings data to provide the information needed to determine if programs pass the value-added earnings test. The Department will also establish a new system and data collection for assessing program tuition levels to determine whether programs meet the value-added earnings test. The Department is updating the Common Origination and Disbursement (COD) system, the National Student Loan Data System (NSLDS), and other systems to receive new data, enable the disbursement of Pell Grant funds to individuals who have already obtained a bachelor's degree, and support ongoing operations of the expanded Pell Grant Program.

The COD system is designed to support origination, disbursement, and reporting for Direct Loan, Pell Grant, and the Teacher Education Assistance for College and Higher Education (TEACH) Grant programs. The system uses a single "Common Record" (XML format) for efficiency and eliminating duplicate student and borrower data, providing a centralized system for title IV, HEA program administration used by the Department and all institutions across the country that participate in the delivery of Federal student aid. NSLDS is the central database for all Federal student aid, tracking title IV loans and grants (like Pell Grants) through their entire lifecycle, from approval to repayment or closure. The system provides an integrated view for students, institutions, and servicers to manage aid, loan status, balances, and enrollment. It consolidates data from institutions, lenders, and programs, enabling users to access loan history, disbursement details, and servicer information via the FSA Partner Connect portal.

The Department is also establishing systems and processes for coordinating with Governors who will certify that each program in each State meets eligibility requirements prior to the institution submitting the program to the Department for final approval of Pell Grant eligibility.

The long-term administrative costs to implement these final regulations are minimal. There will be some additional costs to maintain the necessary data sharing with a Federal agency with earnings data, as well as to maintain the Department's COD, NSLDS, and other system changes in future years to account for ongoing development, operations, and maintenance. Additional costs will be incurred to train and support institutions of higher education and to monitor the program.

Second, these final regulations will create new administrative costs for States, although the Department notes that participation in the program is voluntary. Specifically, Governors will have to determine industry occupations that are "in-demand" and "meet the hiring needs of employers" in the State. While many States may classify industry occupations associated with eligible workforce programs as "high-skill, high-wage," others may have to establish a new process for doing so. Further, States that have existing processes for classifying industry occupations in this manner may wish to amend their process given the new availability of Federal funding. This may occur, for example, if Governors decide they wish to target Pell Grants to workers in a particular set of industries. Because of this, we anticipate that State governments will incur new costs related to the process for defining which industry occupations meet the definition of an "in-demand industry sector or occupation".

States will also incur costs associated with administering Pell Grants for eligible workforce programs. Specifically, States are tasked with calculating program completion rates (until the 2028–29 award year) and job placement rates (in perpetuity) to determine which programs meet the definition of an eligible workforce program. To do so, States will establish new processes to verify that programs have completion rates and job placement rates above 70 percent. This process may require new personnel costs, data assembly costs, communication costs, and other administrative costs. States must compute completion rates (until the 2028–29 award year) and job placement rates (in perpetuity) over multiple years, meaning States will incur initial start-up costs establishing the process and additional costs associated with computing these metrics on an annual basis.

Third, higher education institutions will incur minimal costs related to compliance with these final regulations in relation to the processes they

establish to determine Pell Grant eligibility for students who receive non-Federal grant or scholarship assistance that equals or exceeds cost of attendance. Institutions will need to modify their systems and train staff to monitor whether additional non-Federal grant or scholarship assistance is awarded to a Pell Grant recipient that affects that individual's eligibility for Pell Grant funds.

Institutions already monitor the receipt of new assistance but would experience additional burden to evaluate whether the total non-Federal grant or scholarship assistance equals or exceeds the student's COA. While the Department believes only a small number of students would potentially be affected by this change, all institutions must still establish systems to monitor aid awards and will therefore incur costs under these final regulations.

Benefits of the Final Regulations

These final regulations provide benefits to four groups: students, institutions of higher education, employers, and taxpayers. These benefits are discussed in that order.

First, students will benefit through several channels, the first of which is from the positive effect these final regulations will have on postsecondary enrollment, persistence, and completion outcomes. An abundance of research, including IES studies on the Workforce Pell Grant experimental sites initiative, finds that these grant programs positively affect these outcomes,²⁰ implying that students will attain higher levels of postsecondary education due to the expanded availability of Pell Grants to enroll in eligible workforce programs relative to the current baseline. This, in turn, may result in additional benefits for students, given

that postsecondary participation is associated with higher levels of happiness, health, and civic engagement, among other benefits.²¹ Furthermore, it is possible that some students who would otherwise unsuccessfully attend a two- or four-year program are instead diverted to short-term programs, saving these students in terms of lost time away from the labor market and higher expenses for tuition and fees.

To better understand potential effects on enrollment, we estimate how much enrollment in short-term certificate programs may increase as a result of the regulation. In the "Net Budget Impact" section (Table 4.1), the Department estimates that there will be an average of 187,000 Pell Grant recipients per year in eligible workforce programs between FY 2027 and FY 2035. As a high-end estimate (where we assume all of these Pell Grant recipients are new college students), this suggests that these final regulations would increase enrollment in short-term certificate programs by approximately 13 percent relative to current levels.²² As a low-end estimate (where we assume one in five of these recipients are new college students), this suggests enrollment in these programs would increase by approximately 3 percent relative to current levels. As a middle-ground estimate, we take the midpoint between the low-end and high-end estimates. Under this method, this implies an estimated 8 percent enrollment growth in short-term certificate programs relative to current levels.

Second, students will benefit because these final regulations will expand the supply of potentially high-value, short-term certificate programs. Research suggests that Federal subsidies allow institutions to create new programs and expand the sizes of existing ones, especially for short-term programs that are intended to "stack" with other

credentials.²³ This implies that these final regulations may prompt institutions to create and expand the number of potentially high-value, short-term certificate programs they offer.

To estimate how institutions may expand their short-term certificate programs due to these final regulations, we first used data from the Integrated Postsecondary Education Data System (IPEDS) to examine the current landscape of undergraduate certificate programs. Approximately 60 percent of undergraduate certificate programs that are less than one year (or approximately 900 clock hours) in length are offered at public two-year institutions, and an additional 28 percent are offered at public four-year institutions (Table 3.1). A majority of undergraduate certificate programs that are less than one year in length are offered in fields related to STEM, Consumer and Public Service, Business, and Skilled Trades (Table 3.2).

The data imply that, as an upper-bound estimate, as many as 28,000 existing undergraduate certificate programs could potentially qualify as eligible workforce programs given the length of these programs. This estimate was derived by summing the total number of programs shown in columns 1 and 2 of Table 3.1.²⁴ In addition to these currently existing programs, some number of new programs will also be created and will meet the requirements to be classified as an eligible workforce program. Assuming a proportional growth in new programs to match the estimated 8 percent enrollment growth, this would imply that there could be as many as 2,200 new undergraduate certificate programs that are created as a result of these final regulations.²⁵

In practice, however, the Department anticipates that a much smaller share of

²⁰ Thomas, J., Gonzalez, N., Paxton, N., Wiegand, A., & Hebbbar, L., (2020). The Effects of Expanding Pell Grant Eligibility for Short Occupational Training Programs: Results for the Experimental Sites Initiative. US Department of Education: Institute for Education Sciences, https://ies.ed.gov/sites/default/files/migrated/nces_pubs/ncee/pubs/2021001/pdf/2021001.pdf; Thomas, J., Gonzalez, N., Williams, B., Paxton, N., Hu, J., Wiegand, A., Hebbbar, L., (2024). The Effects of Expanding Pell Grant Eligibility for Short Occupational Programs: New Results on Employment and Earnings from the Experimental Sites Initiative. US Department of Education: Institute for Education Sciences, <https://ies.ed.gov/sites/default/files/ncee/document/2025/01/NCEE%202025-005r.pdf>; Deming D., & Dynarski S. (2010). College aid. In Levine P.B., Zimmerman D. J. (Eds.), *Targeting investments in children: Fighting poverty when resources are limited* (pp. 283–302). Chicago, IL: University of Chicago Press; and Nguyen, T.D., Kramer, J.W., & Evans, B.J. (2019). The effects of grant aid on student persistence and degree attainment: A systematic review and meta-analysis of the causal evidence. *Review of educational research*, 89(6), 831–874.

²¹ Milligan, K., Moretti, E., & Oreopoulos, P. (2004). Does education improve citizenship? Evidence from the United States and the United Kingdom. *Journal of Public Economics*, 88(9–10), 1667–1695; Oreopoulos, P., & Salvanes, K.G. (2011). Priceless: the nonpecuniary benefits of schooling. *Journal of Economic Perspectives*, 25(1), 159–184; Doyle, W.R., & Skinner, B.T. (2017). Does postsecondary education result in civic benefits? *The Journal of Higher Education*, 88(6), 863–893; and Cutler, D.M., & Lleras-Muney, A. (2010). Understanding differences in health behaviors by education. *Journal of health economics*, 29(1), 1–28.

²² This estimate is derived by assuming that all of the 187,000 new Pell Grant recipients per year are new college students, and by using a denominator of 1.4 million students, which is the number of completers in undergraduate certificate programs that are less than 900 clock hours in length using IPEDS completers data from the 2024 award year.

²³ Anderson, D. M., & Daugherty, L. (2023). Community colleges can increase credential stacking by introducing new programs within established technical pathways. *The Journal of Higher Education*, 94(6), 745–765.

²⁴ Eligible workforce programs must be between 150 and 600 clock hours (or the equivalent of 8–14 weeks) in length. Unfortunately, data in IPEDS do not classify programs using these thresholds. Instead, they categorize undergraduate certificate programs as "less than 12 weeks in length" and "between 12 weeks and 1 year in length." Therefore, it is not possible to distinguish the precise number of existing certificate programs that meet the criteria to be an eligible workforce program. Instead, we sum the two categories (in columns 1 and 2) together. This method results in overcounting programs because it includes programs that are shorter than 150 clock hours in length and also programs that are longer than 600 clock hours in length—neither of which meet the definition to be an eligible workforce program.

²⁵ The 8% enrollment growth projection comes from the middle-ground estimate described above when discussing the first benefit to students.

undergraduate certificate programs will ultimately qualify as eligible workforce programs given the other requirements (beyond program length) that programs must meet. It is difficult for the Department to provide a precise estimate on how many programs may

qualify as eligible workforce programs using existing data on short-term certificate programs because we currently lack visibility into those programs' completion rates and job placement rates, and whether the programs will be classified as aligned

with requirements of high-skill, high-wage, or in-demand sectors or occupations by States—all of which are important determinants for estimating the number of programs that could be eligible, among other requirements.

TABLE 3.1—UNDERGRADUATE CERTIFICATE PROGRAMS BY SECTOR, LEVEL, AND PROGRAM LENGTH

Sector	Program length				Total
	Less than 12 weeks	12 weeks to less than 1 year	1 year to less than 2 years	2 or more years	
	(1)	(2)	(3)	(4)	(5)
A. 4-Year Institutions					
Public	697	6,969	3,151	187	11,004
Private Nonprofit	64	1,113	477	74	1,728
For-profit	24	289	342	21	676
B. 2-Year Institutions					
Public	1,216	14,410	10,506	613	26,745
Private Nonprofit	3	35	100	75	213
For-profit	94	391	779	189	1,453
C. less-Than 2-Year Institutions					
Public	252	668	1,155	5	2,080
Private Nonprofit	4	40	74	0	118
For-profit	211	1,463	1,655	9	3,338
Total	2,565	25,378	18,239	1,173	47,355

Note: The sample of programs is limited to certificate programs (award levels 1, 4, 20, and 21) that had at least one reported completer during Award Years 2022–23 or 2023–24. Second majors are not included.

Source: Integrated Postsecondary Education Data System (IPEDS).

TABLE 3.2—UNDERGRADUATE CERTIFICATE PROGRAMS BY FIELD OF STUDY AND PROGRAM LENGTH

Broad Field of Study	Program length				Total
	Less than 12 weeks	12 weeks to less than 1 year	1 year to less than 2 years	2 or more years	
	(1)	(2)	(3)	(4)	(5)
Skilled Trades	427	3,698	3,920	489	8,534
Business	202	3,801	1,902	36	5,941
Consumer and Public Services	465	5,632	4,047	211	10,355
Law and Protective Services	95	1,423	747	21	2,286
Health	952	3,504	4,211	185	8,852
Liberal Arts & Humanities	84	1,944	606	64	2,698
STEM	340	5,376	2,806	167	8,689
Total	2,565	25,378	18,239	1,173	47,355

Notes: See Table 3.1 above for information on sample of programs. Field of Study categories come from Christensen & Turner (2022) and are created by grouping two-digit CIP codes (“Skilled Trades” = 47,48,46,49; “Business” = 52; “Consumer and Public Services” = 31,9,50,10,25,13,44,12,19; “Law and Protective Services” = 22,43; “Health” = 51; “Liberal Arts, Humanities, and Social Sciences” = 52,43,30,23,42,16,45,38,39,54; and “STEM” = 14,41,15,11,4,26,27,29,40,1,3).

Source: Integrated Postsecondary Education Data System (IPEDS).

Despite the lack of data on key eligibility criteria among existing certificate programs, it remains likely that the influx of Federal funding from Pell Grants for eligible workforce programs will result in an expansion in short-term certificate programs, creating a more-robust set of programmatic options for students to consider. Program creation and growth will be abetted by the \$107 million in funding the Departments of Education and Labor

provided to help institutions of higher education create and expand high-quality, short-term certificate programs.²⁶

²⁶ Department of Education (2025). “FIPSE–SP Program FY 2025 Awards: Supporting Capacity-Building for High-Quality Short-Term Programs.” www.ed.gov/media/document/fy-2025-fipse-sp-awards-funding-summary-short-term-programs-112923.pdf. Department of Labor (2025). “US Department of Labor Announces Availability of \$65M in Grants to Help Community Colleges Increase Access to In-Demand, High-Quality

The Department’s analysis of existing short-term certificate programs provides some insight into the fields that may be most common among eligible workforce programs. Given the current distribution of short-term undergraduate certificate programs (Table 3.2), programs in Health, Consumer and Public Service, Business, and Skilled Trades could be

Training.” www.dol.gov/newsroom/releases/eta/eta20260217.

the most common types of programs that expand due to these final regulations.

The third way students will benefit from these final regulations is through the higher earnings they achieve after participating in high-value, short-term certificate programs. A large body of empirical research from multiple States finds that short-term certificate programs provide lucrative returns to participants. On average, the earnings gains associated with completing a short-term certificate program range from \$1,200-\$2,000 per year,²⁷ with some studies finding even larger earnings gains ranging between \$3,800-\$5,200 per year.²⁸ These earnings gains are realized by students over a number of years following program exit, and for many students, these gains represent a sizeable earnings increase that is often enough to pull the individual out of poverty.

One reason these final regulations are likely to result in an average increase in students' earnings is because eligible workforce programs must pass a value-added earnings test on an annual basis to remain in the program (which will first be computed for the 2030–31 award year). When the value-added earnings test is in effect, this means the average earnings gains (defined as the difference between a program's adjusted median earnings²⁹ and 150 percent of the Federal poverty line) of Pell Grant

recipients who complete the program must equal or exceed the program's tuition prices. Eligible workforce programs that fail to clear this benchmark must reduce tuition until it is at or below the value-added earnings or they are not eligible to access Pell Grants.

To better understand the impact of this provision, we again analyzed current undergraduate certificate programs as a proxy to better understand the programs that would likely pass the value-added earnings test. To do so, we used program-level earnings data from the College Scorecard, program-level completer counts from IPEDS, and program-level data on tuition and fees reported by institutions to the Department of Education.³⁰

Results are shown in Tables 3.3, 3.4, 3.5, and 3.6. There are two important caveats to these analyses. First, these results are likely to represent upper-bound estimates on program pass rates because this analysis only includes undergraduate certificate programs *with earnings data*. This means our analysis does not include program-level earnings outcomes for any undergraduate certificate program that is less than 300 clock hours (or equivalent) in length. This limitation may upwardly bias our tuition and earnings estimates relative to the subset of programs that may ultimately qualify as eligible workforce

programs.³¹ Second, these estimates are based on the stock of *existing* undergraduate certificate programs. Our estimates do not account for the possible interactive effects that could occur if newly created certificate programs (due to the availability of Federal funding) alter composition of existing programs. Similarly, the analysis does not account for the possibility that newly created undergraduate certificate programs will have different tuition levels and earnings outcomes than the stock of undergraduate certificate programs that currently exist.

With those caveats in mind, we begin by presenting information on the average tuition and fees of short-term undergraduate certificate programs (Table 3.3). The data come from program-level tuition data reported by institutions to the Department of Education for students who completed their education during the 2023–24 award year. There is large variation in the sticker prices of undergraduate certificate programs, ranging from \$4,100 (the average for public institutions) to \$19,300 (the average for private non-profit institutions). Programs that are less than one year in length are typically less expensive. At public institutions, these programs have an average sticker price of just under \$3,600.

TABLE 3.3—MEDIAN TUITION AND FEES OF UNDERGRADUATE CERTIFICATE PROGRAMS, BY LENGTH AND SECTOR

Sector	Program length		Total
	Less-than one year	One year or longer	
Public	\$3,588	\$4,578	\$4,083
Private Nonprofit	15,038	23,630	19,334
For-Profit	15,148	20,152	17,650

²⁷ Bahr, P. R., & Columbus, R. (2025). Labor Market Returns to Community College Noncredit Occupational Education. *Educational Evaluation and Policy Analysis*, 01623737251360029; Carruthers, C.K., & Sanford, T. (2018). Way station or launching pad? Unpacking the returns to adult technical education. *Journal of Public Economics*, 165, 146–159; Darolia, R., Guo, C., & Kim, Y. (2025). The Labor Market Returns to Very Short-Term Rapid Postsecondary Certificates. *Economics of Education Review*, 107, 102681; Jepsen, C., Troske, K., & Coomes, P. (2014). The labor-market returns to community college degrees, diplomas, and certificates. *Journal of Labor Economics*, 32(1), 95–121; and Stevens, A.H., Kurlaender, M., & Grosz, M. (2019). Career technical education and labor market outcomes: Evidence from California community colleges. *Journal of Human Resources*, 54(4), 986–1036.

²⁸ Bahr, P.R., Dynarski, S., Jacob, B., Kreisman, D., Sosa, A., & Wiederspan, M. (2015). Labor Market

Returns to Community College Awards: Evidence from Michigan. A CAPSEE Working Paper. *Center for Analysis of Postsecondary Education and Employment*; and Xu, D., Bird, K.A., Cooper, M., & Castleman, B.L. (2024). Noncredit Workforce Training, Industry Credentials, and Labor Market Outcomes. EdWorkingPaper No. 24–959. *Annenberg Institute for School Reform at Brown University*.

²⁹ Median program earnings are adjusted using the regional price parity (all items) from the metropolitan statistical area where the college is located. If the program is offered at a college that is not in a metropolitan statistical area, the state-level regional price parity is used. The median earnings at programs who enroll a majority of students from out of state are not adjusted using regional price parities. Regional price parity data comes from the Bureau of Economic Analysis.

³⁰ Specifically, using 4-digit CIP codes, credential level, and OPEID, we merge College Scorecard data,

IPEDS completers data, and data reported by colleges to the Department of Education on program-level tuition and fees. When necessary, we used College Scorecard crosswalks to link UNITIDs (from IPEDS) to 6-digit OPEIDs. A small share of undergraduate certificate programs may be omitted from our analysis because their college did not report tuition and fees data to the Department of Education through the Financial Value and Transparency (FVT) data reporting.

³¹ In other words, the average length of undergraduate certificate programs in our sample is necessarily longer, on average, than the programs that will qualify as eligible workforce programs. If the earnings outcomes of shorter certificate programs (not observed in our data) differ from the earnings outcomes of longer certificate programs (included in our data), than the pass rates we estimate could vary from actual program pass rates.

TABLE 3.3—MEDIAN TUITION AND FEES OF UNDERGRADUATE CERTIFICATE PROGRAMS, BY LENGTH AND SECTOR—
Continued

Sector	Program length		Total
	Less-than one year	One year or longer	
Total	11,258	16,120	13,689

Notes: The sample of programs includes all undergraduate certificate programs that appear in both IPEDS Completers data and Financial Value Transparency program-level reporting as submitted by September 30, 2025. Program tuition data corresponds to the median sticker price (tuition and fees) charged to students who completed the program during the 2023–24 award year excluding individuals charged no tuition and fees. Monetary values are in 2024 dollars. Program medians are averaged by sector, weighting them by the number of completers in the program (from IPEDS). Some certificate programs may be omitted because their college did not report program tuition data to the Department of Education.

Source: Integrated Postsecondary Education Data System (IPEDS) and data reported by colleges to the Department of Education on program-level tuition and fees.

Next, in Table 3.4 we formally estimate the share of undergraduate certificate programs that pass the value-added earnings test. To pass, the following must be true of the program:

(Published Tuition & Fees) $\leq$ (Adjusted Median Earnings) – (150 percent Poverty Line)

where “Published Tuition & Fees” is the sticker price of the program and “Adjusted Median Earnings” is the median earnings of Pell Grant recipients

measured three years after program exit, adjusted using regional price parity based on where the institution is located.³² All monetary values are adjusted to 2024 dollars using the Consumer Price Index for All Urban Consumers. In 2024, 150 percent of the Federal Poverty Line for a single individual was equal to \$22,590.

As an upper-bound estimate, we estimate that 46 percent of existing undergraduate certificate programs could pass the value-added earnings

test. Pass rates are highest at undergraduate certificate programs offered at public institutions (84 percent), while pass rates are lowest at undergraduate certificate programs offered at for-profit institutions (14 percent). However, approximately half of programs at for-profit institutions could pass the value-added earnings test if they lowered tuition prices because median earnings of their completers exceed 150 percent of the poverty line.

TABLE 3.4—ESTIMATED VALUE-ADDED EARNINGS OF UNDERGRADUATE CERTIFICATE PROGRAMS, BY SECTOR

Sector	Adjusted median earnings	Value-added earnings (VAE)	% Failing the VAE test		% Passing the VAE test
			VAE $\leq$ FPL150	FPL150 < VAE < tuition	VAE $\geq$ tuition
	(1)	(2)	(3)	(4)	(5)
Public	\$41,812	\$19,222	9.4	7.0	83.6
Private Nonprofit	36,460	13,870	31.5	36.6	31.9
For-Profit	28,876	6,286	36.8	49.7	13.5
Total	35,020	12,430	24.0	29.8	46.2

Notes: The sample includes all undergraduate certificate programs with data on program-level earnings (from the College Scorecard), tuition and fees (from Financial Value & Transparency reporting), and program completer counts (from IPEDS). When necessary, programs are aggregated to the 4-digit CIP and averages are weighted by program completers (from IPEDS). All monetary values are in 2024 dollars. The value-added earnings is the difference between column 1 and \$22,590, which is the Federal Poverty Line for a single individual in 2024. Adjusted median earnings are the median earnings of title IV, HEA program completers who are working and not enrolled in college measured one year after program exit for students who existed during the 2017–18/2018–19 and 2018–19/2019–20 award years, adjusted using the regional price parity of where the college is located. Programs are counted as passing the value-added earnings if the estimated value-added earnings equals or exceeds the total tuition and fees of the program.

Source: The College Scorecard, IPEDS, and data reported by colleges to the Department of Education on program-level tuition and fees.

TABLE 3.5—ESTIMATED VALUE-ADDED EARNINGS OF UNDERGRADUATE CERTIFICATE PROGRAMS, BY BROAD FIELD OF STUDY

Broad field of study	Adjusted median earnings	Value-added earnings (VAE)	% Failing the VAE test		% Passing the VAE test
			VAE $\leq$ FPL150	FPL150 < VAE < tuition	VAE $\geq$ tuition
(1)	(1)	(2)	(3)	(4)	(5)
Skilled Trades	\$42,174	\$19,584	4.1	34.7	61.2

³² In our analyses, we estimate “Published Tuition & Fees” by using the median sticker price (published tuition and fees) charged to title IV students in the program. For “Adjusted Median Earnings,” we use the median earnings of title IV

completers from the program measured 1-year after exit, adjusted using the regional price parity (RPP) based on where the college is located. Colleges located in a metropolitan statistical area (MSA) are adjusted using the MSA’s RPP, and colleges not

located in an MSA are adjusted using the state’s RPP. 1-year program earnings are used because they correspond to when program earnings will be measured (3 years after exit) of Pell Grant recipients in eligible workforce programs.

TABLE 3.5—ESTIMATED VALUE-ADDED EARNINGS OF UNDERGRADUATE CERTIFICATE PROGRAMS, BY BROAD FIELD OF STUDY—Continued

Broad field of study (1)	Adjusted median earnings (1)	Value-added earnings (VAE) (2)	% Failing the VAE test		% Passing the VAE test
			VAE <= FPL150 (3)	FPL150 < VAE < tuition (4)	VAE >= tuition (5)
Business	37,793	15,203	13.0	3.0	84.0
Consumer and Public Services	20,035	– 2,555	72.7	23.2	4.1
Law and Protective Services	55,451	32,861	1.2	3.4	95.4
Health	38,490	15,900	9.3	39.1	51.6
Liberal Arts & Humanities	29,156	6,566	20.9	33.9	45.2
STEM	43,766	21,176	6.1	24.2	69.7

Notes: See Table 3.4 for information on the programs in the sample, variable definitions, and calculations. Programs are grouped into Broad Field of Study categories using the method described in Table 3.2.

Source: The College Scorecard, IPEDS, and data reported by colleges to the Department of Education on program-level tuition and fees.

Lastly, Table 3.6 displays the characteristics of the 15 largest undergraduate certificate programs³³ (measured by number of completers during the 2022–23 and 2023–24 award years) and whether these programs are likely to pass the value-added earnings test. Like the prior table, these results reveal the large variation in pass rates

across programs. Among the 15 largest undergraduate certificate programs, some fields (such as Cosmetology and Somatic Body Work) have pass rates below 5 percent. Many of these programs, however, could pass the value-added earnings test if they lowered tuition prices. Programs in other fields (such as Ground

Transportation, Allied Health, Criminal Justice & Corrections, and Business Administration) have pass rates above 90 percent, implying that the earnings gains experienced by graduates from these certificate programs almost always exceed tuition prices.

