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FEDERAL REGISTER

Vol. 91 Tuesday,

No. 196 October 13, 2026

Pages 64751–65076

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–4648; Project Identifier MCAI–2025–01834–E; Amendment 39–23484; AD 2026–20–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd & Co KG (RRD) Model RB211 Trent 768–60, 772–60, and 772B–60 engines. This AD was prompted by a report that a batch of low-pressure compressor (LPC) blades were exposed to a non-conforming repair and are more prone to cracking due to a deviation from the approved blade configuration design. This AD requires removal from service of the affected LPC blades and replacement with a serviceable part. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 17, 2026.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 17, 2026.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2026–4648; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2026–4648.

FOR FURTHER INFORMATION CONTACT: Alexis Whitaker, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (516) 228–7309; email: *alexis.j.whitaker@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all RRD Model RB211 Trent 768–60, 772–60, and 772B–60 engines. The NPRM was published in the **Federal Register** on June 1, 2026 (91 FR 32364). The NPRM was prompted by EASA AD 2025–0288, dated December 17, 2025, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2025–0288). EASA AD 2025–0288 superseded EASA AD 2024–0130, dated July 8, 2024 (EASA AD 2024–0130), which stated that a batch of LPC blades were exposed in service to non-conforming repair procedures that resulted in blade configuration deviating from the approved design. These LPC blades that do not conform to the approved design are prone to blade cracking. EASA AD 2024–0130 required removal from service of the affected LPC blades and replacement with a serviceable part. EASA AD 2025–0288 retained the removal from service and replacement requirements for the affected LPC blades in EASA AD 2024–0130 and expanded the list of affected parts. In the NPRM, the FAA proposed to require removal from service of the affected LPC blades and replacement with a serviceable part. The FAA is issuing this AD to address the unsafe condition on these products.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, EASA superseded EASA AD 2025–0288 and issued EASA AD 2025–0288R1, dated June 26, 2026 (EASA AD 2025–0288R1) (also referred to as the MCAI). The MCAI states that since EASA AD 2025–0288 was issued, it was determined that the original wording of Note 2 is too restricting, since it provides allowance only to cases where an affected part is reinstalled in its original position on the same engine within a single on-wing maintenance activity. The MCAI removes ''on the same position'' from Note 2 to clarify that the exception provided by Note 2 applies to the removal and reinstallation of the same affected part on the same engine within a single maintenance activity, irrespective of its position. The FAA has updated this final rule accordingly by replacing EASA AD 2025–0288 with EASA AD 2025–0288R1 in all affected paragraphs.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2026–4648.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment from the Air Line Pilots Association, International, who supported the NPRM without change.

Conclusion

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM.

None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2025–0288R1, which specifies procedures for removal from service of the affected LPC blades and replacement with a serviceable part. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Differences Between This AD and the MCAI

Where EASA AD 2025–0288R1 applies to RRD Model RB211 Trent 772C–60 engines, this AD does not because these engines do not have an FAA type certificate.

Costs of Compliance

The FAA estimates that this AD affects eight engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace LPC blades	2 work-hours × $85 per hour = $170	$225,000	$225,170	$1,801,360

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2026–20–11 Rolls-Royce Deutschland Ltd & Co KG: Amendment 39–23484; Docket No. FAA–2026–4648; Project Identifier MCAI–2025–01834–E.

(a) Effective Date

This airworthiness directive (AD) is effective November 17, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Rolls-Royce Deutschland Ltd & Co KG Model RB211 Trent 768–60, 772–60, and 772B–60 engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by a report that a batch of low-pressure compressor blades were exposed to a non-conforming repair and are more prone to cracking due to a deviation from the approved blade configuration design. The FAA is issuing this AD to prevent blade cracking. The unsafe condition, if not addressed, could lead to multiple structural failures of the affected parts, which could result in increased risk of in-flight shutdown, engine fire, and uncontained high-energy debris release.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2025–0288R1, dated June 26, 2026 (EASA AD 2025–0288R1).

(h) Exceptions to EASA AD 2025–0288R1

(1) Where EASA AD 2025–0288R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2025–0288R1 refers to July 22, 2024 (the effective date of EASA AD 2024–0130), this AD requires using the effective date of this AD.

(3) This AD does not adopt the ''Remarks'' paragraph of EASA AD 2025–0288R1.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: *AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Additional Information

For more information about this AD, contact Alexis Whitaker, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (516) 228–7309; email: *alexis.j.whitaker@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2025–0288R1, dated June 26, 2026.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on September 30, 2026.

Brian Knaup,

Acting Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2026–20869 Filed 10–9–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–11804; Project Identifier MCAI–2026–01087–A; Amendment 39–23490; AD 2026–21–01]

RIN 2120–AA64

Airworthiness Directives; Elixir Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Elixir Aircraft Model Elixir airplanes. This AD was prompted by a fatal accident on a Model Elixir airplane during a production flight. The cause of the accident is still under investigation. This AD prohibits operation until approved inspection or modification procedures are identified, accomplished, and incorporated. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 14, 2026.

The FAA must receive comments on this AD by November 27, 2026.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2026–11804; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4059; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments using a method listed under the **ADDRESSES** section. Include ''Docket No. FAA–2026–11804; Project Identifier MCAI–2026–01087–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

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

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2026–0191–E, dated October 2, 2026 (EASA Emergency AD 2026–0191–E) (also referred to as the MCAI), to correct an unsafe condition on all Elixir Aircraft Model Elixir airplanes. The MCAI states that a fatal accident occurred on a Model Elixir airplane. The cause of the accident is currently under investigation. Based on all available information, further actions may be necessary to ensure the continued airworthiness of these airplanes. Therefore, pending further investigation to determine the root cause of the accident, EASA decided to temporarily ground the fleet as a precautionary measure and issued EASA Emergency AD 2026–0191–E. Elixir Aircraft had already issued Alert Service Bulletin ASB–633–005–R01, dated October 2, 2026.

The unsafe condition, if not addressed, could result in loss of continued safe flight and landing. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2026–11804.

FAA's Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority

has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD prohibits further flight of all Elixir Aircraft Model Elixir airplanes until all applicable corrective actions have been performed using a method approved by the Manager, AIR–730, International Validation Branch, FAA.

Interim Action

The FAA considers this AD to be an interim action. If final action is later identified, the FAA might consider further rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because the severity of the consequences of not knowing what caused the fatal accident necessitate prohibiting further flight until approved inspection or modification procedures are identified, the airplane is inspected, and any applicable corrective actions are performed. Given the significance of the risk presented by this unsafe condition, it must be immediately addressed. Additionally, the compliance time in this AD is before further flight, which is shorter than the time necessary for the public to comment prior to publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b).

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

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects three airplanes of U.S. registry. Because the cause of the unsafe condition is unknown at this time, there are no approved inspection or modification procedures, and the FAA has no definitive data on which to base the cost estimates for any inspection and corrective actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2026–21–01 Elixir Aircraft: Amendment 39–23490; Docket No. FAA–2026–11804; Project Identifier MCAI–2026–01087–A.

(a) Effective Date

This airworthiness directive (AD) is effective October 14, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Elixir Aircraft Model Elixir airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code Not Applicable.

(e) Unsafe Condition

This AD was prompted by a fatal accident on a Model Elixir airplane during a production flight. The cause of the accident is still under investigation. The FAA is issuing this AD to address the continued airworthiness of these airplanes. The unsafe condition, if not addressed, could result in loss of continued safe flight and landing.

(f) Compliance

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

(g) Required Action

As of the effective date of this AD, further flight is prohibited until all applicable corrective actions have been performed using a method approved by the Manager, AIR–730, International Validation Branch, FAA.

Note 1 to paragraph (g): Elixir Aircraft Alert Service Bulletin ASB–633–005–R01, Revision 01, dated October 2, 2026, contains information on the subject addressed by this AD.

(h) Special Flight Permits

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed unless approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD or email to *AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Additional Information

(1) For more information about this AD, contact Doug Rudolph, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4059; email: *doug.rudolph@faa.gov.*

(2) For material identified in this AD that is not incorporated by reference, contact Elixir Aircraft, Rue du Jura, 17000 La Rochelle, France; phone: +33 0 5 64 37 80 21; email: *airworthiness@elixir-aircraft.com;* website: *elixir-aircraft.com.*

(k) Material Incorporated by Reference

None.

Issued on October 7, 2026.

Steven W. Thompson,

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

[FR Doc. 2026–20818 Filed 10–8–26; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–2614; Airspace Docket No. 24–ASO–32]

RIN 2120–AA66

Amendment of Jet Routes J–83 and J–85, and Very High Frequency Omnidirectional Range (VOR) Federal Airways V–415 and V–605; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Jet Routes J–83 and J–85 in the eastern United States. This action supports the Spartanburg, SC (SPA), Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) relocation project.

DATES: Effective date 0901 UTC, December 24, 2026. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Ashley Toth, Airspace Regulation Group, Operational Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the route structure to maintain the efficient flow of air traffic within the National Airspace System (NAS).

History

This action is due to the Spartanburg VORTAC relocation project. The land where the Spartanburg, SC (SPA), VORTAC resides is being developed for other uses which required its relocation. The effective date for the relocation of the Spartanburg VORTAC is December 24, 2026, from ''lat. 35°02′01.05″ N, long. 081°55′37.24″ W'', to 7.97 nautical miles (NM) south-southwest, ''lat. 34°54′19.19″ N, long. 081°58′11.30″ W''. The Magnetic Variation (MAGVAR) for the relocated Spartanburg VORTAC changed from 2.0° W to 7.0° W. The facility identification remains unchanged. These route modifications realign the airway structure resulting from relocation of the Spartanburg VORTAC.

The FAA published an NPRM for Docket No. FAA–2024–2614 in the **Federal Register** (89 FR 103720; December 19, 2024), proposing to amend Jet Routes J–83 and J–85, and VOR Federal Airways V–415 and V–605 in the eastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

In the NPRM's description of amendments, the FAA included amendments to VOR Federal Airways V–415 and V–605. After publication of the NPRM, a delay was encountered in the Spartanburg, SC (SPA), VORTAC relocation project, causing a delay in the issuance of this final rule. In the interim, amendments to V–415 and V–605 were separately proposed in Docket No. FAA–2026–2452 (91 FR 10979; March 6, 2026). Accordingly, the amendments proposed to V–415 and V–605 in the NPRM associated with this action have been removed from this final rule. Because these changes simply remove part of the initially proposed amendments without substantively impacting the remaining portions or increasing the burdens on regulated parties, the FAA finds good cause that recirculating the proposal for notice and comment is unnecessary.

Incorporation by Reference

Jet Routes are published in paragraph 2004 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11M, dated July 30, 2026, and effective September 15, 2026. These updates will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11M, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Rule

This action amends 14 CFR part 71 by amending Jet Routes J–83 and J–85 to support the Spartanburg, SC (SPA), VORTAC relocation project in the

eastern United States as described below.

J–83: Prior to this final rule, J–83 extended between the Spartanburg VORTAC and the Dryer, OH (DJB), VOR/Distance Measuring Equipment (VOR/DME). Due to the relocation of the Spartanburg VORTAC, aircraft flying this segment of J–83 conflict with aircraft flying on the adjacent United States Area Navigation (RNAV) Route Q–149. To mitigate this conflict, the FAA is removing the airway segment between the Spartanburg VORTAC and the Appleton, OH (APE), VORTAC. As amended, J–83 is changed to now extend between the Appleton VORTAC and the Dryer VOR/DME.

J–85: Prior to this final rule, J–85 extended between the Spartanburg VORTAC and the Dryer VOR/DME. Due to the relocation of the Spartanburg VORTAC, aircraft flying this segment of J–85 conflict with aircraft flying on the adjacent RNAV Route Q–147. To mitigate this conflict, the FAA is removing the airway segment between the Spartanburg VORTAC and the Charleston, WV (HVQ), VOR/DME. As amended, J–85 is changed to now extend between the Charleston VOR/DME and the Dryer VOR/DME.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Order 2100.6B, ''Rulemaking and Guidance Procedures'' (March 10, 2025); and (3) is expected to result in, at most, de minimis costs from compliance with applicable operating requirements or minor flight rerouting for operators choosing to navigate around the controlled airspace. Since these amendments are routine and the expected impact to operators is de minimis, the FAA certifies that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending Jet Routes J–83 and J–85 to support the Spartanburg, SC (SPA), VORTAC relocation project in the eastern United States qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and in accordance with FAA Order 1050.1G, *FAA National Environmental Policy Act Implementing Procedures,* paragraph B–2.5(a), which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph B–2.5(b), which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*). . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA's NEPA implementation policy and procedures regarding extraordinary circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact statement.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11M, Airspace Designations and Reporting Points, dated July 30, 2026, and effective September 15, 2026, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–83 [Amended]

From Appleton, OH; to Dryer, OH.

* * * * *

J–85 [Amended]

From Charleston, WV; INT Charleston 357° and Dryer, OH, 172° radials; to Dryer.

* * * * *

Issued in Washington, DC, on October 7, 2026.

Brian Eric Konie,

Acting Manager, Airspace Regulation Group.

[FR Doc. 2026–20834 Filed 10–9–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2026–1062; Airspace Docket No. 25–AEA–12]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route T–437; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) Route T–437 in the eastern United States. This action supports FAA Next Generation Air Transportation System (NextGen) efforts to provide a modern RNAV route structure to improve the safety and efficiency of the National Airspace System (NAS).

DATES: Effective date 0901 UTC, December 24, 2026. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Ashley Toth, Airspace Regulation Group, Operational Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the route structure to maintain the efficient flow of air traffic within the NAS.

History

The FAA published a NPRM for Docket No. FAA–2026–1062 in the **Federal Register** (91 FR 3696; January 28, 2026), proposing to amend RNAV Route T–437 in the eastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Two comments were received. The first comment was supportive of the amendment and the second comment was not germane to the amendment of RNAV Route T–437.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11M, dated July 30, 2026, and effective September 15, 2026. These amendments will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11M, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Rule

This action amends 14 CFR part 71 by amending RNAV Route T–437 in the eastern United States. This action supports the FAA's NextGen efforts to provide a modern RNAV route structure to improve the safety and efficiency of the NAS. The amendments are described below.

T–437: Prior to this final rule, T–437 extended between the SIROC, GA, waypoint (WP) and the ZOOMS, WV, Fix. The FAA is extending the airway to the north between the ZOOMS Fix and the Elkins, WV (EKN), Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to provide connectivity for RNAV-equipped aircraft between the Zenith, WV, and the Elkins, WV, areas. As amended, the route is changed to now extend between the SIROC WP and the Elkins VORTAC.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Order 2100.6B, ''Rulemaking and Guidance Procedures'' (March 10, 2025); and (3) is expected to result in, at most, de minimis costs from compliance with applicable operating requirements or minor flight rerouting for operators choosing to navigate around the controlled airspace. Since these amendments are routine and the expected impact to operators is de minimis, the FAA certifies that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of amending RNAV Route T–437 in the eastern United States qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and in accordance with FAA Order 1050.1G, *FAA National Environmental Policy Act Implementing Procedures,* paragraph B–2.5(a), which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph B–2.5(b), which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*). . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with the FAA's NEPA implementation policy and procedures regarding extraordinary circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact statement.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11M, Airspace Designations and Reporting Points, dated July 30, 2026, and effective September 15, 2026, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–437 SIROC, GA to Elkins, WV (EKN) [Amended]

SIROC, GA	WP	(Lat. 31°03′02.32″ N, long. 081°26′45.89″ W)
KELER, GA	FIX	(Lat. 31°55′07.40″ N, long. 081°11′09.14″ W)
TBERT, GA	WP	(Lat. 32°08′46.76″ N, long. 081°11′57.44″ W)
DURBE, SC	WP	(Lat. 33°00′44.75″ N, long. 081°17′32.69″ W)
CAYCE, SC	WP	(Lat. 33°51′26.13″ N, long. 081°03′14.76″ W)

CRLNA, NC	WP	(Lat. 35°12′49.48″ N, long. 080°56′57.32″ W)
DANCO, VA	WP	(Lat. 37°05′15.75″ N, long. 080°42′46.45″ W)
ZOOMS, WV	FIX	(Lat. 37°28′32.22″ N, long. 080°35′06.70″ W)
RUFYO, WV	WP	(Lat. 37°41′35.12″ N, long. 080°32′47.89″ W)
GRNBR, WV	WP	(Lat. 38°02′19.12″ N, long. 080°28′25.06″ W)
KNEDL, WV	WP	(Lat. 38°42′35.52″ N, long. 080°15′15.38″ W)
Elkins, WV (EKN)	VORTAC	(Lat. 38°54′51.97″ N, long. 080°05′57.38″ W)

* * * * *

Issued in Washington, DC, on October 7, 2026.

Brian Eric Konie,

Acting Manager, Airspace Regulation Group.

[FR Doc. 2026–20847 Filed 10–9–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Publication of an Iran-Related Determination

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of a determination.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing a sector determination pursuant to a January 10, 2020 Executive Order. The determination was previously issued on OFAC's website.

DATES: The determination was issued on October 1 2026. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On January 10, 2020, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), issued Executive Order (E.O.) 13902 of January 10, 2020, ''Imposing Sanctions With Respect to Additional Sectors of Iran'' (85 FR 2003, January 14, 2020). Among other prohibitions, section 1(a)(i) of E.O. 13902 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of, any person determined by the Secretary of the Treasury, in consultation with the Secretary of State to operate in the construction, mining, manufacturing, or textiles sectors of the Iranian economy, or any other sector of the Iranian economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.

On October 1, 2026, the Director of OFAC, in consultation with the Department of State, determined that section 1(a)(i) of E.O. 13902 shall apply to the automotive and rail sectors of the Iranian economy. This determination took effect on October 1, 2026. The determination was made available on OFAC's website (*https://ofac.treasury.gov/*) when it was issued. The text of the determination is provided below.

Determination Pursuant to Section 1(a)(i) of Executive Order 13902

Automotive and Rail Sectors of the Iranian Economy

Section 1(a)(i) of Executive Order (E.O.) 13902 of January 10, 2020 (''Imposing Sanctions With Respect to Additional Sectors of Iran'') imposes economic sanctions on any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to operate in such sectors of the Iranian economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.

To further address the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States described in E.O. 13902, and in consultation with the Department of State and pursuant to 31 CFR 560.802, I hereby determine that section 1(a)(i) of E.O. 13902 shall apply to the automotive and rail sectors of the Iranian economy. Any person determined to operate in these sectors shall be subject to sanctions pursuant to section 1(a)(i).

This determination shall take effect on October 1, 2026.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026–20839 Filed 10–9–26; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Publication of Venezuela Sanctions Regulations Web General License 60

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of a web general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing a general license (GL) issued pursuant to the Venezuela Sanctions Regulations: GL 60, which was previously made available on OFAC's website.

DATES: GL 60 was issued on June 25, 2026. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On June 25, 2026, OFAC issued GL 60 to authorize certain transactions otherwise prohibited by the Venezuela Sanctions Regulations, 31 CFR part 591. GL 60 has an expiration date of October 23, 2026. This GL was made available on OFAC's website (*https://ofac.treasury.gov*) when it was issued. The text of this GL is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 60

Authorizing Transactions Related to Earthquake Relief Efforts in Venezuela

(a) Except as provided in paragraph (b) of this general license, all transactions related to earthquake relief efforts in Venezuela that would otherwise be prohibited by the Venezuela Sanctions Regulations, 31

CFR part 591 (VSR), are authorized through 12:01 a.m. eastern daylight time, October 23, 2026.

Note 1 to paragraph (a). The authorization in paragraph (a) of this general license includes the processing or transfer of funds on behalf of third-country persons to or from Venezuela in support of the transactions authorized by paragraph (a) of this general license. U.S. financial institutions and U.S. registered money transmitters may rely on the originator of a funds transfer with regard to compliance with paragraph (a) of this general license, provided that the financial institution does not know or have reason to know that the funds transfer is not in compliance with paragraph (a) of this general license.

(b) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the VSR; or

(2) Any other transactions or activities prohibited by any other Executive order or by any part of 31 CFR chapter V not referenced in this general license.

Note 2 to General License 60. Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies.

Bradley T. Smith
Director, Office of Foreign Assets Control.

Dated: June 25, 2026.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026–20831 Filed 10–9–26; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2026–1265]

Safety Zone; Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone on the South Branch of the Chicago River between mile markers 325.5 and 325.4 for the demolition of the Lake Street Bridge for the Chicago Department of Transportation bridge repair. During the enforcement period, entry into, transiting, mooring, laying-up, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

DATES: The regulations in 33 CFR 165.930(a)(3) will be enforced on October 13, 2026, from 10 a.m. through 10 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Michael Vega, Marine Safety Unit Chicago,U.S. Coast Guard; telephone 630–986–2155, email: *D09-SMB-MSUChicago-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a portion of the safety zone regulations in 33 CFR 165.930(a)(3) on the South Branch of the Chicago River across the entire width of the river, starting at Mile Marker 325.5 and ending at the Randolph Street Bridge at Mile Marker 325.4, for demolition of the Lake Street Bridge for the CDOT bridge repair. The regulations will be enforced from 10:00 a.m. until 10:00 p.m. on October 13, 2026. This action is being taken to provide for the safety of life on the navigable waterway during the demolition of the Lake Street Bridge. Our regulation for marine events within the Great Lakes Coast Guard District, 33 CFR 165.930(c)(1), specifies that the Captain of the Port (COTP) may enforce this safety zone in whole, in segments, or by any combination of segments. The COTP Lake Michigan may suspend the enforcement of any segment of this safety zone for which notice of enforcement has been given. Pursuant to 33 CFR 165.930, during the enforcement period, entry into, transiting, or anchoring within safety zone is prohibited unless authorized by the COTP Lake Michigan or a designated on-scene representative. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the COTP Lake Michigan or a designated representative. Upon being hailed by the Coast Guard by siren, radio, flashing light or other means, the operator of a vessel must proceed as directed.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with notification of this enforcement period via Broadcast Notice to Mariners. The COTP Lake Michigan may be reached by contacting the Coast Guard Sector Lake Michigan Command Center at (833) 900–2247. An on-scene designated representative may be reached via VHF–FM Channel 16.

N.R. Downend,

Commander, U.S. Coast Guard, Acting Captain of the Port, Lake Michigan.

[FR Doc. 2026–20900 Filed 10–9–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2026–1270]

Safety Zone; Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone on the South Branch of the Chicago River, between mile marker 325.4 and 325.5, for the assembly of the Lake Street Bridge for the Chicago Department of Transportation bridge repair. During the enforcement period, entry into, transiting, mooring, laying-up, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

DATES: The regulations in 33 CFR 165.930(a)(3) will be enforced on October 20, 2026, from 6:00 a.m. through 6:00 p.m., with alternate inclement weather dates and times of October 18, 2026, 6:00 a.m. through 6:00 p.m.; October 19, 2026, 6:00 a.m. through 6:00 p.m.; October 21, 2026, 6:00 a.m. through 6:00 p.m.; and October 22, 2026, 6:00 a.m. through 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LieutenantMichael Vega, Marine Safety Unit Chicago, U.S. Coast Guard; telephone 630–986–2155, email: *D09-SMB-MSUChicago-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a portion of the safety zone regulations in 33 CFR 165.930(a)(3) on the South Branch of the Chicago River across the entire width of the river, beginning at Mile Marker 325.5 and ending at the Randolph Street bridge at Mile Marker 325.4, for the assembly of the Lake Street Bridge for the CDOT bridge repair. The safety zone will be enforced from 6:00 a.m. until

6:00 p.m. on October 20th, 2026. This action is being taken to provide for the safety of life on the navigable waterway during the assembly of the Lake Street Bridge. Our regulation for marine events within the Great Lakes Coast Guard District, 33 CFR 165.930(c)(1), specifies that the Captain of the Port (COTP) may enforce this safety zone in whole, in segments, or by any combination of segments. The COTP Lake Michigan may suspend the enforcement of any segment of this safety zone for which notice of enforcement has been given. Pursuant to 33 CFR 165.930, during the enforcement period, entry into, transiting, or anchoring within safety zone is prohibited unless authorized by the COTP Lake Michigan or a designated on-scene representative. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the COTP Lake Michigan or a designated representative. Upon being hailed by the Coast Guard by siren, radio, flashing light or other means, the operator of a vessel must proceed as directed.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with notification of this enforcement period via Broadcast Notice to Mariners. The COTP Lake Michigan may be reached by contacting the Coast Guard Sector Lake Michigan Command Center at (833) 900–2247. An on-scene designated representative may be reached via VHF–FM Channel 16.

N.R. Downend,

Commander, U.S. Coast Guard, Acting Captain of the Port, Lake Michigan.

[FR Doc. 2026–20902 Filed 10–9–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2026–1263]

Safety Zone; Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a moving safety zone on the South Branch of the Chicago River between the Lake Street Bridge at mile marker 325.5 and South Damen Avenue at mile marker 321 for the floating down of the bridge leaf for the Chicago Department of Transportation Bridge repair. During the enforcement period, entry into, transiting, mooring, laying-up, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

DATES: The regulations in 33 CFR 165.930(a)(2) and (3) will be enforced on October 14, 2026, 9:30 a.m. through 6:00 p.m., with alternate inclement weather dates and times of October 15, 2026, 9:30 a.m. through 6:00 p.m.; October 16, 2026, 9:30 a.m. through 6:00 p.m.; and October 17, 2026, 9:30 a.m. through 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Michael Vega, Marine Safety Unit Chicago, U.S. Coast Guard; telephone 630–986–2155, email: *D09-SMB-MSUChicago-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a portion of the safety zone regulations in 33 CFR 165.930(a)(2) and (3) on the South Branch of the Chicago River between the Lake Street Bridge (Mile Marker 325.5) and South Damen Avenue (Mile Marker 321) for the floating down of the CDOT bridge leaf from 9:30 a.m. until 6:00 p.m. on October 14th, 2026. This will be a moving safety zone creating a 500-foot buffer forward and aft of the vessel carrying the bridge leaf. This action is being taken to provide for the safety of life on the navigable waterway during the bridge leaf float down. Our regulation for marine events within the Great Lakes Coast Guard District, 33 CFR 165.930(c)(1), specifies that the Captain of the Port (COTP) may enforce this safety zone in whole, in segments, or by any combination of segments. The COTP Lake Michigan may suspend the enforcement of any segment of this safety zone for which notice of enforcement has been given. Pursuant to 33 CFR 165.930, during the enforcement period, entry into, transiting, or anchoring within safety zone is prohibited unless authorized by the COTP Lake Michigan or a designated on-scene representative. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the COTP Lake Michigan designated representative. Upon being hailed by the Coast Guard by siren, radio, flashing light or other means, the operator of a vessel must proceed as directed.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with notification of this enforcement period via Broadcast Notice to Mariners. The COTP Lake Michigan may be reached by contacting the Coast Guard Sector Lake Michigan Command Center at (833) 900–2247. An on-scene designated representative may be reached via VHF–FM Channel 16.

N.R. Downend,

Commander, U.S. Coast Guard, Acting Captain of the Port, Lake Michigan.

[FR Doc. 2026–20901 Filed 10–9–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 218

RIN 0596–AD69

Project-Level Predecisional Administrative Review Process

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture is issuing a final rule amending its Project-Level Predecisional Administrative Review Process regulations. These regulations establish the process by which the public may file objections seeking administrative review of proposed projects and activities implementing land management plans on national forests and grasslands. The Department is amending these regulations to consolidate and streamline processes, increase efficiency, and better align with the Agency's statutory obligations and recent rescissions and revisions to National Environmental Policy Act regulations.

DATES: The final rule is effective November 12, 2026.

FOR FURTHER INFORMATION CONTACT: Joshua White, Acting Director, Ecosystem Management Coordination, 202–205–0650. Individuals who are deaf, hard of hearing, or have a speech disability may call 711 to reach the Telecommunications Relay Service, then provide the phone number of the person named as the point of contact for further information.

SUPPLEMENTARY INFORMATION:

I. Background and Need

Background

The Department is revising the Project-Level Predecisional Administrative Review Process

regulations at 36 CFR part 218 to reflect statutory requirements and to ensure consistency with current National Environmental Policy Act (NEPA) procedures. Over the last several decades, Congress has enacted laws reshaping the Agency's administrative review process. Section 322 of the October 5, 1992 Interior and Related Agencies Appropriations Act, or Appeals Reform Act of 1992, established a notice and comment process and a postdecisional appeal process for certain project decisions implementing land management plans. In 2003, section 105 of the Healthy Forests Restoration Act (HFRA) directed the Secretary of Agriculture to publish regulations to establish a predecisional administrative review process for authorized hazardous fuel reduction projects. In 2012, section 428 of the Consolidated Appropriations Act extended the HFRA section 105(a) administrative review framework in lieu of subsections (c), (d), and (e) of section 322 to all projects and activities that implement land management plans and are documented with a decision notice or record of decision. In 2014, section 431 of the Consolidated Appropriations Act, 2014, exempted categorically excluded projects and activities from predecisional objection. Congress subsequently repealed the Appeals Reform Act in 2014.

The regulations at 36 CFR part 218 were amended in 2013 to implement section 428. Since then, the Forest Service has gained significant experience administering the objection process and identified opportunities to improve its efficiency and clarity. The Council on Environmental Quality (CEQ) rescinded its NEPA regulations, effective April 11, 2025, and the U.S. Department of Agriculture (USDA) issued updated NEPA procedures at 7 CFR part 1b. The same rulemaking effort to update 7 CFR 1b subsequently rescinded the NEPA implementing regulations at 36 CFR 220 for the Forest Service. Because the objection process applies to certain proposed actions subject to NEPA, the rescission of CEQ and 36 CFR 220 regulations and the revision of USDA's NEPA implementing regulations necessitate aligning the administrative review regulations with the current NEPA framework. Taken together, these statutory and regulatory developments require updates to part 218 to ensure consistency, efficiency, and legal compliance.

Need for Rulemaking

This final rule is necessary to incorporate statutory direction adopted since the previous revision, update the administrative review process to reflect current NEPA regulations, and streamline processes to ensure the Forest Service conducts administrative review in a timely and efficient manner.

As described above, section 431 of the Consolidated Appropriations Act of 2014 exempts categorically excluded projects and activities from predecisional objection. The regulatory text in the final rule is therefore updated to incorporate this statutory direction and clarify which actions are subject to administrative review.