TABLE 3.6—ESTIMATED VALUE-ADDED EARNINGS OF UNDERGRADUATE CERTIFICATE PROGRAMS
[15-Largest undergraduate certificate programs]

Program (4-digit CIP)	Adjusted median earnings (1)	Value-added earnings (VAE) (2)	% Failing the VAE test		% Passing the VAE test
			VAE <= FPL150 (3)	FPL150 < VAE < tuition (4)	VAE >= tuition (5)
Cosmetology and Related Personal Grooming Services	\$19,227	– \$3,363	77.8	21.3	0.9
Practical Nursing, Vocational Nursing and Nursing Assistants	47,805	25,215	1.3	12.4	86.3
Allied Health and Medical Assisting Services	29,557	6,967	9.0	70.5	20.5
Precision Metal Working	41,447	18,857	0.9	31.0	68.1
Vehicle Maintenance and Repair Technologies	39,363	16,773	7.3	40.4	52.3
Health and Medical Administrative Services	30,314	7,724	14.4	57.0	28.6
Business Administration, Management and Operations	38,888	16,298	3.7	0.9	95.4
Liberal Arts and Sciences, General Studies and Humanities	28,570	5,980	22.1	32.4	45.5
Allied Health Diagnostic, Intervention, and Treatment Professions	56,646	34,056	0.7	8.3	91.0
Electrical and Power Transmission Installers	47,559	24,969	5.2	41.7	53.1
Dental Support Services and Allied Professions	26,541	3,951	26.3	59.6	14.1
Criminal Justice and Corrections	57,949	35,359	0.3	3.7	96.0
Heating, Air Conditioning, Ventilation & Refrigeration Maintenance	38,868	16,278	0.2	51.8	48.0
Ground Transportation	46,237	23,647	0.0	1.9	98.1
Somatic Bodywork and Related Therapeutic Services	21,684	– 906	54.6	43.7	1.7

Notes: This table displays the 15 largest undergraduate certificate programs (defined at the 4-digit CIP level) and ranked using the number of completers in the program during the 2022–23 and 2023–24 award years. See Table 3.4 for information on the programs in the sample, variable definitions, and calculations.

Source: The College Scorecard, IPEDS, and data reported by colleges to the Department of Education on program-level tuition and fees.

Together, the estimates from Tables 3.4, 3.5, and 3.6 suggest that programs offered in certain sectors and fields are

more likely to pass the value-added earnings test than others. Our estimates suggest that students who attend short-

term certificate programs offered at public colleges and in fields related to health, transportation, and business will

³³ Programs are defined using 4-digit CIP codes.

experience the largest earnings gains, and are therefore likely to benefit the most from these final regulations.

The final benefit to students is the way these final regulations will influence students' decisions to pursue higher levels of postsecondary education. Research shows that short-term certificate programs may serve as an "on-ramp" for students to pursue additional levels of postsecondary education, with low-income students experiencing the largest effects.³⁴ Thus, as low-income students use the Pell Grant to pursue high-value, short-term programs, some subset of those enrollees will be motivated and prepared to pursue higher levels of postsecondary education such as an associate or bachelor's degree program—an outcome they would not have considered in the absence of their enrollment in the short-term program. These students are likely to experience additional earnings gains when they obtain additional credentials. Further, eligible workforce programs are required to provide stackable credentials, which may increase the likelihood that these students pursue additional credentials.

The second group who will benefit from these final regulations are institutions of higher education. Like students, institutions of higher education will benefit through several channels. First, institutions of higher education may experience increases in enrollment in high-value, short-term certificate programs due to the expansion in Pell Grant eligibility to eligible workforce programs.³⁵ Ultimately, these enrollment increases will lead to greater revenue for institutions. Much of this revenue will come from the Pell Grant Program directly. However, institutions may earn revenue beyond what is provided by Pell Grants in situations where the Pell Grant does not fully cover the cost of the program and students or other entities pay those additional costs with their own funds.

Second, institutions of higher education will benefit from greater enrollment in other types of postsecondary programs (such as associate and bachelor's degree programs). This is because high-value, short-term certificate programs serve as an "on-ramp" for students to pursue additional levels of postsecondary education.³⁶ As the Pell Grant Program drives enrollment into eligible workforce programs, some of these students will choose to pursue enrollment in additional postsecondary programs. As a result, institutions of higher education will benefit from the additional tuition and fees revenues they receive from these new enrollments.

Third, institutions of higher education will benefit because the new eligibility requirements for Pell Grants will allow institutions to create and expand short-term programs.³⁷ Currently, short-term certificate programs (those that are less than 300 clock hours in length) are relatively limited in scale because they are typically ineligible for Federal financial assistance. Because of these final regulations, institutions may choose to expand these short-term certificate programs since they will now be eligible for Federal Pell Grants. This growth will benefit the institution through the effect it has on tuition revenue and through the spillover effects that short-term certificate programs have on enrollment in other types of postsecondary education programs.

The third group that will benefit from these final regulations are employers. Employers from many industries regularly cite a "skills gap" in the American labor force, meaning there is a mismatch between the skills that potential workers have and the skills that employers are looking for.³⁸ These final regulations will enhance the skills of the American labor force by increasing the rate at which individuals pursue high-value, short-term certificate programs.³⁹ Employers may benefit from these final regulations because they may increase the pool of skilled individuals that employers are able to find and hire.⁴⁰ In turn, this may allow

firms to expand, ultimately increasing revenues and profits.

Lastly, taxpayers will benefit from these final regulations in two ways. First, taxpayers (and society at large) will benefit due to the higher level of earnings experienced by individuals who participate in potentially high-value, short-term programs. As discussed above, there are significant earnings gains for participants in short-term certificate programs, and those earnings gains translate into higher levels of revenue collected through Federal and State taxes.⁴¹ Those revenues can then be used to pay down the national debt or spent on other policy priorities that benefit taxpayers and society.

We provide a back-of-the-envelope estimate on how much tax revenue could be generated through these final regulations (note these estimates are illustrative and not included in the net budget impact estimates). To do so, we assume that 187,000 individuals will receive a Pell Grant per year to attend an eligible workforce program, and that the average annual earnings gain experienced by these individuals is \$2,000. Assuming the \$2,000 earnings gain is taxed at a 12 percent rate, this provision is estimated to yield up to an additional \$449 million in tax revenue over 10 years.⁴²

Second, the positive effects on earnings will result in fewer individuals in poverty. In turn, this means that fewer individuals will rely on social safety net programs such as Unemployment Insurance, the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and the Women, Infants, and Children (WIC) program. Taxpayers will benefit due to the reduction in costs associated with these safety net programs.

To better understand this benefit to taxpayers, Table 3.7 displays data on the pre-enrollment earnings levels of independent students prior to enrolling

Bank of Dallas. www.dallasfed.org/cd/communities/2024/2408.

⁴¹ See previously cited research by Bahr & Columbus (2025), Carruthers & Sanford (2018), Darolia et al. (2025), Jepsen et al. (2014), Stevens et al. (2019), Bahr et al. (2015), and Xu et al. (2024).

⁴² This estimate is calculated by multiplying the \$2,000 earnings increase by 12% by 187,000 individuals, times ten years. The 187,000 estimate comes from ED's recipient estimates in the Net Budget Impact (Table 4.1), and the \$2,000 earnings gain estimate comes from previously cited research by Bahr & Columbus (2025), Carruthers & Sanford (2018), Darolia et al. (2025), Jepsen et al. (2014), Stevens et al. (2019), Bahr et al. (2015), and Xu et al. (2024). The 12% marginal tax rate is the 2026 Federal statutory marginal income tax rate for individual tax filers earning between \$12,400 and \$50,400. The effective marginal Federal income tax rate for this population may be lower.

³⁴ Daugherty, L., Anderson, D.M., Kramer, J.W., & Bozick, R. (2021). Building Ohio's Workforce through Stackable Credentials. Research Brief. RB-A207-1. RAND Corporation; Daugherty, L., Bahr, P.R., Nguyen, P., May-Trifiletti, J., Columbus, R., & Kushner, J. (2023). Stackable Credential Pipelines and Equity for Low-Income Individuals: Evidence from Colorado and Ohio. Research Report. RR-A2484-1. RAND Corporation; Bohn, S., & McConville, S. (2018). Stackable credentials in career education at California community colleges. Public Policy Institute of California; and Zaber, M.A., Phillips, B.M., & Daugherty, L. (2025). Examining Short-Term Credentials and Student Outcomes in Indiana. RAND.

³⁵ See previously cited research by Thomas et al. (2020), Thomas et al. (2024), Deming & Dynarski (2010), and Nguyen et al. (2019).

³⁶ See previously cited research by Daugherty et al. (2021), Daugherty et al. (2023), Bohn & McConville (2018), and Zaber et al. (2025).

³⁷ See previously cited research by Anderson & Daugherty (2023).

³⁸ Bessen, J. (2014). Employers aren't just whining—the "skills gap" is real. *Harvard Business Review*, 25.

³⁹ See previously cited research by Deming & Dynarski (2010) and Nguyen et al. (2019).

⁴⁰ Crockett, A., Perlmeier, E.R., & Zhang, X. (2024). "How Valuable is a Short-Term Credential for a Job Seeker? It's Complicated." Federal Reserve

in an undergraduate certificate program.⁴³ On average, these individuals report annual earnings between \$20,400 to \$24,500 prior to their enrollment. Given that 150 percent of the Federal poverty threshold for a single individual is \$22,590 (in 2024) and that the average estimated earnings

gains of short-term programs (from the literature) ranges between \$1,200 to \$2,000 per year, this implies that the median independent student who enrolls in short-term certificate program will be pulled above 150 percent of the Federal poverty threshold after completing a short-term certificate

program. Ultimately, this increase in earnings reduces the cost burden on Federal safety net programs, benefiting both students as well as taxpayers and society (these effects are not included in the net budget impact estimates).

TABLE 3.7—ESTIMATED PRE-ENROLLMENT EARNINGS OF INDEPENDENT STUDENTS IN UNDERGRADUATE CERTIFICATE PROGRAMS, BY SECTOR

Sector	Median pre-enrollment earnings
Public	\$24,518
Private Nonprofit	21,718
For-profit	20,448
Total	22,228

Notes: Earnings values come from the income of individuals reported on the FAFSA prior to entering their program. Earnings include the income of independent students entering an undergraduate certificate program during the 2023–24 award year. Individuals with zero pre-enrollment earnings are excluded from the median value. Monetary values are measured in 2024 dollars.
Source: Data from the Office of Federal Student Aid (FAFSA Submissions).

4. Net Budget Impact

Table 4.1 provides an estimate of the net Federal budget impact of these final

regulations that are summarized in Table 2.1 of this RIA. The baseline for the estimated net budget impact is the

PB_2027 in order to capture the full impact of the legislative changes implemented by the final regulations.

TABLE 4.1—ESTIMATED COSTS, NEW RECIPIENTS, AND OUTLAYS ASSOCIATED WITH WORKFORCE PELL

Award Years (AY) 2027–28—2031–32					
	AY 2027–28	AY 2028–29	AY 2029–30	AY 2030–31	AY 2031–32
Discretionary Program Cost (\$m)	264	265	267	268	269
Mandatory Program Cost (\$m)	51	51	52	52	52
Total Program Cost (\$m)	315	316	319	320	321
New Recipients	184,000	185,000	187,000	187,000	188,000
	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
Discretionary Outlays (\$m)	260	264	266	267	266
Mandatory Outlays (\$m)	51	51	51	52	52
Total Outlays (\$m)	311	315	317	319	320

Continued for Award Years (AY) 2032–33—2036–37					
	AY 2032–33	AY 2033–34	AY 2034–35	AY 2035–36	AY 2036–37
Discretionary Program Cost (\$m)	270	271	273	274	275
Mandatory Program Cost (\$m)	52	52	52	52	52
Total Program Cost (\$m)	322	323	325	326	327
New Recipients	188,000	189,000	190,000	191,000	191,000
	FY 2032	FY 2033	FY 2034	FY 2035	FY 2036
Discretionary Outlays (\$m)	269	270	272	273	274
Mandatory Outlays (\$m)	52	52	52	52	52
Total Outlays (\$m)	321	322	324	325	326

The Pell Grant Program has traditionally served students in bachelor's and associate degree

programs, with a smaller number of certificate students. Moving forward, the number of certificate and credential

programs that are eligible for Pell Grants will expand, resulting in an estimated increase in Pell Grant recipients of over

⁴³ Income data comes from information title IV recipients filed on the FAFSA prior to enrolling in their program. The sample includes independent

students in undergraduate certificate programs (regardless of program length) who enrolled in an undergraduate certificate program during the 2023–

24 award year. Individuals with zero earnings are excluded from the median.

180,000 each year between award years 2027–28 and 2036–37.

The recipient estimates in Table 4.1 reflect the portion of projected undergraduate enrollment, who are not in a degree program and would be financially eligible for a Pell Grant (*i.e.*, have a sufficiently low Student Aid Index, which considers income and family size). The Department's recipient estimates are informed by the National Center for Education Statistics (NCES) enrollment projections and National Postsecondary Student Aid Study (NPSAS) data on the percentage of undergraduates in non-degree programs. The estimated cost reflects an average award of approximately \$1,710, which is prorated from the Short-term Pell

Experimental Sites Initiative. The experiment piloted an expansion of Pell Grants for short-term programs aligned with regional workforce needs to a limited group for evaluation from 2012 to 2017. The average award for the experiment was \$1,312 at a time when the Pell Grant maximum award ranged from \$5,550 (in 2012) and \$5,815 (in 2017).⁴⁴ The recipient estimate combined with the average award results in a program cost estimate of over \$300 million per award year and outlays of \$3.2 billion for FY 2027 to 2036.

Accounting Statement

As required by OMB Circular A–4, we have prepared an accounting statement

showing the classification of the expenditures associated with the provisions of these final regulations. Table 4.2 provides our best estimate of the changes in annual monetized transfers that may result from these final regulations. Expenditures are classified as transfers from the Federal government to affected student loan borrowers. The administrative costs are annualized based on a window from FY 2026 to FY 2035 based on Federal Student Aid's anticipated timeframe for updates. Transfers annualized based on the FY 2027–FY 2036 budget window for the PB 2027 baseline.

TABLE 4.2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED ANNUALIZED EXPENDITURES

[In millions]

Category	Benefits	
Expanded Pell Grant availability benefits recipients as grant aid is positively associated with postsecondary enrollment, persistence, and completion outcomes.	Not quantified.	
Expanded supply of high-value, short-term certificate programs	Not quantified.	
Increased earnings for recipients who achieve a certificate from a high-value, short-term programs	Not quantified.	
Potential influence of short-term programs on students' decisions to pursue higher levels of postsecondary education	Not quantified.	
Increased enrollment and associated non-Pell Grant revenues at institutions with successful Workforce Pell programs	Not quantified.	
Increased pool of skilled individuals employers are able to hire, ultimately increasing revenues and profits	Not quantified.	
Taxpayer benefits from higher level of earnings experienced by individuals who participate in high-value, short-term programs and reduced poverty and reliance on social safety nets.	Not quantified.	

Category	Costs	
	3 percent	7 percent
Costs of compliance with paperwork requirements	\$13.88	\$13.58
Costs to State Governments to administer Workforce Pell programs	Not quantified	
Costs of system changes for the Department to implement the final regulations	\$0.57	\$0.67
Federal implementation staffing and contract costs	1.4	1.6
Federal long-term staffing increases	0.90	0.87
Additional ongoing contract costs to operate and maintain systems to administer regulatory provisions	2.14	2.09

Category	Transfers	
	3 percent	7 percent
Increased transfers in FY 2027–FY 2036 from Federal government to Pell recipients at Workforce Pell programs	\$319	\$320

5. Alternatives Considered

As part of the development of these final regulations, the Department engaged in the negotiated rulemaking process in which we received comments and proposals from non-Federal negotiators representing numerous impacted constituencies. These included higher education institutions, State officials, legal assistance

organizations, and employers. Non-Federal negotiators submitted a variety of proposals relating to the issues under discussion. Information about these proposals is available on our negotiated rulemaking website at: <https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-education-policy/negotiated-rulemaking-for-higher-education-2025-2026>.

We received 440 comments and considered them all as alternatives. We updated several provisions in the regulatory text that are listed in Table 2.1 of the Regulatory Impact Analysis.

600.10 Date, Extent, Duration, and Consequence of Eligibility

In this rule, we require that the Secretary approve every eligible workforce program. During its initial

⁴⁴ Institute of Education Sciences (2020). "The Effects of Expanding Pell Grant Eligibility for Short Occupational Training Programs: Results from the

Experimental Sites Initiative." <https://ies.ed.gov/use-work/resource-library/report/evaluation-report/effects-expanding-pell-grant-eligibility-short->

[occupational-training-programs-results-experimental](https://ies.ed.gov/use-work/resource-library/report/evaluation-report/effects-expanding-pell-grant-eligibility-short-occupational-training-programs-results-experimental).

analysis of the statutory requirements, the Department considered requiring the Secretary to proactively approve only the first eligible workforce program offered by an institution. Requiring the Secretary to approve one eligible workforce program is similar to the Department's current process for the Direct Assessment Program (§ 668.10) and Prison Education Programs (§ 668 Subpart P). After internal discussion, we determined that the WFTCA requires the Secretary to approve each eligible workforce program. Section 481(b)(3) of the HEA states “. . . after the Governor of such State makes the determination that the program meets the requirements . . . the Secretary determines that— . . .” the program meets other requirements like the minimum and maximum number hours and weeks in the program. The Department interprets that language to mean that the Secretary is required to proactively ensure that the program meets all the statutory and regulatory requirements to become an eligible workforce program.

§ 668.5 Written Arrangements To Provide Educational Programs

In this rule, we limit the amount of an eligible workforce program that can be offered by an ineligible institution or organization through a written arrangement to 25 percent or less, with a single exception for Related Apprenticeships (discussed under the Directed Questions section). Currently up to 50 percent of an eligible program can be offered by an ineligible institution or entity with the approval of the institution's accrediting agency. During initial discussions, the Department considered allowing institutions to contract out more than 25 percent of the eligible workforce program but determined that an institution that seeks to offer an eligible workforce program should be able to demonstrate that it can provide and offer at least three-quarters of the program without relying on outside vendors.

§ 668.20 Limitations on Noncredit or Remedial Coursework That Is Eligible for Title IV, HEA Program Assistance

In this rule, the Department prohibits inclusion of noncredit, remedial or partial credit remedial courses in a student's eligibility for title IV, HEA program funds. The Department is aware that many institutions currently offer noncredit programs that do not confer academic credit and also are not measured in clock hours. These noncredit programs usually culminate in a certificate or credential conferred

by the institution. The Department considered allowing noncredit programs that are not offered in clock hours to be considered eligible programs; however, we are constrained by statute. Section 401(k) of the HEA which states, “. . . the provisions of subsection (d)(2) shall not be applicable to eligible workforce programs;”. Section (d)(2) of the HEA states, “(2) Noncredit or remedial courses; study abroad.—Nothing in this section shall exclude from eligibility courses of study which are noncredit or remedial in nature (including courses in English language instruction) which are determined by the eligible institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to use already existing knowledge, training, or skills . . .”.

Programs must be offered in either credit hours or clock hours to be considered eligible workforce programs for the purposes of receiving a Pell Grant. This means a noncredit program offered in clock hours could be considered an eligible workforce program, so long as the noncredit program also meets all of the other eligibility criteria.

§ 668.32 Student Eligibility and § 690.6 Duration of Student Eligibility

In this rule, the Department allows eligible students who have already obtained a bachelor's degree who then enroll in an eligible workforce program under § 668.32 (and a conforming change in § 690.6) to be eligible to receive a Pell Grant. Currently, under § 668.32(c)(2), “For purposes of the Federal Pell Grant Program [the student] . . . Does not have a baccalaureate or first professional degree . . .”. The Department considered applying the bachelor prohibition on Pell Grants to students enrolled in an eligible workforce program. Section 401(k)(2)(B)(i) of the WFTCA states that a student, “be enrolled, or accepted for enrollment, in a program of study that leads to a graduate credential. Section 401(k) of the WFTCA makes no mention of a student with a bachelor's degree; therefore, we do not believe eligible individuals enrolled in an eligible workforce program after obtaining a baccalaureate degree are prohibited from receiving Pell Grants.

§ 690.5 Ineligibility Due To Grant or Scholarship Assistance From Non-Federal Grants, and § 690.80 Recalculation of a Federal Pell Grant Award

In this rule, the Department prohibits a student from receiving a Pell Grant if the student receives grant or scholarship assistance from non-Federal sources that equals or exceeds the student's COA for the award year. For example, a student is eligible for \$7,000 in Pell Grants for the year based on SAI, enrollment intensity, and COA. If a Pell-eligible student's COA is \$7,000, and the student receives a scholarship for \$6,000, then the student can receive their full calculated Pell Grant for the award year.

The Department considered the alternative that, if at any time during the award year the student receives assistance from non-Federal sources that, in combination with the student's Pell Grant disbursements, exceeds the student's COA, the institution must reduce either the Federal Pell Grant or the non-Federal grant or scholarship assistance until the amount that exceeds the COA is eliminated. For example, a student is eligible for \$6,000 in Pell Grants for the year based on SAI and enrollment intensity. If the student's COA is \$7,000, and the student receives a scholarship for \$6,000, the institution would have to either reduce the student's Pell award by \$5,000 (to not exceed COA) or reduce the scholarship by \$5,000 (to not exceed COA). We determined that we did not have the authority to require a reduction in Pell Grant or non-Federal grant or scholarship assistance in this manner. The proposed text is a more direct read of the statute.

§ 690.90 Scope and Purpose

In this rule, the Department limits eligible workforce programs to Pell Grant Program eligibility. We considered expanding eligibility to other title IV aid programs, such as the Federal Direct Loan program. However, because the statute amended section 401 of the HEA, we determined that the statutory framework only allows eligible workforce programs to access Pell Grants.

§ 690.91 Definitions

The statute defines a Governor as “the chief executive of a State.” In this rule, the Department aligns the definition of *Governor* with WIOA to mean “the chief executive of a State or outlying area as defined under section 3 of the Workforce Innovation and Opportunity Act . . .”. In WIOA, an outlying area is

American Samoa, Guam, the Northern Mariana Islands, Palau, and the U.S. Virgin Islands. A conflict exists between WIOA and the HEA. In addition to all States, territories, and countries covered under the WIOA definition, the HEA definition of a “State” includes the Republic of the Marshall Islands and the Federated States of Micronesia. The Department considered extending eligibility to eligible institutions in the Republic of the Marshall Islands and the Federated States of Micronesia to offer eligible workforce programs. The Department determined that eligible institutions in neither the Republic of the Marshall Islands nor the Federated States of Micronesia could offer an eligible workforce program because section 481 of the WFTCA requires the Governor of a State to approve the eligible workforce program “. . . after consultation with the State board . . .”. Neither the Republic of the Marshall Islands nor the Federated States of Micronesia have a State board as defined in WIOA.

§ 690.93 Components Determined by Governors

Prior to negotiated rulemaking, the Department considered not regulating on the Governor’s approval process. We intended to copy the exact text from the WFTCA regarding the Governor’s approval, making no additional clarifications nor adding any additional requirements.

We worked in direct collaboration with the U.S. Department of Labor (DOL). During our discussions, DOL recommended the framework under § 690.93(b) that requires written and published methodologies, policies, and timeframes for how Governors will approve an eligible workforce program. The Department believes it is important for Governors to have written policies on how programs would be approved. Written policies establish a framework for consistent and standardized program approval. Written policies would also make the approval process clear and transparent for eligible institutions outlining what information is necessary for eligible institutions to submit to the Governor for program approval.

The Department’s original proposal for the Components determined by Governors did not contain proposed rules on bilateral agreements between Governors to offer eligible workforce programs through distance education to students outside the State where the institution is located. During negotiated rulemaking, several negotiators asked if an eligible workforce program could be offered through distance education (defined under 34 CFR 600.2) to

students located in a different State than where the eligible institution is located. The Department has two significant concerns about allowing nationwide reciprocity for eligible workforce programs offered online.

First, the Department is concerned that nationwide reciprocity, without constraints, would bypass Congressional intent that eligible workforce programs fulfill specific local, regional, and State workforce needs. Second, such reciprocity is more likely to lead to rapid proliferation of certain types of eligible workforce programs offered through distance education, and because the oversight framework for these programs is only now being developed, there is significant risk associated with allowing rapid widespread adoption of programs that may or may not be of low quality.

We understand that the proposal is likely to receive significant interest and have asked for specific feedback in the *Directed Questions* section.

§ 690.94 Components Determined by the Secretary

The WFTCA requires that eligible workforce programs annually meet a completion outcome for enrolled students. The completion outcomes are detailed in under § 690.94(a)(2)(i)(A) and (a)(2)(ii)(A). The Department did not initially consider exempting any population of students from the completion rate calculation because the statute does not specifically instruct the Department to do so. Indeed, there could be a number of reasons why a student does not complete an eligible workforce program, many of which should be considered in order to reflect the true completion rate for the eligible workforce program.

However, during negotiated rulemaking, several negotiators raised concerns that the completion rate could be negatively impacted by factors completely outside of the eligible institution’s control, which would not reflect the true completion rate, and which then could cause an eligible workforce program to lose eligibility. In collaboration with negotiators, the Department developed this list of exclusions. A student is not included in the numerator or denominator of the completion or placement rate if the student dies; experiences the onset of a medical condition that prevents employment; is ordered to the uniformed services, including service performed under Title 10 or Title 32 of the United States Code, for a period of more than 30 days; or becomes incarcerated.

§ 690.95 Value-Added Earnings

The Department considered three alternatives related to the calculation of the value-added earnings metric. These include: the “cohort period” and “earnings measurement period” for the value-added earnings metric; the method for computing earnings for small programs; and the method for adjusting earnings using regional price parities (RPPs).

Value-Added Earnings Timeline

The statute does not specify the first award year that value-added earnings will be measured. The statute is also ambiguous about which completer cohort should be used to measure earnings. We determined that because Congress specified that a program’s value-added earnings shall be based on “. . . the earnings of students who received Federal financial aid under this title and who completed the program 3 years prior to the award year . . .”, the first award year in which the value-added earnings could be calculated is the 2029–30 award year using the earnings of students who graduated during the 2026–27 award year. Non-Federal negotiators raised two concerns regarding the Department’s proposal. First, the Department’s initial proposal does not always allow for three full years to transpire before earnings are measured. Second, negotiators argued that this timeline is incongruent with the timeline for when Federal tax records are filed each year.

Alternatively, non-Federal negotiators proposed measuring earnings for the first time during the 2030–31 award year using completers from the 2026–27 award year. Under this alternative, all Pell Grant completers who graduate from an eligible workforce program would then have at least three full years between when they graduated and when earnings are measured.

The Department agreed with the negotiators’ recommendation. Measuring earnings in 2029–30 (as the Department initially proposed) rather than 2030–31 (which the Department and negotiators ultimately agreed upon) could result in some scenarios where program earnings are measured less than three full after students complete their program, which the Department believes would be incongruent with statutory intent.

Value-Added Earnings Computation for Small Programs

To protect individual privacy when the Department obtains earnings data to compute the median earnings of each program, data must include a minimum

number of individuals (at least 16) with usable income records for which the median earnings value is derived. Programs with fewer than 16 completers during an award year will not meet this threshold.

The Department considered several options to address this issue. First, the Department considered excluding these small programs and exempting them from the value-added earnings requirement.

The Department ultimately rejected such an approach. The Department and non-Federal negotiators believe that the value-added earnings component is a critical part of validating the efficacy of an eligible workforce program. Furthermore, the Department believes that Congress intends the Department to make every effort to produce a value-added earnings metric for all programs to protect students and taxpayers. Failing to calculate this metric for small programs could risk program expansion in unpredictable ways.