Additionally, rescission of CEQ and 36 CFR 220 regulations and changes issued by USDA to its NEPA implementing procedures render existing provisions in part 218 inconsistent with the governing NEPA framework. This final rule revises the objection regulations to align them with 7 CFR part 1b by adding flexibility in the review process, removing references to decision notices for environmental assessments (EA)s, and modernizing the Agency's information exchange methods to rely more consistently on technology generally available to the public.

Practical experience since 2013 also demonstrates the need to adopt more efficient procedures. The existing comment and objection processes add, at a minimum, 120 to 150 days for review of an EA and finding of no significant impact (FONSI) and 135 to 165 days for review of an environmental impact statement (EIS) and record of decision (ROD). This does not account for additional time needed for the responsible official to respond to instructions, if any, provided by the objection reviewing officer. Neither the HFRA nor the other statutes governing the administrative review process mandate a specific length for the comment or objection periods. The final rule reduces these time periods and clarifies how objections are reviewed and addressed to improve the timeliness, consistency, and predictability of administrative review. The rule also standardizes procedures for HFRA and non-HFRA projects, modernizes public notification and document distribution practices by transitioning from outdated publication methods to web-based notification, and clarifies the authorities of the Secretary and Under Secretary to ensure that decision-making processes remain flexible and legally sound.

Collectively, these revisions are necessary to ensure that the administrative review process conforms to current statutory and regulatory requirements, supports timely and effective decision-making, and provides a clear, modern, and consistent framework for public participation in project-level environmental review.

Transition Guidelines

For projects that published a legal notice for the notice-and-comment period prior to the publication of the proposed rule on February 6, 2026, the previous 218 rule shall apply to the entirety of the administrative review process. For projects that published a legal notice for the notice-and-comment period between February 6, 2026, and the effective date of the final rule, and that did not notify the public that the project may be subject to the revised 218 rule, the previous 218 rule shall apply to the entirety of the administrative review process. For projects that published a legal notice for the notice-and-comment period between February 6, 2026, and the effective date of the final rule, and included language in the legal notice that the project may be subject to the revised 218 rule, the project shall be subject to the objection process of the rule that is in effect at the time the objection period is initiated. For all projects that initiate public notice-and-comment after the effective date of this rule, the revised rule shall apply. Initiation of the notice-and-comment period means the date the responsible official published the required notice.

For purposes of establishing eligibility to object under 16 U.S.C. 6515(a)(3), any scoping period conducted for a project prior to or after the publication of the proposed rule shall be treated as a 'designated comment period'.

II. Summary of Comments and Responses

Overview

The proposed rule for the Project-Level Predecisional Administrative Review Process was published in the **Federal Register** on February 6, 2026 (91 FR 5387), initiating a 30-day public comment period. Approximately 2,270 comments were received, about half of which were unique comments. One hundred twenty-nine organizations provided comments, including eight Tribal governments, sixteen State governments, seven local governments, sixteen businesses and industry groups, eighty-one non-governmental organizations, and one educational institution.

General Comments

Commenters generally expressed concerns that the proposed revisions to the project-level predecisional administrative review process would significantly reduce meaningful public

participation, limit transparency, and increase both legal and operational risk for the Agency. Many view the proposed changes as a shift away from collaborative practices that have strengthened public trust and the durability of decisions.

Some commenters expressed support for the proposed amendments to 36 CFR 218, citing the need for a more streamlined process facilitated by shorter review periods, page limits, and the consolidation of review responsibilities. They supported modernizing public notice requirements and eliminating the reviewing officer role, noting that these changes may reduce redundancy and increase efficiency. Some commenters further observed that prolonged administrative review timelines can affect forest health treatments, project costs, and local economic stability.

Comments and Responses

Comments received on the proposed rule are summarized below and organized by topic. The Department's responses follow each comment.

(1) Public Participation Timing and Information Availability

Comment: Commenters contend that shortened comment periods, earlier opening of comment periods (sometimes before the EA or EIS is available), and compressed objection timelines do not provide a meaningful opportunity for participation. They underscore practical constraints (weekends and holidays, internal approvals, and rural broadband limits) and the need for access to supporting materials (specialist reports, GIS layers, and Endangered Species Act and National Historic Preservation Act analyses documents) to craft substantive input.

Response: The Department carefully considered concerns about comment and objection timelines and access to information at the start of public participation. In the proposed rule, the minimum public comment periods were shortened from 30 days to 10 days for EAs and from 45 days to 20 days for EISs. Recognizing concerns raised in comments, in the final rule the minimum public comment period is 15 days for EAs and 30 days for EISs, providing ample time for review of analyses and preparation of comments. The final rule also identifies that when the comment or objection filing period ends on a weekend or Federal holiday, the end date is extended to the end of the next Federal working day.

Consistent with Departmental NEPA procedures (7 CFR 1b.7(b)(1)), the final rule clarifies that sufficient environmental information must be available at the start of the designated comment period so the public can meaningfully evaluate the proposed action and its effects (section 218.3(d)). When materials are incorporated by reference, such as specialist reports, Endangered Species Act analyses, or other technical documents, those materials must be reasonably available for inspection by potentially interested parties within the time allowed for comment (7 CFR 1b.9(e)(7)). For EISs, the NEPA statutory requirement, 42 U.S.C. 4336a(c)) to solicit public comments when publishing a notice of intent provides a foundation for early feedback. The final rule specifies that the opportunity to comment for an EIS can be combined with the notice of intent public comment opportunity so long as the required minimum information is available to the public (section 218.3(d)). For EAs, the comment period begins when information is available to inform substantive input. These adjustments made in the final rule preserve meaningful participation while maintaining predictable schedules for timely, efficient decision-making.

(2) Public Notification

Comment: Commenters broadly oppose replacing newspapers and **Federal Register** notices with web-based postings, citing concerns about transparency, equity, and monitoring burdens across many USDA and Forest Service web pages. Many favor a multi-channel approach (**Federal Register**, local papers, Schedule of Proposed Action, email or text alerts, direct outreach) to ensure timely and accessible notice under shorter comment periods.

Response: Consistent with USDA's NEPA regulations, 7 CFR 1b.9(k)(1), the Department is modernizing public notification practices to rely on web-based notice rather than newspapers of record or routine **Federal Register** publication for project-level actions. Centralized electronic posting on Forest Service project web pages ensures information is available in a uniform, timely, and accessible format. The final rule also establishes a requirement of direct notification using the Agency's current public notification tools (for example, email listservs or subscription services) so that interested parties receive notice when comment or objection opportunities open (section 218.3(b)). These approaches modernize communications without reducing the public's ability to provide comments in a timely manner. Responsible officials may, at their discretion, issue press releases, provide newspaper announcements, post notifications to unit-specific social media pages, or use other such means to notify local and surrounding communities of comment and objection opportunities.

(3) Objection Process and Review of Objection Issues

Comment: Commenters oppose eliminating the independent reviewing officer and consolidating objection review authority with the responsible official. They assert this change creates a structural conflict of interest that erodes impartiality, accountability, and public trust, and increases the risk of litigation. Some commenters support removing the reviewing official, stating that the Agency official most knowledgeable about the proposal should review the objections.

Response: The final rule consolidates objection review with the responsible official who is most familiar with the environmental analysis and the issues raised. An independent reviewing officer is not required by the statutory authorities for the 36 CFR 218 predecisional objection process, including the HFRA (16 U.S.C. 6515) and the Consolidated Appropriations Act of 2012 (Pub. L. 112–74 Sec. 428). Neither NEPA nor the National Forest Management Act requires a higher-level reviewing officer for project administrative reviews. After applying the objection regulations over the last 12 years, the Forest Service has determined that it is more conducive to the predecisional review and final decision-making processes to have the responsible official review the objections as they are most familiar with the project. However, in response to comments regarding the loss of an objective and independent review, the final rule includes a requirement that objection responses from a District Ranger or Forest/Grassland Supervisor receive concurrence by an Agency official at an administrative level higher than the Forest/Grassland Supervisor where the project is occurring before finalizing and posting the response online. The final rule also preserves the responsible official's discretion to seek an independent review when appropriate, ensuring flexibility without imposing additional procedural requirements.

Comment: Commenters urge the Forest Service to retain a guaranteed right to request an objection-resolution meeting, emphasizing that digital-only processes can isolate or exclude impacted communities and limit meaningful dialogue with responsible officials.

Response: The Department recognizes the importance of public engagement and the value of opportunities for direct dialogue between the public and responsible officials. The revised language removes ''Meetings'' (previously found at section 218.11(a)) because resolution meetings are not statutorily required as part of the objection process and often create additional administrative burdens and unnecessary delays; however, this does not preclude a responsible official from holding public hearings, public meetings, or other opportunities for public involvement. Maintaining discretion allows responsible officials to determine whether a meeting would be beneficial for resolving issues raised in objections without imposing mandatory procedural requirements that only result in unproductive delay.

Comment: Commenters oppose the proposal's expanded basis for setting aside objections or specific objection issues from review, arguing (1) the proposed rule creates internal contradictions by requiring objectors to demonstrate a connection to prior comments while also risking setting aside if they restate prior comments; (2) issues premised on new information or changes since public comment should not be set aside; (3) the proposed rule's handling of supportive objections improperly removes a way for stakeholders to preserve interests during resolution discussions; (4) added content requirements, such as clearly articulated recommendations or mitigation and citing statutory authority for mitigation, could create barriers for lay participants and increase the risk of arbitrary dismissal; and (5) setting aside objections ''as a whole'' could limit productive dialogue.

Response: With respect to concerns about setting aside objections that are a ''restatement of previously submitted comments'' (section 218.11(a)(4)), the intent of the requirement is not to prohibit objectors from referencing or building upon their earlier comments. Rather, the purpose is to ensure that objections are not simply a verbatim resubmission of a comment letter without identifying specific concerns with the proposed decision or explaining how those concerns relate to issues previously raised. For example, objectors may restate or elaborate on prior comments, provided they identify specific concerns with the proposed decision that remain unresolved and demonstrate a clear connection to the issues raised during the designated public comment period.

Regarding the concern about issues premised on new information, if the proposed decision or supporting analysis differs from what was available during the public comment period, objectors may raise issues related to those changes (section 218.9(c)). Such issues would not be set aside solely because they were not referenced during the comment opportunity. This principle ensures that objectors are not disadvantaged by changes in the analysis or other new information that becomes available after the comment period.

Regarding supportive objections, the Department acknowledges commenters' interest in preserving the ability to express support on a project. If supportive comments are submitted, the Agency will include them as part of the project record, but will not review them as eligible objections. The set-aside provisions are not intended to eliminate the ability to express support but rather to ensure that objections contain sufficient information for the responsible official to understand and respond to the specific issues being raised.

The Department considered concerns about the requirement to include specific information with regard to recommendations or mitigation. The final rule clarifies that objectors must provide recommendations and/or mitigation, but are not required to include both in their objection (section 218.9 (d)(4)(ii)). This requirement is intended to focus the objection process on constructive solutions and does not require objectors to propose measures that would trigger new analysis beyond what has already been completed, nor does the final rule require that mitigation cite statutory or regulatory authority. Recommendations should be conveyed with sufficient clarity for the responsible official to understand the concern and consider potential adjustments to the proposal.

The provision at section 218.11(a) for setting objections aside from review is intended for circumstances where an objection does not meet the basic requirements for filing, such as eligibility, timeliness, or connection to prior comments, and is not intended to limit the responsible official's ability to consider individual issues within an otherwise valid objection (section 218.11(b)).

Comment: Commenters generally oppose the use of automated artificial intelligence (AI) tools to review, summarize, or filter public comments, arguing that automated summarization risks oversimplifying complex points, mischaracterizing minority viewpoints, and introducing bias. Several commenters also link AI concerns with the proposal's ''modernization'' of submission formats and shortened comment windows, fearing these changes will reduce meaningful participation or exclude those who do not use digital tools.

Response: The final rule does not authorize, require, or reference the use of artificial intelligence or automated tools to review, summarize, or filter public comments or objections. Requirements for digital formats, such as machine-readable or text-based submissions, are intended to ensure compliance with section 508 of the Rehabilitation Act, helping ensure that documents are accessible to individuals using assistive technologies. Executive Order (E.O.) 13960, *Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government,* encourages agencies to explore AI tools to improve government operations where appropriate and consistent with principles of transparency, accountability, and nondiscrimination. Similarly, the USDA AI Strategy outlines Department-wide principles for responsible AI use. These policies do not mandate or direct the use of AI in the Forest Service's objection processes, nor do they supersede the Agency's responsibility to ensure that public input is meaningfully considered by decision-makers.

Comment: Commenters oppose the proposed page-length limits on objections (15 pages for EA-level and 30 pages for EIS-level decisions), asserting the page limits are arbitrary and inadequate for complex, multi-disciplinary analyses; would suppress citations, endnotes, and evidentiary detail needed for rigorous administrative review; and would disproportionately burden Tribes, small organizations, and individuals without legal support.

Response: The objection process is intended to provide a concise, issue-focused opportunity for eligible parties to identify specific concerns with the proposal and suggest recommendations or mitigation. It is not intended to replicate the opportunity for public comment, which has a broader purpose and imposes no page limitations (section 218.3(e)).

In 2020, the Council on Environmental Quality included requirements in its now-rescinded regulations to limit EAs to 75 pages and EISs to 150 pages, unless the proposal is of extraordinary complexity, in which case the page limits are capped at 300. In 2023, Congress amended NEPA with the Fiscal Responsibility Act (of 2023) to make these page limits a statutory requirement. As the Department is now

required to meet page limits for environmental documents, it is logical to also place page limits on objection documents that have, at times, exceeded the length of the environmental document itself. The page limits placed on environmental documents necessitate a focus on the substantive issues that inform the iterative decision-making process. Similarly, page limits on objections help ensure that objections remain focused on the issues raised during public comment and facilitate timely and efficient review by responsible officials, while providing adequate opportunity for objectors to identify specific issues based upon previously submitted comments.

The page-length limits on objections (15 pages for EA-level and 30 pages for EIS-level decisions) are reasonable based on Agency experience distilling objection issues and rationales from objections submitted over the more than twelve years since the objection process was put in place. Furthermore, page limitations apply only to the objection document itself, and do not apply to attachments and other documents incorporated by reference (section 218.9(b)). The page limits reflect a balanced approach to ensuring both meaningful participation and administrative efficiency.

Comment: Commenters oppose the proposed rule's requirement that science or literature must be submitted as an attachment in portable document format (PDF) during the comment and objection stages (section 218.3(h)). They argue that restrictions such as prohibiting web links, disallowing CDs or external media, requiring permission-free PDFs, limiting file sizes, and allowing only narrowly defined literature will exclude relevant science. Many commenters also assert that the cause-and-effect justification requirement improperly shifts the analytical burden from the Forest Service to the public, enables selective exclusion of inconvenient evidence, and undermines the completeness and accuracy of the project record.

Response: The final rule does not limit the amount or type of scientific literature that may be submitted. Commenters and objectors may provide peer reviewed articles, gray literature, Agency reports, monitoring data, photographs, and other relevant materials. These materials must be submitted as permission free PDF attachments to ensure accessibility and compliance with section 508 standards. The Forest Service does not accept website links because URLs are unstable and cannot be reliably preserved in the project record. Additionally, content on websites is subject to change and on occasion the information being cited is no longer available at the website link provided; therefore, it is in the best interest of the commenter or objector to provide a PDF of the website page they are citing to ensure content is captured as it appeared at the time it was referenced.

Requiring commenters and objectors to identify the cause-and-effect relationship between submitted materials and the environmental analysis clarifies relevance and supports efficient review. The final rule also allows objectors to submit scientific literature that was not available during the comment period, such as newly published studies or recently released data, ensuring that relevant new information can be considered without reopening the comment period.

Comment: Commenters oppose the requirement that responsible officials issue written objection responses within 15 days following the close of the objection filing period for an EA and FONSI or 20 days following the close of the objection filing period for an EIS and ROD, and they object to the 5-page limit on those responses. They assert that compressed timelines and page limits will reduce the quality and completeness of responses to complex, multi-statute objections, risking increased litigation exposure. Many also oppose discontinuing mailed responses, advocating direct notice to lead objectors in addition to posting on the Agency website.

Response: The objection process is intended to provide a focused, predecisional administrative review to identify and resolve concerns efficiently before a final decision is issued. The proposed response timelines were designed to support timely decision-making while ensuring that responsible officials address the issues raised in objections.

The Department acknowledges commenters' concerns that highly technical projects or a high volume of objections may require additional time for review. To address this, the final rule allows an Agency official one level above the responsible official to extend the objection review period by up to 15 additional days for EIS- level decisions that are highly complex or receive a high volume of objections. This discretionary extension provides flexibility for certain EIS-level decisions while maintaining the overall efficiency of the administrative review process.

The primary purpose of the objection response is to identify objections that were reviewed in whole or in part, those that were set aside from review, and any changes that the responsible official will make prior to finalizing the FONSI or ROD. Page limits help ensure that objection responses remain concise, focused, and accessible to the public. Responsible officials may incorporate by reference relevant portions of the environmental analysis or other documents in the project record into the objection response as needed.

In response to concerns about the discontinuation of mailed objection responses, the final rule requires that objection responses be posted on the Agency's website to ensure timely and consistent access. Responsible officials have the discretion to provide direct notice to objectors through electronic communication or other appropriate means.

Comment: Commenters requested clarity on the ''substantive comment'' requirement to ensure it does not exclude non-technical participants or experience-based, on-the-ground input from consideration by the responsible official.

Response: The section 218.2 definition of ''substantive'' aligns with the USDA NEPA rule at 7 CFR 1b.11(a)(53), which defines substantive as information that ''meaningfully informs the consideration of reasonably foreseeable impacts on the human environment, the resulting significance determination, decisions on how to proceed . . . or compliance with applicable laws, executive orders, and regulations.'' This definition does not require technical language, formal citations, or specialized expertise. It encompasses a wide range of input, including local and traditional knowledge, field observations, community-based information, photographs, monitoring data, and descriptive accounts.

Comment: Commenters express concern regarding proposed and existing practices that would discount, consolidate, or set aside repetitive public input, including objections that restate previously raised concerns, similarly worded or form-letter comments that may be ''counted as one,'' and policies that allow the Agency to adopt only one of multiple related submissions from the same signer or organization.

Response: The final rule states that the responsible official shall consider all specific written comments but is not required to review multiple submissions from an objector that are submitted in different formats (duplicates) (section 218.3(g)). Similarly worded and form letters are counted as individual submissions and considered, though consolidated summaries may be used

for efficiency of response. The final rule promotes an issue-based approach to understanding concerns and identifying recommendations. When similar concerns or recommendations are expressed more than once, it is reasonable to consolidate and consider the concern or recommendation once.

(4) Emergency Situations and Exclusion Mechanisms

Comment: Commenters assert that emergency situation determinations referenced at 218.14 are insufficiently defined and applied too broadly, and oppose categorical exclusion practices that reduce notice, scoping, and objection opportunities—particularly for fuels and vegetation projects that are large in scope.

Response: The Consolidated Appropriations Act of 2012 provides a broad authority to determine that a ''proposed action shall not be subject to the predecisional objection process'' because ''an emergency situation exists for which immediate implementation of a proposed action is necessary'' (Pub. L. 112–74, Sec. 428). The section 218.14 provision on Emergency Actions clarifies when this authority applies while maintaining the ability to use the emergency authority as needed, as provided by Congress. In addition to the section 218.14 Emergency Situations authority, section 218.5(a)(6)(i) clarifies that the project-level objection process also does not apply to projects authorized pursuant to the Infrastructure Investment and Jobs Act of 2021 (IIJA) section 40807 Emergency Situation Determinations or other applicable emergency authorities. The IIJA emergency authority is defined by statute (16 U.S.C. 6592c) and specific Emergency Situation Determinations are declared via Secretarial Memoranda (for example, Secretarial Memorandum 1078–006). Even in an emergency situation, the Agency continues to provide public notice and maintain NEPA compliance commensurate with the circumstances and legal requirements.

Categorical exclusions (CEs) are exempted from project-level objections by statute (Pub. L. 113–76 and 113–79) and section 218 does not modify CE scope or create new CEs.

(5) Legal/Policy Alignment and Justification

Comment: Commenters assert that the proposed reductions in comment and objection periods are inconsistent with NEPA's participatory purpose and with the Administrative Procedure Act's requirement for reasoned Agency decision-making. They further contend that the proposal does not adequately explain what they view as a departure from the Agency's prior interpretation of congressional direction under the Appeals Reform Act, the 2012 Appropriations Act, HFRA, and the 2014 repeal of the ARA, citing the *State Farm* and *Fox* standards governing changes in Agency policy. Commenters also allege potential inconsistencies between the revised procedures and other Federal accessibility and administrative statutes, including the Americans with Disabilities Act, section 504, and public-comment provisions applicable to FAST–41 projects. In addition, they request clarification regarding the relationship between part 218, USDA's NEPA procedures at 7 CFR 1b, and the rescission of the Forest Service's former NEPA regulations at 36 CFR 220.

Response: The revisions to 36 CFR 218 reflect a reasoned balance among public participation, timeliness, and administrative efficiency and compliments the public participation provisions set forth in the USDA NEPA regulations. In developing the final rule, statutory authorities, public input, and implementation experience were evaluated to ensure that the objection procedures continue to support NEPA statutory requirements for soliciting comments and the Administrative Procedure Act's (APA) requirement for reasoned decision-making. The authorities cited in the comment on the proposed rule do not prescribe specific comment or objection periods, and the 2014 repeal of the Appeals Reform Act restored discretion to structure predecisional review procedures consistent with HFRA and the 2012 Appropriations Act. The Department considered statutory requirements and relevant legislative history and determined that the final rule is consistent with statutory requirements concerning the objections process and provides opportunity for the public to raise substantive issues before decisions are finalized.

Part 218 establishes procedural requirements for administrative review and does not alter or supersede statutory obligations under NEPA or any other environmental or accessibility statute identified by commenters. FAST–41 (''Fixing America's Surface Transportation Act,'' title 41) provides permitting process coordination, schedules, and dashboard requirements for ''covered projects,'' but it does not create new or additional comment periods where no other applicable provision of law creates a comment period, nor does it create any public participation requirement. References in the FAST–41 to processes required by the now rescinded CEQ NEPA regulations (40 CFR parts 1500–1508) are obsolete.

The final rule is consistent with USDA NEPA regulations at 7 CFR part 1b, and the rescission of 36 CFR 220 does not affect the statutory basis for the objection process or control the provisions set forth in this rule.

(6) Tribal Consultation, Rights, and Cultural Resources

Comment: Tribal governments and intertribal organizations warn that shortened windows and exclusive reliance on website posting impede timely, reliable participation and government-to-government consultation, especially given seasonal subsistence cycles (Alaska Native Interest Lands Conservation Act Sec. 810), internal coordination needs, and limited broadband in rural areas. They express concern that the reduced comment and objection periods would severely impede meaningful Tribal participation, particularly when comment or objection periods for multiple projects overlap. They argue changes undermine trust and treaty responsibilities and obligations under E.O. 13175, the National Historic Preservation Act (NHPA), and the Native American Graves Protection and Repatriation Act (NAGPRA). They request longer, flexible timelines, direct notice, and assurance that consultation comments qualify for objection eligibility.

Response: The final rule is consistent with the United States' trust responsibilities and consultation obligations as specified in the comment received. The Forest Service will continue to conduct early, meaningful, and ongoing government-to-government consultation when undertakings may affect culturally significant sites or subsistence practices. The final rule extends the comment periods from those proposed to 15 days for an EA and 30 days for an EIS and clarifies the minimum information required during the opportunity for public comment (section 218.3 (d)). In response to comments received, the responsible officials will supplement electronic web-posting with direct notifications to Tribes and tailored outreach appropriate to local communities, Sections 218.3(b) and 218.8. For objection eligibility, section 218.6(b) allows specific written comments provided during Federal-Tribal consultation to establish eligibility to object. Procedural adjustments (page limits and set-aside clarifications) promote concise, issue-

specific review and do not diminish consideration of Tribal input.

(7) Resource Impacts

Comment: Commenters express concern that shortened comment and objection periods, elimination of review extensions, and limits on the length of submissions increase the likelihood that the objection review process will miss cumulative or long-term impacts on wildlife, sensitive and listed species, migration corridors, aquatic systems, and mature and old-growth forests. Commenters note that adequate objection review time is essential for Endangered Species Act compliance, land management plan consistency, and adherence to E.O. 14072 and the Northwest Forest Plan. They maintain that compressed objection review timelines would diminish science-based input, reduce the ability to verify technical accuracy, and heighten the risk of irreversible impacts on resources. Commenters request longer or complexity-based review windows and greater involvement of State wildlife agencies and other jurisdictional experts to ensure decisions reflect robust scientific understanding.

Response: The final rule maintains adequate opportunity for concise, directed issues to be raised to responsible officials based upon comments submitted previously, as well as targeted review and adjustments by those officials to ensure compliance with federal laws. Agency experience, coupled with statutory direction and resource conditions, support the procedural changes in time periods set forth in the final rule. Statutory requirements are unaffected by the time periods set forth in this rule. Agency experience indicates that longer time periods do not result in improvement in objection quality or depth, nor does a longer time period automatically improve objection responses.

Consistent with 7 CFR 1b.2(g), the Forest Service conducts NEPA reviews concurrently and in an integrated manner with all other environmental analyses, surveys, and studies required by Federal environmental laws and executive orders. This includes Endangered Species Act consultation, cultural resource review under the National Historic Preservation Act, water-quality considerations under the Clean Water Act, and other resource-specific requirements. The procedural adjustments in part 218 do not modify these responsibilities or the depth of analysis required to support informed decision-making.

In addition, the National Forest Management Act authorizes the Agency to develop, maintain, and appropriately revise land management plans for units of the National Forest System. These land management plans contain standards, guidelines, and desired conditions applicable to project-level decisions. All projects, regardless of administrative review timelines, must be consistent with the applicable land management plan or must be adjusted as soon as practicable to be consistent with the plan (16 U.S.C. 1604(i)).

The final rule provides ample opportunity to provide concise, specific issues (based on previous comments submitted) for review by the responsible official to ensure continued compliance with federal statutes and consistency with the land management plan. The opportunity for public participation in the final rule, coupled with substantive provisions included in law, ensure that resources will be protected in the context of efficient Forest Service decision-making.

(8) Consultation and Collaboration

Comment: Commenters are concerned that reduced comment periods will curtail meaningful public participation, which could elevate stewardship partners' and timber purchasers' exposure to financial, contractual, and reputational risk if litigation impacts project implementation. They also note that cooperating agencies (for example, those monitoring livestock grazing) rely on public engagement to identify resource impacts, and that eliminating or compressing opportunities to comment and object could reduce public input until after decisions are made, pushing conflict into litigation.

Response: The Department recognizes the importance of early engagement with stewardship partners, permittees, cooperating agencies, and other stakeholders. These relationships often help identify issues early, improve project design, and reduce the likelihood of disputes. Nothing in the final rule limits the Forest Service's ability to engage proactively with partners before the formal comment or objection period begins to discuss the resource issues as well as potential litigation risk. Responsible officials retain discretion to share preliminary information, coordinate technical review, and work collaboratively with purchasers, permittees, and cooperators throughout project development.

III. Changes to the Final Rule

In response to public comments, the Department is making the following changes to the rule as proposed on February 6, 2026.

Section 218.1 Purpose, Applicability, and Scope

Added a cross-reference to 218.16.

Section 218.2 Definitions

Updated the definition of ''Recommendations'' to be consistent with 7 CFR 1b.7(f) and updated the definition of ''Substantive'' to be consistent with 7 CFR 1b.11(a)(53).

Removed the definition for Forest Service line officer as that term is not referenced in the final rule.

Updated the definition for National Forest System land to reference 16 U.S.C. 1609(a).

Section 218.3 Designated Opportunity for Public Comment

Section 218.3(b) Added a requirement for the responsible official to send a notification to interested parties of the designated opportunity to comment using the Agency's current public notification tools.

Section 218.3(c) Increased the time to file comments from 10 days in the proposed rule to 15 days in the final rule for EAs and from 20 days in the proposed rule to 30 days in the final rule for EISs. In section 218.3(c)(1), clarified that computation applies to comment and objection filing time periods.

Section 218.3(c) Removed the last sentence from the paragraph regarding ''Notice of the opportunity to comment . . .'' because it is already stated in 218.3(b).

Section 218.3(d) Added language regarding what information is required to be available to the public during the designated opportunity to comment and removed 218.3(d)(4) as a requirement.

Section 218.3(e) Changed ''the designated opportunity for public comment'' to ''a designated opportunity for public comment'' to indicate that there may be more than one opportunity for public comment to establish eligibility to object. This update from ''the'' to ''a'' was made throughout the rule where appropriate. In (e)(2) updated ''national forest(s)'' to ''national forest(s) and grassland(s)'' to appropriately include grasslands. This update to reference grasslands in addition to forests was made throughout the regulations where needed.

Section 218.3(g) Corrected a reference to ''objections'' when it should read ''comments.''

Section 218.4 Projects and Activities Subject to the Project-Level Objection Process

Added ''project-level'' to this section heading to distinguish it from the objection process for land management

plan revision and plan amendments at 36 CFR 219, subpart B.

Section 218.5 Projects and Activities Not Subject to the Project-Level Objection Process

Added ''project-level'' to this section heading to distinguish it from the objection process for land management plan revision and plan amendments at 36 CFR 219, subpart B.

Removed text in 218.5(b) that exempted projects from the objection process that have already been through ''a previous Forest Service administrative review process, or another agency's pre- or post-decisional administrative review process.''

Added reference to ''previous findings, or decisions'' that were relied upon as not subject to objection review.

Section 218.7 Objection Filing Period

Added clarification for timing of filing the EIS with the Environmental Protection Agency.

Section 218.8 Notice of Opportunity To Object

Added a requirement for the responsible official to send a notification to interested parties of the objection filing period using the Agency's current public notification tools. Added a cross-reference to section 218.3(c)(1) with regards to calculating objection start and end dates.

Section 218.9 Filing an Objection

Updated language in section 218.9(a)(1) to be consistent with section 218.3(g) regarding the acceptable document formats.