Second, to ensure small programs will be included in the value-added earnings test, the Department considered aggregating small programs with cohorts of completers from up to three prior award years or until between 30 to 50 completers are reached. The Department adopted this overall approach in the NPRM, but based on public comments, made further revisions to this method for this final rule. Specifically, public commenters expressed concern that the cohort aggregation process would create significant burden on the Department because it is inconsistent with the aggregation process proposed in the STATS and Earnings Accountability NPRM (91 FR 21088), published April 20, 2026.

To reduce burden, the Department agreed with public commenters that it would be beneficial to further streamline the cohort aggregation process. In this final rule, the Department ultimately adopted a cohort aggregation process that aggregates small programs up to 30 title IV completers, first using the program completers from the most recent award year, then, if 30 title IV completers has not been achieved, pooling these completers with title IV completers from the program during the prior award year (to form a two-year pooled cohort), and lastly, if 30 title IV completers still has not been achieved, pooling these completers with title IV completers from if the prior two award years (to form a four-year pooled cohort). If the program still has not achieved at least 30 title IV completers after this aggregation process, the program would not have a

value-added earnings measure calculated for this award year.

Some non-Federal negotiators argued that the earnings of individuals in aggregated cohorts should all be measured using tax records from the most-recently available year. Other non-Federal negotiators argued that measuring earnings using data from the most-recent tax year would create an inconsistent earnings metric, where some individuals would have earnings measured three years after program exit, and others (from prior cohorts that are included due to cohort aggregation) would have their earnings measured between 4 and 6 years after exit. Ultimately, the Department rejected this approach because we believe measuring earnings for a period longer than three full years after program exit is inconsistent with statutory intent and would unfairly benefit small programs by upwardly biasing program earnings.

Instead, the Department will consistently measure earnings three full years after program exit for all individuals in the cohort period, including for individuals in aggregated cohorts, which aligns with the earnings year associated with the first full tax year after each respective cohort completes. Earnings values would then be adjusted for inflation to align with a single year. The Department and non-Federal negotiators ultimately agreed that this method was preferable because all students in the aggregated cohort would be measured three full years after they exit from their program, preventing the scenario where some individuals (those from prior cohorts) have a longer time horizon for measuring earnings.

Regional Price Parities

When adjusting program earnings by the regional price parities index, the Department initially considered the following process. First, the Department identifies the location of the institution (using the six-digit OPEID of the institution) that the program was offered at. If that location was in a metropolitan statistical area (MSA), the earnings value would be adjusted using the regional price parity of that MSA. If the location was not in an MSA, the earnings value would be adjusted using the regional price parity of the state.

Non-Federal negotiators raised concerns about programs that enrolled few students from the area in which the college is physically located. They argued programs that enroll a majority of students from out of state would unfairly have their earnings adjusted using a price parity metric that is not representative of the prices their students pay.

The Department subsequently considered an alternative approach (which it adopted in this proposed rule) whereby the earnings of completers from programs that enroll a majority of students from out of State are adjusted using the national regional price parity (rather than the MSA or State-level measure). The Department and negotiators believed that the national-level regional price adjustment (which multiplies median earnings by a factor of 1.0, the national average) more accurately represents the price differentials students in these programs experience.

§ 690.97 Regaining Eligibility

Programs may regain eligibility immediately after losing eligibility by following the steps in § 690.97(b) and (c) due to revocation or the Governor's approval or failure of value-added earnings. The Department considered mirroring this timeline for failure of completion or job placement rates under § 690.96(a); however, during internal discussions, concerns arose that a program's failure of placement and completion rates is indicative of a more serious problem. An eligible workforce program is short by nature; therefore, we believe that enrolled students should complete the programs at a high rate, and also the programs are meant to result in a high-skill, high-wage, and in-demand job. Due to these concerns expressed by Department staff, an institution may not seek to reestablish the eligibility of the failing program or to establish eligibility for a substantially similar program until two years following the earlier of the date the program loses eligibility or the date the institution voluntarily discontinues the failing workforce program.

Regulatory Flexibility Act

This section considers the effects that these final regulations may have on small entities in the Educational Sector as required by the Regulatory Flexibility Act (RFA, 5 U.S.C. *et seq.*, Public Law 96–354) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The purpose of the RFA is to establish as a principle of regulation that agencies should tailor regulatory and informational requirements to the size of entities, consistent with the objectives of a particular regulation and applicable statutes. The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies

that the rule will not have a “significant impact on a substantial number of small entities.”

These final regulations are needed to implement statutory changes in the WFTCA that expand the Pell Grant Program as of July 1, 2026, to include students who attend eligible workforce programs. The final regulations also implement a separate provision under the WFTCA preventing a student from receiving a Pell Grant if the student’s non-Federal financial assistance equals or exceeds their cost of attendance.

The Secretary certifies, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this final regulatory action will not have a significant economic impact on a substantial number of small

entities. For the purposes of this certification the Department has defined “significant economic impact” as increasing or reducing a small entity’s revenues by more than 3 percent, and a “substantial number of small entities” as more the 5 percent of institutions that meet the Department’s definition of a small entity. The Department estimates that fewer than 5 percent of small entities would see their revenues affected by more than 3 percent as a result of the proposed rule. For the purposes of this certification, the Department of Education defines “small entities” by reference to enrollment, to allow meaningful comparison of regulatory impact across all types of higher education institutions. We

construct four different categories of small entities for the purposes of classifying higher education institutions: (1) Extremely Small (1–249 FTE, full-time equivalent student enrollees); (2) Very Small (250–499 FTE); (3) Moderately Small (500–749 FTE); and (4) Small (750–999 FTE).

Table 5.1 summarizes the number of institutions in each of these categories. In total, 53 percent of institutions are classified as small institutions under the enrollment-based definition. Specifically, 33 percent are Extremely Small (1–249 FTE), 9 percent are Very Small (250–499 FTE), 6 percent are Moderately Small (500–749 FTE), and 5 percent are Small (750–999 FTE).

TABLE 5.1—NUMBER OF SMALL INSTITUTIONS UNDER ENROLLMENT-BASED DEFINITION

	Small entities					All colleges	Percent small
	Extremely small (1-249 FTE)	Very small (250-499 FTE)	Moderately small (500-749 FTE)	Small (750-999 FTE)	Small subtotal		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Public	181	73	74	91	419	1,780	23.54
2-Year	181	68	68	81	398	1,233	32.28
4-Year	0	5	6	10	21	547	3.84
Non-Profit	455	139	142	111	846	1,638	51.65
2-Year	159	34	21	8	222	251	88.45
4-Year	296	104	121	103	624	1,387	44.99
For-Profit	983	242	80	63	1,368	1,540	88.83
2-Year	954	227	70	57	1,308	1,438	90.96
4-Year	29	15	10	6	60	102	58.82
Total	1,619	453	296	265	2,633	4,958	53.11

Notes: Institutions are defined using OPEID6 identification codes.

Source: Department analysis using 2022–23 and 2023–24 IPEDS data.

As shown in Table 5.2, small entities (all four categories combined) in the public sector generate \$3.5 billion in revenues annually, small entities (all four categories combined) in the private non-profit sector generate \$12.3 billion in revenues annually, and small entities

(all four categories combined) in the for-profit sector generate \$4.2 billion in revenues annually. An outsized share of these revenues come from institutions in the largest category of small entities (institutions with 750–999 FTE). These institutions make up just 9 percent of all

institutions classified as a small entity (having fewer than 1,000 FTE) but comprise 38 percent of the annual revenues generated by these institutions.

TABLE 5.2—TOTAL REVENUE AT SMALL INSTITUTIONS AND ALL INSTITUTIONS IN 2023–24
[\$ in millions]

	Small entities					All colleges	Percent small
	Extremely small (1-249 FTE)	Very small (250-499 FTE)	Moderately small (500-749 FTE)	Small (750-999 FTE)	Small subtotal		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Public	203.5	431.4	956.9	1,939.7	3,531.6	433,146.1	0.82
2-Year	203.5	340.9	799.2	1,498.8	2,842.3	104,109.5	2.73
4-Year	0.0	90.5	157.8	441.0	689.3	328,955.6	0.21
Non-Profit	1,998.1	2,293.1	3,192.2	4,769.0	12,252.5	275,556.3	4.45
2-Year	294.6	213.0	241.9	106.2	855.8	12,257.1	6.98
4-Year	1,703.5	2,080.0	2,950.3	4,662.8	11,396.7	263,299.3	4.33
For-Profit	1,361.8	1,157.6	705.6	934.5	4,159.4	18,684.4	22.26
2-Year	1,299.2	1,042.8	555.9	754.6	3,652.5	9,581.4	38.12

TABLE 5.2—TOTAL REVENUE AT SMALL INSTITUTIONS AND ALL INSTITUTIONS IN 2023–24—Continued
[\$ in millions]

	Small entities					All colleges	Percent small
	Extremely small (1-249 FTE)	Very small (250-499 FTE)	Moderately small (500-749 FTE)	Small (750-999 FTE)	Small subtotal		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
4-Year	62.6	114.7	149.7	179.9	506.9	9,102.9	5.57
Total	3,563.4	3,882.1	4,854.7	7,643.3	19,943.5	727,386.8	2.74

Notes: Institutions are defined using OPEID6 identification codes. Monetary values are measured in 2023 nominal dollars.
Source: Department analysis using 2022–23 and 2023–24 IPEDS data.

To determine the extent to which the proposed rule would impact small entities, the Department implemented a two-step process. First, the Department used data from IPEDS and NSLDS to estimate the share of completers from programs that are less than 12 weeks in length who would be Pell Grant recipients. Second, using the values from step 1 and the average estimated Pell Grant disbursement to eligible workforce programs (\$1,710), the Department then estimated the total revenue that could be derived annually from such disbursements relative to institutions' total annual revenues.

Using this methodology, the Department estimates that just 45 small entities (or approximately 2 percent) could have an increase in total revenues of 3 percent or more due to the proposed rule. Additionally, this regulatory action does not impose new reporting requirements or compliance burdens on these entities. Any potential effects are minimal, indirect, or result from voluntary participation in a Federal program. Therefore, the Department concludes that this rule will not have a significant economic impact on a substantial number of small entities, in accordance with 5 U.S.C. 605(b).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the Department to consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This final rule will impose new information collection requirements. As required by the Paperwork Reduction

Act of 1995 (44 U.S.C. 3507(d)), the Department submitted these information collection requirements to OMB for its review. The Office of Management and Budget approved these new information collection requirements associated with this final rule and assigned it OMB Control Number 1845–0188.

Responses to Comments Received in NPRM on the Paperwork Reduction Act of 1995

Comments: One commenter disputed the Department's estimate of zero hours of PRA burden for this NPRM on the stated grounds that the regulatory action implements statutory changes from the WFTCA and no new information collection is proposed. The commenter asserts that the NPRM creates new Governor certification requirements, new Secretary approval processes, new value-added earnings reporting mandates, new job placement rate reporting, new completion rate tracking, and new annual outcome metrics. The commenter stated that the Department's failure to estimate and disclose this burden is a PRA violation.

Discussion: The Department rejects the commenter's assertions. The Department estimated burden for all required sections on pages 11427–11431 of the NPRM⁴⁵ for an estimated total of 183,872 hours, not zero. This estimate of 183,872 hours includes all of the burden identified by the commenter.

Changes: None.

Comments: One commenter stated that the proposed information collection does not require institutions to report on supply chain integrity for procured program equipment and materials. Under 44 U.S.C. 3506(c)(3), collections must ensure practical utility. The commenter stated that a program

accountability framework that cannot identify whether Federally funded equipment procurement involves forced-labor-produced goods lacks necessary oversight value.

Discussion: The Department rejects the commenter's assertion. Practical utility under the PRA is defined as the actual usefulness of the information being collected. Information on supply chain integrity for procured program equipment and materials would not be useful for the Department with respect to the scope of this collection. The Department fulfilled all statutory requirements in our estimation of paperwork and information collection burden.

Changes: None.

690.5 Ineligibility Due To Grant or Scholarship Assistance From Non-Federal Grants; § 690.80 Recalculation of a Federal Pell Grant Award

Summary

Section 690.5 would make a student ineligible for a Pell Grant during an award year in which the student receives non-Federal grant or scholarship assistance that equals or exceeds the student's COA. Under § 690.80(d), if prior to the final disbursement of a student's Pell Grant for the award year, the institution becomes aware that the student has or will receive grant or scholarship assistance from non-Federal sources that equals or exceeds the student's COA, the institution must either: reduce the non-Federal grant or scholarship assistance until it does not equal or exceed the student's COA or return all of the Pell Grant funds that the student received for the award year and cancel any future disbursements.

Burden

Section 690.5 now requires an institution to monitor, through the final Pell Grant payment for an award year, whether additional non-Federal grant or

⁴⁵ Accountability in higher education and access through demand-driven workforce Pell—www.Federalregister.gov/documents/2026/03/09/2026-04520/accountability-in-higher-education-and-access-through-demand-driven-workforce-pell-pell-grant.

scholarship assistance is awarded to a Pell Grant recipient that impacts that individual's eligibility for Pell Grant funds. Institutions already monitor the receipt of new assistance; however, institutions may experience additional burden to evaluate whether the total non-Federal grant or scholarship assistance equals or exceeds the student's COA. If the grant or scholarship assistance does not equal or exceed the COA, the school does not have to adjust the student's Pell Grant award. If non-Federal grant or scholarship assistance equals or exceeds the COA, the school will either (1) reduce the total non-Federal grant or scholarship aid to be at least \$1 less than the COA or (2) return the full Pell Grant amount. An institution will need to work with the sources of the non-Federal grant or scholarship and the student to determine what option best meets the student's specific needs.

The Department estimates that currently 18,000 students per year receive non-Federal grants and scholarships that meets or exceeds exceed their program's COA. Of those, we estimate approximately 28 percent also receive a Federal Pell Grant. This would result in approximately 5,040 students who could lose Pell Grant eligibility each year due to non-Federal funds exceeding their program's COA.

Complying with these new regulations will require an institution to review the regulations and regulatory guidance, train staff, update policies and procedures, and potentially make system changes for purposes of tracking non-Federal aid. Financial aid offices will need to adjust a student's aid package for this new reason, increasing burden on institutions. We believe this will add a total of 1.5 hours of burden per student that is potentially impacted by this regulation.

$1.5 \text{ hours} \times 5,040 \text{ students} = 7,560$ burden hours.

§ 690.11 Concurrent Federal Pell Grant Payments

Summary

Section 690.11 clarifies that a student cannot receive a Pell Grant for enrollment in an eligible workforce program concurrently with any other educational programs, including another eligible workforce program.

Burden

Institutions are already required to ensure a student is not receiving Pell Grant funds concurrently with another institution. This regulation may add a small amount of burden to highly automated processes that already exist

at financial aid offices by requiring the institution to evaluate whether a student enrolled in an eligible workforce program is also enrolled in and receiving Pell Grant funds for another program at the same institution. The Department estimates it will take 1 minute per 1,000 students to perform this additional check. With approximately 6 million Pell recipients per year, we estimate there will be an increase of 100 additional burden hours.

$6,000,000/1000 = 6,000 \text{ minutes} = 100$ additional burden hours.

§ 668.32 Student Eligibility; § 690.6 Duration of Student Eligibility

Summary

In nearly all cases, a student who has already obtained a bachelor's degree is not eligible for a Pell Grant. Under the new regulations, students holding bachelor's degrees, and who are otherwise eligible for a Pell Grant, would not be disqualified for a Pell Grant if they are enrolled in an eligible workforce program. Section 690.32(c)(2)(i)(B)(2)(i) and (ii) would, however, disqualify a student from eligibility for a Pell Grant to enroll in an eligible workforce program if the student is enrolled or accepted for enrollment in a program of study that leads to a graduate credential or has attained a graduate credential.

Burden

Institutions receive information from a student's FAFSA regarding the highest level of education attained by the student. For eligible workforce programs, there will no longer be a burden associated with an institution's verification that the student has not obtained a bachelor's degree. However, that burden is replaced with documenting a student is not enrolled or accepted for enrollment in a program that leads to a graduate credential, nor have they already attained a graduate credential.

Institutions must update their systems and train staff to account for these changes in regulations. The Department believes it will take 3 hours per eligible institution to make these updates. This adds 16,878 additional burden hours.

$5,626 \text{ institutions} \times 3 \text{ hours} = 16,878$ burden hours.

Once relevant updates have been made, the use of automation and technology reduces much of the burden on schools for this requirement. Because of this, the Department does not believe there will be any increase in burden for an institution on a day-to-day basis.

§ 668.20 Limitations on Noncredit or Remedial Coursework That Is Eligible for Title IV, HEA Program Assistance

Summary

Section 668.20 prevents students enrolled in eligible workforce programs from using a Pell Grant for noncredit, remedial, or reduced credit courses such as remedial coursework or English as a second language courses.

Burden

Institutions must identify noncredit or reduced credit remedial courses and exclude them from their aid packaging policies for eligible workforce programs. Under § 668.20(c)(2), institutions are currently permitted, but not required, to include some or all noncredit and reduced credit remedial courses for consideration when packaging title IV, HEA program assistance. Since this new requirement deviates from regular processes, we anticipate there will be an increase in burden on institutions.

Institutions will need to review and become familiar with the regulations (4 hours), train staff (2 hours), update policies and procedures (5 hours), update relevant technical systems (8 hours), and update materials and websites (3 hours). This increases burden by 22 hours for schools implementing eligible workforce programs. If there are 100 institutions with eligible workforce programs after year one of implementation of these regulations, there would be an increase in 2,200 burden hours.

$100 \text{ schools} \times 22 \text{ hours} = 2,200$ total burden hours.

§ 690.91 Definitions; § 690.2 Definitions; § 600.10 Date, Extent, Duration, and Consequence of Eligibility; § 690.90 Scope and Purpose; § 690.92 Eligible Workforce Program; § 668.5 Written Arrangements To Provide Educational Programs; § 668.8 Eligible Program; § 690.90 Scope and Purpose; § 690.92 Eligible Workforce Program; § 668.32 Student Eligibility; § 668.5 Written Arrangements To Provide Educational Programs

Summary

Section 690.91 defines terms used in 34 CFR 690 Subpart H. § 690.2 defines an eligible workforce program. § 600.10 establishes title IV eligibility for workforce programs if the workforce program is approved by the Secretary. § 668.8 and § 690.90 limit title IV, HEA program eligibility to only Pell Grants for students enrolled in an eligible workforce program. § 690.92 contains the program requirements of an eligible workforce program. § 668.5 would limit eligible workforce programs to offer no

more than 25 percent of their program with an ineligible institution through a written arrangement, unless the written arrangement meets the requirements for an exception under § 668.5(c)(3)(ii)(D).

Burden

These regulations create a new type of program eligible for Pell Grants. Institutions must consider whether or not these regulations have an impact on their programs and whether or not any updates need to be made to their internal processes and procedures. An institution may currently offer programs similar to eligible workforce programs but decide not to seek Secretary approval for them. An institution who otherwise participates in the title IV, HEA programs would want to ensure their staff is familiar with these changes so they can determine whether or not a particular program was eligible for a Pell Grant.

The Department estimates it will take an average of 4 burden hours for institutions to review and consider the changes to title IV, HEA programs regulation. In 2024, there were 5,626 title IV-eligible institutions. This results in a total of 22,504 additional burden hours.

$5,626 \times 4 \text{ hours} = 22,504 \text{ burden hours.}$

§ 690.93 Components Determined by Governors

Summary

Section 690.93 outlines requirements for the Governor to approve an institution's application for an eligible workforce program.

Burden

These regulations create burden on States. In order to approve an eligible workforce program, the Governor will need to review statutory and regulatory requirements (3 weeks), consult with their State board (4 weeks), create and publicly publish steps in their eligible workforce program approval process (7 weeks), review applications for eligible workforce programs (7 weeks), and finally, approve or deny the program (2 weeks.)

“Governor” is defined as the chief executive of a State or outlying area or the Tribal government where an institution is located. The Department estimates there will be 59 Governors that decide to create the new approval process required for establishing an eligible workforce program.

If we assume a 40-hour workweek and 23 weeks, this totals an additional 920 hours per Governor. This adds 54,280 burden hours.

$920 \text{ hours} \times 59 \text{ Governors} = 54,280 \text{ burden hours.}$

Governors will also need to report to the Department the approval of an eligible workforce program. The Department is currently seeking OMB approval of a new form for the requirements of Governor approval. Burden hours for a Governor to complete the actual application have been assessed under the development of a new form, 1845–NEW. A **Federal Register** Notice was published on March 20, 2026 (91 FR 13598) opening the 60-day public comment period for this form using the docket ID ED–2026–SCC–0595.

§ 690.94 Components Determined by the Secretary

Summary

Section 690.94 outlines the requirements for Secretary approval of an eligible workforce program. Institutions will be required to seek Secretary approval by submitting an application to offer Pell Grants to otherwise eligible students enrolled in eligible workforce programs. § 690.94 also requires an institution with an eligible workforce program to submit to the Governor a list of students who completed the program during the award year and other information necessary for the Governor to verify a job placement rate. Institutions offering eligible workforce programs will also be required to report to the Department the published tuition and fees for the eligible workforce program.

Burden

The application requirements involve burden. Eligible workforce programs will have additional application requirements beyond what an institution is accustomed to when applying for a new program qualifying for title IV, HEA program funds. Institutions will be required to develop and prepare to apply for an eligible workforce program by seeking approval from the Governor prior to seeking program approval from the Secretary. We believe that it will take 15 weeks for internal preparation at the institution which could consist of reviewing new statutory requirements, identifying which programs may qualify, compiling program details, and gaining any relevant internal approvals needed prior to their submission to the Governor.

The submission of the application itself will be completed through a process institutions are already accustomed to using. Regulations require an update to a form an institution completes: 1845–0012,

Application for Approval to Participate in Federal Student Aid Programs. The Department anticipates that eligible workforce programs will increase the number of programs qualifying for title IV, HEA program funds overall and therefore increase the number of responses to 1845–0012.

Section 690.94 contains burden for institutions. The Department estimates it will take an institution approximately 20 weeks to prepare to seek Governor approval of their programs. Assuming a 40-hour work week, this creates an additional 800 burden hours on institutions. With 100 programs, this would create an additional 80,000 burden hours to this collection.

$100 \text{ programs} \times 800 \text{ hours} = 80,000 \text{ burden hours.}$

Section 690.94 also results in additional burden for States. Institutions with an eligible workforce program would submit to their Governor a list of students that completed the program during the award year each award year. States would be required to review this information to verify the job placement rate each year. Based upon discussion with affected parties, the Department believes that ten different states will be completing these requirements during the first three years these regulations are effective. The Department will reassess burden upon renewal of this collection in three years as required by the Paperwork Reduction Act. If it takes a State 20 hours to review and verify the information submitted by the institution, this adds 200 additional burden hours to States.

$10 \text{ States} \times 20 \text{ hours} = 200 \text{ burden hours.}$

§ 690.95 Value Added Earnings

Summary

New regulations would require an institution to ensure an eligible workforce program's published tuition and fees do not exceed value-added earnings. There will be no additional burden on institutions to calculate the value-added earnings as the Secretary will publish the value-added earnings that apply to an eligible workforce program each award year. However, the regulations do require an institution to evaluate the accuracy of the data submitted to NSLDS that is ultimately used to construct cohorts of students for purposes of the value-added earnings calculation. Institutions are already accustomed to doing this for all other programs to comply with Financial Value Transparency. Due to technology and automation, the Department does not believe this regulation will have any

meaningful impact on burden for institutions to comply with.

Institutions would also be required to publish their tuition and fees for their eligible workforce programs. Should tuition and fees exceed the calculated value-added earnings, the eligible workforce program would lose eligibility for title IV, HEA program funds.

Burden

The Department estimates it will take 1.5 hours each award year for an institution to publish tuition and fees. If there are 100 programs that would create 150 additional burden hours.

100 programs $\times$ 1.5 hours = 150 burden hours.

An institution with an eligible workforce program must provide to the Secretary documentation that their published tuition and fees do not exceed the value-added earnings. The Department anticipates this will create burden on institutions. Burden for this requirement will be assessed under a new OMB number and will be made

available for a 60-day and a 30-day public comment period before being made available for use.

§ 690.96 Loss of Eligibility

Summary

Section 690.96 requires that a program become ineligible for title IV, HEA program aid if it fails to meet any of the prescribed requirements or if an institution voluntarily discontinues a failing workforce program.

Burden

The Department anticipates there will not be many programs, if any, to lose eligibility within the next 3 years. Upon renewal of this information collection, we will have more data to support whether an eligible workforce program will lose eligibility. At this time, we do not believe 10 or more programs will lose eligibility and therefore do not believe this regulation adds burden to the regulatory collection at this time.

§ 690.97 Regaining Eligibility Summary

Section 690.97 outlines the requirements to regain program eligibility should an eligible workforce program lose eligibility for any reason.

Burden

The Department does not anticipate there will be many, if any, losses of eligibility within the next 3 years. Because of this, we do not think enough programs that have lost eligibility will seek to regain eligibility. This means that this regulation does not add burden to this regulatory collection at this time.

Collection of Information

For institutions, we used the median hourly wage for Education Administrators, Postsecondary (11–9033) from the U.S. Bureau of Labor Statistics. In 2024 this was \$49.98. To account for overhead costs and benefits, the Department has multiplied by this wage by two, resulting in hourly costs of \$99.96.

Regulation	Requirement	OMB control #	Burden hours	Costs
§ 690.5 Ineligibility due to grant or scholarship assistance from non-Federal grants; § 690.80 Recalculation of a Federal Pell Grant award.	Students receiving non-Federal grant and scholarships that exceed Cost of Attendance are not eligible for Pell. Schools must update their current processes and procedures.	1845–NEW	1.5 hours $\times$ 5,040 students = 7,560 additional burden hours.	$\$99.96 \times 7,560 = \$755,698$.
§ 690.11 Concurrent Federal Pell Grant payments.	Institutions must ensure a student does not receive a Pell Grant in an eligible workforce program concurrently with any other title IV eligible programs.	1845–NEW	6,000,000/1000 = 6,000 minutes = 100 additional burden hours.	$\$99.96 \times 100 = \$9,996$.
§ 668.32 Student eligibility; § 690.6 Duration of student eligibility.	Allows students who have already received bachelor's degrees to otherwise qualify for a Pell Grant to enroll in an eligible workforce program. Prevents a student with a master's credential from receiving a Pell Grant for an eligible workforce program.	1845–NEW	5,626 institutions $\times$ 3 hours = 16,878 burden hours.	$\$99.96 \times 16,878 = \$1,687,125$.
§ 668.20 Limitations on remedial coursework that is eligible for title IV, HEA program assistance.	Prevents Pell from funding noncredit or reduced credit hour courses to students enrolled in eligible workforce programs.	1845–NEW	100 schools $\times$ 22 hours = 2,200 total burden hours.	$\$99.96 \times 2,200 = \$219,912$.