Updated language at section 218.9(b)(5) to be consistent with section 218.9(c)(4).

Updated language at section 218.9(c)(3) to clarify when issues raised in objections may be based on new information.

Updated language at section 218.9(d)(4)(ii) to indicate that recommended mitigation included in an objection *should* include reference to statutory or regulatory authority but is not required to include reference to statutory or regulatory authority.

Section 218.11 Objections or Issues Set Aside From Review

Added reference to section 218.9(c) and clarified language at section 218.11(a)(4), section 218.11(b)(3), and section 218.11(b)(4) regarding when objections may be set aside from review.

Section 218.12 Review of Objections

Added language to indicate that the Agency official one level above the responsible official has the discretion to extend the review of objections on an EIS an additional 15 days if the project is of extraordinary complexity (NEPA, section 107(e)(1)(B); 42 U.S.C. 4336a(e)(1)(B)) and/or has received a high volume of objections.

Updated the ''end date'' for the objection response period for an EA to 15 calendar days from the start date and 20 calendar days from the start date for an EIS, unless extended to 35 days for an EIS (218.12(b)). Also clarified the computation applies to the time period for review of objections.

Added a requirement a requirement at 218.12(c)(4) that for District Ranger or Forest/Grassland Supervisor objection responses, an Agency official at an administrative level higher than the Forest/Grassland Supervisor where the project is occurring must concur with the objection response before finalizing and posting on the USDA website (218.12(d)).

Section 218.13 Timing of Finding or Decision

Updated the time to publish a final FONSI or ROD to ''after the fifth business day following the end of the objection period.'' Added cross-reference to section 218.7(c) regarding timing of filing an EIS with the Environmental Protection Agency.

Section 218.14 Emergency Actions

Updated language of this section to reference section 428 of the Consolidated Appropriations Act of 2012, which establishes that when the Chief or Associate Chief determines that an emergency situation exists, the project shall not be subject to the predecisional objection process.

Section 218.15

Corrected the reference to the Under Secretary for Natural Resources, which previously read ''National Resources.''

Section 218.16

Changed the reference to ''administrative review process'' in the last sentence to ''objection process'' to be consistent with section 218.1.

The Department has also made non substantive editorial and clarifying revisions to the regulatory text between the proposed and final rule. These changes improve clarity, correct minor inconsistencies, and enhance the precision of the rule language without altering the intent or scope of the rule.

Regulatory Certifications

Regulatory Planning and Review

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether a regulatory action is significant as defined by E.O. 12866 and will review significant regulatory actions. OIRA has determined that this final rule is not significant as defined by E.O. 12866. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Department has developed the final rule consistent with E.O. 13563.

Congressional Review Act

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), OIRA has designated this final rule as not a major rule as defined by 5 U.S.C. 804(2).

National Environmental Policy Act

The final rule will update, consolidate, and streamline the process by which the public may file objections seeking administrative review of proposed projects and activities implementing land management plans on national forests and grasslands. Departmental regulations at 7 CFR 1b.4(c)(20) exclude from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions.'' The Department's assessment is that this final rule falls within this category of actions and that no extraordinary circumstances exist which will require preparation of an environmental assessment or an environmental impact statement.

Regulatory Flexibility Act

The Department has considered this final rule under the Regulatory Flexibility Act (5 U.S.C. 602 *et. seq.*). This final rule will not have any direct effect on small entities as defined by the Regulatory Flexibility Act. This final rule will not impose recordkeeping requirements on small entities; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism

The Department has considered this final rule under the requirements of E.O. 13132, *Federalism.* The Department has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has concluded that this final rule will not have federalism implications.

Consultation and Coordination With Indian Tribal Governments

E.O. 13175, *Consultation and Coordination with Indian Tribal Governments,* requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This final rule will update, consolidate, and streamline the process by which the public may file objections seeking administrative review of proposed projects and activities implementing land management plans on national forests and grasslands. The Department has reviewed this final rule in accordance with the requirements of E.O. 13175 and has determined that this final rule could have substantial direct effects on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Therefore, consultation and coordination with Indian Tribal governments is required for this final rule.

Tribal Impact Summary Statement: On September 29, 2025, Tribes and Alaska Native Corporations were notified by email about the opportunity to consult on proposed changes to regulations at 36 CFR part 218. The Forest Service provided a National Policy Summary Analysis describing the proposal and identifying how its implementation may affect Tribal governments, Alaska Native Corporations, and the citizens they represent. This information was also available on the Forest Service National Consultation web page at *https://www.fs.usda.gov/working-with-us/tribal-relations/national-consultation.*

Input was provided by seven federally recognized Tribal governments (Chilkat Indian Village, Chilkoot Indian Association, Tlingit and Haida, Hoonah Indian Association, Ketchikan Indian Community, Organized Village of Kasaan, and Tulalip Tribes) and by the Great Lakes Indian Fish and Wildlife Commission, a Tribal organization representing member Tribes in natural resource management. The Tulalip Tribe requested formal consultation on the proposed rule, and the Forest Service met with members of the Tribe on April 6, 2026, to discuss their concerns. On April 17, 2026, the Forest Service met with the Alaska Native Council to provide additional information about the proposed rule. The other Tribes that provided comments on the proposed rule expressed interest in continued government-to-government consultation during project planning. The Tribes raised several concerns regarding the proposed revisions, including:

- *Reduced Timelines for Comments and Objections:* Concern that the proposed rule shortens the timeframe for submitting comments and objections, which may not provide adequate time for Tribes to conduct necessary research, consultation, and coordination.
- *Narrowing of NEPA Review:* Concern that the recent changes to NEPA regulations may reduce the analysis of indirect and cumulative effects, placing additional burdens on Tribes.
- *Removal of Public Notice Mechanisms:* Concern that the proposed rule eliminates the requirement to publish legal notices in newspapers of record or the **Federal Register**, relying solely on a USDA website.
- *Procedural Constraints:* Concern about additional procedural constraints, such as page limits on objections and detailed documentation requirements.
- *Federal Trust Responsibility and Consultation Obligations:* Several Tribes emphasized the Federal Government's trust responsibility to federally recognized Tribes and the need for robust government-to-government consultation.
- *Digital-Only Notification Systems and Accessibility Concerns:* Concern that the proposed rule's reliance on digital-only notification systems may reduce accessibility for some Tribal governments and citizens.
- *Weakening of Objection Process and Transparency:* Concern that the proposed rule weakens the objection process by narrowing the substance of Forest Service responses, reducing transparency, and allowing issues to be dismissed with limited explanation.
- *Impact on Treaty-Protected Resources and Cultural Sites:* Concern that the proposed rule has potential impacts on treaty-protected resources, cultural sites, and traditional use areas.

The rule has been reviewed in accordance with the requirements of E.O. 13175, and the Forest Service has determined that the rule does not impact the provisions of the E.O., which allows Tribes to initiate consultation with the Forest Service at any time. For future projects, administrative units will continue to conduct early, meaningful, and ongoing government-to-government consultation when undertakings may affect culturally significant sites, subsistence practices, or other Tribal interests. The final rule extends comment periods to 15 days for an EA and 30 days for an EIS, and clarifies the information that must be provided to support informed participation during comment windows. Responsible officials will supplement electronic web-posting with direct notifications to Tribes and tailored outreach appropriate to local communities. For objection eligibility, section 218.6(b) allows specific written comments provided during Tribal consultation to establish eligibility to object. Procedural adjustments remain focused on concise, issue-specific review and do not diminish substantive obligations to consider Tribal input.

Family Policymaking Assessment

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for a rule that may affect family well-being. The final rule will have no impact on the autonomy or integrity of the family as an institution. Accordingly, the Department has concluded that it is not necessary to prepare a Family Policymaking Assessment for the final rule.

Takings Implications

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.* The Department has determined that the final rule will not pose a risk of taking private property.

Energy Effects

The Department has reviewed the final rule under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.* The Department has determined that the final rule will not constitute a significant energy action as defined in E.O. 13211.

Civil Justice Reform

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12988, *Civil Justice Reform.* Upon publication of the final rule, (1) all State and local laws and regulations that conflict with the final rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of the final rule on State, local, and Tribal governments and the private sector. The final rule will not compel the expenditure of $100 million or more, adjusted annually for inflation, in any one year by State, local, and Tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202 of the Act is not required.

Paperwork Reduction Act

The final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 218

Administrative practice and procedure, National forests.

Therefore, for the reasons set forth in the preamble, under the authority of the Organic Act of 1897 (16 U.S.C. secs. 472 and 551), the Department amends chapter II of title 36 of the Code of Federal Regulations by revising part 218 to read as follows:

PART 218—PROJECT-LEVEL PREDECISIONAL ADMINISTRATIVE REVIEW PROCESS

Sec.

218.1 Purpose, applicability, and scope.
218.2 Definitions.
218.3 Designated opportunity for public comment.
218.4 Projects and activities subject to the project-level objection process.
218.5 Projects and activities not subject to the project-level objection process.
218.6 Who may or may not file an objection.
218.7 Objection filing period.
218.8 Notice of opportunity to object.
218.9 Filing an objection.
218.10 Evidence of timely filing.
218.11 Objections or issues set aside from review.
218.12 Review of objections.
218.13 Timing of finding or decision.
218.14 Emergency situations.
218.15 Secretary and Under Secretary authority.
218.16 Judicial proceedings.
218.17 Severability.

Authority: Pub. L. 108–148, 117 Stat. 1887 (16 U.S.C. 6515); sec. 428, Pub. L. 112–74, 125 Stat. 1046 (16 U.S.C. 6515 note); sec. 431, Pub. L. 113–76, 128 Stat. 5; sec. 8006, Pub. L. 113–79, 128 Stat. 649.

§ 218.1 Purpose, applicability, and scope.

This part establishes an administrative review process (hereinafter referred to as ''objection process'') for proposed actions of the Forest Service concerning projects and activities implementing land management plans and documented with a finding of no significant impact (FONSI) or a record of decision (ROD). The objection process is the sole means of administrative review for qualifying projects (see § 218.16).

§ 218.2 Definitions.

The following definitions apply to this part:

Commenter. An individual or entity that submits timely, specific written comments that meet the requirements outlined in § 218.3.

Contact information. For comments submitted electronically, this is a current email address at which an entity or individual may be reached. For comments not submitted electronically, this is a current phone number or a current physical mailing address where an entity or individual may be reached.

Entity. For purposes of eligibility to file an objection (§ 218.6), an entity includes non-governmental organizations, businesses, partnerships, State and local governments, Alaska Native Corporations, and Indian Tribes.

Environmental assessment (EA). See NEPA section 111(4), 42 U.S.C. 4336e(4).

Environmental documents. See NEPA section 111(5), 42 U.S.C. 4336e(5).

Environmental impact statement (EIS). See NEPA section 111(6), 42 U.S.C. 4336e(6).

Finding of no significant impact (FONSI). See NEPA section 111(7), 42 U.S.C. 4336e(7).

Issue. A logical cause-and-effect relationship between the actions proposed (cause) and the reasonably foreseeable impacts (effect) on resources found in the affected environment.

Lead commenter or objector. The individual or entity identified to represent all other commenters or objectors (for comments or objections submitted with multiple individuals and/or entities listed) for the purposes of communication, written or otherwise, regarding the comments or objections. (Also see definitions for *commenter* and *objector.*)

Mitigation. Constraints or requirements that avoid, minimize, or compensate for adverse impacts caused by a proposed action or selected alternative, which are documented in a FONSI or ROD and are determined by the responsible official, in accordance with statutory or regulatory authority, in reaction to the effects described in an EA or EIS.

Name. The first and last name of an individual or the complete name of an entity. (An electronic username is insufficient for the identification of an individual or entity.)

National Forest System land. See 16 U.S.C. 1609(a).

Objection. The written document filed with a responsible official by an individual or entity seeking administrative review of a proposed project or activity implementing a land management plan and documented with a FONSI or ROD.

Objector. An individual or entity filing an objection who meets the eligibility requirements associated with the filed objection (§ 218.6).

Proposal (or Project or Activities). See NEPA section 111(12), 42 U.S.C. 4336e(12).

Proposal record (or project record). All relevant documentation and records, including all environmental analysis documents and comment submissions, that contain information the responsible official relies on to make iterative decisions throughout the NEPA process or to determine if and how the action will be approved.

Recommendations. Actions the responsible official should consider taking based on substantive issues raised to remedy an issue. Actions in response to the recommendation may include: modifying alternatives,

including the proposed action; developing and evaluating alternatives that have not been previously given serious consideration by the responsible official; supplementing, improving, or modifying analyses; considering science or literature that has not been previously considered; making factual corrections; or choosing not to take action.

Record of decision (ROD). A documented determination by the responsible official on how to proceed with respect to a proposed action and action alternatives that have reasonably foreseeable significant impacts on the quality of the human environment, as described in an environmental impact statement (see NEPA section 111(6), 42 U.S.C. 4336e(6)).

Responsible official. The Forest Service employee who has the authority to determine: when NEPA applies, what level of NEPA review is appropriate, the extent of environmental review, the final NEPA finding, and compliance with other applicable laws, regulations, and executive orders; and how to proceed for a proposed action or action alternative(s).

Scope. The range of actions and alternatives developed for a proposal, or the issues and impacts to be considered in an environmental analysis.

Specific written comments. A written statement that identifies a substantive issue that is within the scope of the project or activity. See the definitions provided for *issue, scope,* and *substantive.*

Substantive. Information that meaningfully informs the consideration of reasonably foreseeable impacts on the human environment, the resulting significance determination, decisions on how to proceed (that is, alternatives to be considered or analyzed or the alternative selected for implementation), or compliance with applicable laws, executive orders, and regulations.

§ 218.3 Designated opportunity for public comment.

(a) *Designated opportunity.* The responsible official shall provide notice of a designated opportunity for public comment for projects and activities subject to the objection process (see § 218.4). EAs or EISs for which an opportunity for public comment or an objection process has already been provided and that are updated to include changes stemming from the designated opportunity for public comment or objection review process, or when issuing updated or supplemental environmental documents in response to court orders, shall not be subject to another opportunity for comment.

(b) *Notice of opportunity.* Notice of the opportunity to comment will be published on the USDA website where the EA or EIS, or preliminary information associated with these documents, is published, and the responsible official shall send a notification to interested parties using the Agency's current public notification tools (for example, email listservs or subscription services). The notice shall:

(1) Disclose that the project or activity is subject to the objection process (§ 218.4) unless at any point in the development and analysis process the project or activity is no longer subject to the objection process (§ 218.5 or § 218.15).

(2) Specify how comments must be submitted (for example, mailing address, email address, or web platform);

(3) State the title of the responsible official to whom the comments are to be addressed;

(4) Specify where the project or activity information for comments can be located electronically;

(5) State the date the notice of designated opportunity to comment is published on a USDA website and the dates the designated opportunity for public comment begins and ends (see paragraphs (c)(2) and (3) of this section); and

(6) Include the requirements for filing comments in paragraphs (e) through (h) of this section or include a link to the requirements as provided in this section.

(c) *Time to file comments.* The length of the designated opportunity for public comment is 15 days for a project or activity that is to be documented in an EA, or 30 days for a project or activity that is to be documented in an EIS, with no extension.

(1) *Computation.* The time periods for the designated opportunity for public comment and objection filing are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended until the end of the next Federal working day (11:59 p.m. in the receiving office's time zone for comments filed by electronic means, such as email).

(2) *Start date.* The date after a notice of a designated opportunity for comment is published on a USDA website is the first day of the designated opportunity for public comment.

(3) *End date.* The date specified as the last day of the designated opportunity for public comment, as stated in the notice of opportunity for comment.

(d) *Providing information for comment.* The timing of the notice of a designated opportunity for public comment will be determined by the responsible official and should take into account the complexity of the project or activity, the context of the substantive issues, and whether sufficient information is available for the public to make informed comments. For an EIS, the opportunity for comment may be combined with the request for comment included in the notice of intent to publish an EIS (NEPA, section 107(c); 42 U.S.C. 4336a(c)), and the notice of intent may be referenced as the place to find the information for comment. The information provided for comment shall include, at a minimum:

(1) A detailed description of the purpose and need and proposed action;

(2) Alternatives, if any, already being considered for detailed analysis, with sufficient description to indicate how each alternative differs from the proposed action. Discussion may include alternatives already considered but not carried forward for detailed analysis, and the rationale for this; and

(3) Issues to be analyzed in detail. Discussion shall include preliminary anticipated effects associated with issues to be analyzed in detail, and may also identify those issues considered but not carried forward for detailed analysis, and the rationale for this.

(e) *Comment requirements.* To be eligible to submit an objection, individuals and entities must provide the following in writing during a designated opportunity for public comment:

(1) Commenter's name and contact information;

(2) The name of the project or activity and the name(s) of the national forest(s) or grassland(s) on which the project or activity will be implemented;

(3) Specific written comments, along with supporting reasons. Commenters should also provide recommendations for the responsible official to consider that would remedy the issues raised; and

(4) Identification of the individual or entity who authored the comment(s) and, when multiple names are listed on a comment, identification of the lead commenter. Individual members of an entity must submit their own comments to establish personal eligibility to object. Comments received on behalf of an entity are considered as those of the entity only.

(f) *Timeliness.* It is the commenter's responsibility to ensure the timely filing of comments in accordance with the notice, see paragraph (b)(5) of this

section. Timeliness must be determined by the following indicators:

(1) The date of the U.S. Postal Service postmark for a hard-copy comment received before the close of the fifth business day after the designated opportunity for public comment;

(2) The shipping date for delivery by private carrier for a hard-copy comment received before the close of the fifth business day after the designated opportunity for public comment; or

(3) The Agency's electronically generated date and time for email and web-based platforms.

(g) *Submission format.* Comments submitted on or via electronic external media (such as CD–ROMs or external hard drives) shall not be accepted due to computer security policies. If comments from the same entity or individual are submitted in more than one format (for example, hard-copy, email, and electronically through web-based platforms), the responsible official will accept and review only one submission at their discretion. Comments submitted electronically must be in .doc, .docx, .pdf, or .txt document formats or provided on an Agency web-based platform. Documents must not have permission restrictions on printing, copying, or accessing text by screen reader devices.

(h) *References and attachments.* Only the following documents may be referenced or attached in comments. Other documents, attachments, or website links are not allowed and if submitted will not be reviewed by the responsible official.

(1) All or part of a Federal law or regulation.

(2) Forest Service directives and land management plans.

(3) Documents referenced by the Forest Service in the information provided for comment.

(4) Science or literature may be considered if the commenter clearly identifies the cause-and-effect issues relating literature to the environmental analysis. Science or literature must be included as an attachment in portable document format (.pdf) that does not have permission restrictions on printing, copying, or accessing text by screen reader devices. Website links will not be accepted.

(i) *Comment consideration.* The responsible official shall consider all specific written comments to identify the substantive issues raised and the recommendations made to remedy the issues. All comments received by the responsible official shall be placed in the project record and shall become a matter of public record.

§ 218.4 Projects and activities subject to the project-level objection process.

The objection process applies to:

(a) Projects and activities implementing land management plans for which an EA is prepared, including projects authorized under the Healthy Forests Restoration Act (HFRA);

(b) Projects and activities implementing land management plans for which an EIS is prepared, including HFRA projects; and

(c) Amendments to a land management plan that are included as part of a project or activity covered in paragraph (a) or (b) of this section, which are applicable only to that project or activity.

§ 218.5 Projects and activities not subject to the project-level objection process.

(a) The objection process does not apply when:

(1) No timely, specific written comments regarding the project or activity are received during a designated opportunity for public comment (see § 218.3);

(2) Any project or activity is categorically excluded from documentation in an EA or EIS;

(3) Any proposed land management plan, plan revision, and plan amendment is subject to the objection process set forth in 36 CFR part 219, subpart B;

(4) A FONSI or ROD is updated to incorporate changes stemming from the objection review process or when otherwise issuing an updated FONSI or ROD that does not change the Agency's original finding or decision;

(5) Rules are promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or policies and procedures are issued in the Forest Service Manual and Handbooks (36 CFR part 216); or

(6) Authorizing the following:

(i) Emergency Situation Determinations or authorized emergency action under section 40807 of the Infrastructure and Investment Jobs Act of 2021 (16 U.S.C 6592c(d)) or determinations of emergency situations pursuant to any applicable emergency authorities; or

(ii) Emergency situations pursuant to § 218.14.

(b) For projects or components of projects that rely on other environmental analyses that have already been subject to the objection process of this part, the environmental analysis, previous findings, or decisions relied upon shall not be subject to objection review.

§ 218.6 Who may or may not file an objection.

(a) Individuals and entities, including federally recognized Indian Tribes and Alaska Native Corporations, that submitted timely specific written comments in response to a designated opportunity to comment as required in § 218.3 and in accordance with § 218.3(e) through (h) for a project or activity subject to this part may file an objection. Objections from one or more individuals or entities must identify a lead objector (§ 218.9(d)(2)).

(b) Federally recognized Indian Tribes and Alaska Native Corporations are also eligible to file an objection when specific written comments are provided during Federal-Tribal consultations.

(c) Federal agencies may not file objections.

(d) Federal employees who otherwise meet the requirements of this regulation for filing objections in a non-official capacity must comply with Federal conflict of interest statutes at 18 U.S.C. 202 through 209 and with employee ethics requirements at 5 CFR part 2635.

§ 218.7 Objection filing period.

(a) *Time to file an objection.* Written objections must be filed with the responsible official within 10 days following the publication of the draft FONSI or 20 days following the publication of the draft ROD on a USDA website. The objection filing period will not be extended. Computation of the objection filing period will follow § 218.3(c)(1).

(b) *Start date.* The day after publication of the draft FONSI (for an EA) or draft ROD (for an EIS) required by paragraph (c) of this section is the first day of the objection filing period.

(c) *Publication date.* The publication date of the draft FONSI or draft ROD on a USDA website is the exclusive means for calculating the time to file an objection. The most recent version of the applicable EA or EIS may be published prior to publication of the draft FONSI or draft ROD, but it must be available to the public at the time the draft FONSI or draft ROD is published. The EIS need not be filed with the Environmental Protection Agency, if required by the applicable NEPA regulations, until after the objection process concludes, but shall be filed prior to or in conjunction with issuance of the signed ROD. The responsible official shall ensure the term ''draft'' is included in the title of the FONSI or ROD for purposes of publishing the documents for the objection process.

(d) *End date.* The date specified as the last day of the objection period as stated in the notice of opportunity to object

(§ 218.8(b)(5)). Objectors may not rely on dates or timeframe information provided by any other source.

§ 218.8 Notice of opportunity to object.

(a) For projects and activities subject to the objection process (see § 218.4), the responsible official shall offer eligible individuals and entities (see § 218.6) an opportunity to object. Notice of the opportunity to object will be published on the USDA website where the applicable EA and draft FONSI or EIS and draft ROD are published, and the responsible official shall send a notification to interested parties using the Agency's current public notification tools (for example, email listservs or subscription services).

(b) The notice shall be posted on a USDA website on the same day as the draft FONSI or draft ROD and must:

(1) Specify how objections will be submitted (for example, mailing address, email address, or web platform);

(2) State the title of the responsible official offering the opportunity to object;

(3) Specify where the EA and draft FONSI, or the EIS and draft ROD, can be located electronically;

(4) Identify the date the draft FONSI or draft ROD was published on a USDA website and specify the start date of the objection filing period, as determined in accordance with §§ 218.7(b) and 218.3(c)(1);

(5) Identify the objection filing period end date, as determined in accordance with §§ 218.7(d) and 218.3(c)(1); and

(6) Include the requirements for filing an objection as found in § 218.9 or include a link to § 218.9.

§ 218.9 Filing an objection.

(a) Objections must be filed with the responsible official in writing and shall be formatted to be no longer than 15 pages for an EA and draft FONSI or 30 pages for an EIS and draft ROD (not including documents and attachments as permitted in paragraph (b) of this section).

(1) For objections submitted electronically, a page is defined as 8.5 by 11 inches with one-inch margins, in at least 12-point proportionally spaced font, and single-spaced. Electronic documents must be in .doc, .docx, .pdf, or .txt format or provided on an Agency web-based platform and must not have permission restrictions on printing, copying, or accessing text by screen-reader devices. For objections submitted via web-based forms (not uploaded as an electronic document), a page is defined as 500 words.

(2) Objections submitted on or via electronic external media (such as CD–ROMs or external hard drives) shall not be accepted due to computer security policies. If objections from the same entity or individual are submitted in more than one format (for example, hard copy, email, or electronically through web-based platforms), the responsible official will accept and review only one submission at their discretion.

(b) Only the following documents may be referenced or attached in objections. Other documents, attachments, or website links are not allowed and if submitted will not be reviewed by the responsible official.

(1) All or part of a Federal law or regulation.

(2) Forest Service directives and land management plans.

(3) Documents referenced by the Forest Service in the project EA or EIS, or the draft FONSI or draft ROD, that are subject to objection.

(4) Comments previously provided to the Forest Service by the objector during the opportunity for public comment.

(5) Science or literature not previously considered that was published after the designated opportunity for public comment may be considered at the responsible official's discretion if the objector clearly identifies the cause-and-effect issues relating the literature to the environmental analysis. Science or literature must be included as an attachment in portable document format (.pdf) that does not have permission restrictions on printing, copying, or accessing text by screen reader devices. Website links will not be accepted.

(c) Issues raised in objections must be based on previously submitted specific written comments provided by the objector during a designated opportunity for public comment (see § 218.3(e)) unless the issue is based on:

(1) Modified alternatives, including the proposed action;

(2) Alternatives not previously analyzed;

(3) Supplemental analysis or analyses not previously disclosed; or

(4) Consideration of science or literature not previously considered because it was published after the designated opportunity to comment, and the objector clearly identifies cause-and-effect issues relating the literature to the environmental analysis.

(d) At a minimum, an objection must include the following:

(1) Objector's name and contact information;

(2) When multiple names are listed on an objection, identification of the lead objector;

(3) The name of the project or activity and the name(s) of the national forest(s) or grassland(s) on which the project or activity will be implemented; and

(4) Clearly stated issues, and for each issue:

(i) A statement that demonstrates the connection between the issue included in the objection and the issue as it was included in prior specific written comments or a statement indicating the issue is based on one or more of the exceptions in paragraph (c) of this section; and

(ii) Clearly articulated recommendations for the responsible official to consider taking and/or clearly stated specific mitigation for the responsible official to consider (and should include statutory or regulatory authority for the mitigation specified) when finalizing the FONSI or ROD.

§ 218.10 Evidence of timely filing.

It is the objector's responsibility to ensure the timely filing of a written objection with the responsible official. Timeliness will be determined by the following indicators:

(a) The date of the U.S. Postal Service postmark for a hard-copy objection received before the close of the fifth business day after the objection filing period;

(b) The shipping date for delivery by private carrier for a hard-copy objection received before the close of the fifth business day after the objection filing period; or

(c) The Agency's electronically generated date and time for email and web-based platforms.

§ 218.11 Objections or issues set aside from review.

(a) The responsible official must set aside as a whole and not review an objection when one or more of the following apply:

(1) Objections are not filed in a timely manner (see § 218.10);

(2) The project or activity is not subject to the objection process (see § 218.5);

(3) The individual or entity submitting the objection did not submit specific written comments regarding the project or activity during a designated opportunity for public comment in accordance with § 218.3(e) through (h), unless § 218.9(c) applies;

(4) The objection is only a restatement of previously submitted comments;

(5) The objection, as a whole, refers to the wrong project, activity, or administrative unit;

(6) The objection does not meet all the requirements of § 218.9;

(7) The objector withdraws their objection;

(8) The responsible official cancels the objection process for the project or

activity or withdraws the project or activity (notification of objection cancellation will be posted to the same location as the notice for opportunity to object); and/or

(9) The document is labeled or submitted as an ''objection'' but is entirely supportive in nature.

(b) The responsible official must set aside objections in part (not review certain issues in the objection) when one or more of the following apply to the issue(s) raised:

(1) Not within the scope of the project or activity, or is not within the responsible official's decision authority (that is, the responsible official does not have discretion to change certain aspects of the project or does not have statutory authority to require certain outcomes);

(2) Refers to the wrong project, activity, or administrative unit;

(3) Contains no statement that accurately ties the objection issue to previously submitted written comments nor a statement that the issue is based on one or more of the exceptions in § 218.9(c); and/or

(4) Contains no clearly articulated recommendations for the responsible official to consider taking, and/or no clearly stated mitigation for the responsible official to consider including in the final FONSI or ROD.

§ 218.12 Review of objections.

(a) The responsible official shall review the objections and issue a single written response that does not exceed five pages. A page is defined as 8.5 by 11 inches with one-inch margins, in at least 12-point proportionally spaced font, and single-spaced.

(b) The written response shall be issued after the close of the objection filing period; within no more than 15 days for objections filed on an EA and draft FONSI, or 20 days for objections filed on an EIS and draft ROD. The Agency official one level above the responsible official has the discretion to extend the review of objections on an EIS an additional 15 days (for a total of 35 days) if the proposed action is of extraordinary complexity (NEPA, section 107(e)(1)(B); 42 U.S.C. 4336a(e)(1)(B)) and/or has received a high volume of objections. Following the required concurrence described in paragraph (d) of this section, the objection response will be posted on the same USDA website where the EA and draft FONSI, or the EIS and draft ROD, are published.

(1) *Computation.* The objection response period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period begins or expires on a Saturday, Sunday, or Federal holiday, the start or end date is extended to the next Federal working day.

(2) *Start date.* The starting date for the objection response period is the day after the objection filing period ends.

(3) *End date.* The ending date for the objection response period is the close of business, 15 calendar days from the start date for an EA and 20 calendar days from the start date for an EIS (unless extended to 35 days for an EIS (§ 218.12(b)).

(c) The response shall state the following at a minimum:

(1) The objections, identified by submitting party, that were reviewed in whole or in part (meaning some issues were set aside from review);

(2) Objections, if any, that were set aside in whole or in part from review and the reasons for this (see § 218.11(a) and (b)); and

(3) Changes the responsible official will make prior to finalizing the FONSI or ROD, if any, in response to the issues raised or recommendations made in the objections that were reviewed in whole or in part.

(4) Concurrence from an Agency official at an administrative level higher than the Forest/Grassland Supervisor where the project is occurring (see paragraph (d) of this section).