Regulation	Requirement	OMB control #	Burden hours	Costs
§ 690.91 Definitions; § 690.2 Definitions; § 600.10 Date, extent, duration, and consequence of eligibility; § 690.90 Scope and purpose; § 690.92 Eligible workforce program; § 668.5 Written arrangements to provide educational programs; § 668.8 Eligible program; § 690.90 Scope and purpose; § 690.92 Eligible workforce program; § 668.32 Student eligibility; § 668.5 Written arrangements to provide educational programs.	Schools must review and consider new regulations.	1845–NEW	5,626 schools × 4 hours = 22,504 additional burden hours.	\$99.96 × 22,504 = \$2,249,500.
§ 690.93 Components determined by Governors.	Various requirements for Governor approval, including ensuring programs meet workforce needs and have been operating for at least one year.	1845–NEW	920 hours × 59 Governors = 54,280 burden hours.	\$99.96 × 54,280 = \$2,712,914.
§ 690.94 Components determined by the Secretary.	Various requirements for Secretary approval, including ensuring program length, completion rate, and placement rate requirements are met. States must verify the calculated job placement rate each year.	1845–NEW	100 programs × 800 hours = 80,000 burden hours 10 States × 20 hours = 200 burden hours.	\$99.96 × 80,000 = \$7,996,800 \$99.96 × 200 = \$19,992.
690.95 Value added earnings.	Requirements for institutions to publish tuition and fees for eligible workforce programs.	1845–NEW	100 programs × 1.5 hours = 150 burden hours.	\$99.96 × 150 = \$14,994.
§ 690.96 Loss of eligibility.	Regulations for when an eligible workforce program loses eligibility.	N/A	N/A	N/A.
§ 690.97 Regaining Eligibility.	Regulations for regaining eligibility after an eligible workforce program loses eligibility.	N/A	N/A	N/A.
Total .....	.....	.....	183,872	\$15,666,931.

Intergovernmental Review

This program is subject to E.O. 12372 and the regulations in 34 CFR part 79. One of the objectives of the E.O. is to foster an intergovernmental partnership and strengthen Federalism. The E.O. relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Education Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary requests comments on whether these final regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

E.O. 13132 requires us to provide meaningful and timely input by State and local elected officials in the development of regulatory policies that have Federalism implications. “Federalism implications” means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various

levels of government. The proposed regulations do not have Federalism implications.

Accessible Format: On request to the program contact person(s) listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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List of Subjects

34 CFR Part 600

Colleges and universities, Grants programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grants programs—education, Reporting and recordkeeping requirements, Student aid.

Nicholas Kent,

Under Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends parts 600, 668, and 690 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Amend § 600.10 by revising paragraphs (c)(1)(iii) and (iv) and adding (c)(1)(v) to read as follows:

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) * * *

(1) * * *

(iii) For an undergraduate program that is at least 300 clock hours but less than 600 clock hours and does not admit as regular students only persons who have completed the equivalent of an associate degree under 34 CFR 668.8(d)(3);

(iv) For an eligible workforce program as defined under 34 CFR 690.92; and

(v) For the first eligible prison education program under subpart P of 34 CFR part 668 offered at the first two additional locations as defined under § 600.2 at a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution.

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 3. The general authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c-1, and 1231a, unless otherwise noted.

■ 4. Amend § 668.5 by revising paragraph (c)(3)(ii) to read as follows:

§ 668.5 Written arrangements to provide educational programs.

* * * * *

(c) * * *

(3) * * *

(ii) (A) The ineligible institution or organization provides more than 25 percent but less than 50 percent of the educational program, in accordance with 34 CFR 602.22(a)(1)(ii)(f);

(B) The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership, or corporation;

(C) The eligible institution's accrediting agency or, if the institution is a public postsecondary vocational educational institution, the State agency listed in the **Federal Register** in accordance with 34 CFR part 603 has

specifically determined that the institution's arrangement meets the agency's standards for executing a written arrangement with an ineligible institution or organization; and

(D) If the educational program is an eligible workforce program, it serves as a related instruction component of a Registered Apprenticeship program, as defined in 29 CFR part 29.2.

* * * * *

■ 5. Amend § 668.8 by revising paragraph (n) to read as follows:

§ 668.8 Eligible program.

The restructuring and addition read as follows:

* * * * *

(n) *Other eligible programs.* For title IV, HEA program purposes, *eligible program* includes—

(1) A direct assessment program approved by the Secretary under § 668.10;

(2) A comprehensive transition and postsecondary program approved by the Secretary under § 668.232;

(3) An eligible prison education program under subpart P of this part; and

(4) For purposes of the Federal Pell Grant Program only, an eligible workforce program under 34 CFR 690.92.

■ 6. Amend § 668.20 by:

■ a. Revising paragraph (b) introductory text; and

■ b. Adding paragraph (g).

The revision and addition read as follows:

§ 668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance.

* * * * *

(b) Except as provided in paragraphs (c), (d), and (g) of this section, in determining a student's enrollment status and cost of attendance, an institution shall include any noncredit, remedial or reduced credit remedial course in which the student is enrolled. The institution shall attribute the number of credit or clock hours to a noncredit or reduced credit remedial course by—

* * * * *

(g) An institution may not take into account any noncredit, remedial or reduced credit remedial course, including a course in English as a second language, for a student enrolled in an eligible workforce program, as defined under 34 CFR 690.92.

■ 7. Amend § 668.32 by revising paragraph (c)(2)(i)(B) to read as follows:

§ 668.32 Student eligibility.

* * *

(c) * * *
(2) * * *
(i) * * *

(B)(1) Is enrolled in a postbaccalaureate teacher certificate or licensing program as described in 34 CFR 690.6(c); or

(2) Is enrolled in an eligible workforce program as defined under 34 CFR 690.92 and—

(i) Is not enrolled or accepted for enrollment in a program of study that leads to a graduate credential; and

(ii) Has not attained a graduate credential; and

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

■ 8. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, 1070g, unless otherwise noted.

■ 9. In § 690.2 amend paragraph (c) by adding, in alphabetical order, the definition of “Eligible workforce program” to read as follows:

§ 690.2 Definitions.

* * * * *

(c) * * *

Eligible workforce program: A program as defined under § 690.92.

* * * * *

■ 10. Effective May 19, 2026, add § 690.5 to read as follows:

§ 690.5 Ineligibility due to non-Federal grant or scholarship assistance.

(a) A student shall not be eligible for a Federal Pell Grant for an award year during which the student receives grant or scholarship assistance from non-Federal sources, including States, eligible institutions, or private sources, in an amount that equals or exceeds the student’s cost of attendance for the award year.

(b) Grant or scholarship assistance from non-Federal sources does not include sources that are excluded under Section 480(i) of the Higher Education Act of 1965, as amended.

■ 11. Amend § 690.6 by:

■ a. Revising paragraph (a).

■ b. Adding paragraph (f).

The revision and addition read as follows:

§ 690.6 Duration of student eligibility.

* * * * *

(a) Except as provided in paragraphs (c), (d), and (f) of this section, a student is eligible to receive a Federal Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

* * * * *

(f) Notwithstanding paragraph (a) of this section, an otherwise eligible student enrolled in an eligible workforce program as defined under 34 CFR 690.92 may receive a Federal Pell Grant.

■ 12. Revise § 690.11 to read as follows:

§ 690.11 Concurrent Federal Pell Grant payments.

(a) A student is not entitled to receive Federal Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

(b) A student is not entitled to concurrently receive a Federal Pell Grant for enrollment in an eligible workforce program and any other educational program at the same or a different institution, including another eligible workforce program.

■ 13. Effective May 19, 2026, amend § 690.80 by adding paragraph (d) and removing the parenthetical authority citation to read as follows:

§ 690.80 Recalculation of a Federal Pell Grant award.

* * * * *

(d) *Receipt of assistance from non-Federal grants.* If, prior to the final disbursement of a student’s Pell Grant for an award year, the institution becomes aware that the student has received or will receive grant or scholarship assistance from non-Federal sources that equals or exceeds the student’s cost of attendance as described in 34 CFR 690.5, the institution must either—

(1) Reduce the non-Federal grant or scholarship assistance until it does not equal or exceed the student’s cost of attendance; or

(2) Return all of the Federal Pell Grant funds that the student received for that award year pursuant to 690.79 and cancel any future disbursements of such funds for that award year.

§§ 690.84–690.89 [Removed and Reserved]

■ 14. Remove and reserve §§ 690.84–690.89.

■ 15. Add subpart H, consisting of §§ 690.90 through 690.97, to read as follows:

Subpart H—Workforce Pell

Sec.

690.90 Scope and purpose.

690.91 Definitions.

690.92 Eligible workforce program.

690.93 Components determined by Governors.

690.94 Components determined by the Secretary.

690.95 Value-added earnings.

690.96 Loss of eligibility.

690.97 Regaining eligibility.

§ 690.90 Scope and purpose.

This subpart establishes regulations that apply to eligible institutions that offer eligible workforce programs. An eligible student enrolled in an eligible workforce program is only eligible for Federal financial assistance under the Federal Pell Grant Program and no other title IV, HEA program. Unless provided in this subpart, eligible students and eligible institutions that offer Pell Grants to students enrolled in eligible workforce programs are subject to the same regulations and procedures that otherwise apply to title IV, HEA program participants.

§ 690.91 Definitions.

The following definitions apply to this subpart:

Cohort period: The award year that ends three full award years prior to the beginning of the award year for which value-added earnings are being determined.

Earnings measurement period: The first full tax year following the award year in which the student completed the eligible workforce program.

In-demand industry sector or occupation:

(1) An industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or

(2) An occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate.

Governor: (1) The chief executive of a State or outlying area as defined under Section 3 of the Workforce Innovation and Opportunity Act (Public Law 113–128); or

(2) If an institution is located on Tribal lands, the Tribal government.

Recognized postsecondary credential: A credential consisting of an industry-recognized certificate or certification, a certificate of completion of a Registered Apprenticeship under 29 CFR part 29, a license recognized by the State involved or Federal Government, or an associate or baccalaureate degree.

State board: A State workforce development board established under section 101 of the Workforce Innovation

and Opportunity Act and 20 CFR 679 Subpart A.

Tuition and fees: The institutional charges for an eligible workforce program.

§ 690.92 Eligible workforce program.

An educational program is an eligible workforce program if the Secretary determines it is an undergraduate program that meets the requirements under 34 CFR 668.8 and—

(a) Requires a minimum of 8 weeks, but less than 15 weeks of instruction;

(b)(1) Is at least 150 clock hours but less than 600 clock hours;

(2) At least 4 but less than 16 semester or trimester hours; or

(3) At least 6 but less than 24 quarter hours;

(c) Is not offered using—

(1) Correspondence courses, as defined under 34 CFR 600.2;

(2) Coursework that takes place as part of a study abroad program; or

(3) Credit or clock hour equivalencies that are part of a direct assessment program under 34 CFR 668.10.

(d) Is approved by the Governor through a process as described in § 690.93;

(e) Meets the requirements established by the Secretary as described in § 690.94;

(f) Complies with the annual value-added earnings requirements as described in § 690.95; and

(g) Is offered by an institution that, during the five years preceding the date of the determination, has not been subject to any suspension, emergency action, or termination of programs under this title.

§ 690.93 Components determined by Governors.

(a) Prior to the Secretary's evaluation of whether a program is an eligible workforce program, the Governor, after consultation with the State board, approves the program to be offered to students in that State by determining that the program—

(1) Provides an education aligned with the requirements of high-skill, high-wage (as identified by the State pursuant to section 122 of the Carl D. Perkins Career and Technical Education Act (20 U.S.C. 2342)), or in-demand industry sectors or occupations;

(2) Meets the hiring requirements of potential employers in the sectors or occupations described in paragraph (a)(1) of this section;

(3) Either—

(i) Leads to a recognized postsecondary credential that is stackable and portable across more than one employer; or

(ii) With respect to students enrolled in the program—

(A) Prepares such students for employment in an occupation for which there is only one recognized postsecondary credential; and

(B) Provides such students with such a credential upon completion of the program; and

(4) Prepares students to pursue one or more certificate or degree programs at one or more eligible institutions (which may include the eligible institution providing the program), including by ensuring—

(i) That a student, upon completion of the program and enrollment in such a related certificate or degree program, will receive academic credit for the program that will be accepted toward meeting such certificate or degree program requirements; and

(ii) The academic credit described in paragraph (i) will be acceptable toward meeting such certificate or degree program requirements.

(b) The Governor shall establish, after consultation with the State board, a process for an institution to request a determination that a program meets the requirements in paragraph (a) of this section that is made publicly available and includes—

(1) The criteria the Governor will use to determine if a program meets each of the requirements described under paragraph (a), which shall include—

(i) The State's methodology to determine and periodically review which occupations and industry sectors are high-skill, high-wage (as identified by the State pursuant to section 122 of the Carl D. Perkins Career and Technical Education Act (20 U.S.C. 2342)), or in-demand, including the competencies needed in such industries and occupations, as identified by the State pursuant to section 102 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3112), and where the list of such occupations and sectors will be made publicly available. Such review shall be done not less than every two years concurrent with development and modification of the State Plan under Section 102(c) of the Workforce Innovation and Opportunity Act;

(ii) A written policy for determining whether a program meets the hiring requirements of employers in the high-skill, high-wage, or in-demand sectors and occupations that the program prepares students for employment in, that—

(A) Considers whether the expected competencies for which the recognized postsecondary credential intends, align with the competencies needed in such

high-skill, high-wage, or in-demand sectors and occupations; and

(B) Incorporates direct input from employers, which may be secured from the State board and local workforce development boards, industry or sector partnerships, sponsors of Registered Apprenticeship programs, joint labor-management partnerships, or through other methodologies established by the State;

(iii) A written policy for determining if a credential is stackable and portable that establishes documented connections to additional credentials, considers, if available, data showing whether students have obtained additional credentials through career pathways, real-time labor market information, and includes a process for employer validation; and

(iv) A written policy for institutions to establish that an eligible workforce program will ensure the award of academic credit towards a certificate or degree program upon a student's successful completion of the eligible workforce program and enrollment in such certificate or degree program, and that such credit will be accepted at one or more eligible institutions through written agreements, including established articulation agreements, transfer-of-credit agreements, consortium or partnership agreements, or similar arrangements;

(2) The information an institution must submit to the Governor to assess an eligible workforce program on the criteria established under paragraph (1), including the job placement standards under § 690.94(a)(2)(ii), and, if applicable, alternative completion and placement standards under § 690.94(a)(2)(i), which shall include the information necessary for the Governor to make the appropriate job placement calculations using administrative data, such as wage records;

(3) The process and timeline for the Governor's consultation with the State board and a determination that a program meets the requirements in paragraph (a), and the process for an institution to appeal that determination and that such process shall include clear, transparent and timely procedures that are applied consistently and equitably at all eligible institutions; and

(4) An attestation that the State board has been consulted.

(c) The Governor shall not approve a program until it meets all the requirements of paragraph (a) of this section, as determined through the process established under paragraph (b) of this section.

(d) The Secretary documents the Governor's approval and determination

that a program meets the requirements in paragraph (a) of this section by accepting a certification by the Governor that includes the following—

(1) The name of the program;

(2) The 6-digit Classification of Instructional Programs (CIP) Code of the program;

(3) The Standard Occupational Classification (SOC) codes(s) for which the program prepares individuals for employment;

(4) A signed statement that the program was approved by the Governor and that the program currently meets, and has met for the 12 months immediately preceding the certification, the requirements described in paragraph (a);

(5) The date the eligible workforce program was approved;

(6) If applicable, a certification that the State determined that the program meets alternative completion and placement standards under § 690.94(a)(2)(i);

(7) An agreement that, upon request of the Secretary of Education or Secretary of Labor, the Governor will make available to the Secretary of Education and Secretary of Labor documentation of its process established under paragraph (b) for making the determination in paragraph (a) of this section;

(8) An agreement that the Governor will inform the Department of Education and Department of Labor and the institution within 15 calendar days of its final decision to withdraw approval of the eligible workforce program;

(9) A certification that the Governor takes into consideration the cost of the program and the anticipated wages of the industry or occupation prior to the initial determination of the program's value-adding earnings is made under § 690.95; and

(10) Such other information as the Secretary of Education or Secretary of Labor may require.

(e) The Governor's approval, under paragraph (a) of this section, expires at the expiration of the institution's program participation agreement under 34 CFR 668.13.

(f) Prior to the expiration of an institution's program participation agreement, the Governor must provide, through a process determined by the Secretary, a certification of continued approval of each eligible workforce program offered by the institution.

(g) A program that serves as a related instruction component of a Registered Apprenticeship Program meets the requirements of paragraph (a)(1) and (a)(2) of this section.

(h) The Governors of two States may enter into a bilateral agreement, that is published publicly, regarding the enrollment of students located in one of those States into some or all of the programs located in the other State, so long as—

(1) The Governor in the State in which the student is located, in consultation with the State board, includes the occupation(s) or sector(s) on the list developed under the process set forth in § 690.93(b)(1)(i);

(2) The Governor of the State in which the institution(s) offering such program(s) is located has determined, in consultation with the State board, that the program meets the conditions under § 690.93(a); and

(3) The bilateral agreement includes provisions for data-sharing among the States for purposes of completion and placement rate calculations.

§ 690.94 Components determined by the Secretary.

(a) After the Governor determines that the program meets the requirements under § 690.93, the Secretary evaluates documentation from an eligible institution to determine that the following requirements have been met—

(1) The program has met the conditions under 34 CFR 690.92(a) and (b) for the 12 months preceding the date on which the institution applied for eligibility for the program.

(2) The program meets placement and completion rate requirements—

(i) For the 2026–27, 2027–28, and 2028–29 award years only, as determined through a certification from the Governor, based on the Governor's analysis, that the program meets the following standards—

(A) A completion rate of at least 70 percent, within 150 percent of the normal time to completion; and

(B) A job placement rate of at least 70 percent, calculated as the percentage of students that are employed during the second quarter after exiting the program, using administrative data, including wage records;

(ii) For each award year after the 2028–29 award year—

(A) A completion rate of at least 70 percent, within 150 percent of the normal time of completion, as determined under 34 CFR 668.8 (f); and

(B) A job placement rate of at least 70 percent, calculated as the percentage of students who are employed in the occupation(s) for which the program prepares students (as identified through the process established under § 690.93 (b)) or a comparable high-skill, high-wage, or in-demand occupation during the second quarter after successfully

completing the program, as determined through a certification from the Governor, based on the Governor's analysis using available administrative data, including wage records.

(b) For each award year after the date that the eligible workforce program is approved, the institution must—

(1) Submit to the Governor a list of students that completed the program during the award year and the information necessary for the Governor to verify the job placement rate for such award year; and

(2) Report the published tuition and fees for the eligible workforce program through a process determined by the Secretary.

(c) The Secretary may waive some or all of the requirements under paragraphs (a) and (b) of this section related to submission of completion rates and the Governor's certification of job placement rates if—

(1) The Secretary determines that completion or placement rates will be calculated under a separate process established by the Secretary; or

(2) In the case of the job placement rate certification described in § 690.94(a)(2)(ii)(B), the Secretary determines that the Governor is making progress towards making such certification but needs an additional award year using the certification described in § 690.94(a)(2)(i)(B).

(d) For each award year, the Secretary confirms the eligible workforce program's published tuition and fees do not exceed the value-added earnings of the eligible workforce program, consistent with § 690.95.

(e) A student is not included in the numerator or denominator of completion or placement rates if the student—

(1) Dies;

(2) Experiences the onset of a medical condition that prevents employment;

(3) Is ordered to service in the uniformed services, including service performed under Title 10 or Title 32 of the United States Code, for a period of more than 30 days; or

(4) Becomes incarcerated.

§ 690.95 Value-added earnings.

(a) For each award year, an eligible workforce program's total published tuition and fees may not exceed the value-added earnings of students who are working, received a Pell Grant for enrollment in the program, and completed the program during the cohort period defined in § 690.91 and described in paragraph (i)(2).

(b) An eligible workforce program's value-added earnings are determined by calculating the difference between—

(1) The median earnings of such students during the earnings measurement period as defined in 34 CFR 690.91, as adjusted by the State and metropolitan area regional price parities of the Bureau of Economic Analysis based on the location of such programs; and

(2) 150 percent of the poverty line applicable to a single individual as determined under section 673(2) of the Community Service Block Grant Act (42 U.S.C. 9902(2)) for such tax year.

(c) No later than three months prior to the beginning of the award year, the Secretary will publish the value-added earnings that will apply to the eligible workforce program for that upcoming award year.

(d) The institution must keep published tuition and fees at or below the value-added earnings calculated for the program for all students who first enroll in the eligible workforce program during the award year that begins following the annual release of the program's value-added earnings.

(e) Programs that have a calculated value-added earnings of zero or negative value shall not be eligible for Federal Pell Grant funds.

(f) The institution must provide, upon request, evidence satisfactory to the Secretary that its published tuition and fees does not exceed the published value-added earnings for that award year.

(g) In calculating the value-added earnings for an eligible workforce program, the Secretary uses student completion data that the institution is required to report to the Secretary to support its administration of, or participation in, the title IV, HEA programs to—

(1) Compile a list of students who received Federal Pell Grant funds and who completed each program during the cohort period, after which the Secretary—

(i) Provides the list to institutions; and

(ii) Allows each institution to correct the information reported by the institution on which the list was based, no later than 60 days after the date the Secretary provides the list to the institution;

(2) Obtain from a Federal agency with earnings data the median annual earnings of the students on each list, as provided in paragraph (h) of this section; and

(3) Calculate the value-added earnings and provide it to the institution.

(h)(1) If the final list of students who completed the program during the cohort period includes at least 30 students, the Secretary sends

information about those individuals to the Federal agency with earnings data;

(2) If the final list of students who completed the program during the cohort period does not include at least 30 students, the Secretary adds students who completed the same program during the first award year prior to the cohort period. If the combined number of completers from both award years includes at least 30 students, the Secretary sends information about those individuals to the Federal agency with earnings data;

(3) If the final list of students who completed the program during the cohort period and the first award year prior to the cohort period does not include at least 30 students, the Secretary adds students who completed the same program during the second and third award years prior to the cohort period. If the combined number of completers from these award years in which students completed the program includes at least 30 students, the Secretary sends information about those individuals to the Federal agency with earnings data;

(4) If the final list of students who completed the program during the cohort period and the first, second and third award years prior to the cohort period does not include at least 30 students, the Secretary does not calculate value-added earnings for the program for that award year.

(i) For each list submitted to the Federal agency with earnings data, the agency returns to the Secretary median annual earnings of the students on the list whom the Federal agency with earnings data has matched to earnings data, in aggregate and not in individual form.

(1) If the Federal agency with earnings data includes reports from records of earnings on at least 16 students who completed the program, the Secretary uses the median annual earnings provided by the Federal agency with earnings data to calculate the value-added earnings for the program.

(2) If the Federal agency with earnings data includes reports from records of earnings on less than 16 students who completed the program, the Secretary does not calculate the value-added earnings for the program for the award year.

(j) When calculating value-added earnings, the Secretary includes completers from all eligible workforce programs with the same six-digit CIP code.

(k) Notwithstanding paragraph (b) of this section, if more than 50 percent of students described in paragraph (a) are not located in the State in which the

institution offering the program is located, the Department will not adjust the program's median earnings by the State and metropolitan area regional price parities of the Bureau of Economic Analysis.

(l) The Secretary excludes a student from the value-added earnings calculation if the Secretary determines that the student was enrolled in any other educational program at the institution or at another eligible institution during the calendar year for which the Secretary obtains earnings information under paragraphs (g) and (h) of this section.

§ 690.96 Loss of eligibility.

If an eligible workforce program fails to meet the requirements—

(a) Under § 690.93, the program will become ineligible at the end of the payment period that begins following the date that—

(1) The Governor acts to withdraw approval for an eligible workforce program; or

(2) The Governor fails to reapprove the program.

(b) Under § 690.94, the program will become ineligible at the end of the payment period that begins after the date that the Secretary determines that the institution failed to meet the completion rate or job placement rate requirements, except that the Secretary will not make such a determination while a program's eligibility, approval, or reported completion rate of job placement rate is in an appeal status or awaiting the Governor's final approval determination.

(c) Under § 690.95—

(1) The program will become ineligible at the beginning of the award year following the release of the value-added earnings; and

(2) The Secretary will assess a liability for amounts of Pell Grants disbursed for students enrolled in the eligible workforce program during the award year for which the value-added earnings were calculated and shall collect any such liability from the institution.

§ 690.97 Regaining eligibility.

(a) If an eligible workforce program loses eligibility based on the Secretary's determination that the program's completion rate or job placement rate failed to meet the requirements under § 690.94(a)(2) or the institution voluntarily discontinues a failing eligible workforce program, the institution may not seek to reestablish the eligibility of the failing program, or to establish eligibility for a substantially similar program sharing both (i) the same four-digit CIP code, and (ii)

identical SOC codes according to the CIP SOC Crosswalk that is provided by a Federal agency, until two years following the earlier of the date the program loses eligibility under § 690.96(b) or the date the institution voluntarily discontinues the failing workforce program.

(b) If an eligible workforce program loses eligibility due to a loss of Governor approval described in (a) of this section, the program may reestablish eligibility after the Secretary receives the Governor's certification that the program has been approved as provided under § 690.93(c), and after

the Secretary determines the program has met eligibility criteria under § 690.94.

(c) If an eligible workforce program loses eligibility because its published tuition is higher than its value-added earnings under § 690.95(e), the institution may, through a process described by the Secretary, request that the program's eligibility be reinstated by—

(1) Providing to the Secretary a new certification of the Governor's approval of the program as provided under § 690.93(c);

(2) Submitting to the Secretary documentation of the program's current published tuition and fees and an attestation that the tuition and fees have been reduced and will remain equal to or less than the program's recalculated value-added earnings; and

(3) Requesting a recalculation of the program's value-added earnings to determine whether the program's updated tuition and fees that will apply to the next award year exceed the program's value-added earnings.

[FR Doc. 2026-10013 Filed 5-18-26; 8:45 am]

BILLING CODE 4000-01-P



FEDERAL REGISTER

Vol. 91

Tuesday,

No. 96

May 19, 2026

Part III

Department of the Treasury

12 CFR Parts 34 and 160

Office of the Comptroller of the Currency, Final Rule

DEPARTMENT OF THE TREASURY

12 CFR Parts 34 and 160

[Docket ID OCC–2025–0736]

RIN 1557–AF46

Real Estate Lending Escrow Accounts

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.**ACTION:** Final rule.

SUMMARY: The OCC is issuing a final rule to codify longstanding and recognized powers of national banks and Federal savings associations (collectively, banks) to establish or maintain real estate lending escrow accounts and to exercise flexibility in making business judgments as to the terms and conditions of such accounts, including whether and to what extent to offer any compensation or to assess any fees related thereto.

DATES: This final rule is effective on June 18, 2026.

FOR FURTHER INFORMATION CONTACT: Karen McSweeney, Special Counsel, Graham Bannon, Counsel, and Priscilla Benner, Counsel, Chief Counsel's Office, 202–649–5490; Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:**I. Introduction**

Real estate lending has been core to the business of national banks for over 100 years and of Federal savings associations for their entire existence of over 90 years. Banks are a key pillar supporting homeownership and commercial real estate in the United States. In order to engage in effective and efficient real estate lending, banks use a variety of tools to safely and soundly manage the associated risks. Mortgages have several features that set them apart from most of banks' other extensions of credit, including that they are typically overcollateralized and the collateral is unique, is often illiquid, and is subject to acts of nature that can rapidly depreciate its value. As such, a significant risk in mortgage lending is related to a bank's ability to assess, manage, and preserve the underlying collateral.¹ Since the late 1930s, escrow accounts have been a crucial risk-mitigation tool that supports safe and

sound mortgage lending. For example, a lender may require a borrower to prepay a portion of their annual property taxes, insurance premiums, and certain other payments relating to the mortgaged property, which the lender places into an escrow account. When those payments become due, the lender then forwards the payment to the applicable party to which it is due.²

From the lender's perspective, escrow accounts can ensure in advance that these payments will be met, which in turn enables the lender to protect the priority of its mortgage lien and the value of the collateral. If a borrower fails to pay property taxes, for example, a tax lien is, in general, superior to the lender's mortgage lien.³ If a municipality forces a sale of the property to collect on the taxes owed to it, there may be insufficient proceeds left over from the sale of the property to enable the borrower to satisfy the remaining real estate loan. Similarly, if a borrower fails to pay premiums on an insurance policy covering the property, the lender may bear the risk of uninsured damage to the collateral. For example, the borrower may cease payment on the real estate loan if the property becomes so damaged that its market price is less than the outstanding mortgage balance. In this case, the lender may be unable to recover the value of the outstanding mortgage loan through foreclosure on and sale of the collateral property.

From the borrower's perspective, escrow accounts can help the borrower budget for tax, insurance, and other payments.⁴ Use of an escrow account also simplifies the operational aspects associated with making payments and

confirming satisfaction of the borrower's obligations to multiple parties.

In light of these benefits to both lenders and borrowers, escrow accounts are widely used. For example, approximately 80 percent of U.S. residential real estate mortgages to purchase a property use an escrow account.⁵ While banks typically provide escrow accounts free of charge, banks nonetheless incur costs and assume risks related to administering these accounts, including the operational costs of building escrow systems, ensuring payments are timely made to the relevant parties, and complying with contractual terms and applicable law.⁶ When banks establish and maintain escrow accounts, they make a variety of decisions that collectively allow them to balance these costs and risks with the benefits of such accounts. For example, some banks may choose to pay interest on such accounts or otherwise offer some form of related compensation to mortgage borrowers. Banks may also take steps to recoup some of the costs of administering escrow accounts, including through investing escrow funds, typically in short term assets. Some banks may also offset costs by imposing additional fees, such as origination fees, particularly if escrow account administration becomes more expensive. Increased fees may result in larger upfront costs that can create

⁵ Fed. Hous. Fin. Agency & Consumer Fin. Prot. Bureau, *A Profile of 2016 Mortgage Borrowers: Statistics from the National Survey of Mortgage Originations*, 27, 30 (2018). In some cases, including certain government insured or guaranteed loans, the use of escrow accounts is required. See, e.g., 24 CFR 200.84(b)(3)–(4) (escrow account requirements for Federal Housing Administration programs).

⁶ See Mortgage Banking Handbook, *supra* n.1, at 15 (“Mortgage servicers are exposed to considerable operational risk when they manage escrow accounts[.]”); *id.* at 53–54 (“Escrow account administration consists of collecting and holding borrower funds in escrow to pay such items as real estate taxes, flood and hazard insurance premiums, property tax assessments, and, in some cases, interest on escrow account balances. The escrow account administration unit (1) sets up the account, (2) credits the account for the tax and insurance funds received as part of the borrower's monthly mortgage payment, (3) makes timely payments of the borrower's obligations, (4) analyzes the account balance in relation to anticipated payments annually, and [(5)] reports the account balance to the borrower annually. Servicers must closely monitor property taxing authorities and individual insurance contracts to ensure that escrow calculations are accurate and that insurance policies have not lapsed. . . . Servicers must comply with applicable law in connection with [their] management of escrow accounts, including collecting, holding, and escrowing funds on behalf of each borrower in accordance with RESPA (12 [U.S.C.] 2609) and Regulation X (12 CFR 1024.17 and 1024.34). . . . Servicers also should ensure compliance with legal requirements regarding the cessation of escrow withholding for [private market insurance] on serviced loans.”).

² See *id.*; OCC, *Comptroller's Handbook*, “Residential Real Estate,” 25–27 (2017).

³ See Mortgage Banking Handbook, *supra* n.1, at 99; see also U.S. Gen. Acct. Off., B–114860, *Study of the Feasibility of Escrow Accounts on Residential Mortgages Becoming Interest Bearing*, 6 (1973) (“Escrow accounts began during the economic depression of the 1930s when many homeowners, because of their inability to pay property taxes, lost their homes through foreclosure.”). Use of escrow accounts also benefit State and local governments in reducing the number of delinquent or delayed property tax filings and associated foreclosure proceedings. *Id.* at 20.

⁴ Unlike principal and interest payments on the mortgage loan, which are typically due monthly and are consistent over time, tax, insurance, and certain other payments related to the mortgaged property are typically due less frequently (e.g., every six months) and may change throughout the life of the mortgage loan due to, for example, changes in local property tax rates, the assessed tax value of the property, or annual insurance premium adjustments. Such lump sum payments thus mean that total mortgage-related payments on these tax, insurance, or other payments due dates are typically larger and may vary over time.

¹ See OCC, *Comptroller's Handbook*, “Mortgage Banking,” 15, 53–54 (2014) (Mortgage Banking Handbook).

barriers to homeownership. This burden may fall especially hard on first-time and lower-income borrowers, as origination fees, for example, may represent a proportionally larger financing charge compared to higher-balance mortgages.⁷ A bank's decisions on how to appropriately balance the applicable costs and benefits may be informed by a wide variety of factors, including the bank's business strategy, costs, market demand, competition from other real estate lenders, and eligibility requirements for certain mortgage insurance programs.⁸ It is therefore critical that banks have the flexibility to make the business decisions that adapt to local circumstances and other relevant considerations; otherwise, inefficient and ineffective results are more likely to prevail, which may lead to higher prices and reduced mortgage lending.

The terms and conditions of escrow accounts, including whether and to what extent banks pay interest or other compensation, are ultimately a business judgment made by each bank in accordance with safe and sound banking principles. This discretion ensures that banks have the flexibility to make business decisions about how to effectively and efficiently set the terms and conditions of their escrow accounts, which allows banks to appropriately balance the costs and benefits of these accounts and the risks and rewards of real estate lending more generally. As such, it is a core component of banks' mortgage lending powers under applicable law, including provisions of the Federal Reserve Act,⁹ the Home Owners' Loan Act of 1933 (HOLA),¹⁰ and the National Bank Act.¹¹ This is consistent with longstanding agency precedent¹² and bank practices, which

the OCC is codifying in its regulations governing the mortgage lending powers of national banks and Federal savings associations, respectively, for the sake of clarity.¹³

This final rule will also complement the OCC's preemption determination, which it is concurrently finalizing along with this final rule, related to State laws that restrict banks' flexibility to decide whether and to what extent to pay interest or other compensation on funds placed in escrow accounts or assess related fees.¹⁴ As explained, those State laws prevent or significantly interfere with banks' exercise of their Federally authorized powers and are thus preempted. In addition, codifying these Federal powers makes clear that those State laws also directly conflict with a Federal regulation. Together, these two rules will reduce uncertainty with regards to banks' escrow practices and may thereby incentivize reduced fees and increased mortgage lending.¹⁵

II. National Banks' Real Estate Lending and Escrow Account Powers; Discussion of Public Comments

The Federal Reserve Act and HOLA both evince clear congressional intent to provide banks with broad, discretionary real estate lending powers, which include the flexibility to make business decisions about how to effectively and

acknowledging that banks may place escrow funds into accounts that do not pay interest to customers); OCC, *Corporate Decision No. 99-06*, at 3 (Jan. 29, 1999) (opining that a bank's proposed real estate closing and escrow services were permissible as "functionally and operationally equivalent to activities undertaken by banks . . . in their ordinary course of business. The real estate loan closing and escrow services respond to customers' needs and do not involve risks that are not already assumed by banks in their capacity as closing and escrow agents, financial intermediaries, custodians, and trustees." (footnote omitted)); OCC, *Conditional Approval No. 276*, at 12 (May 8, 1998) (noting that the provision of tax escrow services "is an integral part of or a logical outgrowth of the lending function"); Mortgage Banking Handbook, *supra* n.1, at 53–54 (detailing the escrow account administration practices of banks).

¹³ This final rule was initially proposed at 90 FR 61099 (Dec. 30, 2025).

¹⁴ This final preemption determination is published elsewhere in this issue of the **Federal Register**. The proposed preemption determination is available at 90 FR 61093 (Dec. 30, 2025).

¹⁵ Subsequent to the issuance of the proposal, the U.S. Court of Appeals for the Second Circuit issued a decision on remand from the Supreme Court concluding that Federal law preempts a New York law mandating the payment of interest by certain institutions on mortgage escrow accounts. *See Cantero v. Bank of Am., N.A.*,—F.4th—, 2026 WL 1217467 (2d Cir. May 5, 2026). The court's analysis of national banks' real estate lending powers, including national banks' flexibility in making business judgments regarding the terms and conditions of escrow accounts, was fundamentally consistent with the analysis provided in, and cited to, the proposal, lending additional credence to the arguments discussed herein.

efficiently set the terms and conditions of escrow accounts. Each of these statutes also provides the OCC broad discretionary grants of rulemaking authority. Additionally, the flexibility to make business judgments concerning the investment and use of escrowed funds has long been inherent in the business of banking as codified in the National Bank Act. These practices are the logical outgrowth or functional equivalent of other longstanding permissible bank practices regarding collateral protection. They benefit the bank and its customers and are well within the types of risks national banks manage in the ordinary course of business.

Broad Real Estate Lending Powers Under the Federal Reserve Act and HOLA

National banks are authorized under the Federal Reserve Act to "make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate," subject to requirements imposed by the OCC.¹⁶ Congress has progressively expanded national banks' mortgage lending powers under this law. Initially limited to loans on farmland,¹⁷ Congress amended the law to include limited general real estate lending in 1916¹⁸ and, through the years, removed all limits and conditions on real estate lending other than those prescribed in regulation by the Comptroller.¹⁹ The Federal Reserve Act provides the OCC broad authority to prescribe regulations governing national banks' loans or extensions of credit secured by liens on interest in real estate.²⁰

Several commenters commended the proposal as correctly recognizing and applying the underlying statutes and the OCC's longstanding practices.²¹ That

¹⁶ 12 U.S.C. 371(a).

¹⁷ Sec. 24, Public Law 63–43, 38 Stat. 251, 273 (1913).

¹⁸ Public Law 64–270, 39 Stat. 752, 754–55 (1916).

¹⁹ Sec. 403, Public Law 97–320, 96 Stat. 1469, 1510–11 (1982).

²⁰ 12 U.S.C. 371(a); *see also* Sec. *Indus. Ass'n v. Clarke*, 885 F.2d 1034, 1048 (2d Cir. 1989) ("Legislative history indicates that the [1982] amendment [to 12 U.S.C. 371(a)] was intended to simplify the real estate lending authority of national banks by deleting rigid statutory [limitations]. Section 403 [which amended 12 U.S.C. 371] is intended to provide national banks with the ability to engage in more creative and flexible financing, and to become stronger participants in the home financing market." (citation modified)).

²¹ Several commenters requested that the OCC extend the comment period, which the OCC declined to do. The OCC determined that the original comment period provided a meaningful opportunity to comment consistent with the

⁷ One commenter explicitly noted this concern, providing a case study of Iowa's repeal of its mandated interest on escrow account laws, which concludes that the majority of interest payments pre-repeal were passed on to consumers via higher origination fees, including at a rate of over 100 percent for lower-income borrowers, and that origination fees fell substantially post-repeal, as compared to other similarly situated States.

⁸ *See, e.g.,* U.S. Dep't of Hous. & Urb. Dev., *Housing Handbooks*, "FHA Single Family Housing Policy Handbook 4000.1," 1164 (2025) (section III(A)(1)(g)(ii) on escrowing of funds).

One commenter suggested that the proposed rule would benefit large banks over community banks. However, the final rule applies to all banks. The need to appropriately balance the applicable costs and benefits may be even more acute for community banks, which, for example, may have less diversified businesses than larger banks.

⁹ 12 U.S.C. 371.

¹⁰ 12 U.S.C. 1464.

¹¹ 12 U.S.C. 24(Seventh).

¹² *See* OCC, *Interpretive Letter No. 1041*, at 2–3 (Sept. 28, 2005) (detailing the broad array of escrow services permissible for national banks and

said, one commenter objected to the OCC's reading of the Federal Reserve Act by noting that 12 U.S.C. 371(a) provides that national banks' real estate lending powers are also "subject to section [12 U.S.C. 1828(o)]."²² The commenter asserted that, contrary to the above description of the history of the Federal Reserve Act, this evinces that Congress has not removed all limits and conditions on real estate lending other than those prescribed in regulation by the Comptroller. Instead, this commenter asserts that national banks' real estate lending powers remain significantly constrained, and any regulations must, per section 1828(o), be adopted in concert with the other Federal banking agencies.²³ This argument is neither supported by the plain meaning of the text nor the history of the statute's various amendments.

12 U.S.C. 371(a) clearly states that national banks' real estate lending powers are subject both to 12 U.S.C. 1828(o) "and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order" (emphasis added). A reading of the statute that section 1828(o) is the controlling basis for adopting regulations would render the Comptroller's concurrent rulemaking authority as surplusage—"[i]t is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant."²⁴

Moreover, the statutory history supports the conclusion that the OCC has wide discretion to issue regulations under 12 U.S.C. 371(a). Prior to 1982, section 371(a) variously set detailed and prescriptive statutory limits on national banks' real estate lending powers,

requirements of the Administrative Procedure Act and that this rulemaking should be finalized as expeditiously as possible. The volume and range of comments the OCC received on the proposal is consistent with the OCC's conclusion that the comment period was sufficient.

²² 12 U.S.C. 1828(o) instructs the Federal banking agencies to "adopt uniform regulations prescribing standards for extensions of credit" related to certain real estate transactions.

²³ The preamble's statement that the Federal Reserve Act "removed all limits and conditions on real estate lending other than those prescribed in regulation by the Comptroller" is not an error or oversight. Even when certain regulations are adopted in concert with other agencies, only the OCC may prescribe rules for national banks.

²⁴ *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (citation modified) (rejecting a claim of a general discovery rule that a statute of limitations starts running when a party knows or has reason to know she was injured as doing so would render a specific exception to tolling periods in the relevant statute superfluous in all but the most unusual circumstances).

including, among other things, minimum or maximum mortgage maturities, minimum loan-amount-to-collateral-value ratios, distinctions based on real estate type, and restrictions based on a bank's location.²⁵ Congress removed these prescriptive requirements in favor of only such discretionary regulations as the OCC prescribes, indicating Congress's intent to provide the OCC with wide latitude to regulate national bank real estate lending. The addition of 12 U.S.C. 1828(o) as an alternative rulemaking authority does not indicate a contrary intent. That provision vests the Federal banking agencies with similarly broad discretion, setting forth general criteria (e.g., "the risk posed to the Deposit Insurance Fund") that the agencies shall "consider."

Other commenters alternatively asserted that 12 U.S.C. 371(a)'s grant of rulemaking authority only permits for limitations on national banks' real estate lending powers and not expansions. These commenters point to the statute's use of the phrase "such restrictions and requirements" in qualifying the OCC's rulemaking authority. Even assuming that this assertion is accurate, nothing in the final rule impermissibly expands national banks' powers beyond the bounds of the statute. Rather, as discussed throughout the preamble, which details the extensive statutory, judicial, and historical record, the final rule merely clarifies longstanding and recognized real estate lending powers. In addition, judicial precedent contradicts the commenters' reasoning. The D.C. Circuit, for example, discussing an earlier, though substantially similar, version of section 371's grant of rulemaking authority, aptly noted that:

[the plaintiff] maintains that the language and legislative history of section 371 indicate the Comptroller is permitted only to impose "conditions and limitations" on the lending powers of national banks, not to issue rules that would *expand* those powers. The short answer to this argument, as the Comptroller notes, is that permitting national banks to offer [adjustable-rate mortgages] is not a new power at all. National banks could offer ARMs before the promulgation of these regulations. . . . It is significant that, in its selective recapitulation of the legislative history of section 371, appellant omits the following sentence from the report by the House Committee on Banking and Currency:

The primary purpose of this provision is to improve and update the mortgage investment tools of national banks to assist them in their efforts to respond to the demands of the real estate industry.

²⁵ See, e.g., Public Law 64–270, 39 Stat. 752, 754–55 (1916); Secs. 711, 802(i)(1), Public Law 93–383, 88 Stat. 714, 716, 725 (1974).

This clearly authorizes the Comptroller to regulate the terms and conditions of mortgages.²⁶

In the case of Federal savings associations, residential mortgage lending is central to their business.²⁷ The explicit purpose of HOLA is to create a Federal chartering regime for institutions that provide credit for housing.²⁸ HOLA provides Federal savings associations broad powers to invest in, sell, or otherwise deal in residential real property loans, subject to regulations issued by the Comptroller.²⁹ HOLA also provides the OCC with broad authority to prescribe rules and regulations to provide for the organization, incorporation, examination, operation, and regulation³⁰ of Federal savings associations and to specify their powers to invest in, sell, or otherwise deal in various loans and other investments.³¹

Since the earliest days of the Federal banking system, courts have held that banks have wide latitude in managing and protecting property acquired in the usual course of banking, even where such activities are not otherwise

²⁶ *Conf. of State Bank Supervisors v. Conover*, 710 F.2d 878, 884 (D.C. Cir. 1983) (emphasis in original) (citations omitted).

²⁷ The history of savings associations more generally in the United States dates back to 1831, "when townspeople in Frankford, Pa., agreed to pool their money to buy their own homes. The result was the Oxford Provident Building Association, which lasted until all 40 original members had been given the opportunity to become homeowners. The Oxford's example of cooperative finance to promote home ownership inspired the founding of other associations across the country." OCC, *History of the OCC*, "1914–1935: The Federal Thrift Charter is Created," <https://www.occ.gov/about/who-we-are/history/history-of-the-occ/1914-1935/1914-1935-the-federal-thrift-charter-is-created.html>.

²⁸ 12 U.S.C. 1464(a).

²⁹ See 12 U.S.C. 1464(c); 12 CFR part 160. HOLA also authorizes Federal savings associations to engage in nonresidential real estate lending not in excess of 400 percent of capital or certain greater amounts as determined by the Comptroller, subject to regulations issued by the Comptroller. 12 U.S.C. 1464(c)(2)(B).

³⁰ 12 U.S.C. 1464(a); see also *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 145 (1982) ("Pursuant to this authorization [12 U.S.C. 1464(a)], the [Federal Home Loan Bank] Board has promulgated regulations governing the powers and operations of every Federal savings and loan association from its cradle to its corporate grave." (citation modified)). This authority to promulgate regulations for Federal savings associations was ultimately transferred to the OCC. 12 U.S.C. 5412(b)(2)(B). The grant of rule writing authority to the OCC in each of 12 U.S.C. 371(a) and 1464(a) is of a type that "empower[s] an agency to prescribe rules to fill up the details of a statutory scheme . . . or to regulate subject to the limits imposed by a term or phrase that leaves agencies with flexibility" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024) (citation modified). That is, they are grants of authority to the agency to "exercise a degree of discretion." *Id.* at 394.

³¹ 12 U.S.C. 1464(c).

permissible.³² Courts have also explicitly linked the power to lend as inextricably bound up in the power to foreclose on collateral.³³ As such, it is clear that the discretion afforded a bank in making business judgments related to real estate lending does not end when a bank decides the means by which to administer and finance the costs of managing and protecting property that serves as collateral for its loans.³⁴

This history, and the statutory role of the OCC as the agency delegated discretion in enacting real estate lending regulations for both national banks and Federal savings associations, evince a clear congressional intent to provide banks with broad, discretionary real estate lending powers.

This intent is clear too from the primary piece of Federal legislation governing escrow accounts. In the 1970s, Congress determined that certain abuses in mortgage lenders' real estate settlement processes necessitated nationwide reform, including with respect to lenders that were requiring excessive funds be placed in escrow

accounts.³⁵ The Real Estate Settlement Procedures Act (RESPA) of 1974³⁶ regulates elements of the use and operation of escrow accounts in residential real estate loans. It requires disclosures as to the nature and purposes of escrow accounts,³⁷ mandates the provision of free annual escrow account statements,³⁸ requires amounts in escrow accounts be paid timely as they become due and any funds remaining in such accounts after the loan is repaid be promptly returned to the borrower,³⁹ and establishes proportional caps on the total amounts that may be collected from borrowers in escrow accounts.⁴⁰ RESPA does not, however, include any provisions related to the use of funds in escrow accounts or that require lenders to pay compensation on such accounts. Several commenters argued that the enactment of RESPA represented a comprehensive reform of banks' use of mortgage-escrow accounts and reflected a general congressional intent to constrain or eliminate banks' flexibility regarding these accounts, even beyond its specific provisions. These commenters do not, however, provide evidence to support the assertion that RESPA was intended to restrict previously existing bank powers. Rather, case law has recognized that RESPA, in legislating a system of escrow account disclosures and amount limits, implicitly recognizes the flexibility banks have in deciding how to invest, and whether and to what extent to pay interest on escrowed funds.⁴¹

Congress has largely refrained from interfering with the flexibility of banks

in setting the terms and conditions of how escrowed funds are handled by the bank.⁴² This flexibility allows banks to efficiently and effectively balance the risks and rewards of mortgage lending, just as banks do with other aspects of the credit underwriting and lending process. The OCC has long recognized this principle as well. For example, the *Interagency Guidelines for Real Estate Lending*, adopted pursuant to 12 U.S.C. 1828(o), state that each insured depository institution should establish loan administration procedures for its real estate portfolio that address "escrow administration," along with other core aspects of the lending arrangements, including "documentation," "loan closing and disbursement," "payment processing," "collateral administration," "loan payoffs," "collections and foreclosure," "claims processing," and "servicing and participation agreements."⁴³ That is, the *Guidelines* outline broad topics for banks to address, including escrow administration, but give banks substantial flexibility in how to address them.

More generally, the Federal Reserve Act, HOLA, and the National Bank Act do not individually or together displace a national bank's or Federal savings association's general business judgment with respect to compensation paid to or fees assessed on customers. For example, no Federal law dictates or contemplates a minimum interest rate that national banks or Federal savings associations must pay on general deposit accounts. Additionally, a national bank's non-interest charges and fees are subject to the bank's "discretion, according to sound banking judgment and safe and sound banking principles."⁴⁴

³² See, e.g., *First Nat'l Bank v. Nat'l Exch. Bank*, 92 U.S. 122, 128 (1875) (holding that a bank may accept stock in satisfaction of a defaulted debt, notwithstanding a prohibition in dealing in stocks); *Cockrill v. Abeles*, 86 F. 505, 511 (8th Cir. 1898) (holding that where a national bank acquired an undivided interest in real property in satisfaction of a debt, it could also purchase other undivided interests in the property and discharge thereon where necessary to better enable the bank to manage or dispose of the property); *Cooper v. Hill*, 94 F. 582, 586 (8th Cir. 1899) (holding that a bank could expend money to restore a mine shaft acquired in satisfaction of a debt to presentable condition for purposes of attracting a buyer); *Second Nat'l Bank of Parkersburg v. U.S. Fid. & Guar. Co.*, 266 F. 489, 494 (4th Cir. 1920) (citing other cases related to the protection and disposition of collateral as "sufficient to illustrate the latitude that is permitted national banks, not in the character of the acts they may primarily engage in as a business, but in the management and protection of property and property rights acquired in the usual course of banking transactions, and it includes such minor incidental powers as may be reasonably adapted to the ends in view.").

³³ See *JPMorgan Chase Bank, N.A. v. Johnson*, 719 F.3d 1010, 1017–18 (8th Cir. 2013) ("There is little doubt the power to foreclose is closely related to and useful in carrying out the business of banking. As the district court recognized, [t]he power to engage in real estate lending would be rendered a nullity if national banks could not also foreclose when the borrower defaulted." (citation modified)).

³⁴ See also 12 CFR 7.4002 (providing that a national bank may charge non-interest fees, including deposit account service charges, and that the establishment, amount, and method of calculation are business decisions made by each national bank at its discretion). As noted above, escrow accounts are typically provided free of cost to consumers. However, a bank's decision to not charge permissible fees may in many cases be underwritten by reasonable short-term returns that banks are able to earn on escrowed funds. This flexibility may allow a bank to recoup the costs of escrow accounts rather than passing them on to borrowers through additional upfront fees.

³⁵ See 12 U.S.C. 2601(a), (b)(3).

³⁶ Public Law 93–533, 88 Stat. 1724, codified at 12 U.S.C. 2601 *et seq.*

³⁷ 12 U.S.C. 2604(b)(9).

³⁸ 12 U.S.C. 2609(c), 2610.

³⁹ 12 U.S.C. 2605(g).

⁴⁰ 12 U.S.C. 2609(a). One commenter argued that the proposed rule would incentivize banks to require borrowers pay a larger amount into escrow accounts than is necessary. However, no such incentive exists since such a practice is prohibited under RESPA. *Id.*

⁴¹ See *Cantero*, 2026 WL 1217467 at *7 ("The omission of an interest rate requirement from RESPA, a statute regulating many other aspects of escrow accounts, suggests that national banks have a broad power to set those rates."); *Flagg v. Yonkers Sav. & Loan Ass'n, FA*, 396 F.3d 178, 185 (2d Cir. 2005) ("RESPA is meant to regulate the amount of money that a borrower is required to deposit in escrow by tying that amount to the costs the escrow fund is meant to secure. RESPA is not, however, designed to reduce the dollar costs of taxes, fees, and insurance premiums. RESPA can, and does, accomplish its task by setting rules on required escrow contributions. That this system may, in the end, be more expensive to borrowers than, say, keeping their money in interest-bearing accounts to pay their own bills, does not violate RESPA's stated goal of 'reduc[ing] the amounts home buyers are required to place in escrow accounts.'" (citations omitted)).