(d) Where the responsible official is a District Ranger or Forest/Grassland Supervisor, an Agency official at an administrative level higher than the Forest/Grassland Supervisor where the project is occurring must concur with the objection response before finalizing and posting on the USDA website. No concurrence is required where the responsible official is at an administrative level above the Forest/Grassland Supervisor.

§ 218.13 Timing of finding or decision.

(a) *When eligible objections are reviewed.* Upon publishing the response required in § 218.12, and unless withdrawing the project or activity, the responsible official shall promptly make any changes as communicated in the response (§ 218.12(b)) and, once complete, promptly publish the final FONSI or ROD and ensure the term ''draft'' is removed. Notification of the availability of the final FONSI or ROD shall be provided in accordance with the applicable NEPA regulations and also include notification to any individuals or entities that have filed an objection, if they are not already included in the notification process. See § 218.7(c) with regards to timing of filing an EIS with the Environmental Protection Agency.

(b) *When no objections are subject to review.* If there are no eligible objectors or all objections filed are set aside from review (§ 218.11(a) and (b)), the responsible official shall, unless withdrawing the project or activity, publish a response noting that all objections were set aside from review, and promptly publish the final FONSI or ROD to a USDA website and provide notification of the availability of the final FONSI or ROD in accordance with the applicable NEPA regulations. Unless other statutes or regulations require otherwise, implementation of the Agency action may occur after the fifth business day following the end of the objection filing period.

(c) *When a project is not subject to objection.* When a project or activity is not subject to the objection process (§ 218.5), notification of the availability of the FONSI or ROD shall be provided in accordance with the applicable NEPA regulations.

§ 218.14 Emergency situations.

(a) *Circumstances requiring immediate implementation.* If the Chief or Associate Chief determines that an emergency situation exists as described in section 428 of the Consolidated Appropriations Act of 2012 (16 U.S.C. 6515 note) or successor legislation and associated regulations, and it is necessary to take action for the public interest, or to avoid a loss of commodity value sufficient to jeopardize the Agency's ability to accomplish project objectives directly related to resource protection or restoration, the project or activity, or portion thereof, shall not be subject to the predecisional objection process under this part, and implementation may proceed per the authorizing regulation.

(b) *Authorized hazardous fuel reduction projects.* Determinations made under this section shall not apply to an authorized hazardous fuel reduction project under title I of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511 *et seq.*).

§ 218.15 Secretary and Under Secretary authority.

(a) Nothing in this section shall restrict the Secretary of Agriculture or the Under Secretary for Natural Resources and Environment from exercising any statutory authority regarding the protection, management, or administration of National Forest System lands.

(b) Projects and activities finalized, authorized, or approved by the Secretary of Agriculture or the Under

Secretary for Natural Resources and Environment are not subject to the procedures set forth in this part. Approval of projects and activities by the Secretary or Under Secretary constitutes the final administrative determination of the U.S. Department of Agriculture.

§ 218.16 Judicial proceedings.

Any filing for Federal judicial review of a decision covered by this part is premature and inappropriate unless the plaintiff has exhausted the objection process set forth in this part (see 7 U.S.C. 6912(e) and 16 U.S.C. 6515(c)).

§ 218.17 Severability.

The sections of this part are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is the Agency's intention that the validity of the remainder of those parts will not be affected, with the remaining sections and all applications thereof to continue in effect.

Michael K. Boren,

Under Secretary, Natural Resources and Environment.

[FR Doc. 2026–20890 Filed 10–9–26; 8:45 am]

BILLING CODE 3411–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 118

[EPA–HQ–OLEM–2021–0585; FRL–7881.1–02–OLEM]

RIN 2050–AH38

Clean Water Act Hazardous Substance Facility Response Plans: Compliance Date Delay and Changes To Reflect Administration Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an extension to the compliance date for Facility Response Plans (FRPs) required by the Clean Water Act (CWA) addressing potential worst-case discharges of CWA hazardous substances. These requirements apply to onshore non-transportation-related facilities that could reasonably be expected to cause substantial harm to the environment from a CWA hazardous substance worst-case discharge to navigable waters, adjoining shorelines, or the exclusive economic zone. This action is also finalizing language modifications to remove references to climate change and environmental justice in the FRP requirements to align with Executive Order 14148 of January 20, 2025. EPA is revising the compliance deadlines in light of serious concerns that facilities may be unable to comply with the relevant requirements by the existing deadline. These changes are necessary to allow the Agency to consider implementation and compliance assistance tools that regulated facilities may be able to take advantage of when complying with the new requirements, and to ensure proper planning for all communities while promoting a science-based and risk-based approach to planning. EPA also recognizes that a delay would provide time for EPA to consider whether revisions are necessary before facilities must comply.

DATES: This final rule is effective on December 14, 2026.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2021–0585. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa Kaps, Waste and Chemicals Implementation Division, Office of Resource Conservation and Recovery (5303T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–0501; email address: *kaps.melissa@epa.gov.*

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I. General Information

A. Does this action apply to me?

A list of North American Industry Classification System (NAICS) codes at the three-digit level that could be affected by requirements established under CWA section 311(j)(5) is provided in table 1.

TABLE 1—SECTORS POTENTIALLY AFFECTED BY THE PROPOSED RULE

NAICS	NAICS description
111	Crop Production.
112	Animal Production and Aquaculture.
115	Support Activities for Agriculture and Forestry.
211	Oil and Gas Extraction.
212	Mining (except Oil and Gas).

TABLE 1—SECTORS POTENTIALLY AFFECTED BY THE PROPOSED RULE—Continued

NAICS	NAICS description
213	Support Activities for Mining.
221	Utilities.
236	Construction of Buildings.
237	Heavy and Civil Engineering Construction.
238	Specialty Trade Contractors.
311	Food Manufacturing.
312	Beverage and Tobacco Product Manufacturing.
313	Textile Mills.
314	Textile Product Mills.
321	Wood Product Manufacturing.
322	Paper Manufacturing.
323	Printing and Related Support Activities.
324	Petroleum and Coal Products Manufacturing.
325	Chemical Manufacturing.
326	Plastics and Rubber Products Manufacturing.
327	Nonmetallic Mineral Product Manufacturing.
331	Primary Metal Manufacturing.
332	Fabricated Metal Product Manufacturing.
333	Machinery Manufacturing.
334	Computer and Electronic Product Manufacturing.
335	Electrical Equipment, Appliance, and Component Manufacturing.
336	Transportation Equipment Manufacturing.
339	Miscellaneous Manufacturing.
423	Merchant Wholesalers, Durable Goods.
424	Merchant Wholesalers, Nondurable Goods.
441	Motor Vehicle and Parts Dealers.
444	Building Material and Garden Equipment and Supplies Dealers.
447	Gasoline Stations.
453	Miscellaneous Store Retailers.
481	Air Transportation.
486	Rail Transportation.
488	Support Activities for Transportation.
493	Warehousing and Storage.
511	Publishing Industries (except internet).
518	Data Processing, Hosting, and Related Services.
522	Credit Intermediation and Related Activities.
531	Real Estate.
541	Professional, Scientific, and Technical Services.
561	Administrative and Support Services.
562	Waste Management and Remediation Services.
611	Educational Services.
622	Hospitals.
624	Social Assistance.
712	Museums, Historical Sites, and Similar Institutions.
713	Amusement, Gambling, and Recreation Industries.
811	Repair and Maintenance.
812	Personal and Laundry Services.
921	Executive, Legislative, and Other General Government Support.
924	Administration of Environmental Quality Programs.
926	Administration of Economic Programs.
928	National Security and International Affairs.

This table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be regulated by this action. This table includes the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not included could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 118.3. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

The Agency is finalizing a three-year delay of the compliance date by which a regulated facility is required to prepare and submit their CWA hazardous substances FRP, as well as language modifications to 40 CFR part 118 to remove references to climate change and environmental justice to align with Executive Order (E.O.) 14148. Delaying the compliance date to June 1, 2030, is necessary to allow the Agency to consider implementation and compliance assistance tools that regulated parties may be able to take advantage of when complying with the new requirements. EPA also recognizes that a delay would provide time for EPA to consider whether revisions are necessary before facilities must comply. Removal of the provisions related to climate change and environmental justice aligns with E.O. 14148 while ensuring proper planning for all communities and promoting a science-based and risk-based approach to planning.

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

This final rule is authorized by sections 311(j)(5) and 501(a) of the CWA, (33 U.S.C. 1321(j)(5), 1361(a)).

D. What are the incremental costs and benefits of this action?

EPA has determined that the delay of the compliance date and the language modifications to remove references to climate change and environmental justice will have a deregulatory impact for affected facilities, State and local entities, and/or the Federal Government. Expressed in 2024 dollars, annualized cost savings due to the final rule are $25.97 million and $17.95 million using 7 and 3 percent discount rates, respectively. EPA's 2024 final rule assessed benefits of the CWA hazardous substances FRP program qualitatively, and therefore, there is no quantifiable effect of this final rule on benefits.

More details on the costs and benefits are found in Section 4, ''Analysis of Costs,'' and Section 5, ''Analysis of Benefits,'' in the ''Regulatory Impact Analysis: Clean Water Act Hazardous Substance Facility Response Plans: Compliance Date Delay and Changes to Reflect Administration Policy,'' which is located in the docket.

II. Background

A. Statutory Authority and Delegation of Authority

The CWA section 311(j)(5)(A)(i) states, ''[t]he President shall issue regulations which require an owner or operator of a tank vessel or facility . . . to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.'' The EPA Administrator was delegated authority under E.O. 12777 of October 18, 1991, *Implementation of section 311 of the Federal Water Pollution Control Act of October 18, 1972, as amended, and the Oil Pollution Act of 1990* (56 FR 54757), for onshore non-transportation related facilities under this statutory provision. The EPA Administrator also has authority under CWA section 501 to prescribe such regulations as are necessary to carry out provisions of the Act.

B. Clean Water Act Hazardous Substances Facility Response Plans Regulation

On March 28, 2022, the EPA proposed the CWA Hazardous Substances Worst-Case Discharge Planning Regulations (87 FR 17890); on March 28, 2024, the EPA issued final CWA Hazardous Substance FRP requirements for worst-case discharges of CWA hazardous substances (89 FR 21924) (2024 final rule). The requirements are for onshore non-transportation-related facilities that could reasonably be expected to cause substantial harm to the environment by a worst-case discharge of a CWA hazardous substance into or on the navigable waters, adjoining shorelines, or exclusive economic zone. The compliance date in the 2024 final rule for facilities to submit their Hazardous Substances FRPs to EPA is June 1, 2027.

C. Summary of the March 2026 Proposed Rule

On March 5, 2026 (91 FR 10787), the EPA proposed three modifications to the CWA Hazardous Substances FRP regulations at 40 CFR part 118: (1) delay the compliance date for regulated facilities to meet the requirements by three years; (2) remove language referencing climate change; and (3) remove language referencing environmental justice.

1. Compliance Date Delay

The EPA proposed a three-year delay in the compliance date in recognition of the complexity in implementing the new CWA Hazardous Substances FRP Regulation. Originally, in the 2022 proposal for the 2024 final rule, the EPA proposed that initially regulated facilities must prepare and submit a CWA hazardous substances FRP within 12 months (87 FR 17890 at 17921, March 28, 2022) of the effective date of the final rule. In the 2024 final rule, the EPA changed the language for plan submission to provide an initial 36-month implementation period (89 FR 21924 at 21941, March 28, 2024). In so doing, the EPA recognized that it was establishing a new program that would require significant compliance assistance. Indeed, the 2024 final rule is replete with statements where the EPA signaled its intent to provide tools and compliance assistance to help the regulated community with these new requirements because of the complexity of the new requirements to make applicability determinations. For example, there are many variables to consider in determining appropriate endpoints for all CWA hazardous substances present in a facility above the threshold quantity. CWA hazardous substances and mixtures can be present onsite in myriad types of containers and configurations. Modeling worst case discharge scenarios and making substantial harm calculations will be needed to determine not only applicability but also to inform the development of the FRPs. At the time, in recognizing both the complexity of implementing a new program and resource constraints, the EPA judged a 36-month implementation period appropriate.

Upon further consideration, on March 5, 2026 (91 FR 10787), EPA proposed extending the compliance date by another three years due in part to the complexity of the existing requirements and extent of compliance assistance that EPA said it would provide in the 2024 final rule. EPA is continuing to consider what compliance assistance and tools are necessary while simultaneously considering changes to the underlying provisions. EPA considered several lengths of delay and, after reviewing public comment, has ultimately determined that it is necessary to delay the compliance date by three years. The three-year delay balances EPA's dual priorities of implementing the FRP program as soon as possible, while also ensuring compliance and consistency across regions. This delay is necessary to allow EPA adequate time to develop tools far enough in advance of the compliance deadline so as to be actionable. Specifically, the Agency proposed delaying the compliance dates in 40 CFR 118.4 (a) for onshore non-transportation related facilities (hereafter, covered facilities or facility) as follows:

- Covered facilities meeting the applicable criteria in 40 CFR 118.3 (a) and (b) but not (c) that are in operation on March 30, 2030, must submit the Substantial Harm Certification Form by June 1, 2030, while covered facilities meeting the applicable criteria in 40 CFR 118.3 (a) and (b) after March 30, 2030, have 60 days to submit their form.
- Initially, regulated covered facilities (covered facilities in operation on November 30, 2029, and that meet the criteria in 40 CFR 118.3 or are notified by a Regional Administrator (RA) as in 40 CFR 118.5(a)) shall prepare and submit an FRP by June 1, 2030.
- Newly regulated covered facilities (covered facilities that meet the criteria in 40 CFR 118.3 or are notified by an RA as in 40 CFR 118.5(a) after November 30, 2029) shall prepare and submit an FRP within six months of meeting the criteria.
- Newly constructed covered facilities (covered facilities starting operations after June 1, 2030) shall prepare and submit an FRP and Substantial Harm Certification Form prior to the start of operations and including a 60-day start up period adjustment phase.
- Covered facilities regulated as a result of a planned event or change shall prepare and submit an FRP and

Substantial Harm Certification Form prior to the start of operations and including a 60-day start up period adjustment phase, but no sooner than June 1, 2030.

- Covered facilities regulated as a result of an unplanned event or change shall prepare and submit an FRP and Substantial Harm Certification Form within six months of the unplanned event or change, but no sooner than June 1, 2030.

2. Climate Change Language Recission

The EPA proposed to remove references to climate change from the CWA hazardous substances FRP requirements in 40 CFR part 118 to reflect the January 20, 2025, E.O. 14148—*Initial Rescissions of Harmful Executive Orders and Actions.* E.O. 14148 specifically orders the rescission of E.O. 13990—*Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.* Additionally, disproportionate focus on climate-related hazards may result in uneven applicability determinations, which could skew planning away from a risk-based approach. This unintended consequence could lead to planning based upon highly unlikely events, rather than foreseeable scenarios. Specifically, the Agency proposed modifications consistent with E.O. 14148 as follows:

- Remove the term ''climate change'' and the associated examples from the definition of ''adverse weather'' under 40 CFR 118.2.
- Remove reference to ''climate change'' from the passive mitigation provision under 40 CFR 118.5(b)(7).
- Remove reference to ''climate change'' in adverse weather provision under 40 CFR 118.5(b)(9).
- Remove ''impacts of climate change'' and associated examples from the hazard evaluation provision under 40 CFR 118.11(b)(3)(i) and replace with ''in adverse weather conditions.''

3. Environmental Justice Language Recission

The EPA proposed to remove references to environmental justice from the CWA hazardous substances FRP requirements in 40 CFR part 118 to reflect E.O. 14148, which specifically orders the rescission of E.O. 14096—*Revitalizing Our Nation's Commitment to Environmental Justice for All.* The EPA is also concerned that undue focus on particular communities rather than on the risks posed to the community by any CWA hazardous substance release could lead to improper planning. Indeed, comprehensive substantial harm criteria should protect all communities. Specifically, the Agency proposed modifications consistent with E.O. 14148 as follows:

- Remove ''Potential to adversely impact communities with environmental justice concerns'' provision under 40 CFR 118.5(b)(8) and amend to read ''potentially exposed or susceptible populations.''

Remove ''impacts to communities with environmental justice concerns'' from the hazard evaluation provision under 40 CFR 118.11(b)(3)(i).

D. Severability

EPA intends that the provisions of the rule be severable. In the event that any individual provision or part of the rule is invalidated, EPA intends that this would not render the entire rule invalid, and that any individual provisions that can continue to operate will be left in place. The rule contains many discrete provisions that operate independent of each other.

III. Discussion of the Final Rule and Public Comments

A. General Comments

A total of 30 comments were received on the proposed rule: 18 supporting the proposal, 11 opposing, and one requesting additional information. Fifteen comments were from industry groups, and 10 comments were from citizens, while the remaining five comments were submitted by two environmental and health non-governmental organizations (NGOs), one local government, one Tribal community, and one utility provider.

The comments from industry groups, the utility provider, and the local government were generally in favor of the proposed delay of the compliance deadline from June 1, 2027, to June 1, 2030, citing the complexity of the underlying rule, the cost of compliance, the lack of tools and guidance provided by the EPA, and the EPA's ongoing reconsideration of the underlying rule. Several of the comments encouraged the EPA to delay the compliance deadline by five years or more. Similarly, industry groups were generally in favor of the proposed language changes, arguing that climate change was difficult to predict, all communities should be protected, the rule was confusing as written, the proposed changes simplify compliance and follow Executive Order direction, and questioning the EPA's authority under the CWA to require covered facilities to consider environmental justice and climate change in their FRPs.

The comments from citizens, NGOs, and the Tribal community were generally opposed to the proposed delay of the compliance deadline, arguing that there could be environmental impacts of a discharge in the meantime, implementation is overdue, there is no valid reasoning for delaying compliance, and there is a need to quantify the foregone benefits associated with delaying compliance. Some commenters suggested that the EPA should have already developed the tools and guidance necessary for compliance with 40 CFR part 118, that the tools and guidance should not take three years to develop, and that a shorter delay for compliance, such as 12 months, should be sufficient to develop such tools and guidance. Similarly, many commenters were opposed to the language modifications, asserting that the proposal was arbitrary and not supported by evidence, would weaken protections for groups facing disproportionate impacts, and weaken the rule in general. These commenters stated that the proposed rule contradicts the EPA's own findings in the preamble to 40 CFR part 118, as well as argued that evidence supports climate-related hazards as contributors to severe discharge scenarios and that 40 CFR part 118 was issued under the authority of the CWA and does not need to comply with Executive Orders.

The EPA agrees with commenters that supported the compliance delay due to the complexity of the rule and lack of guidance and tools provided by EPA thus far. However, EPA disagrees with commenters who argued that a five-year extension is needed, given the Agency expects a three-year extension will be adequate time for the Agency to consider implementation and compliance assistance such as tools, guidance, or any additional measures that would best support the regulated community. EPA seeks to implement the FRP program as soon as is feasibly possible and has determined that a delay of five years is not necessary to develop compliance assistance tools and consider necessary revisions, and therefore could unnecessarily delay the eventual implementation of the rule. EPA disagrees with commenters opposed to any delay. EPA needs additional time to consider compliance assistance and tools that regulated facilities may be able to take advantage of when complying with the new and complex requirements in order to promote compliance and maximum effectiveness of the FRP program.

EPA originally proposed a delay of three years based on timeframe expectations for the Agency to consider implementation and compliance assistance tools and approaches that

would best support the regulated community and solicited comments for whether a delay was necessary and, if so, supporting rationale and data. Throughout this rulemaking, EPA has continued to assess potential timeframes for developing compliance assistance tools and reconsidering the underlying rule. EPA considered a shorter delay of two years or less but determined that any timeframe shorter than three years would not allow adequate time to develop compliance assistance tools, and allow adequate time for regulated entities to come into compliance. Moreover, it is not clear from the comments on the proposal that a delay longer than three years is necessary to ensure compliance. In finalizing a delay of three years here, EPA seeks to balance timely implementation of the FRP program with the time necessary to carry out essential compliance assistance activities. EPA believes that three years is the correct amount of time to allow for such agency activities, as well as to provide adequate time to regulated entities to come into compliance.

The Agency has repeatedly acknowledged that implementation and compliance with the 2024 rule will be extremely difficult and regulated entities may face potential barriers to compliance because tools and models do not yet exist or have not been identified. Therefore, EPA guidance and compliance assistance may be necessary to enable compliance. For example, the current planning distance approach is very complex and relies on developing modeling assumptions that, by themselves, can be difficult to consistently apply across facilities. Facilities will have to determine how to factor in the flow path, stormwater behavior, stormwater intensity, containment performance, and terrain to avoid unnecessary inconsistencies. In addition, EPA has not been able to identify models or methods that could account for the specific physical and chemical properties of each of the 296 CWA hazardous substances and mixtures thereof that could apply to both overland and in-water transport. Additional calculations are required to assess the ability to cause substantial harm to the environment and perform needed and appropriate calculations to numerous endpoints, as well as guidance and assistance for developing and implementing worst case discharge plans to protect the environment from substantial harm.

Given all the variabilities, EPA is concerned that even if facilities had compliance tools in hand today, determining applicably and submitting compliant FRPs by June of 2027 may not be possible. EPA's efforts to date confirm that the rule cannot be implemented absent a years-long effort to develop modeling and other tools necessary for compliance. Indeed, EPA is considering how to provide the necessary compliance tools far enough in advance of the compliance deadline to be actionable and simultaneously exploring whether changes to the underlying rule are warranted. In either case, EPA has determined that it is necessary to delay the compliance date by three years, to allow for EPA to develop tools far enough in advance of the compliance deadline so as to be actionable.

Guidance and other compliance assistance tools are not only necessary for regulated parties, but for EPA to administer the national CWA Hazardous Substances FRP program effectively and pursuant to the statute and corresponding regulations. EPA must ensure consistency across Regional Administrators and offices and provide regional staff with the tools to review and assess the adequacy and accuracy of CWA Hazardous Substances FRPs. For example, Regional Administrators are responsible for accepting and reviewing submitted FRPs, reviewing petitions from the public or any other party to require an FRP from any given facility, and determining if a facility that submits a substantial harm certification form is required to submit an FRP. Without vital compliance assistance, programs, and guidance, enforcement of the FRP program may vary across regions leading to uneven applications.

EPA agrees with commenters who pointed out that a delay would allow EPA to consider whether revisions to the underlying FRP provisions are necessary in order to facilitate compliance and protectiveness. On February 18, 2026, EPA published an advanced notice of proposed rulemaking to seek feedback on reconsidering the provisions that were promulgated in the 2024 rule. This Advance notice of proposed rulemaking (ANPRM) sought feedback on potential amendments to address implementation challenges and clarify requirements from the 2024 final rule. EPA accepted comments on the ANPRM through May 19, 2026. EPA recognizes that additional corrections, clarifications, and/or revisions to these standards may be needed, and such changes cannot be made without an opportunity for notice and comment. Several commenters expressed concern over incurring significant costs to comply with the 2024 rule that could potentially be wasted if EPA makes revisions to the underlying FRP provisions as contemplated in the ANPRM. Through notice and comment rulemaking on this delay rule and the recent ANPRM, EPA has identified serious barriers to compliance with the 2024 rule. EPA finds that a delay is necessary to provide time to (1) determine if guidance, calculators, outreach, or other tools can address these serious compliance issues and/or (2) determine if revision of the 2024 rule is necessary to ensure compliance with the FRP program, therefore ensuring the most effective protection of human health and the environment.

After reviewing further input from stakeholders, EPA has determined to revise the compliance deadline in order to sufficiently analyze what revisions and/or compliance assistance tools are necessary to address serious concerns that facilities may be unable to comply with the relevant requirements by the existing deadline.

EPA also agrees with commenters who supported the proposed changes to remove references to climate change and environmental justice, stating that the language modifications are needed to align with E.O. 14148, and that the changes will promote consistency without impacting 40 CFR part 118's effectiveness. The EPA disagreed with commenters who suggested the language modifications were not necessary, were arbitrary, and would weaken protections for groups facing disproportionate impacts. In particular, the language modifications will help avoid uneven applicability determinations and improper planning. A disproportionate focus on climate-related hazards may result in uneven applicability determinations, which could skew planning away from a risk-based approach. This unintended consequence could lead to planning based upon highly unlikely events, rather than foreseeable scenarios. Additionally, undue focus on particular communities rather than on the risks posed by any CWA hazardous substance release could lead to improper planning.

B. Provisions in the Final Rule

The EPA is finalizing the rule as proposed on March 5, 2026 (91 FR 10787), to modify the CWA Hazardous Substances FRPs Regulation at 40 CFR part 118. This rule finalizes language modifications to: (1) delay the compliance date by three years for regulated facilities to meet the requirements; (2) remove language on climate change; and (3) remove language on environmental justice. Please refer to section II.C of this preamble for further details.

IV. Supporting Information

A. Children's Environmental Health

This action is not subject to the EPA's Children's Health Policy (*https://www.epa.gov/children/childrens-health-policy-and-plan*) because EPA does not believe the action has considerations for human health.

The removal of climate change and environmental justice language will prevent undue focus on climate-related hazards and particular communities rather than on the risks posed by more common scenarios to the community by any CWA hazardous substance release, which could lead to improper planning. Additionally, delaying the compliance date will allow for more thorough, protective, and targeting planning efforts.

V. Statutory and Executive Orders Reviews

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

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

This action is a significant regulatory action as defined under section 3(f)(1) of Executive Order 12866. Accordingly, it was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, ''Regulatory Impact Analysis: Clean Water Act Hazardous Substance Facility Response Plans: Compliance Date Delay and Changes to Reflect Administration Policy,'' is available in the docket.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is considered an Executive Order 14192 deregulatory action. For regulatory accounting purposes, the estimated present value and annualized value of the cost savings of this rule are $348 million and $24 million, respectively (7% discount rate, 2024$, 2024 present value year, perpetuity time horizon). Details on the estimated cost savings of this final rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

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

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on the small entities subject to the rule. This rule will not impose a regulatory burden for small entities because it only proposes to delay the compliance date of the Clean Water Act Hazardous Substances Facility Response Plans Regulation finalized on March 24, 2024 (see 89 FR 21924). Total annualized cost savings for small entities with existing facilities that would require an FRP are estimated to be approximately $3.91–$7.29 million, using 3 and 7 percent discount rates, respectively, expressed in 2024 dollars. Total annualized cost savings for small entities with existing facilities that would not require an FRP are estimated to be approximately $73–$296 thousand, using 3 and 7 percent discount rates, respectively, expressed in 2024 dollars. The vast majority (about 97%) of small entity cost savings would accrue to entities that own or operate facilities that do require an FRP. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive Order 13175. This rule will only delay the compliance date of the CWA Hazardous Substances Facility Response Plans Regulation finalized on March 24, 2024 (see 89 FR 21924) and does not propose any new regulatory requirements. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with Tribal officials during the development of this action. A summary of that consultation is provided in ''Tribal Consultation Summary-Clean Water Act Hazardous Substance Facility Response Plans: Compliance Date Delay and Changes to Reflect Administration Policy Final Rule,'' which is located in the docket.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The rule will not cause reductions in the supply or production of oil, fuel, coal, or electricity; nor will it result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

This rule does not involve technical standards.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action meets the criteria set forth in 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 118

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Lee Zeldin,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR part 118 as follows:

PART 118—CLEAN WATER ACT HAZARDOUS SUBSTANCES FACILITY RESPONSE PLANS

■ 1. The authority citation for part 118 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.* Executive Order 11735, superseded by Executive Order 12777, 56 FR 54757; and Executive Order 14148, 90 FR 8237.

■ 2. Amend § 118.2 by revising the definition ''Adverse weather'' to read as follows:

§ 118.2 Definitions.

* * * * *

Adverse weather means weather conditions that make it difficult for response equipment and personnel to clean up or respond to discharged CWA hazardous substances, and that must be considered when identifying response systems and equipment in a response plan for the applicable operating environment.

* * * * *

■ 3. Amend § 118.4 by revising paragraphs (a)(1) through (5) to read as follows:

§ 118.4 General requirements.

(a) * * *

(1) *Initially regulated facilities.* The owner or operator of a non-transportation related onshore facility in operation on November 30, 2029, that satisfies the criteria in § 118.3 shall prepare and submit a facility response plan that satisfies the requirements of this section and appendix A: Substantial Harm Certification Form to the Regional Administrator by June 1, 2030.

(2) *Newly regulated facilities.* The owner or operator of a non-transportation related onshore facility that did not satisfy the criteria in § 118.3 on November 30, 2029, but satisfies the criteria in § 118.3 after November 30, 2029 or that is notified by the Regional Administrator pursuant to § 118.5 shall prepare and submit a facility response plan that satisfies the requirements of this section and appendix A: Substantial Harm Certification Form to the Regional Administrator within six months of meeting the criteria or notification.

(3) *Newly constructed facilities.* For a newly constructed non-transportation related onshore facility that commences operation after June 1, 2030, and is required to prepare and submit a facility response plan based on the criteria in § 118.3, the owner or operator shall submit the facility response plan and appendix A: Substantial Harm Certification Form to the Regional Administrator prior to the start of operations. Adjustments to the facility response plan to reflect changes that occur during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days.

(4) *Facilities regulated as a result of a planned event or change.* For a non-transportation related onshore facility required to prepare and submit a facility response plan after June 1, 2030, as a result of a planned change in design, construction, operation, or maintenance so that the non-transportation related onshore facility now meets the criteria in § 118.3 of this part, the owner or operator shall submit the facility response plan and appendix A: Substantial Harm Certification Form to the Regional Administrator before the portion of the non-transportation related onshore facility undergoing the planned change commences operations. Adjustments to the facility response plan to reflect changes that occur during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days.

(5) *Facilities regulated as a result of an unplanned event or change.* For a non-transportation related onshore facility required to prepare and submit a facility response plan after June 1, 2030, as a result of an unplanned event or change in facility characteristics that renders the non-transportation related onshore facility subject to the criteria in § 118.3, the owner or operator shall submit the facility response plan and appendix A: Substantial Harm Certification Form to the Regional Administrator within six months of the unplanned event or change.

* * * * *

■ 4. Amend § 118.5 by:

■ a. Revising paragraphs (b)(7) through (10); and

■ b. Removing paragraphs (b)(11) and (12).

The revisions read as follows:

§ 118.5 Regional Administrator determination of substantial harm and significant and substantial harm.

* * * * *

(b) * * *

(7) Lack of passive mitigation measures or systems;

(8) Reportable discharge history; or

(9) Other site-specific characteristics and environmental factors that the Regional Administrator determines to be relevant to recovery, shoreline protection, and cleanup; or

(10) Density of facilities with CWA hazardous substances onsite in the immediate area.

* * * * *

■ 5. Amend § 118.11 by revising paragraph (b)(3)(i) to read as follows:

§ 118.11 Facility response plan requirements.

* * * * *

(b) * * *

(3) * * *

(i) Chemical-specific information, including the response considerations, health hazards, fire hazards, chemical reactivity, hazard classifications, and physical and chemical properties; and potential effects of a CWA hazardous substance worst case discharge as per § 118.10 in adverse weather conditions. Illustrative diagrams of the hazard evaluation should be included.

* * * * *

[FR Doc. 2026–20849 Filed 10–9–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–HQ–OW–2025–2829; FRL 12995–02–OW]

Colorado Underground Injection Control (UIC) Program; Class VI Primacy

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or the Agency) is approving an application from the State of Colorado that requests primary enforcement responsibility (primacy) for Class VI injection wells under Safe Drinking Water Act (SDWA) section 1422. The EPA's approval of the State's UIC program primacy application will allow the Colorado Energy and Carbon Management Commission (ECMC) to issue and enforce UIC Class VI permits for geologic carbon sequestration. The EPA will remain the permitting authority for Class VI injection wells on Indian lands within the State. With this action, the EPA also intends to codify previously approved, non-substantial changes to Colorado's UIC program for Class II injection wells.

DATES: This final rule is effective on November 12, 2026. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of October 13, 2026. For judicial purposes, this final rule is promulgated as of October 13, 2026.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2025–2829. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Hastings Puckett, Drinking Water Infrastructure Development Division, Office of Ground Water and Drinking Water (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–1525; or VelRey Lozano, UIC/Groundwater Section, Water Division, Region 8, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–8917; telephone number: (303) 312–6128. Both can be reached by emailing *UICprimacy@epa.gov.*

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I. Introduction

A. Federal UIC Program and Primary Enforcement Authority (Primacy)

The SDWA protects public health by regulating the nation's public drinking water supply, including both surface and groundwater sources. Among other things, the SDWA requires the EPA to develop minimum requirements for effective State and Tribal UIC programs to prevent underground injection of fluids (such as water, wastewater, brines from oil and gas production, and carbon dioxide) from endangering underground sources of drinking water (USDWs). In general, USDWs are aquifers or parts of aquifers that supply a public water system or contain enough groundwater of sufficient quality to supply a public water system. See 40 Code of Federal Regulations (CFR) 144.3 (defining USDW).

The EPA's UIC program regulates various aspects of injection throughout the lifetime of the project. These regulated aspects include technical elements such as site characterization, construction, operation, and testing and monitoring through site closure, as well as permitting, site inspections, and reporting to ensure that well owners and operators comply with UIC permits and regulations.

SDWA section 1421 directs the EPA to establish requirements that States, territories, and authorized Tribes must meet to be granted primary enforcement responsibility or ''primacy'' for a UIC program. 42 U.S.C. 300h. SDWA section 1422 provides that an applicant seeking primacy for a UIC program must demonstrate to the EPA that the applicant's proposed UIC program meets the applicable requirements promulgated by the EPA pursuant to section 1421 for protecting USDWs. 42 U.S.C. 300h–300h–1. An applicant must demonstrate, among other things, that it has jurisdiction over underground injection and that it possesses the administrative, civil, and criminal enforcement authorities required by the EPA's implementing regulations. See 40 CFR part 145, subpart B. After the EPA approves an applicant for a UIC primacy program, that UIC program may later be revised with EPA approval. See 40 CFR 145.32.

The EPA evaluates each primacy application in accordance with SDWA section 1422 and the EPA's implementing regulations to determine whether the applicant (in this instance, the State of Colorado) has satisfactorily demonstrated that, after reasonable notice and public hearings, it has adopted and will implement a UIC program that meets the requirements of the SDWA regulations at 40 CFR parts 144, 145, and 146.

In this final rule, the EPA approves Colorado's primacy program application to administer the UIC Class VI program for Class VI wells located in the State. The EPA determined that the application meets all applicable requirements for approval under SDWA section 1422 and the EPA's implementing regulations and that the State is capable of administering a UIC program consistent with the SDWA and applicable UIC regulations. The EPA will remain the permitting authority for all Class VI wells located on Indian land within Colorado and will oversee Colorado's administration of the State's UIC Class VI program as authorized under the SDWA.

B. Class VI Wells Under the UIC Program

Class VI wells are used to inject carbon dioxide into deep rock formations for long-term underground storage, also known as geologic sequestration. The geologic sequestration of carbon dioxide in UIC Class VI wells is used as part of carbon capture and storage for carbon dioxide emissions from industrial sources. Class VI injection wells are regulated under a SDWA permitting framework that provides multiple safeguards that work together to protect USDWs.

Owners or operators that wish to inject carbon dioxide underground for geologic sequestration must demonstrate to the permitting authority that their proposed injection well and injection activities will meet all regulatory requirements and receive a Class VI permit for each well. The UIC Class VI program requires applicants to meet technical, financial, and managerial requirements to obtain a Class VI permit, including:

- Site characterization to ensure the geology in the project area will contain

the carbon dioxide within the zone where it is authorized to be injected.

- Modeling to delineate the predicted area influenced by injection activities through the lifetime of the project.
- Evaluation of the delineated area to ensure all potential pathways for fluid movement have been identified and addressed through corrective action.
- Well construction requirements that ensure the Class VI injection well will not leak carbon dioxide.
- Testing and monitoring throughout the life of the project, including after carbon dioxide injection has ended. Requirements include, for example, testing to ensure physical integrity of the well, monitoring for seismic activity near the injection site, monitoring of injection pressure and flow, chemical analysis of the carbon dioxide stream that is being injected, and monitoring the extent of the injected carbon dioxide plume and the surrounding area (*e.g.,* ground water) to ensure the carbon dioxide is contained as predicted.
- Operating requirements (for example, injection pressure limitations) to ensure the injection activity will not endanger USDWs.
- Financial assurance mechanisms sufficient to cover the costs for all phases of the geologic sequestration project including the post-injection site care period and until site closure has been approved by the permitting authority.
- Emergency and remedial response plans.
- Reporting of all testing and monitoring results to the permitting authority to ensure the well is operating in compliance with all permit requirements.

The permitting authority ensures that these protective requirements are included in each Class VI permit. A draft of each Class VI permit is made available for public comment before the permitting authority decides whether to issue a final permit.

II. Legal Authorities

SDWA section 1421 requires the EPA to promulgate minimum requirements for effective State UIC programs to prevent underground injection activities that endanger USDWs. 42 U.S.C. 30h0(b)(1). SDWA section 1422 requires that States seeking primacy demonstrate that they have adopted (after notice and public hearings) and will implement a UIC program which meets the requirements that the EPA promulgated under SDWA section 1421. 42 U.S.C. 300h–1(b)(1)(A)(i). The statutory authority for this final rule approving Colorado's UIC Class VI primacy program is SDWA sections 1422 and 1450, 42 U.S.C. 300h–1 and 300j–9.

As directed by the SDWA, the EPA has promulgated regulations setting forth the applicable procedures and substantive requirements for applicants seeking primacy for UIC programs under SDWA section 1422. The regulations in 40 CFR part 144 outline general program requirements that States must meet to obtain primacy. The regulations in 40 CFR part 145 specify the procedures the EPA will follow in approving, revising, and withdrawing UIC programs and outlines the elements and provisions that an applicant must include in its application for primacy. Also, 40 CFR part 145 includes requirements for State UIC permitting programs (by reference to certain provisions of 40 CFR parts 124 and 144), compliance evaluation programs, and enforcement authority, as well as requirements for sharing information between the EPA and the State. The regulations in 40 CFR part 146 contain the technical criteria and standards applicable to each well class, including Class VI wells.

III. Colorado's Application for UIC Class VI Primacy

A. Background

On October 7, 2025, Colorado submitted a Class VI primacy program application to the EPA under SDWA section 1422. Colorado's UIC Class VI primacy program application includes a description of the State's proposed UIC Class VI program, copies of all applicable State legal authorities and forms, a statement of legal authority from Colorado's Attorney General, a summary of Colorado's public participation activities, a letter from the Governor of Colorado requesting primacy program approval and a Memorandum of Agreement (MOA) between Colorado and the EPA's Region 8 office. The EPA reviewed the application for completeness and performed a technical and legal evaluation of the application materials to assess and confirm that Colorado's proposed UIC Class VI program meets Federal requirements.

B. Public Participation Activities Conducted by Colorado

Prior to submitting a Class VI primacy application for the EPA's approval, Colorado needed to expand ECMC's regulatory authority to include direct air capture facilities and geologic storage operations and on July 1, 2021, State law SB23–016 became effective expanding ECMC's regulatory authority. Once the State expanded ECMC's authority, ECMC conducted a comprehensive UIC Class VI rulemaking process that included extensive stakeholder outreach and engagement. The goal of the outreach efforts was to inform stakeholders about ECMC's rule development process and to explain and present drafts of the State Class VI rules. Transparency and engagement were central in the outreach process. ECMC hosted a series of hybrid, virtual, and in-person outreach engagements across the State, for the general public, the regulated community, and the Tribes located in Colorado. ECMC also conducted a presentation on Class VI primacy at a public hearing, led a carbon management tour for communities near a potential development, and held seven general stakeholder meetings and several targeted stakeholder meetings.

In particular, ECMC held a series of virtual stakeholder engagements and rulemaking hearings from June to December 2024, to develop regulations for Class VI injection wells. The engagements provided opportunities for public input and informed the development of Colorado's Class VI rules. Following ten Class VI rulemaking and primacy hearings, ECMC finalized the rules for a UIC Class VI program on December 16, 2024.

In February 2025, ECMC published notices for public hearings in seven Colorado newspapers, on its website, and via email distribution to stakeholders. The public notice provided the hearing schedule and identified specific issues for public input, including the State's intent to request UIC Class VI primacy from the EPA. During the 30-day comment period, ECMC received one oral comment that expressed general concerns regarding carbon capture and storage. ECMC summarized and addressed the input in the responsiveness summary; the comment did not necessitate any changes to the State's proposed primacy application.

Documentation of Colorado's public participation activities, including the comments received and ECMC's responses, can be found in the EPA's Docket ID No. EPA–HQ–OW–2025–2829.

C. Summary of the EPA's Comprehensive Evaluation

The EPA evaluates primacy applications in accordance with SDWA section 1422 and the Agency's implementing regulations to determine whether an applicant has satisfactorily demonstrated that it has adopted, after reasonable notice and public hearings, and will implement, a UIC program that meets applicable regulatory

requirements. 42 U.S.C. 300h–1(b)(1)(A)(i). The EPA conducted a comprehensive technical and legal evaluation of Colorado's primacy application to determine whether the State's UIC Class VI program—including State statutes and regulations, program description, State Attorney General statement, MOA, and documentation of public participation—demonstrates that Colorado has met the requirements of SDWA section 1422. Upon review, the EPA determined that Colorado has adopted and will implement a UIC Class VI program that meets the requirements of 40 CFR parts 144, 145, and 146.

The EPA evaluated Colorado's UIC program description for consistency with 40 CFR 145.23, which lists all the information that must be submitted as part of the program description. The EPA's evaluation of the UIC program description included reviewing the scope, structure, coverage, and processes of the State's program. The EPA assessed Colorado's permitting, administrative, and judicial review procedures, as well as the State's permit application, reporting, and manifest forms. The EPA also reviewed the State's compliance evaluation program and enforcement authorities and the State's demonstration that its UIC Class VI program will have adequate in-house staff or access to contractor support for technical areas including site characterization, modeling, well construction and testing, financial responsibility, and regulatory and risk analysis.

The EPA evaluated Colorado's Attorney General's statement for consistency with 40 CFR 145.24. In an Attorney General's statement, the State's top legal officer affirms that applicable statutes, regulations, and judicial decisions demonstrate adequate authority to administer the UIC program as described in the program description and consistent with the EPA's regulatory requirements for UIC programs. The EPA confirms that the Colorado Attorney General's statement certifies that Colorado's environmental audit privilege, which protects certain self-reported information, will not affect the ability of the State to meet the enforcement and information gathering requirements under the SDWA, nor will it prevent the public from obtaining information about noncompliance or prevent the public from bringing citizen suits under the SDWA.

The EPA determined that the Class VI MOA meets the Federal requirements at 40 CFR 145.25 for primacy MOAs. The MOA is the central agreement setting the provisions and arrangements between the State and the EPA concerning the administration, implementation, and enforcement of the State UIC program. The EPA's evaluation includes ensuring that the MOA contains the necessary provisions pertaining to coordination, permitting, compliance monitoring, enforcement, and EPA oversight.

Colorado has demonstrated that it has the legal authority to implement all UIC Class VI permit requirements found in 40 CFR 145.11. Colorado's UIC Class VI permitting provisions and technical criteria and standards meet the Federal requirements in 40 CFR parts 124 and 144 through 146. The State has incorporated necessary procedures pursuant to 40 CFR 145.12 to support a robust UIC Class VI compliance evaluation program. Additionally, Colorado has the necessary administrative, civil, and criminal enforcement authorities pursuant to 40 CFR 145.13. Colorado's UIC Class VI regulations regarding permitting, inspection, operation, and monitoring meet requirements in 40 CFR parts 145 and 146. Colorado's reporting and recordkeeping requirements meet the requirements in 40 CFR 144.54 and 40 CFR part 146.

As a result of this comprehensive review, the EPA approves Colorado's UIC Class VI primacy program application. The EPA has determined that the application meets all applicable requirements for Class VI primacy under SDWA section 1422 and that the State has demonstrated it is prepared to implement a UIC Class VI program in a manner consistent with the SDWA and all applicable UIC regulations.

D. Public Participation Activities Conducted by the EPA

On March 18, 2026, the EPA Region 8 Water Division Director sent a letter via email to leaders of four Tribes (Navajo Nation, Southern Ute Indian Tribe, Ute Indian Tribe, and Ute Mountain Ute Tribe) in Colorado offering an opportunity for Government-to-Government consultation on Colorado's primacy application for the UIC Class VI program. The EPA received no requests for Tribal consultation during the period beginning March 18 and ending with the close of public comment on May 4, 2026.

On March 19, 2026, the EPA published a proposed rulemaking in the **Federal Register** (91 FR 13266) proposing to approve Colorado's application to implement a UIC Class VI program within the State. The proposal initiated a 45-day public comment period that closed on May 4, 2026. The EPA held a public hearing on April 23, 2026, that participants could attend virtually or by phone. In addition to the **Federal Register** publication, the EPA published notice of the hearing on the EPA's website and in the Denver Post, the Durango Herald, the Grand Junction Daily Sentinel, the Greeley Tribune, the Loveland Reporter Herald, and the Trinidad Chronicle News.

IV. Public Comments and the EPA's Response

A. Public Comments

During the public comment period, the EPA received eleven written comments from several individuals, as well as from interest groups, including the Southern Ute Indian Tribe, the Ground Water Protection Council, the Colorado Energy Council, the Consumer Energy Alliance, and Reliant Carbon Capture and Storage, LLC.

The EPA considered these comments in the development of this final rule. All comments are available as part of the public record and can be accessed through the EPA's docket (ID No. EPA–HQ–OW–2025–2829). Documentation of the EPA's public participation activities, including comments received and the EPA's comment response document, can also be found in the docket (ID. No. EPA–HQ–OW–2025–2829).

B. The EPA's Response to Comments

The EPA received comments supporting and opposing the proposed approval of Colorado's UIC Class VI primacy program, with a majority supporting. EPA also received a comment from the Southern Ute Indian Tribe recommending modified regulatory language, as well as some comments outside the scope of this primacy approval action.

Commenters supporting Colorado UIC Class VI program primacy approval state that Colorado's UIC Class VI rules meet or exceed the EPA's UIC requirements. They also agree that ECMC is well positioned to successfully implement Colorado's Class VI UIC program as it has in-house resources and permitting experience from administering Colorado's UIC Class II program. Commentors supporting Colorado's Class VI primacy application note that Colorado primacy approval will distribute workload between the EPA and ECMC and, that State UIC primacy, generally, will help address a national backlog of Class VI permit application. Another commenter urges that approving Colorado's Class VI program aligns with the EPA's ''Powering the Great American Comeback'' by promoting permitting efficiency, cooperative federalism, and the

protection of health and the environment.

One commenter opposing Colorado UIC Class VI program primacy approval expressed concerns with the Tribal consultation process, alleging a lack of thoroughness by both the EPA and ECMC and requesting more Tribal input on the primacy decision. The commenter also asserted that the SDWA requires that the EPA consider Colorado's ''historical conditions'' when assessing the State's primacy request, such as the State's historical conditions of Tribal consultation related to water rights. Additionally, another commenter raised concerns about carbon dioxide plume migration and the risk to groundwater.

The Southern Ute Indian Tribe (SUIT) submitted a comment supporting EPA's proposed approval of Colorado's primacy program but requested a modification to regulatory language regarding the definition of ''Indian lands.'' SUIT noted that the EPA's proposed amendment to 40 CFR 147.301 applies Colorado's UIC Program for Class VI wells to all ''Class VI wells in the State of Colorado, except those located on Indian lands,'' but ''Indian lands'' used by EPA in the text of its proposed rule is not defined within the rule or within the **Federal Register** document. SUIT noted that the EPA's use of the term ''Indian lands'' as referenced in the consultation letter dated March 18, 2026, differs from ECMC's definition of ''Indian Lands'' found at ECMC's regulations. SUIT further noted that those subtle differences are of no material consequence so long as EPA, ECMC, and the public understand that ECMC's rules, ''will not apply to . . . Class VI UIC Wells located on surface lands within the exterior boundaries of the Southern Ute Indian Reservation or the Ute Mountain Ute Indian Reservation.''

Comments received outside the scope of this primacy approval action recommended the EPA focus on phasing out fossil fuels, consuming less and recycling more, and transitioning to cleaner energy alternatives.

The EPA has noted and addressed all topics, including out of scope topics, in the Agency's response to comments document included in the docket (ID. No. EPA–HW–OW–2025–2829). In brief, the EPA assures commenters that the EPA performed an extensive review of Colorado's proposed program and it meets all applicable requirements for primacy approval.

V. The EPA's Action

A. Incorporation by Reference

The EPA is approving the State of Colorado's UIC program primacy application for Class VI injection wells in the State, except for those located on Indian lands. This action amends 40 CFR 147.300 through 40 CFR 147.305 and incorporates by reference Colorado's EPA-approved statutes and implementing regulations that contain standards, requirements, and procedures applicable to UIC well owners and operators within the State. Any provisions incorporated by reference, as well as all permit conditions issued pursuant to such provisions, are enforceable by the EPA pursuant to SDWA section 1423 and 40 CFR 147.1(e).

The EPA compiled the applicable Colorado statutes and regulations to be incorporated by reference into 40 CFR 147.301 in a document titled ''Colorado SDWA § 1422 Underground Injection Control Program Class VI Statutes and Regulations to be Incorporated by Reference,'' dated January 8, 2026. This compilation is publicly available at *https://www.regulations.gov* in the EPA's Docket No. EPA–HQ–OW–2025–2829 for this rulemaking. The EPA also codifies a table in 40 CFR 147.300 listing the EPA-approved Colorado Statutes and Regulations for Class VI wells that the EPA is incorporating by reference.

The ''Oil and Gas Conservation Commission Revised Rules and Regulations in the 800, 900, and 1200 series,'' as of January 15, 2021, includes the revised Oil and Gas Conservation Commission (OGCC) rules in the 800, 900, and 1200 series, of which the 800 series rules include the State's Class II UIC regulations. The compilation is publicly available at *https://www.regulations.gov* in the EPA's Docket No. EPA–HQ–OW–2025–2829.

In order to better serve the public, the EPA is reformatting and updating the codification of 40 CFR 147.300 State-administered program-Class II wells to incorporate non-substantial changes to Colorado's UIC program for Class II injection wells, previously approved by letter under 40 CFR 145.32(b)(4). Colorado submitted a Class II program revision to EPA Region 8 because of the State's Mission Change Rulemaking to align OGCC rules with the statutory amendments adopted in the Colorado Senate Bill 19–181. This State rulemaking revised the OGCC rules in the 800, 900, and 1200 series, of which the 800 series rules include the State's Class II UIC regulations. EPA Region 8 reviewed the regulations in the 800 series to ensure they retain all necessary authority for the OGCC to enforce the new statutory requirements applicable to Class II injection wells. The EPA is not undergoing notice and public comment on these non-substantial revisions because the Agency had previously approved them by letter in 2021 and is now simply updating the CFR to reflect these previously approved, non-substantial revisions. Because these revisions have already been approved, the codification of these revisions is ministerial. As a result, EPA finds there is ''good cause'' pursuant to 5 U.S.C. 553(b) to incorporate these codifications without prior notice and opportunity for comment. The letters from EPA approving the non-substantial revisions to Colorado's statutes and regulations (OGCC rules in the 800, 900, 1200 series) are included in the docket for reference, along with the updated Memoranda of Agreement and State Attorney General's statements. The revised documents are publicly available at *https://www.regulations.gov* in the EPA's Docket No. EPA–HQ–OW–2025–2829.

B. The EPA's Oversight

The EPA will oversee Colorado's administration of its UIC program. The EPA will require quarterly reports on instances of permittee non-compliance and annual UIC performance reports pursuant to 40 CFR 144.8. The MOA between the EPA Region 8 and ECMC specifies that the EPA will oversee the State's administration of the UIC program on a continuing basis to assure that such administration is consistent with the program MOA, the SDWA and implementing regulations, UIC grant agreements, and other applicable requirements.

VI. Statutory and Executive Orders Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is exempt from review under Executive Order 12866 because the Office of Management and Budget (OMB) has exempted, as a category, the approval of State UIC programs. This exemption also applies to EPA approvals of revisions to existing State UIC programs.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

Executive Order 14192 does not apply because actions that approve State UIC programs are exempted from review under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action will not impose an information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040–0042.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action transfers regulatory authority from the EPA to a State program with substantially the same requirements.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local, or Tribal governments or the private sector. The EPA's approval of Colorado's Class VI program will not constitute a Federal mandate because there is no requirement that a state establish UIC regulatory programs and because the program is a State, rather than a Federal program.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive Order 13175. This action contains no Federal mandates for Tribal governments and does not impose any enforceable duties on Tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it approves a State program.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This final rule does not involve technical standards.

K. Congressional Review Act (CRA)

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

VII. References

Attorney General's Statement ''Attorney General's Statement to Accompany Colorado's Underground Injection Control Program Class VI Primacy Application'', signed by the Attorney General of Colorado on May 27, 2025.

Class VI Underground Injection Control Program Description ''State of Colorado Class VI Underground Injection Control 1422 Program Description'', Colorado Energy and Carbon Management Commission, September 23, 2025.

Letter from the Governor of Colorado to the Regional Administrator, EPA Region 8, signed on April 2, 2025.

The Memorandum of Agreement between the Colorado Energy and Carbon Management Commission and the EPA Region VIII, signed by the EPA Regional Administrator on October 8, 2025.

State of Colorado Energy and Carbon Management Commission of Colorado Department of Natural Resources Class VI UIC Primacy Application, ''Relevant State Statutes and Regulations'', September 23, 2025.

State of Colorado Energy and Carbon Management Commission of the Colorado Department of Natural Resources Class VI UIC Primacy Application, ''Public Participation Documentation'', September 23, 2025.

U.S. Environmental Protection Agency. ''Colorado SDWA § 1422 Underground Injection Control Program Statutes and Regulations to be Incorporated by Reference.'' January 8, 2026. Office of Water.

State of Colorado Oil and Gas Conservation Commission Revised Rules and Regulations in the 800, 900, and 1200 series, as of January 15, 2021.

The Memorandum of Agreement between EPA Region VIII and the Colorado Oil and Gas Conservation Commission, signed by the EPA Regional Administrator on March 3, 1984, amended on August 30, 1989, and amended July 29, 2021.

The amended Memorandum of Agreement between EPA Region VIII and the Colorado Energy and Carbon Management Commission, signed by the EPA Regional Administrator on July 15, 2026.

Letter from Colorado Attorney General to the Acting Regional Administrator, U.S. EPA Region VIII, ''RE: Colorado Attorney General Statement Regarding Class II UIC Well Rules'', December 9, 2020.

Letter from Colorado Attorney General to the Regional Administrator, U.S. EPA Region VIII, ''RE: Colorado Attorney General Statement Regarding Class II UIC Well Rules'', May 20, 2026.

List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Lee Zeldin,

Administrator.

For the reasons set forth in the preamble, the EPA hereby amends 40 CFR part 147 as follows:

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.;* and 42 U.S.C. 6901 *et seq.*

■ 2. Amend § 147.300 by:
■ a. Revising the introductory text and paragraph (a) introductory text;
■ b. Adding paragraph (a)(5);
■ c. Revising paragraph (b); and
■ d. Adding paragraphs (c)(6) and (7).

The revisions and additions read as follows:

§ 147.300 State-administered program—Class II Wells

The UIC program for Class II wells in the State of Colorado, except those wells on Indian Lands, is the program administered by the Colorado Energy and Carbon Management Commission approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the **Federal Register** on April 2, 1984 (49 FR 13040); the effective date of this program is April 2, 1984. This program consists of

the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Colorado. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the State of Colorado's statutes and regulations that are incorporated by reference may be obtained at the State of Colorado Energy and Carbon Management Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado, 80203. Copies of the State of Colorado's statutes and regulations that are incorporated by reference may be inspected at the Environmental Protection Agency, Region 8, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.* The IBR material may be obtained from the EPA offices listed in this paragraph (a).

* * * * *

(5) Oil and Gas Conservation Commission Revised Rules and Regulations in the 800, 900, and 1200 series, as of January 15, 2021.

(b) *Memoranda of agreement.* (1) The Memorandum of Agreement between EPA Region VIII and the Colorado Oil and Gas Conservation Commission, signed by the EPA Regional Administrator on March 3, 1984, amended on August 30, 1989, and amended July 29, 2021.

(2) The amended Memorandum of Agreement between EPA Region VIII and the Colorado Energy and Carbon Management Commission, signed by the EPA Regional Administrator on July 15, 2026.

(c) * * *

(6) Letter from Colorado Attorney General to the Acting Regional Administrator, U.S. EPA Region VIII, ''RE: Colorado Attorney General Statement Regarding Class II UIC Well Rules'', December 9, 2020.

(7) Letter from Colorado Attorney General to the Regional Administrator, U.S. EPA Region VIII, ''RE: Colorado Attorney General Statement Regarding Class II UIC Well Rules'', May 20, 2026.

* * * * *

§§ 147.301 through 147.305 [Redesignated as §§ 147.302 through 147.306]

■ 3. Redesignate §§ 147.301 through 147.305 as §§ 147.302 through 147.306, respectively.

■ 4. Add § 147.301 to read as follows:

§ 147.301 State-administered program—Class VI Wells

The UIC program for Class VI wells in the State of Colorado, except for those wells on Indian lands, is the program administered by the Colorado Energy and Carbon Management Commission approved by EPA pursuant to section 1422 of the Safe Drinking Water Act (SDWA). The effective date of this program is November 12, 2026. The UIC program for Class VI wells in the State of Colorado, except those located on Indian lands, consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph (a) are hereby incorporated by reference and made part of the applicable UIC program under SDWA for the State of Colorado. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the State of Colorado's statutes and regulations that are incorporated by reference may be obtained at the State of Colorado Energy and Carbon Management Commission, 1120 Lincoln Street. Suite 801, Denver, Colorado, 80203. Copies of the State of Colorado's provisions that are incorporated by reference may be inspected at the U.S. Environmental Protection Agency, Water Docket, EPA Docket Center (EPA/DC), EPA WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004, or Region 8, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129. If you wish to obtain this material from the EPA Docket Center, call (202) 566–2426. Copies of this material also may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.* The IBR material may be obtained from the EPA offices listed in this paragraph (a).

(1) Colorado SDWA § 1422 Underground Injection Control Program Class VI Statutes and Regulations to be Incorporated by Reference, dated January 8, 2026. Table 1 to this paragraph (a)(1) lists the Colorado statutes and regulations that EPA has approved for inclusion in this compilation.

TABLE 1 TO PARAGRAPH (a)(1)

State citation	Title/subject	State effective date	EPA approval date
C.R.S. 24–4–101 through 24–4–109 ..	Colorado Administrative Procedure Act.	Last amended December 16, 2024 ...	October 13, 2026.
C.R.S. 34–60–101 through 106 (except 34–60–105(4)(b)), 108 through 115, 121, 122, 124, 131, and 140 through 143.	Oil and Gas Conservation Act	Last amended December 16, 2024 ...	October 13, 2026.
2 CCR 404–1, series 100 (except definition of Indian Lands), 200 (except 201(d)(2)) and 201(e)), 500, 600, 900, 1400.	Department of Natural Resources Energy and Carbon Management Commission Rules of Practice and Procedure.	Last amended December 16, 2024 ...	October 13, 2026.

(2) [Reserved]

(b) *Memorandum of Agreement.* The Memorandum of Agreement between the Colorado Energy and Carbon Management Commission and the EPA Region VIII, signed by the EPA Regional Administrator October 8, 2025.

(c) *Governor's Letter.* Letter from the Governor of Colorado to the Regional Administrator, EPA Region VIII, signed on April 2, 2025.

(d) *Statement of Legal Authority.* Attorney General's Statement to Accompany Colorado's Underground Injection Control Program Class VI Primacy Application'', signed by the

Attorney General of Colorado on May 27, 2025.

(e) *Program Description.* The Program Description, ''Colorado Class VI Underground Injection Control Program (1422) Description.''

[FR Doc. 2026–20846 Filed 10–9–26; 8:45 am]

BILLING CODE 6560–50–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1002

[Docket No. EP 542 (Sub-No. 34)]

Fees for Services Performed in Connection With Licensing and Related Services—2026 Update

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Board updates for 2026 the fees that the public must pay to file certain cases and pleadings with the Board. Pursuant to this update, 87 of the Board's 135 fees will increase and 48 fees will remain at their current levels.