⁴² Some commenters asserted that 15 U.S.C. 1639d, which addresses escrow requirements for certain mortgages, evinces broad Congressional intent to limit banks' flexibility in setting the terms of escrow accounts under 12 U.S.C. 24(Seventh) and 371, including for escrow accounts outside the scope of the statute. The OCC disagrees with these commenters. Section 1639d sets limited additional requirements related to escrow accounts for certain mortgages but is not a comprehensive framework for the regulation of escrow accounts more generally. Furthermore, nothing in section 1639d evinces a broad Congressional intent to carve out the creation or administration of escrow accounts from Federal law nor limit the OCC's rulemaking authority with respect thereto. Section 1639d is not limited to national banks but rather applies to a wide variety of creditors, including many that are regulated by States. The references in section 1639d to State law are thus best understood to reflect Congress's intent to ensure that state law continues to apply to these other creditors.

⁴³ 12 CFR part 34 appendix A to subpart D.

⁴⁴ 12 CFR 7.4002(b)(2). See also OCC, *Interpretive Letter No. 906*, at 6 (Jan. 19, 2001) ("The National Bank Act does not displace business judgments by

Business of Banking

In addition to the abovementioned powers, national banks are permitted to engage in the business of banking more generally and “all such incidental powers as shall be necessary to carry on the business of banking.”⁴⁵ Courts have noted that “the National Bank Act did not freeze the practices of national banks in their nineteenth century forms. . . . [W]hatever the scope of such powers may be, we believe the powers of national banks must be construed so as to permit the use of new ways of conducting the very old business of banking.”⁴⁶

As reflected in the discussion in the preceding section, the OCC has consistently taken the position that escrow account activities are part of the business of banking.⁴⁷ The OCC considers the following factors when determining whether an activity that is not explicitly enumerated in 12 U.S.C. 24(Seventh) is nonetheless part of the business of banking:

- (i) Whether the activity is the functional equivalent to, or a logical outgrowth of, a recognized banking activity;
- (ii) Whether the activity strengthens the bank by benefiting its customers or its business;

dictating any general restrictions on the kinds or amounts of fees that banks may charge for services, leaving those decisions to the discretion of bank management.”).

⁴⁵ 12 U.S.C. 24(Seventh); see also *NationsBank of N.C., N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251, 258 n.2 (1995) (“We expressly hold that the ‘business of banking’ is not limited to the enumerated powers in § 24 Seventh”); 12 U.S.C. 93a (providing the OCC authority to “prescribe rules and regulations to carry out the responsibilities of the office.”). Several commenters argued that *NationsBank* is no longer good law due to the opinion’s reliance on the now-overturned framework laid out in *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). However, these commenters misread the proposal and caselaw. The cited proposition in *NationsBank* stands for the limited proposition that the term “business of banking” is not limited to the enumerated powers in section 24(Seventh). This proposition is not itself premised on *Chevron*. Either way, the case overturning *Chevron* makes clear that prior decisions premised on *Chevron* remain good law. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (“[W]e do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful . . . are still subject to statutory *stare decisis* despite our change in interpretive methodology.”). One commenter argues in the alternative that additional language from *NationsBank* is nonetheless dispositive. *NationsBank*, 513 U.S. at 258 n.2 (“The exercise of the Comptroller’s discretion, however, must be kept within reasonable bounds.”). As discussed in length in this preamble, the final rule merely clarifies the longstanding and recognized real estate lending powers that banks have exercised, and as such is well within reasonable bounds.

⁴⁶ *M&M Leasing Corp. v. Seattle First Nat’l Bank*, 563 F.2d 1377, 1382 (9th Cir. 1977).

⁴⁷ See *supra* n.12.

(iii) Whether the activity involves risks similar in nature to those already assumed by banks; and

(iv) Whether the activity is authorized for State-chartered banks.⁴⁸

Flexibility to exercise a national bank’s business judgment as to how to structure its escrow operations and whether and to what extent to offer any compensation to customers is a clear logical outgrowth of national banks’ other powers to manage and protect collateral. As discussed above, courts have long recognized the wide latitude that banks have in the activities they may undertake in managing and protecting collateral on loans.⁴⁹ Furthermore, this flexibility can also be seen as the functional equivalent of national banks’ deposit-taking powers. It is a fundamental precept of banking that the bank has flexibility in determining what, if any, interest is paid on the funds held in customer accounts, including escrow accounts.⁵⁰ One commenter strongly supported this logical outgrowth argument, noting that banks’ experiences in managing the risks associated with protecting their collateral is fundamental to real estate lending.

Flexibility to exercise a national bank’s business judgment as to how to structure the financing of its escrow operations can also strengthen a national bank by benefiting its customers or its business. As noted above, this flexibility allows banks to

⁴⁸ 12 CFR 7.1000(c)(1). The weight accorded to each factor depends on the facts and circumstances of each case. 12 CFR 7.1000(c)(2). Relatedly, an activity is “incidental to the business of banking if it is convenient or useful to an activity that is specifically authorized for national banks or to an activity that is otherwise part of the business of banking.” The OCC considers the following factors in such analysis: “(i) Whether the activity facilitates the production or delivery of a bank’s products or services, enhances the bank’s ability to sell or market its products or services, or improves the effectiveness or efficiency of the bank’s operations, in light of risks presented, innovations, strategies, techniques and new technologies for producing and delivering financial products and services; and (ii) Whether the activity enables the bank to use capacity acquired for its banking operations or otherwise avoid economic loss or waste.” 12 CFR 7.1000(d)(1).

⁴⁹ See *supra* notes 3232–34 and accompanying text.

⁵⁰ See OCC, *Interpretive Letter No. 1041*, *supra* note 12, at 3 (“[T]he first three activities listed when the Bank acts as escrow agent [receiving funds, depositing funds into a separate non-interest escrow account, and honoring checks written against the account] constitute depository and check cashing functions that are enumerated powers set forth in statutory law.”); OCC, *Corporate Decision No. 98–09*, at 15 (Jan. 28, 1998) (“[I]nterest rates paid by the bank on its deposit accounts are generally a business decision as long as the rates do not violate federal banking laws or regulations. . . . [I]t is generally a business decision of the bank to determine which lending programs fit in to its lending goals and objectives.”).

defray the costs of providing escrow services, including coordinating payments by the customer to multiple different parties free of charge.⁵¹ While a bank’s customers may not receive any interest payments if the bank decides not to offer it, the bank’s ability to exercise its business judgment in how it structures its escrow operations may mean that the bank is less likely to need to recoup these costs through other fees, which may be large and upfront and create barriers to homeownership, or which, for some borrowers, may even exceed interest that could otherwise be earned on escrow accounts. Flexibility may also make it more likely for the bank to use escrow accounts in its mortgage lending operations, with their attendant benefits to both the lender and borrower. For example, if national banks were required to use some fixed interest calculation to determine what compensation to pay to customers using escrow accounts, should market interest rates fall below such threshold, then banks could face losses on their provision of escrow accounts and may reasonably decide, where practicable, to desist from using escrow accounts, implement fees, otherwise increase borrower costs to offset such losses, or reduce their overall mortgage lending due to decreased profitability.

National banks also have a core competency in managing risks associated with fee structures and investing funds. In exercising its business judgment as to how to structure the administration and financing of its escrow operations, a bank does not “assume[] material burdens other than those of a lender of money and is [not] subject to significant risks not ordinarily incident to a

⁵¹ See *Clement Nat’l Bank v. Vermont*, 231 U.S. 120, 140–41 (1913) (allowing national banks to pay State taxes on depositors’ accounts from their customers’ account balances in part justified by the benefit to each customer in not having to separately calculate the tax and submit an individual tax return, which would remove unnecessary obstacles to the successful prosecution of the bank’s business); *M&M Leasing*, 563 F.2d at 1381–82 (holding that leases of personal property constitute the loan of money secured by the properties leased, and so are part of the business of banking); *id.* (“[L]easing yields to the banks a rate of return that compares favorably to that of lending. A portfolio of prudently-arranged leases imposes no greater risks than one of equally prudently-arranged loans. It is small wonder, therefore, that today over 1000 national banks are engaged in the leasing of personal property which has an aggregate value in excess of \$2 billion.” (citation omitted)). Compare the flexibility of national banks to structure secured lending programs as leases and the wide adoption of national bank leasing programs to the flexibility banks may exercise in structuring their escrow accounts and their adoption in approximately 80 percent of mortgages to purchase a property. See *supra* n.5 and accompanying text.

secured loan.”⁵² Rather, it continues to protect its security interest and the attendant collateral while managing investment risks associated with what are typically short-term investments using the escrowed funds.

Finally, roughly three quarters of States permit State-chartered banks flexibility to exercise their business judgment as to how to structure the financing of their escrow operations for residential real estate lending, either explicitly⁵³ or implicitly through silence on the subject,⁵⁴ and the OCC is not aware of any State restricting this flexibility with regards to commercial real estate lending.

Several commenters rejected this line of reasoning on the basis that 12 U.S.C. 93a merely allows the OCC to carry out its responsibilities and does not carry with it authority to confer on national banks powers that they do not have under existing law. Even assuming this assertion is accurate, the OCC’s rule is fully consistent with it. The preamble extensively discusses the existing and historical power of national banks to exercise flexibility to make business judgments in structuring escrow accounts under 12 U.S.C. 24(Seventh). The final rule merely clarifies longstanding and recognized real estate lending powers that banks have exercised under existing law.

Other commenters stated that the agency’s rulemaking authority is limited based on 12 U.S.C. 25b, a statute that does not concern national banks’ real estate lending powers. Specifically, these commenters pointed to the OCC’s concurrent proposed preemption determination related to State interest-on-escrow laws⁵⁵ and asserted that the proposed rule on bank powers was merely pretext for achieving other aims.

As explained above, this final rule is clearly supported by the plain meaning and judicial history of the statutory authorities cited. Assertions that these authorities are somehow limited by either context or unrelated statutes that do not specifically limit application of the cited authorities are not statutorily grounded. This final rule is a permissible exercise of the OCC’s congressionally granted authority to clarify national banks’ longstanding and recognized real estate lending powers.

Another commenter alleged that the OCC failed to provide technical studies and data justifying why the terms and conditions of escrow accounts should be left to a bank’s business judgment and why this codification of flexibility is necessary now. Relevant case law requires that agencies disclose technical studies, *when such studies form the basis of a proposed rule*, to give the public adequate opportunity to provide comment.⁵⁶ The OCC has not relied on any technical studies or data for this final rule, nor is it required to do so.

* * * * *

As such, these statutory schemes make clear that the flexibility of banks to make the appropriate business judgment in structuring escrow accounts and investing related funds is a core component of banks’ broad mortgage lending powers under applicable law. The OCC has broad authority to prescribe regulations codifying this flexibility.

III. Description of the Final Rule

After considering all comments received in light of the text and purpose of the applicable statutes, the OCC has adopted the proposal without amendment.

The final rule amends the OCC’s real estate lending and appraisals regulations applicable to national banks and its lending and investment regulations applicable to Federal savings associations to add a definition of “escrow account,” expressly codify banks’ power to establish and maintain escrow accounts, and to clarify that the terms and conditions of escrow accounts, including the extent of any compensation paid to customers, are business decisions to be made by each bank.

First, the final rule defines an “escrow account” used by national banks as an account established in connection with a loan or extension of credit secured by a lien on interest in real estate in which the borrower places funds for the

purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property. The final rule defines “escrow accounts” in substantially similar terms in the context of Federal savings associations. One commenter supported the definition but suggested expanding it to avoid unintended gaps by adding explicit references to other terminology used to describe escrow accounts, including “reserve account” or “impound account.” The OCC believes this change would be unnecessary as the final rule defines the term “escrow account” by way of the account’s use and purpose, rather than the terminology used. Another commenter suggested expanding the rule to cover other accounts with features similar to, but distinct from, escrow accounts. The OCC will continue to monitor whether there are other instances where banks’ real estate lending powers may benefit from further regulatory clarity, but the OCC has determined not to expand the scope of the final rule at this time.

Second, the final rule codifies national banks’ escrow powers, including the flexibility such banks have as to how to organize and manage escrow accounts. Specifically, the final rule codifies that (1) the powers of national banks include establishing and maintaining escrow accounts in connection with real estate loans; and (2) the terms and conditions of such escrow accounts (including, but not limited to, the investment of escrowed funds, fees assessed for the provision of such accounts, and whether and to what extent interest or other compensation is calculated and paid to customers whose funds are placed in the escrow account) are business decisions to be made by each national bank in its discretion. The final rule codifies these powers in the context of Federal savings associations in substantially similar terms.⁵⁷

One commenter recommended that the final rule establish boundaries that protect homeowners’ escrow funds and prevent abusive or unpredictable practices. The OCC remains committed to ensuring that homeowners’ escrow funds are protected against abusive practices. The OCC has determined that sufficient statutory, regulatory, and supervisory protections and practices already exist addressing this concern and has accordingly decided that

⁵⁷ While Federal law vests banks with broad discretion, banks’ real estate lending operations may be subject to additional requirements under Federal law, and any such operations should be conducted pursuant to safe and sound banking principles and the terms of any applicable agreement with the borrower.

⁵² *M&M Leasing*, 563 F.2d at 1380.

⁵³ See Iowa Code sec. 524.905(2) (2025) (“A bank receiving funds in escrow pursuant to an escrow agreement executed in connection with a loan . . . may pay interest to the borrower on those funds.” (emphasis added)).

⁵⁴ The States and territories that require their own State-chartered banks to pay specified interest amounts on mortgage-escrow accounts include California (Cal. Civ. Code sec. 2954.8 (2025)), Connecticut (Conn. Gen. Stat. sec. 49–2a (2025)), Guam (11 Guam Code Ann. sec. 106103 (2024)); Maine (Me. Rev. Stat. Ann. tit. 9–B, sec. 429; *id.* tit. 33, sec. 504), Maryland (Md. Code Ann., Com. Law secs. 12–109, 12–109.2 (2025)), Massachusetts (Mass. Gen. Laws ch. 183, sec. 61 (2025)), Minnesota (Minn. Stat. Ann. sec. 47.20, subd. 9 (2025)), New Hampshire (N.H. Rev. Stat. Ann. sec. 383–B:3–303(a)(7)(E) (2025)), New York (N.Y. Gen. Oblig. Law sec. 5–601 (2025)), Oregon (Or. Rev. Stat. secs. 86.245, 86.250 (2025)), Rhode Island (19 R.I. Gen. Laws sec. 19–9–2 (2025)), U.S. Virgin Islands (V.I. Code tit. 9, sec. 67 (2025)), Utah (Utah Code Ann. sec. 7–17–3 (2025)), Vermont (Vt. Stat. Ann. tit. 8, sec. 10404 (2025)), and Wisconsin (Wis. Stat. secs. 138.051, 138.052 (2025)).

⁵⁵ 90 FR 61093 (Dec. 30, 2025).

⁵⁶ See *Owner-Operator Indep. Drivers Ass’n, Inc. v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 199 (D.C. Cir. 2007) (cited by the commenter).

additional regulatory requirements here would be redundant.⁵⁸

IV. Administrative Law Matters

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)⁵⁹ states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC has reviewed this final rule and determined that it does not create any new or revise any existing collections of information under the PRA.

Accordingly, no PRA submissions to OMB will be made with respect to this final rule.

Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA)⁶⁰ requires an agency, in connection with a final rule, to prepare a final regulatory flexibility analysis describing the impact of the rule on small entities (defined by the Small Business Administration for purposes of the RFA to include commercial banks and savings institutions with total assets of \$850 million or less and trust companies with total assets of \$47 million or less). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises 991 institutions (national banks, Federal savings associations, and branches or agencies of foreign banks),⁶¹ of which approximately 602 are small entities under the RFA.⁶²

In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number, and at present, 30 OCC-supervised small entities would constitute a substantial number.

While the final rule will impact a substantial number of OCC-supervised institutions, it imposes no new mandates, and thus no direct costs, on affected OCC-supervised institutions. For these reasons, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities supervised by the OCC. Accordingly, a final regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).⁶³ Under this analysis, the OCC considered whether the final rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (\$193 million as adjusted annually for inflation). Pursuant to section 202 of the UMRA,⁶⁴ if a final rule meets this UMRA threshold, the OCC prepares a written statement that includes, among other things, a cost-benefit analysis of the rule.

This final rule imposes no new mandates, and thus no direct costs, on affected OCC-supervised institutions. Therefore, the final rule will not require additional expenditure of \$193 million or more annually by any State, local, or tribal governments, in the aggregate, or by the private sector. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA)

an OCC-supervised institution as a small entity. The OCC used average quarterly assets on December 31, 2025, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.

⁶³ 2 U.S.C. 1531 *et seq.*

⁶⁴ 2 U.S.C. 1532.

of 1994,⁶⁵ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest, (1) any administrative burdens that the final rule would place on depository institutions, including small depository institutions and customers of depository institutions and (2) the benefits of the final rule. This rulemaking will not impose any reporting, disclosure, or other requirements on insured depository institutions. Therefore, section 302(a) does not apply to this final rule.

Executive Order 12866 (as Amended)

Executive Order 12866, titled "Regulatory Planning and Review," as amended, requires the Office of Information and Regulatory Affairs (OIRA), OMB, to determine whether a final rule is a "significant regulatory action" prior to the disclosure of the final rule to the public. If OIRA finds the final rule to be a "significant regulatory action," Executive Order 12866 requires the OCC to conduct a cost-benefit analysis of the final rule and for OIRA to conduct a review of the final rule prior to publication in the **Federal Register**. Executive Order 12866 defines a "significant regulatory action" to mean a regulatory action that is likely to (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, the President's priorities, or the principles set forth in Executive Order 12866.

OIRA has determined that this final rule is not a significant regulatory action under Executive Order 12866 and, therefore, is not subject to review under Executive Order 12866.

Executive Order 14192

Executive Order 14192, titled "Unleashing Prosperity Through Deregulation," requires that an agency, unless prohibited by law, identify at

⁶⁵ 12 U.S.C. 4802(a).

⁵⁸ See, e.g., 15 U.S.C. 45(a) (prohibiting unfair or deceptive acts or practices in or affecting commerce); see also 12 CFR 34.62 (requiring national banks to adopt and maintain written policies that establish appropriate limits and standards for real estate lending, including that they be consistent with safe and sound banking practices); 12 CFR part 34 appendix A to subpart D (requiring banks to establish loan administration procedures that address escrow account administration).

⁵⁹ 44 U.S.C. 3501–21.

⁶⁰ 5 U.S.C. 601 *et seq.*

⁶¹ Based on data accessed using the OCC's Financial Institutions Data Retrieval System on May 8, 2026.

⁶² The OCC bases its estimate of the number of small entities on the Small Business Administration's size thresholds for commercial banks and savings institutions, and trust companies, which are \$850 million and \$47 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify

least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation with total costs greater than zero. Executive Order 14192 further requires that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations. The final rule is not an Executive Order 14192 regulatory action because it is not significant under Executive Order 12866. Further, the final rule is a deregulatory action under Executive Order 14192 because it would provide legal clarity (and therefore a potential reduction in legal-related costs) on how banks may structure the financing of their escrow operations and whether (and, if so, to what extent) to offer any compensation to customers or assess any fee.

Congressional Review Act

For purposes of the Congressional Review Act, OMB makes a determination as to whether a final rule constitutes a “major” rule.⁶⁶ If a rule is deemed a “major rule” by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.⁶⁷

The Congressional Review Act defines a “major rule” as any rule that the Administrator of OIRA finds has resulted in or is likely to result in (1) an annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.⁶⁸

OIRA has determined that this final rule is not a major rule. As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 34

Accounting, Banks, banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

12 CFR Part 160

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Usury.

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends parts 34 and 160 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

Subpart A—General

- 1. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j–3, 1828(o), 3331 *et seq.*, 5101 *et seq.*, 5412(b)(2)(B), and 15 U.S.C. 1639h.

- 2. Amend § 34.2 by:

- a. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; and
- b. Adding a new paragraph (b).

The addition reads as follows:

§ 34.2 Definitions.

* * * * *

(b) *Escrow account* means an account established in connection with a loan or extension of credit secured by a lien on interest in real estate in which the borrower places funds for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property.

* * * * *

- 3. Amend § 34.3 by adding paragraph (d) to read as follows:

§ 34.3 General rule.

* * * * *

(d) National banks may establish or maintain escrow accounts. The terms and conditions of any such escrow account, including the investment of escrowed funds, fees assessed for the provision of such accounts, or whether and to what extent interest or other

compensation is calculated and paid to customers whose funds are placed in the escrow account, are business decisions to be made by each national bank in its discretion.

PART 160—LENDING AND INVESTMENT

- 4. The authority citation for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

- 5. Amend § 160.3 by adding the definition of “Escrow account” in alphabetical order to read as follows:

§ 160.3 Definitions.

* * * * *

Escrow account means an account established in connection with a real estate loan in which the borrower places funds for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property.

* * * * *

- 6. Amend § 160.30 by:

- a. Designating the introductory text as paragraph (a);
- b. In newly designated paragraph (a), revising the table heading; and
- c. Adding paragraph (b).

The revision and addition read as follows:

§ 160.30 General lending and investment powers of Federal savings associations.

* * * * *

Table 1 to Paragraph (a)

* * * * *

(b) Federal savings associations may establish or maintain escrow accounts. The terms and conditions of any such escrow account, including the investment of escrowed funds, fees assessed for the provision of such accounts, or whether and to what extent interest or other compensation is calculated and paid to customers whose funds are placed in the escrow account, are business decisions to be made by each Federal savings association in its discretion.

Jonathan V. Gould,

Comptroller of the Currency.

[FR Doc. 2026–10036 Filed 5–18–26; 8:45 am]

BILLING CODE 4810–33–P

⁶⁶ 5 U.S.C. 801 *et seq.*

⁶⁷ 5 U.S.C. 801(a)(3).

⁶⁸ 5 U.S.C. 804(2).



FEDERAL REGISTER

Vol. 91

Tuesday,

No. 96

May 19, 2026

Part IV

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 34

Preemption Determination: State Interest-on-Escrow Laws; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket ID OCC–2025–0735]

RIN 1557–AF45

Preemption Determination: State Interest-on-Escrow Laws

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Final rule.

SUMMARY: The OCC is issuing a preemption determination concluding that Federal law preempts State laws that restrict OCC-regulated banks' flexibility to decide whether and to what extent to pay interest or other compensation on funds placed in real estate escrow accounts; or assess fees in connection with such accounts. This preemption determination will provide much-needed clarity to banks and other stakeholders.

DATES: This final rule is effective on June 18, 2026.

FOR FURTHER INFORMATION CONTACT: Karen McSweeney, Special Counsel, Graham Bannon, Counsel, Priscilla Benner, Counsel, and Harry Naftalowicz, Attorney, 202–649–5490; Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The dual banking system, which is “made up of parallel Federal and State banking systems” that “co-exist and compete,” is foundational to the American financial system.¹ Congress designed this system to permit banks to choose the charter—State or Federal—that best fits their business needs and allows them to best serve their customers. Federal preemption, which derives from the Supremacy Clause of the U.S. Constitution, has long been recognized as fundamental to the design of the dual banking system.² It removes

barriers and creates efficiencies associated with operating under a uniform set of rules, which fosters the development of national products and services and multistate markets. This can expand access to financial services and facilitate competition, leading to lower costs and increased consumer choice. As such, Federal preemption is a critical tool for reducing unnecessary burden, enabling local and national prosperity, and unleashing economic growth. Congress has consistently reaffirmed the important role that Federal preemption plays in the dual banking system, including by codifying preemption standards for OCC-regulated banks as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)³ and extending comparable Federal preemption standards to State-chartered banks in some cases.⁴

The U.S. Department of Justice (DOJ) and the National Economic Council (NEC) recently recognized the benefits of preemption when they solicited public comment on State laws that significantly and adversely affect the national economy or interstate economic activity. The DOJ and NEC also requested public comment on solutions to address such effects, including whether such State laws are preempted by existing Federal law.⁵ This request for comment was not limited to banking but rather covered State laws that affect all parts of the American economy, consistent with the role that Federal preemption plays in many other sectors, including energy and aviation.

Given that Federal preemption has long been a critical feature of the dual banking system, the OCC is well positioned to support the Administration's preemption efforts. For example, in response to the DOJ and NEC request for comment, banking industry commenters specifically highlighted State laws that restrict banks' flexibility to decide whether and

to what extent to pay interest or other compensation on funds placed in escrow accounts (interest-on-escrow laws), observing that these laws could cause banks to increase mortgage prices or even reduce their mortgage lending.⁶ State interest-on-escrow laws may also restrict banks' flexibility to assess related fees.

While the Supreme Court considered whether Federal law preempts State interest-on-escrow laws in *Cantero v. Bank of America, N.A.*, the Court did not affirmatively decide the question but instead reaffirmed the standard for conflict preemption established in *Barnett Bank v. Nelson* and codified in Dodd-Frank.⁷ Following the Supreme Court's *Cantero* decision, several circuits have considered the issue. The U.S. Court of Appeals for the Second Circuit concluded that the relevant State interest-on-escrow law is preempted while the First and Ninth Circuits reached the opposite result, creating a circuit split.⁸ In light of ongoing litigation, there remains substantial uncertainty for stakeholders who seek to rely on longstanding principles of Federal preemption in the context of State interest-on-escrow laws. Moreover, this litigation has introduced ambiguity regarding how to evaluate National Bank Act preemption generally.⁹ To provide much-needed clarity and reaffirm these longstanding preemption principles, on December 30, 2025, the OCC proposed to issue a preemption determination addressing State interest-on-escrow laws.¹⁰ The OCC is now finalizing its preemption determination, alongside its concurrent rulemaking to codify national banks' and Federal savings associations' longstanding escrow account powers (Escrow Powers Rule).¹¹

B. Proposed Preemption Determination and Comments

The OCC proposed to conclude that (1) the National Bank Act preempts

⁶ See, e.g., Comment from Bank Policy Institute (Sept. 15, 2025); Comment from American Bankers Association (Sept. 15, 2025).

⁷ 602 U.S. 205.

⁸ Compare *Cantero v. Bank of Am., N.A.*, — F.4th —, 2026 WL 1217467 (2d Cir. May 5, 2026) (*Cantero* Remand) with *Conti v. Citizens Bank, NA*, 157 F.4th 10, 17–18 (1st Cir. 2025); *Kivett v. Flagstar Bank, FSB*, 154 F.4th 640 (9th Cir. 2025); see also *Lusnak v. Bank of Am., N.A.*, 883 F.3d 1185 (9th Cir. 2018).

⁹ For purposes of this preemption determination, references to the National Bank Act generally include 12 U.S.C. 371, which authorizes national banks to engage in real estate lending, although section 371 is part of the Federal Reserve Act.

¹⁰ *Preemption Determination: State Interest-on-Escrow Laws*, 90 FR 61093 (Dec. 30, 2025).

¹¹ The OCC's final Escrow Powers Rule is published elsewhere in this issue of the **Federal Register**.

¹ *Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 209–10 (2024).