DATES: This final rule is effective November 12, 2026.

FOR FURTHER INFORMATION CONTACT: Laura Mizner, (202) 914–1059, or Andrea Pope-Matheson, (202) 900–5240. If you require accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: The Board's regulations at 49 CFR 1002.3(a) provide for an annual update of the Board's entire user-fee schedule. Fees are generally revised based on the cost study formula set forth at 49 CFR 1002.3(d), which looks to changes in salary costs, publication costs, and Board overhead cost factors. Applying that formula, 87 of the Board's 135 fees will be increased and 48 will remain at their current levels.

Additional information is contained in the Board's decision. To obtain a free copy of the full decision, visit the Board's website at *www.stb.gov* or call (202) 245–0245. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information.

Decided: October 7, 2026.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.

Tammy Lowery,

Clearance Clerk.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321. Section 1002.1(f)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

■ 2. Amend § 1002.1 by revising paragraphs (b) and (c) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(b) Services involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $56.00 per hour.

(c) Services involved in checking records to be certified to determine authenticity, including clerical work, etc. incidental thereto, at a rate of $39.00 per hour.

* * * * *

■ 3. Amend § 1002.2 by revising paragraph (f) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
PART I: Non-Rail Applications or Proceedings to Enter Into a Particular Financial Transaction or Joint Arrangement:	
(1) An application for the pooling or division of traffic	$6,900.
(2) (i) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303.	$3,000.
(ii) A petition for exemption under 49 U.S.C. 13541 (other than a rulemaking) filed by a non-rail carrier not otherwise covered.	$4,800.
(iii) A petition to revoke an exemption filed under 49 U.S.C. 13541(d)	$4,000.
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13703	$43,000.
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	$7,000.
(ii) Minor amendment	$150.
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	$750.
(6) A notice of exemption for transaction within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family.	$2,400.
(7)–(10) [Reserved]	
PART II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings:	
(11) (i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	$11,200.
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	$2,600.
(iii) Petition for exemption under 49 U.S.C. 10502	$19,500.
(12) (i) An application involving the construction of a rail line	$116,500.
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	$2,600.
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	$116,500.
(iv) A request for determination of a dispute involving a rail construction that crosses the line of another carrier under 49 U.S.C. 10902(d).	$350.
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	$2,600.
(14) (i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902.	$9,500.
(ii) Notice of exemption under 49 CFR 1150.41–1150.45	$2,600.
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902.	$10,200.
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24	$2,500.

Type of proceeding	Fee
(16) An application for a land-use-exemption permit for a facility existing as of October 16, 2008 under 49 U.S.C. 10909.	$9,300.
(17) An application for a land-use-exemption permit for a facility not existing as of October 16, 2008 under 49 U.S.C. 10909.	$33,000.
(18)–(20) [Reserved]	
PART III: Rail Abandonment or Discontinuance of Transportation Services Proceedings:	
(21) (i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments).	$34,500.
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	$5,400.
(iii) A petition for exemption under 49 U.S.C. 10502	$9,700.
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	$700.
(23) Abandonments filed by bankrupt railroads	$2,900.
(24) A request for waiver of filing requirements for abandonment application proceedings	$2,800.
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment.	$2,400.
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	$35,400.
(27) (i) Request for a trail use condition in an abandonment proceeding under 16 U.S.C. 1247(d)	$350.
(ii) A request to extend the period to negotiate a trail use agreement	$700.
(28)–(35) [Reserved]	
PART IV: Rail Applications to Enter Into a Particular Financial Transaction or Joint Arrangement:	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	$29,500.
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	$15,800.
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	$2,327,700.
(ii) Significant transaction	$465,500.
(iii) Minor transaction	$10,600.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$2,400.
(v) Responsive application	$10,600.
(vi) Petition for exemption under 49 U.S.C. 10502	$14,500.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	$8,600.
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$2,237,700.
(ii) Significant transaction	$465,500.
(iii) Minor transaction	$10,600.
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	$1,800.
(v) Responsive application	$10,600.
(vi) Petition for exemption under 49 U.S.C. 10502	$14,500.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	$8,600.
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	$2,327,700.
(ii) Significant transaction	$465,500.
(iii) Minor transaction	$10,600.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$1,700.
(v) Responsive application	$10,600.
(vi) Petition for exemption under 49 U.S.C. 10502	$14,500.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	$8,600.
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$2,327,700.
(ii) Significant transaction	$465,500.
(iii) Minor transaction	$10,600.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$2,000.
(v) Responsive application	$10,600.
(vi) Petition for exemption under 49 U.S.C. 10502	$10,200.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	$8,600.
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	$3,500.
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	$109,000.
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	$20,100.
(ii) Minor amendment	$150.
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	$1,200.
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered.	$12,400.
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	$350.

Type of proceeding	Fee
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act.	$350.
(49)–(55) [Reserved]	
PART V: Formal Proceedings:	
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1).	$350.
(ii) A formal complaint involving rail maximum rates filed under the Simplified-SAC methodology	$350.
(iii) A formal complaint involving rail maximum rates filed under the Three Benchmark methodology	$150.
(iv) All other formal complaints (except competitive access complaints)	$350.
(v) Competitive access complaints	$150.
(vi) A request for an order compelling a rail carrier to establish a common carrier rate	$350.
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705.	$13,800.
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding.	$1,000.
(ii) All other petitions for declaratory order	$1,400.
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	$10,800.
(60) Labor arbitration proceedings	$350.
(61) (i) An appeal of a Surface Transportation Board decision on the merits or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d).	$350.
(ii) An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings	$550.
(62) Motor carrier undercharge proceedings	$350.
(63) (i) Expedited relief for service inadequacies: A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency.	$350.
(ii) Expedited relief for service inadequacies: A request for temporary relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacy.	$350.
(64) A request for waiver or clarification of regulations except one filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a).	$900.
(65)–(75) [Reserved]	
PART VI: Informal Proceedings:	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706.	$1,900.
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	$200.
(78) (i) The filing of tariffs, including supplements, or contract summaries	$1. per page. ($38. min. charge.).
(ii) The filing of water carrier annual certifications	$38.
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less	$75.
(ii) Applications involving over $25,000	$200.
(80) Informal complaint about rail rate applications	$950.
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less	$75.
(ii) Petitions involving over $25,000	$200.
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3).	$350.
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c)	$64. per document.
(84) Informal opinions about rate applications (all modes)	$400.
(85) A railroad accounting interpretation	$1,700.
(86) (i) A request for an informal opinion not otherwise covered	$2,300.
(ii) A proposal to use on a voting trust agreement pursuant to 49 CFR 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 1180.2(a).	$8,000.
(iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered.	$800.
(87) Arbitration of certain disputes subject to the statutory jurisdiction of the Surface Transportation Board under 49 CFR 1108:	
(i) Complaint	$75.
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	$75.
(iii) Third Party Complaint	$75.
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	$75.
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	$150.
(88) Basic fee for STB adjudicatory services not otherwise covered	$350.
(89)–(95) [Reserved]	
PART VII: Services:	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC agent	$50. per delivery.
(97) Request for service or pleading list for proceedings	$38. per list.
(98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in an STB or State proceeding that:	
(i) Annual request does not require a **Federal Register** (FR) notice:	
(A) Set cost portion	$250.
(B) Sliding cost portion	$73. per party.
(ii) Annual request does require a FR notice:	
(A) Set cost portion	$500.

Type of proceeding	Fee
(B) Sliding cost portion	$73. per party.
(iii) Quarterly request does not require a FR notice:	
(A) Set cost portion	$63.
(B) Sliding cost portion	$18. per party.
(iv) Quarterly request does require a FR notice:	
(A) Set cost portion	$233.
(B) Sliding cost portion	$18. per party.
(v) Monthly request does not require a FR notice:	
(A) Set cost portion	$21.
(B) Sliding cost portion	$6. per party.
(vi) Monthly request does require a FR notice:	
(A) Set cost portion	$166.
(B) Sliding cost portion	$6. per party.
(99) (i) Application fee for the STB's Practitioners' Exam	$250.
(ii) Practitioners' Exam Information Package	$25.
(100) Carload Waybill Sample data:	
(i) Requests for Public Use File for all years prior to the most current year Carload Waybill Sample data available, provided on CD–R.	$250. per year.
(ii) Specialized programming for Waybill requests to the Board	$153. per hour.

[FR Doc. 2026–20889 Filed 10–9–26; 8:45 am]
BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 260209–0039; RTID 0648–XG117]

Fisheries of the Northeastern United States; Summer Flounder Fishery; 2026 Commercial Quota Harvested for the State of Maine

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 2026 summer flounder commercial quota allocated to the State of Maine has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Maine for the remainder of calendar year 2026, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise Maine that the quota has been harvested, and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing summer flounder in Maine.

DATES: Effective 0001 hours October 13, 2026, through December 31, 2026.

FOR FURTHER INFORMATION CONTACT: Matthew Rigdon, (978) 281–9336, or *Matthew.Rigdon@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR 648.100 through 648.111. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102.

The commercial quota for summer flounder for 2026 was set equal to 12,765,277 lb (5,794,826 kg) (91 FR 7896, February 19, 2026). The amount allocated to vessels landing summer flounder in Maine is 15,283 lb (6,932 kg).

The NMFS Regional Administrator for the Greater Atlantic Region monitors the state commercial landings and determines when a state's commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. Based on dealer reports and other available information, the Regional Administrator has determined that the available quota has been harvested. The Maine Department of Marine Resources closed the state fishery on October 7, 2026, and this action promotes consistency between state and Federal management measures.

The regulations at 50 CFR 648.14(n) prohibit federally permitted vessels from landing summer flounder for sale in a state, and prohibit all persons from purchasing or otherwise receiving summer flounder for a commercial purpose after the effective date published in the **Federal Register** notification that commercial quota is no longer available in that state. Therefore, effective 0001 hours on October 13, 2026, landings of summer flounder in Maine by vessels holding Federal summer flounder commercial fishery permits are prohibited for the remainder of the 2026 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours on October 13, 2026, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Maine for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the commercial summer flounder fishery for Maine until January 1, 2027, under current regulations. The regulations at 50 CFR 648.103(b) require such action to ensure that summer flounder vessels do not exceed quotas allocated to the states. If implementation of this closure was delayed to solicit prior public comment, the quota for this fishing year will be exceeded, thereby undermining the conservation objectives of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The Assistant Administrator further finds,

pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reason stated above.

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

Dated: October 8, 2026.

Shannon Bettridge,

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

[FR Doc. 2026–20861 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 260925–0005]

RIN 0648–BN00

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Pacific Coast Groundfish Fishery Management Plan; Fixed Gear Marking and Entanglement Risk Reduction

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

ACTION: Final rule.

SUMMARY: This rulemaking implements gear marking requirements and entanglement risk reduction measures for portions of the Pacific coast groundfish fishery. This rulemaking consists of mandatory requirements and voluntary measures. These new requirements and voluntary measures are established pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The intent of the gear marking requirements is to increase the likelihood of attributing entanglements to a specific fishery and gear type. The intent of the risk reduction measures is to reduce bycatch by decreasing the likelihood of marine animal entanglements with fishing line.

DATES:

Effective date: This final rule is effective January 11, 2027, with the exception of §§ 660.219(a)(1) and 660.319(a)(1), which are effective October 13, 2026.

Compliance date: The compliance date for §§ 660.219(b)(2) and 660.319(b)(2), is January 11, 2030.

ADDRESSES: A plain language summary of this rulemaking and the supporting statement for the Paperwork Reduction Act (PRA) information collection is available at *https://www.regulations.gov/docket/NOAA-NMFS-2024-0045.* Other information relevant to this rulemaking, which includes an analysis that addresses Presidential Executive Order 12866, the Regulatory Flexibility Act (RFA), and the statutory requirements of the Magnuson-Stevens Act (the Analysis), may be obtained from the NMFS West Coast Region website at: *https://www.fisheries.noaa.gov/region/west-coast.*

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew, 206–526–6147 or *gretchen.hanshew@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Pacific Coast groundfish fishery in the U.S. exclusive economic zone (EEZ) seaward of Washington, Oregon, and California (the West Coast) is managed under the Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP). This final rule implements gear marking requirements and entanglement risk reduction measures for portions of the Pacific Coast groundfish fishery. These measures are consistent with the authority provided through the Magnuson-Stevens Act section 303(a)(11) (16 U.S.C. 1853(a)(11)) for conservation and management measures that, to the extent practicable, minimize bycatch; and with the authority provided at Magnuson-Stevens Act section 303(b)(4) (16 U.S.C. 1853(b)(4)) for measures that allow for prohibiting, limiting, conditioning, or requiring use of specified types of fishing gear. The framework for gear definitions and restrictions is described in the Groundfish FMP in section 6.6, which notes that gear definitions and restrictions may be revised through a rulemaking process. Additionally, section 6.10.3 of the Groundfish FMP authorizes gear identification requirements, and provides that these requirements may be modified as necessary in Federal regulations.

This rulemaking consists of new mandatory requirements and voluntary measures and is promulgated pursuant to the Magnuson-Stevens Act section 303(c) and 304(b)(1)(A) (16 U.S.C. 1853(c) and 16 U.S.C. 1853(b)(1)(A)). The intent of the gear marking requirements for buoys and portions of lines is to increase the likelihood of attributing entanglements to a specific fishery. The intent of the risk reduction measures is to reduce bycatch by decreasing the likelihood of marine animal entanglements with fishing line. This rulemaking is, in part, in response to increased rates of entanglement of humpback whales with Pacific coast fishing gear since 2014. This rule also clarifies requirements regarding the position of escape panels on pot gear to prevent the escape panel from being on the bottom of the pot and to promote consistency across the escape panel requirements for Federal groundfish pot fisheries off Alaska and the three West Coast states. This rulemaking also clarifies bottom longline regulations throughout 50 CFR part 660 for consistency with Pacific Fishery Management Council (Council) recommendations implemented in this rulemaking.

Pursuant to Magnuson-Stevens Act section 303(c)(2) (16 U.S.C. 1853(c)(2)), the Council deemed the regulations in this rulemaking necessary and appropriate to implement these actions in a December 20, 2024, letter from Council Executive Director, Merrick Burden, to Regional Administrator Jennifer Quan. The proposed rule was published on February 2, 2026 (91 FR 5408). The public comment period was open through March 9, 2026. This rulemaking implements the Groundfish FMP, consistent with the authority provided in sections 6.6 and 6.10.3 of the Groundfish FMP, for gear restrictions being described in this final rule.

Background

This final rule is based on the Council's final recommendations for gear marking and entanglement risk reduction in the groundfish fishery made at its June 2024 meeting in San Diego, CA. In developing the recommended measures, the Council considered the results of a 2022 workshop with the groundfish fishing industry, ''Improving Gear Marking in the U.S. West Coast Sablefish Pot Fishery,'' as well as reports from its advisory bodies and public testimony. In spring 2026, NMFS considered public comments on the proposed rule and advice from the Council's enforcement consultants in developing this final rule.

The Needs and Scope of This Rulemaking

Marine animals, like whales and turtles, can get caught in fishing gear, which can prevent them from eating or cause serious injury or death. The animal most often entangled in gear associated with the Pacific Coast groundfish fishery is the humpback whale.

This rulemaking removes the regulatory requirement to use surface gear at both ends of groundfish pot and bottom longline gear sets, allowing vessels to reduce the number of vertical lines in the water. This voluntary measure is expected to reduce the

likelihood of entanglements. This rulemaking is also expected to help NMFS track the source of entanglements by requiring gear-specific marking on two types of commercial ''fixed gear'' used for catching groundfish off the coasts of Washington, Oregon, and California: (1) pot gear; and (2) bottom longline gear.

Groundfish pot gear (both traditional and slinky pot) uses a series of pots connected by a rope (groundline) on the seafloor. A vertical line and a surface buoy mark the gear's location. Pot gear may sit unattended for 1.5 to up to 7 days, generally a longer period than for bottom longline gear (2 to 48 hours). Because pot gear is heavier than bottom longline gear, it may pose a higher risk of serious injury if an animal becomes entangled.

Bottom longline gear is a horizontal rope (or groundline) with many hooks that lies along the bottom of the sea floor, also marked by vertical lines and surface buoys. It soaks for a shorter time, usually 2 to 48 hours, but may sit unattended for up to 7 days. Groundline for bottom longline gear poses entanglement risk when marine mammals attempt to eat hooked fish.

Entanglement can happen with these fixed gears on the surface with surface lines or surface buoys/markers, in the water column with vertical lines, or at/near the seafloor with the groundline or pots/hooks. Entanglements can also happen with any component as the gear is being hauled to the surface and retrieved. These pot and bottom longline groundfish gears, when fished in Federal waters, are the only gear types affected by this rulemaking. These two gear types, when used to harvest groundfish, are hereafter collectively referred to as the ''subject gears'' or the ''subject gear types.'' This rulemaking does not change the requirement that the subject gear types be attended at sea at least every 7 days.

Gear Marking

This rulemaking implements new requirements in the Pacific Coast groundfish fishery for marking all buoys and the top 20 fathoms (fm) (120 feet (ft) or 37 meters (m)) of the vertical line used with the subject gears. For the first 3 years after the initial effective date of these requirements, temporary marking methods may be used to satisfy the line marking requirements, and thereafter the top 20 fm (37 m) of vertical line must be line manufactured in the designated color schemes. NMFS is implementing two color-coded schemes for the new gear marking requirements for the subject gears, as recommended by the Council: one for groundfish pot gear and one for groundfish bottom longline gear.

TABLE 1—TWO-COLOR MARKING SCHEMES FOR BOTTOM LONGLINE AND POT GEARS

Groundfish gear type	Color A & tag color	Color B	Core color (may be visible on some line types)
Bottom Longline	Brown	Blue	White.
Pot	Orange	Blue	White.

New Requirements for Marking Buoys

NMFS is implementing a new requirement for either gear-specific buoy tags to be attached to each surface buoy, or gear-specific marks to be made directly on each buoy. Tag and buoy markings are ''GP'' for pot and ''GL'' for bottom longline. Vessel identification information must be on at least one buoy, per current regulations, but is also required by this rulemaking to be marked on all other buoys used for the subject gear types, either on the tag or directly on the buoy. Markings are required on every buoy because it is possible that not all buoys would remain connected if the surface gear were to become entangled.

Each tag must have a physical indentation and a contrasting color. Buoy tags on every surface buoy must be in a gear-specific color (table 1), with a gear-specific letter combination legibly marked on it. Tags must be attached to fishing gear when deployed and must be on board the vessel on a trip where groundfish pot or longline gear will be or has been used to take and retain groundfish.

Gear-specific marks directly on buoys must be in capital letters at least 3 inches (7.7 cm) in height and must be present at all times on a trip in which the vessel is taking and retaining groundfish with the subject gears, if gear marking tags are not on board.

In the proposed rule, NMFS proposed that the new buoy marking requirements would require tags attached to each and every surface buoy with a gear-specific color and engraved mark: capital letters ''P'' for pots and ''L'' for bottom longline. Buoy tags were proposed because they can be swapped out, which would allow a surface gear set up, including the large buoys used with groundfish gear, to be used to float different gear types. In this final rule, NMFS is requiring that pot and bottom longline gear buoys are marked either by using buoy tags, as proposed, or through gear-specific marks directly on the buoys in response to public comments.

As described below in the Comments and Responses section, one fisherman submitted comments on the proposed rule asking that vessel operators be allowed the option for permanent fishery and gear-specific marks on the buoys that are used to mark surface gear, in lieu of buoy tags, because this option would be more efficient for certain operators and require less maintenance than the proposed gear-specific buoy tags. The State of California requires lobster pots to have buoys marked with a ''P.'' NMFS considered the request in development of this final rule, and this final rule implements the option to allow for buoy marking using tags or directly on buoys. This final rule also includes a requirement that the buoy marking include a fishery-specific mark as well as a gear-specific mark. These fishery and gear-specific markings must be ''GP'' for pot and ''GL'' for longline. See Changes from the Proposed Rule for additional details.

NMFS notes that current regulations require that all fixed groundfish gears, including the subject gears, have at least one buoy with the vessel identification legibly marked on it, per current regulations at 50 CFR 660.219 and 660.319. This requirement is not revised with this rulemaking.

New Requirements for Marking Lines

This rulemaking requires two-color, gear-specific color schemes for marking the top 20 fm (37 m) of each vertical line deployed in the commercial, non-tribal, limited entry and directed open access groundfish fishery for vessels using pot or bottom longline gears. Lines must be marked in the specified colors by the manufacturer, with strands in each color, except that temporary methods of marking (with the same color scheme) is allowed for 3 years after the effective date of the final rule.

With this rulemaking, NMFS requires that at least the top 20 fm (37 m) of vertical line be continuously marked. Manufactured line must consist primarily of only the two gear-specific colors A and B specified in table 1. Both colors must be used. NMFS requires that at least one-third of the strands in the rope be one color and all the other strands be the other color required in the gear-specific two-color scheme. Presence of a third color, other than white, is prohibited in the top 20 fm (37 m) to reduce the likelihood of mistaken gear identification for gear that is observed entangled on marine animals. NMFS acknowledges that some types of manufactured line may have an inner core color that is necessary and shows through on the outer surface of the line (*i.e.,* a tracer). This core is usually white. Manufactured line can be ordered by the coil; a standard coil has a line length of 1,200 ft (365.8 m) and costs approximately $200–$500, with custom colors available at no additional cost. Some manufacturers offer different size coils. Manufactured line may be used to satisfy the marking requirements for groundfish pot and bottom longline gears immediately upon the effective date of a final rule.

NMFS expects that the most efficient option for complying with new line marking requirements will be manufactured line in the specified color schemes. Manufactured line is expected to have the greatest longevity. However, some operators may have difficulties in initially procuring manufactured line. Thus, to afford fishery participants sufficient flexibility, and to achieve timely compliance with the line marking requirements in this final rule, this rulemaking includes the allowance to use temporary marking of existing lines for 3 years after this rule's effective date. Any temporary marking scheme requires continuous, alternating bands of the color schemes for each gear type on at least the top 20 fm (37 m) of every vertical line. Alternating marks must consist of colored rope sections that result in a continuous, alternating two-color scheme for each groundfish fixed gear type, as detailed in table 1 above. Each colored band for temporary marks is required to be greater than 18 inches and up to 28 inches (46–71 centimeters (cm)) of linear rope length. Presence of any color rope, besides white, other than the color scheme shown in table 1 in the top 20 fm (37 m) of the vertical line is prohibited for vessels fishing for groundfish with the subject gear types. In order to give fishery operators flexibility in complying with this requirement, NMFS is not specifying a method or material for applying temporary marks in the first 3 years after this final rule is effective. In the development of this action, the Council discussed multiple ways to temporarily achieve the required marking scheme for vertical lines, such as paint (sprayed or dipped) or colored tape. NMFS expects temporary marks will have a lower immediate materials cost than manufactured line but may require more time for maintenance. NMFS is implementing this flexibility in this rulemaking, as recommended by the Council.

Summary of Gear Marking Requirements

The gear marking requirements implemented through this final rule apply to vessels fishing in the limited entry or directed open access groundfish fisheries with bottom longline or pot gear. This final rule requires vessels using the subject fishing gears to comply with the following gear-specific marking schemes (summarized in table 2).

All buoys deployed on limited entry or directed open access groundfish pot surface gear must have either: (1) gear-specific orange tags attached with capital letters ''GP'' engraved on both sides and the letters must be in a contrasting color; or (2) capital letters ''GP'' permanently marked directly on the buoy in a contrasting color and at least 3 inches (7.7 cm) in height. The vessel identification number must be included on all buoy tags or directly on all buoys. All markings must be maintained to be legible on an ongoing basis.

All buoys deployed on limited entry or directed open access groundfish bottom longline surface gear must have either: (1) gear-specific brown tags attached with capital letters ''GL'' engraved on both sides and the letters must be in a contrasting color; or (2) capital letters ''GL'' permanently marked directly on the buoy in a contrasting color and at least 3 inches (7.7 cm) in height. The vessel identification number must be included on all buoy tags or directly on all buoys. All markings must be maintained to be legible on an ongoing basis.

At least the top 20 fm (37 m) of vertical line used to deploy bottom longline or pot gear in the limited entry or directed open access fishery must be continuously marked in the appropriate gear-specific color scheme. Bottom longline vertical lines are required to be continuously marked in brown and blue. Pot gear vertical lines are required to be continuously marked in orange and blue. Both colors must be used; manufactured lines must be at least one-third of strands in one color and all remaining strands in the other color, with any other color besides white prohibited in the top 20 fm (37 m). Temporarily marked lines are required to be gear-specific, two-color alternating, in continuous bands between 18 and 28 inches (46 and 71 cm) each for a minimum of 20 fm (37 m) at the top of every vertical line.

NMFS is requiring that manufactured line, and only manufactured line, be used to mark vertical lines for the subject gears, beginning January 11, 2030. After that date, temporary markings will no longer satisfy line marking requirements.

TABLE 2—SUMMARY TABLE OF GEAR MARKING AND VESSEL IDENTIFICATION (ID) REQUIREMENTS FOR THE LIMITED ENTRY (LE) AND DIRECTED OPEN ACCESS (DOA) GROUNDFISH BOTTOM LONGLINE AND POT GEAR FISHERIES

Portion of gear	Marking requirement [1]	Marking details
Every Buoy—Pot (LE or DOA), when deployed.	Orange tags with at least 1.75 inch (4.5 cm) tall capital letters ''GP'' engraved in a contrasting color, or at least 3 inch (7.7 cm) tall capital letters ''GP'' permanently marked directly on the buoys; vessel ID on tags or buoys.	Every buoy must be marked, either with tags securely attached, or with legible marks directly on the buoy. Tags for any other fishery/gear must be removed.
Every Buoy—Bottom Longline (LE or DOA), when deployed.	Brown tags with at least 1.75 inch (4.5 cm) tall capital letters ''GL'' engraved in a contrasting color, or at least 3 inch (7.7 cm) tall capital letters ''GL'' permanently marked directly on the buoys; vessel ID on tags or buoys.	Every buoy must be marked, either with tags securely attached, or with legible marks directly on the buoy. Tags for any other fishery/gear must be removed.

TABLE 2—SUMMARY TABLE OF GEAR MARKING AND VESSEL IDENTIFICATION (ID) REQUIREMENTS FOR THE LIMITED ENTRY (LE) AND DIRECTED OPEN ACCESS (DOA) GROUNDFISH BOTTOM LONGLINE AND POT GEAR FISHERIES—Continued

Portion of gear	Marking requirement [1]	Marking details
Every Buoy—Pot, On Board the Vessel (LE or DOA).	Orange tags with at least 1.75 inch (4.5 cm) tall capital letters ''GP'' engraved in a contrasting color are on board the vessel, or at least 3 inch (7.7 cm) tall capital letters ''GP'' permanently marked directly on the buoys; vessel ID on tags or buoys.	Marks directly on buoys must be legible. Tags must be ready to securely attach to every buoy and be presented to authorized officer upon request. Tags must be of sufficient quantity to attach to every buoy.
Every Buoy—Bottom Longline, On Board the Vessel (LE or DOA).	Brown tags with at least 1.75 inch (4.5 cm) tall capital letters ''GL'' engraved in a contrasting color are on board the vessel, or at least 3 inch (7.7 cm) tall capital letters ''GL'' permanently marked directly on the buoys; vessel ID on tags or buoys.	Marks directly on buoys must be legible. Tags must be ready to securely attach to every buoy and be presented to authorized officer upon request. Tags must be of sufficient quantity to attach to every buoy.
Vertical line(s)—Pot, Manufactured (LE or DOA).	At least the top 20 fm (37 m) is orange and blue manufactured line [2].	Colors other than orange and blue are prohibited on the top 20 fm (37 m). White tracers allowed.
Vertical line(s)—Bottom Longline, Manufactured (LE or DOA).	At least the top 20 fm (37 m) is brown and blue manufactured line [2].	Colors other than brown and blue are prohibited on the top 20 fm (37 m). White tracers allowed.
Vertical line(s)—Pot, Temporary (LE or DOA).	At least the top 20 fm (37 m) continuously marked in alternating orange and blue. Each color segment must be between 18 and 28 inches (46 and 71 cm) long.	Visible original line, in the full circumference, in any other color is prohibited in the top 20 fm (37 m). Temporary markings only satisfy marking requirements for 3 years from the effective date of the final rule.
Vertical line(s)—Bottom Longline, Temporary (LE or DOA).	At least the top 20 fm (37 m) continuously marked in alternating brown and blue. Each color segment must be between 18 and 28 inches (46 and 71 cm) long.	Visible original line, in the full circumference, in any other color is prohibited in the top 20 fm (37 m). Temporary markings only satisfy marking requirements for 3 years from the effective date of the final rule.

[1] Marking requirements are applicable when the vessel is fishing groundfish with either pot or bottom longline gears in the EEZ.
[2] NMFS requires at least 33 percent of strands in one color and the remainder of strands in the other color.

Entanglement Risk Reduction

This section describes voluntary and required management measures that are being implemented with the goal of reducing the risk of entanglement of protected species and bycatch in the subject gear types. These measures affect the same groups of fishermen subject to gear marking requirements described above that use bottom longline or pot gear in directed groundfish fisheries off the West Coast.

Fishing lines on or near the surface generally pose a higher risk of entanglement compared to fishing gear at deeper depths or on the bottom of the sea floor. Therefore, the measures implemented through this rulemaking are designed to reduce the amount of vertical lines required in the fishery and reduce the amount of surface line allowed for each gear set. NMFS expects these measures will reduce the risk of entanglement with surface and vertical lines in Pacific Coast groundfish pot and bottom longline gears.

Single Line Allowance for Gear Identification at the Surface

As noted above, vertical lines and surface gear both pose a risk of entanglement to protected species. Therefore, allowing vessels to reduce the amount of surface gear and the number of lines in the water may reduce risk of entanglement. This rulemaking removes the requirement that pot and bottom longline gear be marked on the surface at both terminal ends (*i.e.,* creates a single surface gear and vertical line allowance). This voluntary measure allows vessel operators to use a vertical line and surface gear at one or both ends of their gear, at their own discretion. Gear would still be required to be marked at the surface on at least one terminal end in a manner consistent with the current gear identification and marking requirements. This single surface gear and vertical line allowance and the manner in which the subject gears must be marked at the surface are articulated in revised regulations at 50 CFR 660.219 and 660.319.