² See *Barnett Bank v. Nelson*, 517 U.S. 25 (1996); *Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299, 314–15 (1978) (stating that when Congress enacted the National Bank Act over 150 years ago, it “intended to facilitate . . . a ‘national banking system.’”

(quoting Cong. Globe, 38th Cong., 1st Sess., 1451 (1864)); see also *Easton v. Iowa*, 188 U.S. 220, 229 (1903) (observing that Federal legislation and regulation “has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States.”); *id.* at 231 (“It thus appears that Congress has provided a symmetrical and complete scheme for the banks to be organized under the provisions of the [National Bank Act].”).

³ See, e.g., 12 U.S.C. 25b.

⁴ See, e.g., 12 U.S.C. 1831a(j).

⁵ *Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce*, 90 FR 39427 (Aug. 15, 2025).

section 5–601 of New York’s General Obligations Law, the State’s interest-on-escrow law; (2) eleven other States have laws with substantively equivalent terms;¹² and (3) these substantively equivalent State laws are also preempted.¹³ The OCC’s proposal reflected the agency’s conclusion that State interest-on-escrow laws prevent or significantly interfere with a national bank’s exercise of its Federally authorized powers, consistent with Dodd-Frank and relevant Supreme Court precedent. The OCC also explained that its proposed preemption determination would complement the OCC’s concurrent proposed Escrow Powers Rule,¹⁴ stating that if the concurrent Rule were finalized, State interest-on-escrow laws would directly conflict with the Federal power addressed therein and would thus be preempted. The OCC received approximately 20 comments on its proposed preemption determination from a variety of stakeholders, including banks, trade associations, members of Congress, consumer groups, academics, State representatives, and individuals.¹⁵

Commenters who supported the proposal stated that it would, among other things, (1) be consistent with Federal law, which already preempts State interest-on-escrow laws; (2) provide helpful clarity; (3) support uniformity; and (4) reduce operational complexity. They also observed that these State laws can increase mortgage prices and decrease mortgage availability, especially for lower-income borrowers.¹⁶ These commenters also

noted that the proposal would support a stable and accessible mortgage market.

Commenters who opposed to the proposal raised a variety of legal and policy objections, including that the preemption determination (1) incorrectly applies the *Barnett* standard; (2) reflects an inaccurate reading of one or more of the *Barnett* antecedent cases cited in *Cantero*; and (3) does not comply with the requirements of 12 U.S.C. 25b. These commenters also raised concerns regarding the effects of the proposal, including on competitive equality between different types of mortgage lenders, mortgage affordability, consumer protection, fairness, and litigation risk for banks that fail to comply with these State laws.¹⁷ Key themes raised by commenters are addressed below.

Preemption standard. Many commenters provided their views on the *Barnett* standard and its application to State interest-on-escrow laws. For example, several commenters asserted that these State laws are not preempted, that the OCC has not properly understood and applied *Barnett*’s antecedent cases, and that the OCC has not demonstrated that compliance with State interest-on-escrow laws would result in net losses related to escrow account administration.¹⁸ Other commenters agreed with the OCC conclusions on preemption but suggested some changes, including

including at a rate of over 100 percent for lower-income borrowers, and that origination fees fell substantially post-repeal, as compared to other similarly situated States.

¹⁷ The OCC has carefully considered the policy issues raised by these commenters and believes that this rule, in conjunction with the agency’s concurrent Escrow Powers Rule, is consistent with applicable law and provides important clarity to stakeholders. The OCC also believes that there is a robust Federal framework to protect consumers. While these rules are likely to impact certain mortgage borrowers, the flexibility that they provide to institutions (including the flexibility to reduce borrower costs in other areas in lieu of providing minimal interest on escrow accounts) will help to support efficient and effective mortgage lending, which ultimately inures to the benefit of U.S. consumers and the economy.

¹⁸ Some commenters asserted that 15 U.S.C. 1639d, which addresses escrow account requirements for certain mortgages, evinces broad congressional intent to require national banks to comply with State interest-on-escrow laws, including for escrow accounts outside the scope of the statute. The OCC disagrees with these commenters. Section 1639d is not limited to national banks but rather applies to a wide variety of creditors, including many that are State regulated. Section 1639d’s references to State law are thus best understood to reflect Congress’s intent to ensure that State law continues to apply to other creditors. Furthermore, Congress simultaneously enshrined the *Barnett* standard in 12 U.S.C. 25b, and nothing in section 1639d supports the contention that the same Congress intended to obliquely overturn or modify this standard as applied to national banks’ escrow accounts.

recommending that the OCC emphasize that the *Barnett* standard does not require financial harm. The OCC’s preemption determination reflects the agency’s application of the *Barnett* standard based on its careful review of Dodd-Frank and relevant precedent. This standard does not require the OCC or a national bank to demonstrate that compliance with State interest-on-escrow laws would cause financial harm. Requiring such a showing would make application of the *Barnett* standard variable, unpredictable, and ultimately unworkable because it would turn on multiple changing factors, such as bank size and activity, economic conditions, and geography. There is no support for this contention in *Cantero*, *Barnett*, or *Barnett*’s antecedent cases. Rather, preemption is fundamentally a question of law that includes consideration of *Barnett* and its antecedent cases, as well as “the text and structure of the laws, comparison to other precedents, and common sense.”¹⁹

Field preemption. Some commenters viewed the OCC preemption determination as applying a field preemption standard to State interest-on-escrow laws, which Congress expressly rejected in Dodd-Frank. Contrary to these commenters’ assertions, this preemption determination is based on a case-by-case application of the National Bank Act’s conflict preemption standard, which was articulated by the Supreme Court in *Barnett*, codified in Dodd-Frank, and reaffirmed by the Supreme Court in *Cantero*. It addresses State interest-on-escrow laws specifically and is based on the OCC’s conclusion that these laws prevent or significantly interfere with a national bank’s exercise of its Federally authorized powers.

Preemption precedent generally. Some commenters asserted that the OCC cannot rely on certain Supreme Court precedents that were not cited in *Cantero* or on pre-*Cantero* decisions issued by lower courts. The OCC continues to believe that it has appropriately cited these cases. More generally, preemption precedent that applies the *Barnett* standard continues to be good law, regardless of whether the precedent pre-dates *Cantero*. *Cantero* itself emphasized the role of precedent in analyzing National Bank Act preemption, and there is no basis to conclude that it intended to silently overturn decades of well-developed case

¹² The OCC also requested comment on whether any additional State laws have substantively equivalent terms.

¹³ The analysis in the proposed preemption determination focused on national bank powers and preemption of State interest-on-escrow laws by the National Bank Act. However, the Home Owners’ Loan Act of 1933 (HOLA) directs courts to apply “the laws and legal standards applicable to national banks” in determining whether Federal law preempts State regulation of Federal savings associations. 12 U.S.C. 1465(a). As such, the OCC’s proposed and final analyses apply equally to Federal savings associations and preemption by the HOLA.

¹⁴ *Real Estate Lending Escrow Accounts*, 90 FR 61099 (Dec. 30, 2025).

¹⁵ Several commenters requested that the OCC extend the comment period, which the OCC declined to do. The OCC determined that the original comment period provided a meaningful opportunity to comment consistent with the requirements of the Administrative Procedure Act and that its preemption determination should be finalized as expeditiously as possible. The volume and range of comments the OCC received on the proposal is consistent with the OCC’s conclusion that the comment period was sufficient.

¹⁶ For example, one commenter provided a case study of Iowa’s repeal of its mandatory interest-on-escrow requirement, which concludes that the majority of interest payments pre-repeal were passed on to consumers via higher origination fees,

¹⁹ *Cantero*, 602 U.S. at 220 n.3; see also *Cantero* Remand, 2026 WL 1217467, at *6, n.5.

law applying *Barnett*.²⁰ Moreover, many of the decisions that commenters objected to have been cited in relevant Supreme Court precedent or other recent lower court decisions.

Interest-on-escrow precedent. Several commenters asserted that the OCC's preemption determination ignores or is otherwise inconsistent with decisions in the First and Ninth Circuits addressing whether the National Bank Act preempts State interest-on-escrow laws. As explained throughout this preemption determination, the OCC believes its analysis and conclusions are fully consistent with Supreme Court precedent. Moreover, the analysis and conclusions are consistent with the First Circuit's decision, which concluded that State laws are preempted where there is a direct or obvious conflict with State law.²¹ In addition, following the close of the comment period, the Second Circuit concluded that the National Bank Act preempts New York's interest-on-escrow law. The OCC's proposed analysis is consistent with the Second Circuit's decision, which cited both the OCC's proposed preemption determination and proposed Escrow Powers Rule.

Compliance with procedural requirements of Dodd-Frank. Multiple commenters addressed the OCC's compliance with the procedural requirements of Dodd-Frank (codified at 12 U.S.C. 25b). For example, some asserted that the OCC did not comply with the requirement to act on a case-by-case basis, including because it did not engage in a sufficiently particularized assessment of the relevant State laws. Others recommended that the OCC clarify the meaning of case-by-case. Commenters also asserted that the OCC's preemption determination was not supported by

substantial evidence. Some also suggested that the OCC could strengthen its analysis by including more data. As the proposal and this final determination make clear, the OCC has complied with the requirements of section 25b. National Bank Act preemption is fundamentally a question of law, and this final preemption determination includes ample analysis to support its conclusion.²² The OCC has added more detail to its discussion of these statutory requirements where appropriate to provide clarity.

Comments on regulatory text. The OCC also received comments recommending specific changes to its proposed regulatory text, which would have provided: "The OCC has determined that federal law preempts state laws that eliminate a national bank's or Federal savings association's flexibility to decide whether and to what extent to pay interest or other compensation on funds placed in escrow accounts or assess fees for such accounts, including" the twelve listed State interest-on-escrow laws and any other State law with substantively equivalent terms. First, commenters requested that the OCC revise its preemption determination to clarify that it applies to State interest-on-escrow laws that "restrict" flexibility, not only those that "eliminate" it. The OCC agrees and has amended its final preemption determination accordingly. Consistent with the analysis in the OCC's proposed preemption determination and the OCC's concurrently proposed Escrow Powers Rule, a State interest-on-escrow law does not need to completely remove all flexibility to be preempted.

Second, commenters recommended that the OCC expand the preemption determination to include the interest-on-escrow laws in Guam and the U.S. Virgin Islands. The OCC agrees that these interest-on-escrow laws both have substantively equivalent terms to New York's interest-on-escrow law, and the OCC has incorporated these laws into its preemption determination.²³ Third, some commenters raised concerns with

the proposed inclusion of language providing that any other State law with substantively equivalent terms is preempted. The OCC included this placeholder language in its proposal to reflect the possibility that commenters might identify additional State interest-on-escrow laws for potential inclusion in the final preemption determination, a topic on which the OCC specifically requested comment. Now that commenters have addressed this issue, the placeholder language is no longer necessary. The OCC has removed it from the final regulatory text.²⁴

Additional State laws. Commenters also recommended that the OCC expand the scope of its proposed preemption determination to address State laws that impose other kinds of requirements on escrow accounts or require the payment of interest on funds held by national banks in other similar circumstances. The OCC declines to expand the scope of this preemption determination beyond State interest-on-escrow laws, which are the focus of this issuance. However, the OCC will continue to assess whether to issue additional preemption determinations, including with respect to the other State laws highlighted by commenters, as appropriate.

After carefully considering these comments, the OCC is issuing this final preemption determination, which concludes that (1) the National Bank Act preempts section 5–601 of New York's General Obligations Law, the State's interest-on-escrow law; (2) thirteen other States have laws with substantively equivalent terms; and (3) these substantively equivalent State laws are also preempted.²⁵ The OCC has made clarifying changes to this final preemption determination as appropriate.

II. Final Preemption Determination

A. New York Interest-on-Escrow Law

Section 5–601 of New York's General Obligations Law requires "mortgage investing institutions" to pay

²⁰ *Id.* (stating that *Barnett* and its antecedents were based on consideration of "comparison to other precedents"); see also *id.* at 215–16 ("[C]ourts addressing preemption questions in this context must . . . take account of those prior decisions of this Court and similar precedents.").

²¹ See *Conti*, 157 F.4th at 17–18. While this preemption determination is consistent with this standard, the OCC also emphasizes that the National Bank Act preempts State laws that prevent or significantly interfere with a national bank's exercise of its Federally authorized powers, regardless of whether those powers are specifically enumerated or incidental; enumerated powers do not have some greater preemptive effect than those that are incidental. See *Barnett*, 517 U.S. at 32 (concluding that "grants of both enumerated and incidental 'powers' to national banks . . . [are] not normally limited by, but rather ordinarily preempt[]", contrary state law"); see also *Cantero*, 602 U.S. at 215 (quoting this language from *Barnett*); *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 19, 20 (2007) ("[W]hen state prescriptions significantly impair the exercise of authority, enumerated or incidental under the [National Bank Act], the State's regulations must give way."), superseded by statute on other grounds, 12 U.S.C. 25b.

²² Another commenter alleged that the OCC failed to provide technical studies and data supporting its proposed preemption determination. Relevant caselaw requires that agencies disclose technical studies, when such studies form the basis of a proposed rule, in order to give the public adequate opportunity to provide comment. See *Owner-Operator Indep. Drivers Ass'n, Inc. v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 199 (D.C. Cir. 2007) (cited by the commenter). The OCC has not relied on any technical studies or data for its analysis in this preemption determination, nor is it required to do so.

²³ For purposes of this preemption determination, the term "State" includes Guam and the U.S. Virgin Islands.

²⁴ The OCC notes, however, that the same preemption standard and analysis would apply to other State interest-on-escrow laws that have substantively equivalent terms even if they are not specifically incorporated into this final preemption determination.

²⁵ As noted above, the Second Circuit recently issued a decision concluding that Federal law preempts New York's interest-on-escrow law. See *Cantero Remand*, 2026 WL 1217467. Nonetheless, the OCC has decided to retain this structure, including the discussion and focus on the New York law, in this final preemption determination to maintain consistency with the proposal and clarity. Regardless of this focus, however, the preemption analysis set forth herein applies equally to the thirteen other laws with substantively equivalent terms.

“dividends or interest at a rate of not less than two per centum per year . . . or a rate prescribed by the [New York] superintendent of financial services” on escrow account balances. This statutory obligation applies whenever the institution “maintains an escrow account pursuant to any agreement executed in connection with a mortgage on any one to six family residence occupied by the owner or on any property owned by a cooperative apartment corporation” located in New York.²⁶ This New York law also requires the institution to credit the interest to the escrow account on a quarterly basis, and it generally prohibits the assessment of a service charge in connection with maintaining an escrow account.²⁷ Accordingly, this New York interest-on-escrow law purports to require national banks to pay a specific amount of interest on funds placed in an escrow account maintained in connection with a covered mortgage and to prohibit them from charging related fees except in limited circumstances.

B. Standard for National Bank Act Preemption

The U.S. Constitution provides that Federal law is the supreme law of the land and contrary State law is preempted.²⁸ In applying this principle, the Supreme Court has identified several ways in which Federal law may preempt State law, including when there is a conflict.²⁹ In *Barnett*, the Supreme Court clarified the standard for conflict preemption in the national banking context, holding that State law is preempted when it prevents or significantly interferes with a national bank’s exercise of its Federal powers.³⁰ The *Barnett* Court also stated that Federal grants of authority in the national banking context are “not normally limited by, but rather ordinarily pre-empt[], contrary state law.”³¹

In 2024, in *Cantero*, the Supreme Court reaffirmed the *Barnett* standard and explained that its application must be based on “a practical assessment of

the nature and degree of the interference caused by a state law.”³² This assessment may include consideration of *Barnett* and its antecedents and be based on “the text and structure of the laws, comparison to other precedents, and common sense.”³³ In addition to *Barnett*, the *Cantero* Court specifically discussed six antecedent cases, noting that they “furnish content” regarding the *Barnett* standard.³⁴

In *Barnett*, the Supreme Court evaluated whether the National Bank Act preempted a Florida law that prohibited national banks from selling insurance. Federal law permitted national banks to sell insurance in small towns. Holding that this authority vested national banks with “a broad, not a limited” power and was “without relevant qualification,” the Court concluded that the Federal law preempted the State law.³⁵

In *Fidelity Federal Savings & Loan Association v. de la Cuesta*, the Supreme Court considered a California law that limited when a Federal savings and loan association could exercise a due-on-sale clause. A Federal regulation recognized the power of Federal savings and loans to include these clauses in mortgage contracts and specifically provided these institutions with the flexibility to decide when to exercise them. Finding that the State law limitations would interfere with this flexibility, which was critical to the Federal scheme, the *Fidelity* Court concluded that the State law was preempted.³⁶

In *Franklin National Bank of Franklin Square v. New York*, the Supreme Court considered a New York law that prohibited banks from using the word “saving” or its variants in advertising and business.³⁷ Federal law granted national banks the express power to accept savings deposits and the incidental power to advertise. Because the State law interfered with national banks’ ability to exercise these powers

“effectively” and “efficiently,” it was preempted.³⁸

In *First National Bank of San Jose v. California*, the Supreme Court considered a California dormant account law that included an expedited process for escheating deposits to the State.³⁹ The Court found that the State law qualified national banks’ deposit-taking authority in an “unusual” way. As such, the Court held that the State law was preempted.

The Supreme Court has also recognized that when a State law does not prevent or significantly interfere with the national bank’s exercise of its powers, it is not preempted.⁴⁰ For example, in *Anderson National Bank v. Lockett*, the Supreme Court contrasted the California dormant account law addressed in *San Jose* with a more conventional dormant account law in Kentucky. The Supreme Court found that the Kentucky law was not preempted, including because it applied a rule that was as “old as the common law itself.”⁴¹ The *Anderson* Supreme Court noted that the State law addressed the transfer and devolution of property in the State,⁴² a kind of generally applicable State “infrastructure” law that is typically not preempted.⁴³

In *McClellan v. Chipman*, the Supreme Court considered a Massachusetts law that prohibited certain transfers of property. The Court’s decision recognized that national banks are subject to general State laws in their “dealings and contracts,” unless those laws expressly conflict with Federal law, frustrate the purpose of national banks, or impair their ability to efficiently exercise their Federally authorized powers. Finding that the Massachusetts law was generally applicable and national banks were subject to no greater conditions and restrictions than other Massachusetts citizens, the *McClellan* Court held that the State law was not preempted.⁴⁴ Similarly, in *First National Bank v. Kentucky*, the Supreme Court held that a Kentucky tax law was not preempted,

²⁶ N.Y. Gen. Oblig. Law 5–601.

²⁷ *Id.*

²⁸ U.S. Const. art. VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

²⁹ See *Barnett*, 517 U.S. at 25.

³⁰ *Id.* at 33; see 12 U.S.C. 25b.

³¹ *Barnett*, 517 U.S. at 32. As this language in *Barnett* reflects, there is no presumption against preemption in the context of National Bank Act preemption. See, e.g., *Bank of Am. v. City & County of San Francisco*, 309 F.3d 551, 558 (9th Cir. 2002).

³² *Cantero*, 602 U.S. at 219–20.

³³ *Id.* at 219–21 and n.3.

³⁴ *Id.* at 219–20 (citing *Fid. Fed. Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S. 141 (1982); *Franklin Nat’l Bank of Franklin Square v. New York*, 347 U.S. 373 (1954); *First Nat’l Bank of San Jose v. California*, 262 U.S. 366 (1923); *Anderson Nat’l Bank v. Lockett*, 321 U.S. 233 (1944); *McClellan v. Chipman*, 164 U.S. 347 (1896); *First Nat’l Bank v. Kentucky*, 76 U.S. 353 (1869)). The Court also stated that “courts addressing preemption questions in this context must do as *Barnett Bank* did and likewise take account of those prior decisions of this Court and similar precedents.” *Id.* at 215–16.

³⁵ *Barnett*, 517 U.S. at 32.

³⁶ 458 U.S. at 159.

³⁷ 347 U.S. at 373.

³⁸ *Cantero*, 602 U.S. at 216 (discussing *Franklin*). The Supreme Court’s preemption analysis in *Franklin* did not turn on a distinction between the express Federal power and the incidental Federal power.

³⁹ 262 U.S. at 366–67, 370.

⁴⁰ *Barnett*, 517 U.S. at 33–34.

⁴¹ 321 U.S. at 251–52.

⁴² *Id.* at 248.

⁴³ See 12 CFR 7.4007(c)(5), 7.4008(e)(5), and 34.4(b)(6). The differing outcomes in *San Jose* and *Anderson*, which both addressed State dormant account laws, demonstrate that even generally applicable State infrastructure laws may be preempted if they prevent or significantly interfere with a national bank’s exercise of its Federally authorized powers.

⁴⁴ 164 U.S. at 357–61.

noting that national banks are generally subject to State laws on contracts, the acquisition and transfer of property, and the right to collect and be sued for debts.⁴⁵

While the Supreme Court precedent discussed above does “not purport to establish a clear line to demarcate” which State laws are and are not preempted by Federal law, they offer a lens through which the standard comes into focus.⁴⁶ Specifically, these cases demonstrate that, at a minimum, a State law prevents or significantly interferes with a Federal power when it interferes with critical flexibility granted to a national bank under Federal law, interferes with a national bank’s effectiveness or efficiency in exercising its Federal power, or qualifies a Federal power in an unusual way.⁴⁷ In contrast, as discussed above, generally applicable infrastructure laws typically apply to national banks, unless they prevent or significantly interfere with a national bank’s exercise of its Federally authorized powers.

C. 12 U.S.C. 25b and State Consumer Financial Laws

As part of Dodd-Frank, Congress addressed National Bank Act preemption, primarily with respect to “State consumer financial laws,”⁴⁸ such as State interest-on-escrow laws.⁴⁹ In particular, section 25b codified the *Barnett* standard,⁵⁰ expressly recognized

the OCC’s role in preemption, and established procedural requirements for OCC “preemption determinations.”⁵¹

Specifically, Dodd-Frank provides that the OCC may issue a preemption determination by regulation or order on a case-by-case basis, which means that the determination may address the impact of (1) a particular State consumer financial law; and (2) the law of any other State with substantively equivalent terms. When making a determination that the law of another State has substantively equivalent terms, the OCC must first consult with the Consumer Financial Protection Bureau (CFPB) and take its views into account. This provision makes clear that the OCC can address multiple State laws in one preemption determination and is not required to engage in a separate law-by-law preemption analysis. Moreover, by its express language, section 25b does not require these State laws to have identical terms, only terms that are substantively equivalent.

In addition, Dodd-Frank requires that “substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption . . . in accordance with” *Barnett*.⁵² Consistent with the Supreme Court’s directive in *Cantero*, a finding of preemption under *Barnett* is based on an assessment of that decision and its antecedent cases, as well as “the text and structure of the laws, comparison to other precedents, and common sense.”⁵³ The analysis is “broadly legal and not factual in nature”⁵⁴ and does not require “evidence of a law’s real-world effects.”⁵⁵

D. Analysis of New York’s Interest-on-Escrow Law

National banks are “necessarily subject to the paramount authority of the United States.”⁵⁶ At the center of this system is a Federal framework for regulation and supervision that authorizes national banks to engage in the business of banking and ensures that they operate in a safe and sound manner, comply with applicable law, provide fair access to financial services, and treat customers fairly.⁵⁷

Real estate lending has been core to the business of national banks for over 100 years. Congress has specifically authorized national banks to “make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate, subject to [12 U.S.C. 1828(o)] and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.”⁵⁸ Much like the Federal power addressed in *Barnett*, national banks’ real estate lending authority is a “broad, not a limited” authorization that is “without relevant qualification.”⁵⁹ As such, it is a grant of authority “not normally limited by, but rather ordinarily pre-empting, contrary state law.”⁶⁰

Frequently, national banks offer or require borrowers to establish escrow accounts when they make real estate loans. These escrow accounts serve a variety of purposes, including protecting the priority of the bank’s security interest in the property that collateralizes the loan, maintaining appropriate insurance on the property, and simplifying expenses and budgeting for the borrower.⁶¹ When a national bank establishes and maintains an escrow account, it makes a variety of decisions that collectively allow the bank to balance these costs and risks with the benefits of such accounts.

⁴⁵ 76 U.S. at 262–63. The Court also stated that the State law “in no manner hinder[ed]” the national bank and imposed “no greater interference with the functions of the bank than any other legal proceeding.” *Id.*

⁴⁶ *Cantero*, 602 U.S. at 215.

⁴⁷ As the First Circuit recently observed, certain State laws, such as those that interfere with flexibility that Federal law specifically grants to banks, can create an “obvious” or direct conflict that results in preemption. *Conti*, 157 F.4th at 17–18; see *supra* n.21.

⁴⁸ A State consumer financial law is “a State law that does not directly or indirectly discriminate against national banks and that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.” 12 U.S.C. 25b(a)(2).

⁴⁹ See *Cantero*, 602 U.S. at 213 (noting that Dodd-Frank established the controlling preemption standard for State consumer financial laws “like New York’s interest-on-escrow law”).

⁵⁰ This codification did not create a new standard but rather incorporated the conflict preemption standard reflected in *Barnett*. *Id.* at 214 n.2 (“Dodd-Frank adopted *Barnett* Bank, and . . . *Barnett* Bank was also the governing preemption standard before Dodd-Frank.”); see also OCC, *Interpretive Letter No. 1173* (Dec. 18, 2020); *Office of Thrift Supervision Integration; Dodd-Frank Act Implementation*, 76 FR 43549, 43555 (July 21, 2011). Section 25b also includes two other preemption standards for State consumer financial laws: when the State law has a discriminatory effect and when it is preempted by other Federal law (including 12 U.S.C. 371). 12 U.S.C. 25b(b)(1)(A) and (C).

⁵¹ A “preemption determination” refers to an OCC regulation or order that concludes that a State consumer financial law is preempted in accordance with the *Barnett* standard under section 25b(b)(1)(B).

⁵² 12 U.S.C. 25b(c). Dodd-Frank also requires the OCC to (1) publish a list of preemption determinations then in effect at least quarterly; and (2) conduct periodic reviews of each determination that Federal law preempts a State consumer financial law. See 12 U.S.C. 25b(d), (g). The OCC will comply with these requirements at the appropriate time. In addition, 12 U.S.C. 43 imposes procedural requirements on the OCC when it takes certain preemption actions, including requiring the OCC to provide notice of the issue in the **Federal Register** and give interested parties at least 30 days to submit written comments.

⁵³ *Cantero*, 602 U.S. at 220 n.3.

⁵⁴ *Ill. Bankers Ass’n v. Raoul*, -FEFF;-FEFF- F. Supp. 3d -FEFF;-FEFF-, 2026 WL 371196, at *5 (N.D. Ill. Feb. 10, 2026), *vacated on other grounds*, 2026 WL 1291987, at *1 (7th Cir. May 8, 2026).

⁵⁵ *Cantero Remand*, 2026 WL 1217467, at *6, n.5 (stating that none of the Supreme Court’s preemption cases consider “evidence of a state law’s ‘real-world consequences upon banks’”).

⁵⁶ *Davis v. Elmira Sav. Bank*, 161 U.S. 275, 283 (1896).

⁵⁷ Congress expressly charged the OCC with ensuring that these goals are met. 12 U.S.C. 1(a).

⁵⁸ 12 U.S.C. 371; see also 12 U.S.C. 24(Seventh) (vesting banks with additional powers). Congress has progressively expanded national banks’ real estate lending powers under section 371. Initially limited to loans on farm land (sec. 24, Pub. L. 63–43, 38 Stat. 251, 273 (1913)), Congress amended the law to include limited general real estate lending in 1916 (Pub. L. 64–270, 39 Stat. 752, 754–55 (1916)) and, through the years, removed all limits and conditions on real estate lending other than those prescribed by the Comptroller (sec. 403, Pub. L. 97–320, 96 Stat. 1469, 1510–11 (1982)). The statute’s grant of authority to the OCC to establish applicable restrictions and requirements does not reflect Congressional intent to limit this power.

⁵⁹ *Barnett*, 517 U.S. at 32; see also *Cantero*, 602 U.S. at 215.

⁶⁰ *Barnett*, 517 U.S. at 32.

⁶¹ *Cantero*, 602 U.S. at 210–11.

Flexibility in structuring the terms and conditions of such accounts is critical to help ensure that banks can effectively and efficiently use escrow accounts, which are a crucial risk mitigation tool that supports safe and sound lending. The OCC has long recognized this principle, including in its *Interagency Guidelines for Real Estate Lending*.⁶² These Guidelines state that each insured depository institution should establish loan administration procedures for its real estate portfolio that address “Escrow administration,” along with other core aspects of the lending arrangements. However, the Guidelines give banks substantial flexibility in how they address these topics.

Further, the OCC is concurrently issuing its final Escrow Powers Rule to codify national banks’ longstanding authority to establish and maintain escrow accounts and their flexibility to make informed business decisions about how to effectively and efficiently set the terms and conditions of their escrow accounts. Specifically, the Escrow Powers Rule clarifies that the terms and conditions of any such escrow account, including the investment of escrowed funds, fees assessed for the provision of such accounts, or whether and to what extent interest or other compensation is calculated and paid to customers whose funds are placed in the escrow account, are business decisions to be made by each national bank in its discretion. The Escrow Powers Rule thus makes express national banks’ broad, federally authorized power to “offer and set the terms of mortgage-escrow accounts.”⁶³

Contrary to the flexibility granted by Federal law, New York’s interest-on-escrow law dictates a minimum interest a national bank must pay on funds held in escrow accounts and generally prohibits the national bank from assessing related service charges, regardless of whether paying this interest or assessing such charges is consistent with the bank’s business judgment. As such, the nature and degree of interference with a national bank’s Federally authorized powers caused by the New York interest-on-escrow law is “more akin” to the interference identified in at least three of the antecedent cases where the Court found preemption: *Barnett*, *Franklin*, and *Fidelity*.⁶⁴

Fidelity is particularly apt. In that case, a Federal regulation provided each Federal savings and loan association with authority to exercise contractual due-on-sale clauses “at its option” and stated that the exercise of such option was “exclusively governed by the terms of the loan contract.”⁶⁵ A California State law forbade a Federal savings and loan association from exercising due-on-sale clauses at its option and “deprived the lender of the ‘flexibility’” given to it by Federal law.⁶⁶ As such, the Federal regulation preempted the State law.⁶⁷

Similarly, in *Barnett*, the State law forbade banks from engaging in a power that Congress had expressly authorized (selling insurance in small towns), and in *Franklin*, the State law prohibited banks from using the word “savings” in advertising, even though Congress had specifically authorized banks to receive “savings deposits.”⁶⁸ In both cases, these State laws conflicted with Federal law and were preempted. Other Federal courts have repeatedly reached similar conclusions where State law would prohibit national banks from exercising the flexibility granted to them by Federal law, including as codified in OCC regulations addressing both enumerated powers and powers that are part of or incidental to the business of banking.⁶⁹

Fidelity as creating a direct or obvious conflict). Moreover, New York’s interest-on-escrow law is not analogous to the cases where the Court did not find preemption: *Anderson, Kentucky*, and *McClellan*. As discussed above, these cases focus on State laws of general applicability. Accordingly, these cases have limited relevance to State interest-on-escrow laws. See *Conti*, 157 F.4th at 20 (describing State interest-on-escrow laws as “banking-specific”); *Cantero Remand*, 2026 WL 1217467, at *7 (“New York’s law is not generally applicable. . . . That characteristic differentiates it from the non-preempted laws in *McClellan* and *Anderson*.”).

⁶⁵ *Fid. Fed. Sav. & Loan Ass’n*, 458 U.S. at 146–47 (quoting 12 CFR 545.8–3(f) (1982)).

⁶⁶ *Id.* at 155 (quoting 12 CFR 556.9(f)(1) (1982)).

⁶⁷ *Id.*, *Conti*, 157 F.4th at 28; see also *Cantero*, 602 U.S. at 217 (observing that “[t]he California law thus interfered with ‘the flexibility given’ to the savings and loan by” the regulation).

⁶⁸ See *Franklin*, 347 U.S. at 374 (emphasis added).

⁶⁹ See, e.g., *Gutierrez v. Wells Fargo Bank, NA*, 704 F.3d 712, 723, 730 (9th Cir. 2012) (holding that “[b]oth the ‘business of banking’ and the power to ‘receive[] deposits’ necessarily include the power to post transactions” and that a State law purporting “to dictate a national bank’s order of posting” is preempted (second alteration in original) (quoting 12 U.S.C. 24)), abrogated in part on other grounds by *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021); *Baptista v. JPMorgan Chase Bank, N.A.*, 640 F.3d 1194, 1198 (11th Cir. 2011) (“The state’s prohibition on charging fees to non-account-holders, which reduces the bank’s fee options by 50%, is in substantial conflict with federal authorization to charge such fees.”); *Monroe Retail, Inc. v. RBS Citizens, N.A.*, 589 F.3d 274, 284 (6th Cir. 2009) (holding that the State law would “‘significantly interfere’ not only with the [b]anks’ ability to collect and set their service fees, but also with the [b]anks’ federal authority to complete other transactions and

Moreover, while the State law at issue in *Franklin* prohibited the use of a particular congressionally recognized term, the decision reflects a more holistic assessment of the nature and degree of interference caused by the State law based on the view that national banks must be permitted to effectively and efficiently exercise the full range of powers granted to them by Congress.⁷⁰ Given the role of advertising in modern business, the Court concluded that “[i]t would require some affirmative indication to justify an interpretation that would permit a national bank to engage in a business” but give them “no right to let the public know about it.”⁷¹ That is, the power to advertise savings accounts emanated from the power to receive savings deposits, even if it was not explicitly enumerated.⁷² Because the State law

balance their accounts” (citation omitted)); *Wells Fargo Bank of Tex. NA v. James*, 321 F.3d 488, 495 (5th Cir. 2003) (“[N]ational banks are authorized by federal regulation 12 CFR 7.4002(a) to charge non-account holding payees a check-cashing fee. Thus, because [the State law] prohibits the exercise of a power which federal law expressly grants the national banks, [it] is in irreconcilable conflict with the federal regulatory scheme, and it is preempted by operation of the Supremacy Clause.”); *Bank of Am. v. City & County of San Francisco*, 309 F.3d at 564 (“[T]he National Bank Act and OCC regulations together preempt conflicting state limitations on the authority of national banks to collect fees for provision of deposit and lending-related electronic services.”).

⁷⁰ See *Conti*, 157 F.4th at 18; see also *Rose v. Chase Bank, USA, N.A.*, 513 F.3d 1032, 1037–38 (9th Cir. 2008) (concluding that, under *Barnett* and *Franklin*, State disclosure requirements on certain credit products known as convenience checks are preempted based on their interference with a national bank’s exercise of its lending power, even though such disclosures did not directly affect the terms of the bank’s lending); *Parks v. MBNA Am. Bank, N.A.*, 278 P.3d 1193, 1200 (Cal. 2012) (“However, to say that [a national bank] may offer convenience checks so long as it complies with [state disclosure laws on certain credit products] is equivalent to saying that [the bank] may not offer convenience checks unless it complies with [the State law]. Whether phrased as a conditional permission or as a contingent prohibition, the effect of [the State law] is to forbid national banks from offering credit in the form of convenience checks unless they comply with state law.”).

⁷¹ *Franklin*, 347 U.S. at 377–78.

⁷² This view of national bank powers is consistent with Supreme Court precedent recognizing that national banks are entitled to exercise National Bank Act powers inherent in the operation of the business of banking. See *NationsBank of N.C., N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251, 258, n.2 (1995) (“We expressly hold that the ‘business of banking’ is not limited to the enumerated powers in § 24 Seventh and that the Comptroller therefore has discretion to authorize activities beyond those specifically enumerated.”); see also *M & M Leasing Corp. v. Seattle First Nat’l Bank*, 563 F.2d 1377, 1382 (9th Cir. 1977) (“[T]he National Bank Act did not freeze the practices of national banks in their nineteenth century forms. . . . [W]hatever the scope of such powers may be, we believe the powers of national banks must be construed so as to permit the use of new ways of conducting the very old business of banking.”); 12 CFR 7.1000.

⁶² See 12 CFR part 34 appendix A to subpart D.

⁶³ See *Cantero Remand*, 2026 WL 1217467, at *1.

⁶⁴ *Cantero Remand*, 2026 WL 1217467, at *9

(“New York’s interest-on-escrow law is preempted because it is ‘akin to’ the laws the Supreme Court has struck down for significantly interfering with a national bank’s powers.”) (citations omitted); *Conti*, 157 F.4th at 15, 17–18 (categorizing each of the laws or regulations at issue in *Barnett*, *Franklin*, and

prohibited banks from “using the commonly understood description,” it interfered with banks’ ability to “effectively” and “efficiently” exercise their power to advertising and was preempted.⁷³

These cases make clear that New York’s interest-on-escrow law prevents or significantly interferes with a national bank’s exercise of Federally authorized powers. The conflict is especially clear in light of the OCC’s concurrent Escrow Powers Rule.⁷⁴ Much like *Fidelity*, *Barnett*, and *Franklin*, compliance with this New York law would forbid national banks from exercising discretion regarding the payment of interest-on-escrow and the assessment of related fees and thus deprive them of the flexibility granted by Federal law and confirmed by the OCC’s concurrent Escrow Powers Rule.⁷⁵ As such, New York’s interest-on-

escrow law creates a direct conflict with the broad Federally authorized powers expressly codified in the OCC’s concurrent Escrow Powers Rule.

In addition, much like the State law in *Franklin*, New York’s interest-on-escrow law interferes with national banks’ ability to effectively and efficiently exercise their real estate and related escrow powers. The discretion to set the terms and conditions of an escrow account in accordance with informed business judgment allows banks to appropriately balance the costs and benefits of establishing and maintaining these accounts and, ultimately, the risks and rewards of real estate lending more generally. The OCC’s regulations have long made clear that national banks have broad discretion to determine the pricing of their products and services based on consideration of relevant factors, including costs, which supports their ability to effectively and efficiently exercise their Federally authorized powers.⁷⁶ Requiring compliance with State interest-on-escrow laws would undermine this discretion and could cause national banks to, among other things, attempt to recoup or offset costs in other ways that are not as well aligned with their sound banking judgment or safe and sound banking principles and that may even increase mortgage pricing. It could also lead national banks to offer escrow accounts on fewer real estate loans or even reduce lending if, for example, the cost of compliance is too high, particularly as dynamic market rates and business conditions evolve.⁷⁷ This may

these bounds. As the Second Circuit majority recognized when it cited the OCC’s proposed Escrow Powers Rule, “mortgage-escrow accounts are a ‘crucial risk mitigation tool that supports safe and sound mortgage lending,’” national banks have the authority “to offer and set the terms of mortgage-escrow accounts,” and the nature and degree of interference caused by New York’s interest-on-escrow law is akin to that in *Fidelity*, *Barnett*, and *Franklin*. *Cantero* Remand, 2026 WL 1217467, at *1, 6–9.

⁷⁶ See 12 CFR 7.4002 (addressing non-interest fees); see also 12 U.S.C. 85 and 12 CFR 7.4001 (addressing permissible interest for national bank loans, including the applicable usury cap). Multiple courts have concluded that State laws on non-interest fees, such as ATM fees, prevent or significantly interfere with a national bank’s exercise of its Federally authorized powers and are preempted. See, e.g., cases cited *supra* note 69; see also *Cantero* Remand, 2026 WL 1217467, at *9 (“a state law restricting the pricing of a bank’s product would have a material impact”); *Kivett*, 154 F.4th at 660 (Nelson, J., dissenting) (concluding that the advertising restriction in *Franklin* “pales in comparison to a state law that dictates a national bank’s pricing of its mortgage products”).

⁷⁷ See *Kivett*, 154 F.4th at 660 (Nelson, J., dissenting) (quoting *McShannock v. JP Morgan Chase Bank, N.A.*, 976 F.3d 881, 893–94 (9th Cir. 2020)). This example is intended to make clear the potential effects of State interest-on-escrow laws on

disproportionately affect lower-income borrowers.⁷⁸ Moreover, by generally prohibiting related service charges, New York’s interest-on-escrow law would further limit a national bank’s ability to defray costs, compounding its effect. This type of interference with national bank powers is at least as significant as a restriction on a national bank’s power to advertise using a specific word.⁷⁹

As Federal courts have recognized, “the level of ‘interference’ that gives rise to preemption under the [National Bank Act] is not very high.”⁸⁰ Therefore, under the *Barnett* standard as clarified in *Cantero*, New York’s interest-on-escrow law is preempted⁸¹ and “must give way” to Federal law.⁸²

E. State Laws With Substantively Equivalent Terms

In addition to New York, at least thirteen other States have interest-on-escrow laws that purport to apply to national banks: California, Connecticut, Guam, Maine, Maryland, Massachusetts, Minnesota, Oregon, Rhode Island, Utah, Vermont, Wisconsin, and the U.S. Virgin Islands.⁸³ Much like New York’s

national banks. However, the OCC emphasizes that the *Barnett* standard does not require financial impact, such as unprofitability or net losses. As noted previously, requiring such a showing would make application of the *Barnett* standard variable, unpredictable, and ultimately unworkable because it would turn on multiple changing factors, such as bank size and activity, economic conditions, and geography. *Cantero*, *Barnett*, and the *Barnett* antecedents do not support such an outcome.

⁷⁸ See *id.* The effects on a national bank’s exercise of its powers may be magnified when considering the cumulative effect of complying not only with New York’s law but also with varying laws in multiple States. See *First Nat’l Bank of San Jose*, 262 U.S. at 370 (“If California may thus interfere other states may do likewise; and . . . varying limitations may be prescribed.”); see also *Kivett*, 154 F.4th at 662–63 (Nelson, J., dissenting) (citing *Watters*, 550 U.S. at 13–14, and *Easton*, 188 U.S. at 229). Several commenters provided information supporting this conclusion, noting that compliance with varied State interest-on-escrow laws introduces significant complexity, including compliance and operational challenges. This is consistent with the OCC’s supervisory experience as reflected in the *Comptroller’s Handbook*, which addresses operational costs and risks associated with managing escrow accounts. See OCC, *Comptroller’s Handbook*, “Mortgage Banking,” 15, 53–54 (2014).

⁷⁹ The State law at issue in *Franklin* did not prohibit national banks from advertising their savings deposits, and it is not hard to imagine a national bank being able to use a different advertising formulation to similar competitive effect. See *Cantero* Remand, 2026 WL 1217467, at *8 (citations omitted); *Kivett*, 154 F.4th at 660 (Nelson, J., dissenting).

⁸⁰ *Monroe Retail*, 589 F.3d at 283 (citing *Ass’n of Banks in Ins., Inc. v. Duryee*, 270 F.3d 397, 409 (6th Cir. 2001)); see also *Am. Bankers Ass’n v. Lockyer*, 239 F. Supp. 2d 1000, 1017 (E.D. Ca. 2002).

⁸¹ *Cantero* Remand, 2026 WL 1217467.

⁸² See *Watters*, 550 U.S. at 12–13; see also 12 CFR 34.4.

⁸³ While Iowa has an interest-on-escrow law, the OCC understands it to be permissive. In addition,

⁷³ *Cantero*, 602 U.S. at 216.

⁷⁴ *Fid. Fed. Sav. & Loan Ass’n*, 458 U.S. at 153 (“Federal regulations have no less pre-emptive effect than federal statutes.”). The dissent in the *Cantero* Remand attempts to distinguish *Fidelity* from the OCC’s issuance of this preemption determination alongside its Escrow Powers Rule. Specifically, the dissent notes that the Supreme Court in *Fidelity* found that the agency had the authority to promulgate the regulations at issue and to preempt state law. *Cantero* Remand, 2026 WL 1217467, at *21, n.13 (Pérez, J., dissenting). Rather than distinguishing *Fidelity*, this point highlights why these OCC actions are squarely aligned with *Fidelity*. The OCC has clear statutory authority to promulgate its Escrow Powers Rule, as the OCC has extensively set forth in that preamble. That an OCC regulation may have the effect of preempting certain state law does not undermine the OCC’s authority to issue it. See, e.g., *Conf. of State Bank Supervisors v. Conover*, 710 F.2d 878, 883 (D.C. Cir. 1983) (“[I]f the regulations would otherwise be valid, their preemptive effect does not invalidate them unless Congress has expressed, either explicitly or implicitly, an intent that preemption is not within the Comptroller’s power.”). In addition, section 25b specifically authorizes the OCC to determine whether Federal law, which includes OCC regulations, preempts a state consumer financial law under the *Barnett* standard. That is precisely what the OCC is doing in this preemption determination. Therefore, the OCC clearly has authority to issue each of these actions independently. There is no basis to conclude that issuing them concurrently undermines this authority.

⁷⁵ See also *supra* nn. 69, 70 and associated text (collecting cases). In the *Cantero* Remand decision, the dissent opines that the *Barnett* analysis does not turn on whether a state law constrains a national bank’s flexibility because this would result in preemption of virtually every state law. *Cantero* Remand, 2026 WL 1217467, at *21–22 (Pérez, J., dissenting). In *Cantero*, the Supreme Court specifically noted that the state law at issue in *Fidelity* was preempted because it “interfered with ‘the flexibility given’ to the savings and loan by federal law,” (i.e., a federal regulation). *Cantero*, 602 U.S. at 217 (citations omitted). This framing reflects the Supreme Court’s recognition that a state law can prevent or significantly interfere with a national bank’s powers if it interferes with flexibility. However, the OCC need not define the outer bounds of this flexibility analysis because New York’s interest-on-escrow law is clearly within

interest-on-escrow law, these State laws (1) require the payment of interest on funds deposited in certain real estate escrow accounts; and (2) in some cases, restrict the assessment of fees in connection with such accounts. The OCC has evaluated the terms of each of these State laws and determined that they have substantively equivalent terms to section 5–601 of New York’s General Obligations Law. Although the specific provisions of these laws vary to some degree,⁸⁴ each State law has the same effect: depriving national banks of the flexibility to exercise the discretion that Federal law, as confirmed in the OCC’s Escrow Powers Rule, vests in them. Consistent with section 25b, the OCC has consulted with the CFPB on whether these State laws have substantively equivalent terms. The CFPB concurred with the OCC’s determination and reasoning. Accordingly, the OCC’s final preemption determination incorporates these thirteen other State interest-on-escrow laws.⁸⁵

III. Administrative Law Matters

Paperwork Reduction Act

The Paperwork Reduction Act of 1995⁸⁶ (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC has reviewed this rule and determined that it does not create any new or revise any existing collections of information under the PRA. Accordingly, no PRA submissions to OMB will be made with respect to this final rule.

Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA)⁸⁷ requires an agency, in connection with a final rule, to prepare

the OCC understands that New Hampshire has an interest-on-escrow law that only applies to banks chartered by the State. As such, the OCC proposed to exclude these State laws from its preemption determination. Commenters did not provide contrary information, and as such, the OCC is not including these State laws in its final preemption determination.

⁸⁴ For example, the State laws have varied scoping provisions. These distinctions do not undermine the OCC’s determination that these state laws have substantively equivalent terms. This conclusion is consistent with the Second Circuit’s analysis in the *Cantero* Remand, which did not turn on the specific provisions of New York’s law.

⁸⁵ The OCC’s regulatory text cites each State law at the section level. To the extent that these sections of State law include provisions that do not relate to interest-on-escrow or fees, they are outside the scope of this preemption determination.

⁸⁶ 44 U.S.C. 3501–21.

⁸⁷ 5 U.S.C. 601 *et seq.*

a final regulatory flexibility analysis describing the impact of the rule on small entities (defined by the Small Business Administration for purposes of the RFA to include commercial banks and savings institutions with total assets of \$850 million or less and trust companies with total assets of \$47 million or less). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises 991 institutions (national banks, Federal savings associations, and branches or agencies of foreign banks),⁸⁸ of which approximately 602 are small entities under the RFA.⁸⁹

In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity’s total annual salaries and benefits or greater than 2.5 percent of the small entity’s total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number, and at present, 30 OCC-supervised small entities would constitute a substantial number.

While the final rule will impact a substantial number of OCC-supervised small entities, it would likely result in some cost savings for those institutions. For these reasons, the OCC certifies that this final preemption determination will not have a significant impact on a substantial number of small entities supervised by the OCC. Accordingly, a final regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995

⁸⁸ Based on data accessed using the OCC’s Financial Institutions Data Retrieval System on May 8, 2026.

⁸⁹ The OCC bases its estimate of the number of small entities on the Small Business Administration’s size thresholds for commercial banks and savings institutions, and trust companies, which are \$850 million and \$47 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an OCC-supervised institution as a small entity. The OCC used average quarterly assets on December 31, 2025, to determine size because a “financial institution’s assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See footnote 8 of the U.S. Small Business Administration’s *Table of Size Standards*.

(UMRA).⁹⁰ Under this analysis, the OCC considered whether the final rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (\$193 million as adjusted annually for inflation). Pursuant to section 202 of the UMRA,⁹¹ if a final rule meets this UMRA threshold, the OCC prepares a written statement that includes, among other things, a cost-benefit analysis of the final rule.

This final rule imposes no new mandates and will likely result in a decrease in expenditures from OCC-supervised entities that may elect not to pay interest on funds held in escrow accounts due to clarity on the preemption of state interest-on-escrow laws. Therefore, this final preemption determination will not result in an additional expenditure of \$193 million or more annually by any State, local, and Tribal government, in the aggregate, or by the private sector. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) of 1994,⁹² in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest (1) any administrative burdens that the final rule would place on depository institutions, including small depository institutions and customers of depository institutions and (2) the benefits of the final rule. This rulemaking will not impose any reporting, disclosure, or other requirements on insured depository institutions. Therefore, section 302(a) does not apply.

Executive Order 12866 (as amended)

Executive Order 12866, titled “Regulatory Planning and Review,” as amended, requires the Office of Information and Regulatory Affairs (OIRA), OMB, to determine whether a final rule is a “significant regulatory action” prior to the disclosure of the final rule to the public. If OIRA finds

⁹⁰ 2 U.S.C. 1531 *et seq.*

⁹¹ 2 U.S.C. 1532.

⁹² 12 U.S.C. 4802(a).

the final rule to be a “significant regulatory action,” Executive Order 12866 requires the OCC to conduct a cost-benefit analysis of the final rule and for OIRA to conduct a review of the final rule prior to publication in the **Federal Register**. Executive Order 12866 defines a “significant regulatory action” to mean a regulatory action that is likely to (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, the President’s priorities, or the principles set forth in Executive Order 12866.

OIRA has determined that this final rule is not a significant regulatory action under Executive Order 12866 and, therefore, it is not subject to review under Executive Order 12866.

Executive Order 14192

Executive Order 14192, titled “Unleashing Prosperity Through Deregulation,” requires that an agency, unless prohibited by law, identify at least ten existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation with total costs greater than zero. Executive Order 14192 further requires that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations. The final rule is not an Executive Order 14192 regulatory action because it is not significant under Executive Order 12866. Further, the final rule is a deregulatory action under Executive Order 14192 because it would result in potential cost savings for OCC-supervised banks.

Congressional Review Act

For purposes of the Congressional Review Act, OMB makes a determination as to whether a final rule constitutes a “major” rule.⁹³ If a rule is deemed a “major rule” by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.⁹⁴

The Congressional Review Act defines a “major rule” as any rule that the Administrator of OIRA finds has resulted in or is likely to result in (1) an annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.⁹⁵

OIRA has determined that this final rule is not a major rule. As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects in 12 CFR Part 34

Accounting, Banks, banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

Authority and Issuance

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 1. The authority citation for part 34 continues to read as follows:

⁹³ 5 U.S.C. 801 *et seq.*

⁹⁴ 5 U.S.C. 801(a)(3).

⁹⁵ 5 U.S.C. 804(2).

Authority: 12 U.S.C. 1 *et seq.*, 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j-3, 1828(o), 3331 *et seq.*, 5101 *et seq.*, 5412(b)(2)(B), and 15 U.S.C. 1639h.

■ 2. Amend subpart A by adding § 34.7 to read as follows:

§ 34.7 OCC preemption determinations.

(a) *Purpose.* This section codifies preemption determinations issued by the Office of the Comptroller of the Currency.

(b) *Escrow.* The OCC has determined that Federal law preempts State laws that restrict a national bank’s or Federal savings association’s flexibility to decide whether and to what extent to pay interest or other compensation on funds placed in escrow accounts or assess fees for such accounts, including the following State laws:

- (1) California: Cal. Civ. Code sec. 2954.8;
- (2) Connecticut: Conn. Gen. Stat. sec. 49–2a;
- (3) Guam: 11 Guam Code Ann. sec. 106103;
- (4) Maine: Me. Rev. Stat. Ann. tit. 9–B, sec. 429; Me. Rev. Stat. Ann. tit. 33, sec. 504;
- (5) Maryland: Md. Code Ann., Com. Law secs. 12–109, 12–109.2;
- (6) Massachusetts: Mass. Gen. L. ch. 183, sec. 61;
- (7) Minnesota: Minn. Stat. Ann. sec. 47.20, subd. 9;
- (8) New York: N.Y. Gen. Oblig. Law sec. 5–601;
- (9) Oregon: Or. Rev. Stat. secs. 86.245, 86.250;
- (10) Rhode Island: 19 R.I. Gen. Laws sec. 19–9–2;
- (11) United States Virgin Islands: V.I. Code tit. 9, sec. 67;
- (12) Utah: Utah Code Ann. sec. 7–17–3;
- (13) Vermont: Vt. Stat. Ann. tit. 8, sec. 10404; and
- (14) Wisconsin: Wis. Stat. secs. 138.051, 138.052.

Jonathan V. Gould,
Comptroller of the Currency.

[FR Doc. 2026–10037 Filed 5–18–26; 8:45 am]

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