Limiting Surface Line

Surface gear consists of the buoys and flags associated with a gear set and the surface line between them. Surface gear marks the location of the terminal end(s) of the groundline anchoring the strings of pots and bottom longline gear set on the ocean floor and usually serves as the primary mechanism for identifying and retrieving gear. Surface lines need to have enough slack to adjust to changes in ocean conditions that may occur while gear remains in the water so that the buoys are not submerged completely.

This final rule restricts the maximum length of surface line, measured from the last trailing buoy (or the highflyer) to the first buoy (main buoy) closest to the vertical line. Specifically, surface line used for the subject gears may not exceed 60 ft (10 fm (18 m)) in length, measured from the main buoy to the last trailing buoy. By prohibiting excess surface line, this rulemaking intends to reduce the risk of entanglement and the bycatch of protected species in the groundfish fishery with the subject gears. To enact this restriction, new definitions of surface line, vertical line, and main buoy are added to the definition of ''Fishing gear'' for the subject gear types at 50 CFR 660.11.

Additional Regulation Changes

Beyond the gear marking and risk reduction measures described above, this rulemaking also includes two additional changes (see the Proposed Rule for additional context and rationale for these changes). Current regulations require that pot and trap gears are fitted with an escape panel that biodegrades to create an opening of specified dimensions so that the pot does not perpetually entrap animals if the gear is lost (660.230(b) and 660.330(b)). Current regulations provide no specificity about the appropriate placement of the escape panel. This rulemaking prohibits escape panels from being positioned on the bottom of a pot, similar to regulations for fishing off the coast of Alaska and includes an exception from this requirement for collapsible pots in order to accommodate differences in gear

configurations. To facilitate this collapsible pot exception, a definition of ''collapsible pot'' is added to the definition of ''Fishing gear'' at 50 CFR 660.11.

Additionally, this rulemaking changes the maximum twine size for the cotton biodegradable twine used for closing escape panels for pots used in the Pacific Coast groundfish fishery. Specifically, this rulemaking revises the maximum untreated cotton twine size for closing escape panels from ''not to exceed number 21'' to ''not to exceed number 30.'' This modification aligns the maximum twine size for groundfish pot gear used in the Pacific Coast groundfish fishery with the twine size required for vessels fishing off the coast of Alaska (*i.e.,* the North Pacific).

NMFS is making technical changes to 50 CFR part 660 to revise references in the relevant regulations to longline and bottom longline gears to clarify key gear terminology, so that it is clear what type of longline gear is affected by this rulemaking. This rulemaking replaces ''longline'' with ''bottom longline'' in the definition of ''fixed gear'' at 50 CFR 660.11, and throughout limited entry and open access commercial groundfish regulations, where applicable.

This rulemaking also amends the current prohibition at 50 CFR 660.12(a)(2) about falsifying or failing to affix or maintain gear markings required under the regulations by adding the word ''identifications'' to revise the text to align with the current section titles for the regulations referenced in the prohibition (50 CFR 660.219 and 660.319), which are, respectively ''fixed gear identification and marking'' and ''open access fishery gear identification and marking.''

Comments and Responses

The proposed rule was published on February 6, 2026 (91 FR 5408), and the public comment period ended on March 9, 2026. NMFS received comment letters from 28 individuals or organizations. The following themes were raised across individual submissions. NMFS received comment letters from five commenters expressing general opposition to the proposed measures in this rulemaking, of which three letters specifically described concerns with gear loss related to the measure that would remove the requirement that groundfish bottom longline or pot gear sets be marked with vertical lines and surface gear at both terminal ends (referred to henceforth as ''the single-line allowance''). Of the five comment letters generally in opposition to the rule, three of those letters expressed general support for the gear marking and surface line length restrictions in this rule and their objective to indirectly conserve marine mammals. However, commenters also expressed concern with the single-line allowance, asserting that the allowance would increase the risk of gear loss. NMFS received 13 comment letters that were generally in support of this rulemaking. Seven of these letters supported the bycatch reduction measures in this rulemaking but also expressed support for additional measures to conserve marine animals, above and beyond those proposed in this rulemaking. Of the 28 comment letters, 1 letter included comments regarding the PRA collection, which is responded to below and in the PRA supporting statement. Overall, most comments generally expressed support for this rulemaking.

NMFS appreciates the thoughtful comments on the proposed rule and has considered them thoroughly. NMFS collated the comments in the 28 letters, and is responding to 20 subject areas included across the unique comment letters below.

Comment 1: Two commenters opposed this rulemaking, describing it as unnecessary, and asserting that entanglements of marine animals in fishing gear are rare and are not a consequential conservation issue.

Response: Entanglements involving commercial fishing gear are estimated based on best scientific information available, and the gears that are the subject of this rulemaking have had multiple documented entanglements with marine animals. NMFS acknowledges that these observed and otherwise documented entanglements in groundfish fixed gear are relatively rare; however, documented entanglements of marine animals in fishing gear of unknown origin is not infrequent and should also be considered. The new requirements in this rule balance the need for reasonable steps forward toward reducing the risk of entanglements with the subject gears and better attributing entanglements in general to the gear-type, with a small additional cost and operational burden on fishermen.

Comment 2: Two commenters express concern with over-regulation of fisheries and assert that the measures in this rulemaking are unnecessarily burdensome to the regulated fishermen. One of these commenters also states that this rule will increase gear expenses and wear and tear on gear, and that fishermen should be financially compensated for the burden of complying with the measures implemented through this rulemaking.

Response: Gear marking measures implemented by this rulemaking are expected to increase the likelihood that NMFS can rule out the groundfish fixed gear fishery as the source of documented entanglements, thus reducing the need for further regulation in the future. However, NMFS acknowledges that the approximately 335 vessels that currently fish groundfish with bottom longline or pot gears will be required to incur costs over the next 3 years to comply with the gear marking measures in this rulemaking. NMFS is obligated under the PRA to annualize burden hours and costs over the initial 3-year period of an approved information collection (gear marking requirements are considered an information collection). Since it is unlikely that any vessel would need to purchase gear compliant with new gear marking regulations more than once in this 3-year period, annualized materials costs are one-third of the estimated total materials cost. The average cost burden for compliance with new gear marking regulations in this rulemaking is estimated to be $809 per respondent (*e.g.,* vessel operator) to temporarily mark and replace their gear once during the three-year period preceding the compliance date for permanently marking fixed gear using manufactured line. This total accounts for the costs of gear-specific marked line, gear-specific marked buoy tags, and paint or markers. NMFS understands from fishery representatives that lines used in the fishery need to be replaced once every 5–10 years, with the actual lifetime of the gear depending on the intensity of use, method of storage, and other variables. To reduce the main source of costs associated with this rulemaking (*i.e.,* gear-specific manufactured marked line in a specified color scheme), line marking is only required for the top 20 fm (37 m) of the vertical line (allowing more sets of gear to be marked per spool of line purchased) and a 3-year transition period is included to allow more cost-effective temporary marking schemes to be used initially in lieu of manufactured line. The goal of this transition period is to allow current vertical lines used in the fishery to be phased out and replaced towards the end of their lifespan with gear-specific manufactured marked lines, avoiding unnecessary waste and defraying costs. This rulemaking is not expected to increase wear and tear on fishing gear beyond what usual use would do. In conclusion, NMFS finds that the cost burden on the regulated community imposed by this rule does not outweigh the conservation benefits from this rule.

Therefore, NMFS is implementing the proposed gear marking requirements in this rulemaking.

Comment 3: One commenter expressed concern that oil spills and pollution pose greater threats to marine animal conservation than entanglements in fishing gear, and, therefore, that is where NMFS should focus conservation efforts.

Response: NMFS does not discount the potential adverse impacts of other environmental conditions, such as oil spills and marine debris, which pose threats to marine animals. However, this action is taken under the authority of the Magnuson-Stevens Act and, as such, its regulatory scope is limited to the effects of federally managed fisheries on marine animals. The primary risk these fisheries pose to non-target marine animals is the potential for entanglement in fishing gear. Accordingly, the measures implemented through this final rule are intended to address this primary risk.

Comment 4: Two commenters state that the amount of fishing gear used in the West Coast EEZ could or will increase in the future, which could subsequently increase the risk of entanglement in the area. One of these commenters expressed concern that this rulemaking does nothing to mitigate this risk.

Response: NMFS acknowledges that there are no current restrictions on the total amount of gear sets or number of vertical lines that may be deployed annually in the Pacific Coast groundfish fixed gear fisheries, nor were any proposed at the proposed rule stage. However, a variety of facets of the groundfish fishery management regime coincide to keep the amount of fishing gear deployed in the EEZ annually relatively stable through time. For example, the groundfish sector with the majority of the fixed gear fishing effort, both in harvest volume and quantity of gear deployed (*i.e.,* the limited entry fixed gear (LEFG) sector), is Federally permitted through a limited entry program. These federal permits are transferable, but limit vessel size (and therefore limit harvest capacity), and are of a limited quantity (no new permits have been issued for over 20 years). This closed class limits the amount of gear that can be fished at any one time or in any season. Participants in the directed open access fishery may use any legal gear type, including pots and bottom longline gears, but are incentivized to use non-bottom contact gears (*i.e.,* gear that is not left unattended) because those gears are allowed to be fished in areas that are closed to bottom longline and pot gears. Most vessels fishing with bottom longline and pot gear in the open access fishery are targeting sablefish in deeper waters outside gear-specific area restrictions. The amount of overall effort to harvest sablefish in the open access fishery is also limited by the sector's annual allocation and through inseason trip limit adjustments to keep harvest within that allocation. Meaning, if more vessels fish sablefish, trip limits for these vessels decrease to keep catch of sablefish within the annual sector allocation, which reduces the incentives for new entrants to join the fishery. In this manner, the number of vessels targeting sablefish in the open access fishery (regardless of gear type) is self-mitigating. Thus, all other things being equal, the single-line allowance established in this rulemaking is expected to decrease the total number of vertical lines that would otherwise be fished annually in the EEZ than without it. In addition, the single-line allowance creates the opportunity within the fishery for fishermen to test on-demand buoy lines and systems (*i.e.,* ''pop-up gear''), if so desired, without an exempted fishing permit, and using their otherwise conventional and legal pot and bottom longline gear configurations.

Comment 5: Five commenters expressed concern for gear loss if future fishermen use only one vertical line (*i.e.,* voluntarily use the single-line allowance) when setting their gear. Generally, these commenters expressed concern that gear retrieval would be less likely, especially in circumstances where gear sets moved due to strong currents or became snagged or parted on some portion of line during attempted retrieval. One commenter specifically mentioned that the risk of gear loss would be highest for longline gear. Another asserted that a single-line allowance would reduce the likelihood of gear retrieval by 50 percent.

Response: The Council considered both a mandatory and voluntary single-line allowance during early scoping of this rulemaking. During scoping, concerns were expressed on multiple fronts. For example, industry representatives were concerned that relatively lighter-weight gear types (such as slinky pots and longline gears) would be much more likely to be lost if only a single-line were used, either voluntarily or if required, and explained that certain conditions and methods of deploying gear did not lend themselves to successful gear retrieval if gear could only be marked on one end (*i.e.,* under a mandatory single-line requirement). Multiple environmental groups expressed concern that a non-mandatory single-line would be ineffectual to reduce the risk of entanglement. All comments were considered by the Council, and the Council ultimately recommended a voluntary single-line allowance for the subject gear types. NMFS has determined that the Council-recommended single-line allowance is appropriate because it will provide the flexibility to allow vessels to mark only one end of their pot or bottom longline gear if fishermen consider ocean conditions exist that are likely to enable full retrieval of the gear using a single vertical line. Some vessels may choose to use heavier single lines to increase the likelihood of preventing their gear from parting during retrieval. Other fishermen may choose to continue to use current gear configurations, with lines and surface gear at both ends, despite the rule change. Regardless, NMFS is confident that fishermen are both strongly disincentivized from losing their gear and from deploying extraneous gear, and will make their future gear use decisions accordingly. NMFS has heard testimony from multiple fishermen that they are likely to utilize the single-line allowance, which will reduce the number of vertical lines in the water. For these reasons, NMFS concludes that the voluntary single-line allowance appropriately balances the need to reduce the risk of entanglement in fishing gear against the need to prevent gear loss and subsequent ghost fishing.

Comment 6: Two commenters expressed concern with the limitation on the length of surface line associated with the terminal end of a gear set that is implemented in this rulemaking. The limitation is intended to reduce the amount of slack or excess surface line that attaches buoys to the vertical line. One commenter was concerned that the length limit of the surface line was too short and would result, under certain ocean conditions, in the gear fully submerging in the tide and therefore being lost. The other commenter expressed concern that the limit on the length of the surface line was too long to sufficiently eliminate the risk of entanglement.

Response: These comments exemplify the purpose of this measure: to keep fishing gear viable and retrievable while limiting excess line to try to reduce the risk of entanglements. In developing this measure, the Council heard from fishing industry representatives that, in their experience, 10 fm (18.3 m) or less of surface line would be an adequate length to prevent the gear from being submerged in most ocean conditions. NMFS acknowledges that allowing any fishing with fixed gears poses a greater than zero risk of entanglement,

regardless of the length of surface line. The goal of this rulemaking is to reduce the risk of entanglement. NMFS has determined that the surface line limitation of 10 fm (18.3 m) is the appropriate length for the surface line limitation to balance the need to reduce the risk of entanglement, and thus minimize the bycatch of marine animals with the subject gears, against the threat of gear submergence and loss.

Comment 7: Ten comment letters explicitly expressed support for NMFS to protect marine mammals and reduce bycatch and/or risk of entanglement for various marine species, either generally (without a reference to the measures in this rulemaking) or as it relates to measures in this rulemaking (*e.g.,* the single-line allowance). Of these 10 letters, 7 letters expressed general support for greater protections for marine animals. However, only one of those 7 letters explicitly expressed support for the proposed measures. Though most of the 10 comments did not explicitly reference the measures in this rulemaking, it is inferred that comments asking for the strongest measures possible to protect marine mammals express concern that the proposed measures do not offer enough protection. Of the 7 comment letters requesting greater protections, 4 expressed general support for actions that would reduce lines in the water as means to achieve risk reduction, though none explicitly endorsed the single-line allowance. One letter mentioned a desire to ''create less fishing lines'' in the ocean, thought it was unclear whether this was an endorsement of the single-line allowance or not. One letter explicitly commented that the voluntary single-line allowance is inadequate because it was possible that, even if fishermen used one end-line, they may deploy shorter but more numerous gear sets, meaning the number of vertical lines per pot fished would stay the same.

Response: NMFS agrees that it is important to reduce the risk of entanglement and bycatch of marine mammals in fisheries and fishing gear. This goal is an important component of NMFS' obligations under the Magnuson-Stevens Act and pursuant to other applicable laws, such as the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). Minimizing bycatch to the extent practicable is a necessary part of fisheries management under the Magnuson-Stevens Act, and this action is consistent with that mandate. This rulemaking began as a response to increased entanglements on the West Coast in 2014. This rulemaking will remove a regulatory barrier that currently prohibits fishermen from deploying fewer fishing lines. As discussed in *Response to Comment 5,* NMFS is confident that fishermen are strongly disincentivized from deploying extraneous gear and from losing gear. This rulemaking allows the flexibility for fishermen to decide and deploy their gear configurations to best balance these needs, based on ocean conditions. Because marking gear with only one end-line is voluntary, there is no specific incentive created by this rulemaking for fishermen to shift towards fewer pots per set. Finally, NMFS intends to collect data on the use of the voluntary single-line allowance via Federal observers and self-reported logbook entries. This will further inform future considerations regarding the efficacy of, and possible future adjustments to, the voluntary measure implemented in this rulemaking.

Comment 8: Two commenters suggested that NMFS make the single-line allowance mandatory instead of voluntary, one of whom asserts that the reduction in risk of entanglements is negligible if the single-line allowance in this rulemaking is voluntary because fishermen may not use only a single end-line.

Response: A requirement for marking only one end of gear (*i.e.,* a mandatory single-line) at the surface was considered, but not recommended, by the Council. See also *Response to Comment 5* and *Response to Comment 7,* which are incorporated here. Groundfish are harvested at a variety of depths, but sablefish are abundant and commonly harvested with the subject gear types at depths of 600 fm (3,600 ft) and deeper. The effects of tidal swells, strong currents, and windy conditions are considerable at these depths and can cause the surface gear, which is used by a vessel to retrieve its gear, to become fully submerged at times. If submerged deep enough, or long enough, buoys may deflate and no longer mark the gear at the surface, even when conditions become more favorable. In these conditions, if regulations required only one set of surface gear to be used, it would most certainly increase the likelihood of gear loss, or ocean conditions would effectively close the fishery at those depths while such ocean conditions persist. Gear that is not successfully retrieved can continue to harvest fish (*i.e.,* ghost fishing) and pose a continued risk of entanglement. Gear requirements that are reasonably expected to increase gear loss are not consistent with the Magnuson-Stevens Act mandates regarding minimizing bycatch to the extent practicable, and, as such, the Council did not recommend that NMFS adopt a mandatory single-line requirement. For these reasons, and the reasons stated in *Response to Comment 5* and *Response to Comment 7,* NMFS has determined that the voluntary single-line allowance fishery management measure to minimize bycatch is consistent with the Magnuson-Stevens Act and other applicable laws, including the ESA and MMPA.

Comment 9: One commenter asked for NMFS to limit fishing in cetacean hotspots (*e.g.,* enact closed areas) to reduce and prevent the entanglement of marine species.

Response: NMFS considered available information on timing and location of entanglements in groundfish bottom longline and pot gears during the development of this rulemaking. Given the relative rarity of entanglements in groundfish gear, and the lack of readily available information on the spatial or seasonal patterns for groundfish gear entanglements and for predicting the likely overlap of marine mammals and the groundfish fishery in space and time, the Council did not develop alternatives for this action that involved area closures (*e.g.,* permanent or seasonal). NMFS expects that the gear marking provisions in this rulemaking are likely to provide new information on entanglements that may inform the development of future conservation measures, as needed.

Comment 10: One commenter noted that the single-line allowance would likely provide the most entanglement risk reduction for gears that are left in the water to ''soak'' longer (*i.e.,* pot gear). This fisherman asked for NMFS to consider soak times when deciding whether to provide the single-line allowance to either longline or pot gears, or both, describing that if they tried to use a single-line with their bottom longline gear they might lose tens of thousands of dollars' worth of gear.

Response: NMFS' groundfish regulations require that all fixed gear (*e.g.,* bottom longline, pot) used in the groundfish fishery be tended once at least every 7 days. Beyond this requirement, which is intended to discourage storage of fishing gear at-sea, there are no rules regarding minimum or maximum soak times; it is at the fisherman's discretion. In the report for the ''Improving Gear Marking in the U.S. West Coast Sablefish Pot Fleet; Workshop Summary Report, November 16, 2022,'' published by Oregon Sea Grant, one sablefish pot fishermen testified that they soak their gear for 36 hours on average (but will sometimes

soak for 3 days and occasionally up to 5 days) between trips, because pots are highly selective and trap fish more slowly than hooks. The amount of time that fixed gear soaks in the water affects the entanglement risk associated with that gear, particularly if gear is marked at both ends. Based on this very limited sample, because pot gear tends to be in the water longer, it follows logic that if pots use the single-line allowance, it would be a bigger reduction in the hours that vertical lines are in the water than if a bottom longline were to use a single-line. During Council testimony, multiple pot fishermen testified that they would be very likely to use the single-line allowance in favorable ocean conditions, because of the gear configurations they use that prevent gear loss. The Council did not consider offering a single-line allowance only to pot fishermen. To reduce regulatory complexity, the single-line allowance applies to both bottom longline and pot gears, though NMFS acknowledges that fishermen fishing bottom longline gear may not utilize this flexibility due to concerns of losing their gear.

Comment 11: One commenter strongly suggested that NMFS approve the voluntary single-line allowance because it would, ''dramatically improve our productivity while greatly reducing entanglement risk to wildlife.''

Response: NMFS agrees that allowing fishermen to voluntarily use one vertical line to mark their gear at the surface could reduce costs for unnecessary gear, reduce the number of vertical lines deployed in the fishery, and reduce risk of entanglement for marine animals. For these reasons, NMFS is approving this Council-recommended management measure.

Comment 12: One commenter only offered support for the marking of lines so entanglements can be properly attributed to the fishery it occurs in. Another commenter stated that the proposed measures would improve accountability for the harm caused to wildlife.

Response: NMFS agrees that the gear marking measures in this rulemaking are an important step in a larger effort across West Coast fisheries to improve our ability to attribute entanglements of unknown sources to particular fisheries, so that management responses can be effective at reducing entanglements without being overly burdensome.

Comment 13: Nine commenters explicitly supported all the gear marking and entanglement risk reduction measures in this rulemaking, expressing gratitude for consulting with fishermen, reducing marine mammal entanglements through science-based decision making, and for practical, fishery-specific management approaches. NMFS notes that one of these seven commenters expressed support for the proposed measures only as a first step, stating that more conservation measures are needed (see *Comment 7*).

Response: NMFS appreciates these comments and notes that additional conservation measures are outside the scope of this rulemaking (see also *Response to Comment 7*).

Comment 14: Two commenters asked NMFS to monitor the efficacy of the measures implemented in this rulemaking, including whether marking requirements after the 3-year temporary marking transition period are working as intended, and whether entanglement rates decline.

Response: NMFS will continue to monitor entanglements of marine animals off the West Coast and continue to try to attribute them to identifiable sources. NMFS will take into account gear marking requirements in various West Coast fisheries, including the requirements established under this rule, when attempting to attribute an entanglement to its source. NMFS publishes entanglement reports annually and analyzes data for trends and other factors of concern. NMFS will also continue to enforce, in partnership with state offices, Federal fishing regulations, including measures implemented in this rulemaking.

Comment 15: One commenter asked NMFS to provide guidance with regards to line marking requirements, including temporary marking. They asked how to account for gaps, knots, wear, or the use of non-solid ''tracer'' lines. Also, they requested further guidance on acceptable temporary marking methods and what NMFS means by ''continuous.'' With this guidance, they hope to reduce compliance uncertainty and enforcement inconsistency.

Response: NMFS agrees that steps should be taken to reduce compliance uncertainty and enforcement inconsistency. NMFS offers the following clarifications to facilitate consistent enforcement of gear marking requirements promulgated in this rulemaking, in addition to forthcoming informational guides.

The gear marking requirements implemented through this final rule apply to vessels fishing groundfish in the commercial, non-tribal, limited entry or directed open access fisheries using bottom longline or pot gear.

With regards to buoy marking, before leaving port on a trip where gear marking requirements apply, the vessel is required to have either enough buoy tags of the required color and marking to mark all applicable gear(s) on board the vessel, or all buoys must have compliant gear-specific markings directly on the buoys. Every buoy used to mark bottom longline or pot gear must have legible vessel identification, directly marked on the surface of at least one buoy on every set, and either directly on all other buoys or on marked tags ready to be attached for all other buoys. Buoys on board that are clearly marked for fishing in non-groundfish fisheries (*e.g.,* pot gears marked for fishing spiny lobster) are not subject to groundfish gear marking requirements implemented in this rulemaking.

With regards to line marking, before leaving port on a trip where gear marking requirements apply, the vessel is required to have a sufficient length of marked line to mark at least the top 20 fm (37 m) of all vertical lines to be deployed on each set. Line is considered ''marked'' when it is manufactured in the applicable two-color scheme found in table 1, with at least one-third of strands being in one color and the remainder being in the other color. Presence of a third color, besides white, is prohibited in the top 20 fm (37 m) to reduce the likelihood of mistaken gear identification for gear that is observed entangled on marine animals. NMFS acknowledges that some types of manufactured line may have an un-customizable inner core color that shows through on the outer surface of the line (*i.e.,* a tracer). This core is usually white. Tracers that are not solid white will be found in non-compliance with line marking requirements. Until January 11, 2030, line is considered ''marked'' when original line is temporarily marked continuously in the applicable two-color scheme found in table 1, with alternating bands of color, for at least the top 20 fm (37 m) of every vertical line deployed with the subject gears. In the context of temporary line marking, ''continuous'' means marking is uninterrupted two-color (table 1) alternating bands of markings in the top 20 fm (37 m) of line, with the exception that the original line may be partially visible for less than 6 inches and not at all visible in the full circumference of the temporarily marked portion of the line. Markings that are partially worn (*i.e.,* discolored or missing such that original line color shows through) on one or more sides of the line for a distance greater than 6 inches (15.2 cm) are not ''continuous'' and do not satisfy line marking requirements. Additionally, any amount of original line showing in the full circumference of the line is not ''continuous'' and

therefore does not satisfy line marking requirements. NMFS does not prescribe temporary marking methods, only the outcome: 20 fm (37 m) of continuous marking in the required length intervals and color scheme.

Comment 16: Two commenters asked NMFS to expand line marking requirements beyond the top 20 fm (37 m) of the vertical line, to include surface lines, the entire vertical line, and all groundlines. Both commenters argue that the only option that allows NMFS to determine with certainty that an entanglement is caused by certain gear (in this case, groundfish pot or bottom longline gear) and, conversely, rule out groundfish pot or bottom longline gear when it is not involved, is by requiring the proposed marking schemes for all parts of the gear. Both commenters argued that because only a small portion of gear (less than 20 ft but often less than 5 ft) is observed entangled, marking 20 fm out of hundreds of fathoms of line is inadequate to ensure entangled gear is identified as groundfish pot or longline gear. They assert that if only part of the gear is marked, entanglements may not be attributed to the groundfish bottom longline and pot gear fishery only because not all parts of the gear are marked. One commenter asserts that NMFS' desire to minimize costs cannot outweigh evidence that marking such a small portion of the gear will fail in many instances to allow NMFS to determine with certainty whether groundfish pot or longline gear is involved in an entanglement. The other of the two commenters argued that an observed entanglement in a sablefish pot groundline warrants additional marking of groundlines and that anything less than marking all parts of gear would be ineffective to definitively attribute entangled gear to a specific fishery.

Response: As reported at the 2022 Gear Marking Workshop, a groundfish pot gear fishermen described fishing in depths of up to 900 fm (137 m), using strings of pot gear (*i.e.,* sets) up to 1.5 miles (2.4 km) long. During the workshop, a groundfish pot gear fishermen commented that, when fishing so deep and with the influence of ocean currents, their vertical lines might each be up to 1,200 fm (2,195 m) long to allow successful gear retrieval. When up to 10 fm (18 m) of surface gear is attached to the top of the vertical line, this results in a single set of gear, even using the single-line allowance, that could have lines totaling up to 2,580 fm (4,718 m) in length. Spools of custom-colored braided poly cord (*i.e.,* line) are typically 200 fm (366 m) long and cost approximately $500 each. If gear marking were required for all parts of the gear, each set could take up to 13 coils of line to retrofit, at a cost of up to $6,500 per set. Fishermen vary in how many sets they fish, but it is often 2 to 7 sets per trip. For a vessel that fishes more gear, retrofitting seven sets of groundfish pot gear entirely with manufactured lines in the required gear-specific color scheme could cost over $45,000 in materials alone.

The cost of replacing worn-out gear is a known and budgeted fishing expense for most vessel operators and fishing businesses. It is likely that they would commonly budget to replace line on a small proportion of their gear each year and on an as needed basis. As discussed at the Gear Marking Workshop in 2022, the larger proportion of gear that is required to be marked, the greater the costs to the industry to comply. Industry representatives voiced concerns that the initial costs to replace all gear at once could be very expensive and asked for consideration of marking only a portion of their gear (*i.e.,* the parts of their gear that would be most likely to be involved in an entanglement).

As NMFS stated in the 2022 Gear Marking Workshop, based on current entanglement information, line marking on the upper portion of the gear would be most helpful at identifying the source of entanglements. This is because most entanglements involve buoys (*i.e.,* upper or surface portion of fishing gear) or portions of line identified to be from the upper portion of fishing gear. The Council considered various marking distances, including marking surface lines and marking more and less than 20 fm (37 m) on the upper portion of the vertical line. The Council did not recommend gear-specific surface line markings for the same reasons they did not recommend gear-specific markings on buoys: surface lines are commonly used to float different gear types or in different fisheries. The Council recommended the intermediate alternative for the distance of vertical line marking, the top 20 fm (37 m) or 120 ft, because that is the portion of gear most often documented in entanglements, and usually the amount of line in an entanglement is only 6 to 20 ft (2 to 6 m). The Council also recommended this distance because the average-sized groundfish pot fishing operation could mark all their groundfish pot gear (2 to 5 sets) by purchasing a single coil of line for approximately $500, while larger operations may only need to buy two coils of line for approximately $1,000. For these reasons, and for reasons described above in *Response to Comment 13,* NMFS has determined that the measures implemented in this rulemaking minimize bycatch to the extent practicable and are reasonably expected to improve accountability in the groundfish pot and bottom longline fisheries, if entanglements occur in the future, while balancing costs to industry.

Comment 17: Two commenters state that the measures in this rulemaking are not sufficient to address entanglement concerns and satisfy legal requirements for the West Coast groundfish fishery, nor are they enough to reduce the large proportion of ''unknown'' entanglements that cannot be attributed to a specific fishery or region, and, therefore, NMFS will be unable to obtain reliable estimates of incidental bycatch.

Response: This rulemaking, taken under the authority of the Magnuson-Stevens Act, is consistent with NMFS' obligations under the Magnuson-Stevens Act, ESA, MMPA, and other laws. As discussed above, minimizing bycatch to the extent practicable is a necessary part of NMFS' fisheries management. Given the removal of the regulatory requirement to mark gear sets on the surface at both terminal ends (*i.e.,* voluntary single-line allowance), NMFS expects this rulemaking to reduce the number of vertical lines used to identify pot gear in groundfish fisheries, which NMFS expects to reduce the likelihood of entanglements with pot gear. Additionally, given the new limitation on surface line length implemented in this rule, NMFS expects this rulemaking to reduce excess surface line in the water, which NMFS anticipates will reduce the risk of entanglement in both pot and bottom longline gear. The single-line allowance measure in this rule balances minimizing bycatch from entanglements with active fishing gear against the flexibility fishermen need to keep bycatch from ghost fishing gear low. The surface line length limitation balances minimizing excess surface line in the water against the flexibility fishermen need to set gear that can withstand changing ocean conditions and tides, without submergence. Thus, these entanglement risk reduction measures minimize bycatch to the extent practicable, consistent with legal requirements, including the National Standards of the Magnuson-Stevens Act.

Comment 18: One commenter, referring to a 2012 biological opinion on the groundfish fishery, describes how NMFS thought, at that time, that the observer program would not be able to provide accurate bycatch estimates for entangled humpback whales because

the gear is left untended and the whales are mobile once entangled in the gear. Based on this, the commenter asserts that the observer program provides an underestimate of actual entanglements occurring in the fishery and that the magnitude of undocumented and unobserved entanglements within the groundfish fishery could be large.

Response: In 2012, when the referenced biological opinion was completed by NMFS, only one humpback whale had been reported entangled in groundfish fixed gear since 1982, and that entanglement (2006) was not witnessed by a federal observer. Because observer coverage rates of all vessels fishing groundfish pot and longline gears prior to 2011 ranged from 6 to 25 percent annually, averaging 16 percent of targeted landings, NMFS presumed at the time that observer data alone would be insufficient to discern bycatch rates of protected species in the fishery. Beginning in 2011, sablefish have been harvested with non-trawl gear, including the subject gears, under gear switching provisions in the Shorebased Individual Fishing Quota (IFQ) Program (historically quota that was harvested with bottom trawl gear). This IFQ fishing has been observed at much higher rates (approximately 100 percent) than in years prior. From 2011 through 2025, no entanglements were observed in pot or bottom longline gear in this sector. However, during that same period, 4 of the other 6 documented entanglements in groundfish fixed gear were observed (2014, 2016, 2023, and 2025) in non-IFQ sectors of the groundfish fishery. There have also been initial reports of entanglements in groundfish fixed gear during the 2026 fishing season. For example, on July 7, 2026, a deceased humpback whale was observed entangled in groundfish pot gear. Additionally, on July 23, 2026, there was a report of a whale entanglement associated with multiple gear types off the coast of Oregon, including sablefish pot gear. An investigation into the circumstances of these entanglements is ongoing by NMFS scientists and entanglement experts. Further information on the entanglements, and potential implications for future action(s) to address the mortality and serious injury of humpback whales in the sablefish pot fishery, will be discussed by the West Coast Take Reduction Team (TRT). The TRT web page is available at *www.fisheries.noaa.gov* by searching for ''west coast take reduction team.''

To date, no entanglement cases have been clearly identified as involving a mobile, free-swimming entanglement involving sablefish pot fishing gear. Since the 2012 biological opinion, NMFS has completed 2 additional consultations and biological opinions addressing humpback whale bycatch in the sablefish pot fishery, including consideration of reported entanglements that have occurred since 2012. Additionally, NMFS has modified the bycatch estimation approach since 2012 to better deal with relatively rare events like humpback whale entanglements in the groundfish fishery and limited observer coverage. NMFS has adopted and utilized methodologies for extrapolating observed entanglements to inform fleet-wide estimates in acknowledgement of limited observer coverage since 2020. Given the weight of updated information, the statement from the 2012 biological opinion is not representative of NMFS' current perspective. NMFS finds that it is unlikely that a whale that becomes entangled in groundfish pot gear will move the gear away from its original location due to the gear's weight and its propensity to anchor whales in place when entanglements have been documented in the past, and that there is an extremely low amount of gear loss documented in the fishery. If mobile entanglements occurred, rates of gear loss would be higher. Line marking requirements in this rulemaking will allow NMFS to ground truth this hypothesis.

Comment 19: Two commenters requested a 90-day transition period from the time when the final rule publishes to when new gear marking requirements are in effect.

Response: NMFS is publishing this final rule with a 90-day delay in effectiveness for most provisions in this rulemaking, including the gear marking requirements. NMFS is waiving the delay in effectiveness for the voluntary single-line allowance provisions, at 50 CFR 660.219(a)(1) and 660.319(a)(1), in this rulemaking. See Classification.

Comment 20: One commenter requested specific changes to proposed regulatory text to further increase flexibility on complying with new buoy marking requirements and to simplify and clarify regulatory requirements for the placement of escape panels on pots.

Response: NMFS finds merit in the suggested regulatory changes and concludes that they constitute a logical outgrowth of the specific requirements described in the proposed rule. See Changes from the Proposed Rule for additional information.

Changes From the Proposed Rule

Additional Buoy Marking Method

Based on public comments, NMFS is adding an additional method for complying with the requirement for gear-specific marks on buoys. Instead of buoy tags being the only method of compliance for the gear-specific buoy marking required, as proposed in the proposed rule, the final rule adds the option for gear-specific marks directly on buoys. This will allow vessel operators that use dedicated, gear-specific surface gear to float either pot or bottom longline gear, exclusively, to permanently and directly mark all buoys. As described in the proposed rule, this method of marking was considered by the Council, but was not recommended because some fishermen testified that they often used surface lines and buoys to float multiple gear types within a fishing vessel's portfolio of target species. For those fishermen, marking directly on buoys was disfavored because it would force the purchase and storage of extra surface gear. However, the Council did not consider allowing multiple methods of buoy marking during development of its recommendation. NMFS finds that expanding the allowable methods for compliance with the gear-specific buoy marking requirements in this rule is appropriate and consistent with the Council's recommendation. Adding this method of marking buoys to the final rule provides operational efficiencies to the fleet, while still achieving the intended goal of gear-specific markings on all pot and bottom longline buoys. As such, this change to the final rule is consistent with NMFS' original purpose for this action and considered a logical outgrowth of the proposed rule. The change neither raises new issues not addressed in, nor represents a substantial departure from the proposed rule. For these reasons, NMFS is revising regulatory text at 50 CFR 660.219(b)(1) and 660.319(b)(1) to add an additional method of complying with this rule's buoy marking requirements by marking directly on the buoys, using capital letters ''GL'' for bottom longline buoys and ''GP'' for pot buoys.

Additionally, NMFS is making technical revisions to these regulations providing that all buoy markings, whether directly on the buoy or via buoy tag, use the capital letters ''GL'' for bottom longline buoys/tags and ''GP'' for pot buoys/tags, rather than the ''P'' and ''L'' markings provided in the proposed rule. These technical edits are intended to ensure the fishery-specific and gear-specific buoy marks required for the groundfish fishery under this

rule are not too similar to buoy markings currently required in other non-groundfish fisheries, including those managed by the State of California. NMFS' revisions to § 660.12(a)(9), as contained in the proposed rule, included gear-specific buoy marking tags as a required component of fishing gear (whether attached to the gear or onboard the vessel) that must be presented to an authorized officer for inspection upon request. In this final rule, gear-specific buoy marking tags are required only if buoys are not directly marked with permanent fishery and gear-specific markings. Therefore, this final rule adds ''when required'' to the buoy tag inspection requirement at § 660.12(a)(9).

Clarifying Edits to Temporary Line Marking Requirements

Based on public comments, NMFS is adding clarifying text to regulations describing continuous temporary markings for vertical lines in the gear-specific color schemes (table 1). NMFS acknowledges that ''continuous'' may be open for interpretation, and clarifies specific allowances for original line color showing in the portion of line required to be marked. Line marked in alternating bands of color according to the temporary line marking requirements at § 660.219(b)(2)(ii) and § 660.319(b)(2)(ii) may have up to 6 inches of original line visible, and may not have any original line showing through in the full circumference in the portion of the line required to be marked. See also Response to Comment 15.

Clarifying Edits to Biodegradable Escape Panel Placement Requirements

The proposed rule added specificity in the regulations regarding the required location of the opening of a pot's biodegradable escape panel. The goal of this regulatory change being to ensure that the opening is not on the bottom of the pot or too close to the bottom of the pot to be obstructed by silting or other benthic obstructions. The proposed language was identical to the rules for biodegradable escape panels used in pot fishing off the coast of Alaska. Based on public comments, and after further consultation with regional enforcement agents, NMFS is rewording the requirement at § 660.230(b)(4) and § 660.330 (b)(2)(iii) to simplify the escape panel language and make it slightly less prescriptive by removing the phrase ''parallel to,'' and to make the intent clearer by stating the escape panel opening must be positioned near but not on the bottom of the pot. The language revisions are consistent with NMFS' original purpose for this regulatory change and neither raise new issues not addressed in, nor represent a substantial departure from the proposed rule action. Thus, these revisions are considered a logical outgrowth of the proposed rule.

Regulations at § 660.219 are revised from the proposed rule to expand the existing gear marking and identification requirements that would have been applicable to only bottom longline and pot gears to apply to all fixed gears authorized for use in the limited entry non-trawl fishery. This change revises the regulations, including language that was not proposed to change in the proposed rule, to bring these provisions into compliance with substantive regulatory amendments that were made in a separate but related rulemaking: the Limited Entry Fixed Gear (LEFG) Follow-On action, for which the final rule published on July 22, 2026 (91 FR 46000). The LEFG Follow-On action authorizes more types of fixed gear to be used in the limited entry non-trawl fishery (formerly limited entry fixed gear fishery). This means there are more types of fixed gear that need to have appropriate identification, per existing requirements in § 660.219. These changes are isolated in paragraphs (a)(1) and (a)(2) of § 660.219. The regulations at § 660.219 pertaining to the final gear marking regulation changes implemented by this rulemaking for bottom longline gear and pot gear at (a)(1) and (b) are not substantively changed from the proposed rule, other than the additional buoy marking method described above for pot and bottom longline types of fixed gear.

Surface Line Length Restrictions for the Limited Entry and Open Access Fisheries

The proposed rule included restrictions on the length of surface lines that may be used for bottom longline and pot gear in the limited entry fishery at § 660.230(b)(7). Since the proposed rule, the paragraph numbering in § 660.230(b) has been revised through a separate rulemaking. Accordingly, the surface line length restriction for the limited entry fishery is now published, as proposed, at § 660.230(b)(6) rather than § 660.230(b)(7). This technical correction is made simply to make the regulatory changes implemented through this final rule consistent with the new paragraph numbering in § 660.230(b).

Additionally, the proposed rule for this action mistakenly omitted the surface length restriction for the subject gears that is being implemented in this rulemaking in the open access fishery gear restrictions, which are at § 660.330(b). As described in the preamble to the proposed rule, the intent of the surface line length restriction implemented in this rulemaking was that it would be applicable to all commercial fishing for groundfish on the West Coast using the subject gears, including vessels fishing for groundfish in the open access fishery. Accordingly, the proposed rule's omission of the surface line length restriction in the regulatory text at § 660.330(b) was a mistake and this final rule corrects that mistake by including the new surface line length restriction for vessels fishing with the subject gears in the open access fishery at § 660.330(b)(2)(v). This addition to the regulatory changes implemented through this final rule is consistent with NMFS' original purpose for this action and neither raises new issues not addressed in, nor represents a substantial departure from the purpose and intent for this action as described in the proposed rule. Therefore, this change is considered a logical outgrowth of the proposed rule.

Classification

Pursuant to sections 303(c)(2) and 304 (b)(1)(A) (16 U.S.C. 1853(c)(2) and 16 U.S.C. 1854(b)(1)(A)) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rulemaking is consistent with the Pacific Coast Groundfish Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law.

This rulemaking has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This final rule is considered an E.O. 14192 deregulatory action.

This action would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes; therefore, consultation with Tribal officials under E.O. 13175 is not required, and the requirements of section (5)(b) and (5)(c) of E.O. 13175 also do not apply. A Tribal summary impact statement under sections (5)(b)(2)(B) and (5)(c)(2)(B) of E.O. 13175 is not required and has not been prepared.

NMFS prepared an analysis for this action, which addresses the statutory requirements of the Magnuson-Stevens Act, E.O. 12866, and the RFA. The full suite of alternatives analyzed by the

Council can be found on the Council's website at *https://www.pcouncil.org.*

The NMFS Assistant Administrator finds that the requirement for a 30-day delay in the date of effectiveness for select regulations in this rulemaking does not apply pursuant to 5 U.S.C. 553(d)(1) and (3) and makes the regulations implementing the voluntary single-line allowance effective upon publication of this final rule in the **Federal Register**.

Pursuant to 5 U.S.C. 553(d)(1), this rule relieves a restriction on fishing because it creates additional flexibility in the amount and type of fishing gear required to be deployed for the subject gears by allowing fixed gear groundfish vessels to voluntarily mark only one terminal end of a pot or bottom longline gear set when a fisherman considers ocean conditions make doing so appropriate. This means that fishermen would be allowed to voluntarily decide to use surface gear (*i.e.,* a pole, flag, light, radar reflector, and a buoy) and a vertical line at only one terminal end of a pot or bottom longline gear set. Fishery participants are currently restricted from deploying the subject gear sets without the sets being marked at the surface on both terminal ends (per current regulations at 50 CFR 660.219(a)(1) and 660.319(a)(1)); thus, the voluntary single-line allowance provided for under this final rule will relieve that restriction and, pursuant to 5 U.S.C. 553(d)(1), the 30-day delay in effective date requirement does not apply to the regulations implementing the single-line allowance.

Additionally, pursuant to 5 U.S.C. 553(d)(3), the 30-day delay in effective date requirement does not apply to the single-line allowance in this final rule because a 30-day delay would be contrary to the public interest as it would delay entanglement risk reduction measures intended to provide conservation benefits to marine animals, particularly humpback whales, by reducing the number of vertical lines required to be deployed in the groundfish fishery during the 2026 fishing year. This provision taking effect without a 30-day delay will benefit the public because it will provide additional flexibilities for fishermen during the 2026 summer harvest of sablefish, which would likely reduce the number of vertical lines deployed, and thus reduce the likelihood of humpback whale and other entanglements, particularly over the summer months when whale presence is highest and overlaps with fishing using the subject gears. As described above in the response to comments, during summer 2026, there have been multiple reported entanglements where initial reports indicate the presence of groundfish gear, including pot gear. Therefore, NMFS feels that it is in the public's interest to promptly implement the single-line allowance to provide fishermen with the flexibility to use only one set of surface gear and vertical lines with the subject gears, and thus to reduce the risk of entanglement, accordingly.

Additionally, NMFS finds it is in the public interest to make the single-line allowance effective upon publication of this rule in the **Federal Register** because the gear flexibility created by the single-line allowance is expected to increase efficiency within the fishery by reducing the amount of fishing gear required when using the subject gear types. The sooner fishery participants are allowed to use this flexibility during the 2026 season, the sooner the economic benefits of these efficiencies can be realized for fishery participants and fishing communities.

Finally, a 30-day delay in effective date is not necessary to provide sufficient notice to the fishing community to adjust to the single-line allowance. One of the general policy purposes for allowing for a delay in a rule's effectiveness is to give the regulated community time to adjust their practices to come into compliance with the requirements of a new rule. The voluntary single-line allowance promulgated in this final rule creates no new compliance burdens for the fishing community affected by this rule. Instead, the rule creates increased operational flexibility on the part of fishery participants. Therefore, there are no policy reasons to delay the effectiveness of the single-line allowance.

For the foregoing reasons, the 30-day delay in the effectiveness pursuant to 5 U.S.C. 553(d)(1) and (3) does not apply to the single-line allowance established at 50 CFR 660.219(a)(1) and 660.319(a)(1) and these provisions will be effective immediately upon the publication of this rule in the **Federal Register**.

Regulatory Impact review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this Analysis is available from NMFS (see **ADDRESSES** section). NMFS is recommending the regulatory revisions in this rulemaking based on its assessment of the net benefits to the nation of these measures.

Regulatory Flexibility Act (RFA)

A final regulatory flexibility analysis (FRFA) was prepared, as required by section 603 of the RFA. The FRFA describes the economic impact this rulemaking will have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

For purposes of the RFA (5 U.S.C. 601 *et seq.*) only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. This standard applies to all businesses classified under North American Industry Classification System (NAICS) code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses (50 CFR 200.2; 13 CFR 121.201).

All commercial groundfish participants that use bottom longline or pot gears in the limited entry or directed open access fisheries in the EEZ off the West Coast, which are managed under the Groundfish FMP, may be affected by this rulemaking. The gear marking and entanglement risk reduction measures require the specified gear marking and surface line limitation described in this final rule for non-Tribal commercial vessels deploying either gear type. Examples of gears that are not affected by this rulemaking include select non-trawl gear types (*i.e.,* troll gear and commercial vertical hook-and-line gear not anchored to the bottom, such as vertical jig gear or rod-and-reel gear with weights suspended off the bottom).

This final rule is needed to increase NMFS' ability to attribute protected species entanglements to specific fisheries and ultimately aid in understanding and reducing the risk of protected species entanglement in groundfish pot and longline gear. The gear marking and entanglement risk reductions in this rule are expected to improve NMFS' ability to attribute the source of protected species entanglements. This rulemaking is also needed to improve the effectiveness of the currently required biodegradable

escape mechanisms in pot gear. Regulations describing in greater detail the location of escape panels in pot gear is expected to ensure efficacy.

No public comments were received regarding the initial regulatory flexibility analysis and no significant issues were raised related to the analysis. Changes from the proposed rule are not expected to change the analyses and findings in the initial regulatory flexibility analysis. No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

Given that this action would apply to the entirety of all entities fishing groundfish with bottom longline and pot gear and that the majority are considered small entities, this rule is expected to have an impact on a substantial number of small entities. All open access groundfish fishing vessels are assumed to be small entities, with ex-vessel revenues for all landings (groundfish and non-groundfish) averaging $85,601 in 2023. From 2019–2023, between 72 and 152 vessels harvested groundfish in federal waters in the directed open access fishery using one or both of the subject gears. In 2023, 197 of the 223 federal permit owners or holders (required to fish in the primary or limited entry fixed gear sectors) reported as small entities. For gear switching vessels, using non-trawl gear to harvest groundfish in the Shorebased IFQ Program, of the 10 that participated in 2023, all reported as small entities.

Note that there is not a strict one-to-one correlation between vessels, permits, operators, or entities. Some persons or firms likely have ownership interests in more than one vessel or permit. Multiple permits may be registered for use with a single vessel. Given these factors, the actual number of entities regulated by this action could be lower than the preceding estimates.

All vessels subject to this action would be subject to the new requirements to have lines marked in gear-specific colors (temporary markings allowed for interim period followed by requirements for manufactured lines) and buoys marked with gear specific tags or markings and vessel identification. These requirements are subject to the Paperwork Reduction Act (PRA). It is expected that commercial fishing vessel operators, or their employee(s) or other agent(s), would meet the requirement for line marking by marking the lines with temporary methods (*e.g.,* paint or tape) in the transition period or ordering manufactured lines in the gear-specific color scheme. Vessels are only expected to acquire manufactured line in the required color scheme once during the three-year interim period, as fishing lines often last 6 years or more. The three-year interim period is intended to allow current vertical lines used in the fishery to be phased out and replaced towards the end of their lifespan to avoid unnecessary waste and costs. Additionally, after initial acquisition, replacement of manufactured line in the required color scheme is not expected to increase incremental costs, as compared to what routine gear replacement costs would have been without this new gear marking requirement.

For buoy marking, buoys may be permanently marked directly on the buoy, or cattle ear tags could be ordered and the required identification information etched or stamped on each tag, then affixed to each buoy prior to setting the gear. NMFS estimates that during the 3-year period of this collection, each respondent will only need to purchase tags and line once and then perform ongoing maintenance of those markings.

To annualize gear marking costs, the number of respondents is divided by the 3-year period of this collection, resulting in an average of 112 respondents per year. NMFS estimates it takes approximately 5 hours to replace lines and mark buoys; therefore, the total burden would be approximately 560 hours per year. The estimated average cost burden for compliance with the new gear marking regulations in this rule is estimated to be $809 per respondent (*e.g.,* vessel operator). This total accounts for the costs of gear-specific marked line, gear-specific marked buoy tags, and paint or markers. This cost per vessel does not always equate to the cost per entity.

NMFS does not anticipate any additional compliance burden to the vessels subject to this action from complying with the biodegradable escape panel placement specifications or twine size changes in this rule. This is because industry representatives attest that no retrofitting of existing pots will be required to comply with revised regulations.

Economic impacts from this rulemaking come primarily from the gear marking requirements. The gear marking alternative adopted in the final rule requires marking of only approximately 1 percent of vertical lines; specifically, the portion of the line that is most commonly documented in entanglements. The rulemaking also requires marking every buoy because at least one buoy is observed in the majority of entanglements. For these reasons, the alternative adopted in this final rule provides the best result in terms of assessing minimal costs to industry and providing benefits in terms of being able to positively or negatively attribute entanglements.

There are no expected economic impacts from any other measures in this final rule, including the voluntary single-line allowance to reduce risk of entanglement. The single-line allowance is voluntary in nature to minimize the risk of gear loss, while removing a regulatory barrier to reducing the number of vertical lines in the water. This entanglement risk reduction measure therefore implements NMFS' statutory obligation under the Magnuson-Stevens Act to minimize bycatch to the extent practicable. None of the other alternatives considered during this rulemaking would meet the stated objectives and minimize any significant economic impact of the rule as compared to the final action.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that, for each rule for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply. As part of this rulemaking process, a notification to permit holders and other interested parties that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the West Coast Regional Office, and the guide will be sent electronically to all holders of permits fishing for groundfish in the EEZ with the subject gear types. The guide and this final rule will also be posted to the NMFS website and made available upon request.

Paperwork Reduction Act

This rulemaking contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the PRA. This rulemaking revises and extends an existing collection with new requirements for fishermen, when using specific gear types to harvest groundfish, to disclose publicly what gear type they are deploying by marking their gear with gear-specific buoy marking and at least the top 20 fm (37 m) of the vertical line in a required color scheme. Line may be either temporarily marked in continuous alternating-colored bands (will only apply for 3 years following the effective date of final rule) or using manufactured line

with only the two specific colors. Burden estimates for the existing collection, which requires vessel identification on a buoy, are revised to update the estimated number of affected entities with updated fishery information and to adjust cost burden estimates for inflation. Public reporting burden for the vessel identification requirements remains 15 minutes per year per vessel. Public reporting burden for new gear marking requirements that are the subject of this rulemaking is estimated to average 5 hours per year per individual response to gear marking requirements. Burden hour estimates include the time for reviewing instructions, searching equipment sources, gathering and maintaining the equipment needed, and completing and maintaining the collection of information. This collection of information was previously approved by the OMB under OMB Control Number 0648–0352.

One public comment was received directly pertaining to the proposed collection, asking for a correction to an apparent typo in the Supporting Statement and asking NMFS to acknowledge the uncertainty in the burden hour estimates since they were not modeled. No public comments were received regarding: (1) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) ways to enhance the quality, utility, and clarity of the information to be collected; and (3) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

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.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 25, 2026.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Amend part 660 subparts C, E, and F by removing the word ''longline'' and adding in its place the words ''bottom longline'' wherever it appears, except for §§ 660.11, 660.12(a)(15), 660.13(d)(4)(iv)(A)(*21*), 660.21(b)(1), 660.21(c)(1)(iii) and (c)(2)(ii), 660.230(b)(4), 660.330(b)(2)(i).

■ 3. In § 660.11, amend the definition of ''Fishing gear'' by:

■ a. Revising paragraph (5);

■ b. Adding paragraphs (6)(i)(B), (C) and (D); and

■ c. Revising paragraph (10).

The revisions and additions read as follows:

§ 660.11 General definitions.

* * * * *

Fishing gear * * *

(5) *Fixed gear (anchored non-trawl gear)* means the following gear types: bottom longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears.

(6) * * *

(i) * * *

(B) Surface line means line at or near the water's surface that connects the main buoy to any additional buoys.

(C) Vertical line means the line connecting the main buoy to the groundline.

(D) Main buoy means the buoy closest to the groundline, attached to the vertical line at or near the water's surface.

* * * * *

(10) *Trap or pot* See § 600.10 of this chapter, definition of ''trap.'' These terms are used as interchangeable synonyms.

(i) Surface line means line at or near the water's surface that connects the main buoy to any additional buoys.

(ii) Vertical line means the line connecting a pot or groundline attached to multiple pots to the main buoy.

(iii) Main buoy means the buoy closest to the fishing gear (pot or groundline) and attached to the vertical line at or near the surface.

(iv) Collapsible pot means a cylindrical pot that is not rigid, and can be collapsed for storage when not deployed, also called ''slinky pots.''

* * * * *

■ 4. In § 660.12, revise paragraphs (a)(2) and (9) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(2) Falsify or fail to affix and maintain vessel and gear identifications and markings as required by § 660.20 or § 660.219, subpart E or § 660.319, subpart F.

* * * * *

(9) When requested or required by an authorized officer, refuse to present fishing gear, including gear marking tags when required, for inspection, refuse to present fish subject to such persons control for inspection, or interfere with a fishing gear or marine animal or plant life inspection.

* * * * *

■ 5. Revise § 660.219 to read as follows:

§ 660.219 Fixed gear identification and marking.

(a) *Gear identification.* (1) Fixed gears authorized for use in the limited entry fishery (*i.e.,* bottom longline, trap or pot, and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be marked at the surface at each terminal end, with a pole, flag, light, radar reflector, and a buoy, except that bottom longline and pot gears (as defined at § 660.11) may be marked, as described in this paragraph (a)(1), at just one terminal end (*i.e.,* gear may be marked at either both terminal ends or one terminal end).

(2) Limited entry commercial vertical hook-and-line gear that is closely tended as defined at § 660.311, Subpart F, may be marked only with a single buoy of sufficient size to float the gear.

(3) At least one buoy used to mark fixed gear under paragraph (a)(1) or (a)(2) of this section must be marked with a number clearly identifying the owner or operator of the vessel. In addition, all buoys used to mark bottom longline or pot gear in the limited entry fishery must be marked with a legible number clearly identifying the owner or operator of the vessel. For these two gear types, the number must be marked directly on at least one buoy, and all other buoys must have the number directly on the buoy or included on gear marking tags attached to the buoy, as specified in paragraph (b)(1) of this section. For all these marking requirements, the number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(b) *Gear marking.* Bottom longline and trap or pot gear, as defined at

§ 660.11, used in the limited entry fishery must have gear-specific markings on any vertical lines (as defined at § 660.11) and all buoy(s). These gear-specific markings are in addition to identification requirements set out in paragraph (a) of this section and applicable gear restrictions in § 660.230.

(1) All buoys attached to the surface line of the subject gears in this paragraph (b)(1) must have a gear-specific marking. Marking must be either a permanent mark directly on the buoy or on a durable tag for each buoy; both are not required. Marks directly on the buoy must appear at least twice on each buoy on opposing sides. Tags must be stamped or engraved, where there is a physical indentation along with a contrasting color. Prior to gear deployment, if the tags are not securely attached to each buoy, tags for each buoy must be shown, upon request, to authorized agents. On a trip where a vessel takes and retains groundfish in the EEZ with the subject gear, all buoys deployed with fishing gear are required to be marked either directly on the buoy or with a tag attached to the buoy with a single, exclusive gear-specific mark, as described in this paragraph (b)(1).

(i) Permanent buoy markings for bottom longline gear must be the capital letters ''GL,'' be legible, be at least 3 inches (7.7 cm) in height, and a gear-specific mark for pot gear may not be present. Tags used to mark buoys attached to bottom longline gear must be brown and large enough to accommodate a letter ''GL'' engraved that is at least 1.75 inches (4.4 cm) in height.

(ii) Permanent buoy markings for pot gear must use the capital letters ''GP,'' be legible, be at least 3 inches (7.7 cm) in height, and a gear-specific mark for bottom longline gear may not be present. Tags used to mark buoys attached to pot/trap gear must be orange and large enough to accommodate a letter ''GP'' engraved that is at least 1.75 inches (4.4 cm) in height.

(2) All vertical lines (as defined at § 660.11) of the subject gears in this paragraph (b)(2) must have gear-specific marks. Marks must be continuous in at least the top 20 fm (37 m) of the vertical line, measured from the main buoy down towards the groundline.

(i) Line manufactured in a gear-specific color scheme must be used for the marked portion of the line. Lines must be both brown and blue for use with bottom longline gear. Lines must be both orange and blue for use with pot gear. At least one-third of strands in the marked line must be one of the gear-specific colors specified here, and the remainder of the strands the other color. Presence of any third color, besides white, is prohibited in the portion of the line required to be marked.

(ii) Until January 11, 2030, the colors specified in paragraph (b)(3)(i) of this section may be applied by temporary methods such that the colors are clearly visible and in continuous, alternating bands of 18–28 inches (46–71 cm) each, over the entire portion of the line required to be marked in this paragraph (b)(2)(ii). Marking is continuous if no more than 6 inches of the original, unmarked line color shows through. If any amount less than 6 inches of original line is visible it may not be in the full circumference of the line.

■ 6. In § 660.230, revise paragraph (b)(3) and add paragraph (b)(6) to read as follows:

§ 660.230 Non-trawl fishery—management measures.

* * * * *

(b) * * *

(3) Traps or pots must have biodegradable escape panels that meet the following requirements:

(i) *General.* Traps or pots must have escape panels constructed with number 30 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates, and the resulting opening is positioned within 3 inches (7.7 cm) from the bottom of the pot.

(ii) *Collapsible pots.* A collapsible pot (defined at § 660.11, subpart C) is exempt from the placement requirements for escape panels described in paragraph (b)(4)(i) of this section. Instead, a collapsible pot must have one of the following:

(A) An escape panel placed anywhere on the mesh of the collapsible pot, constructed with number 30 or smaller untreated cotton twine and in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(B) One door on the pot must measure at least 8 inches (20.3 cm) in diameter and be attached with number 30 or smaller untreated cotton thread.

* * * * *

(6) Surface line, defined at § 660.11, that is used with bottom longline or pot gear may not exceed 10 fm (18.3 m) in length, measured from the terminal end to the main buoy.

* * * * *

■ 7. Revise § 660.319 to read as follows:

§ 660.319 Open access fishery gear identification and marking.

(a) *Gear identification.* (1) Open access fixed gear (bottom longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be marked at the surface at each terminal end, with a pole, flag, light, radar reflector, and a buoy, except that in the directed open access fishery (defined at § 660.11), bottom longline and pot gears may be marked, as described in this paragraph (a)(1), at just one terminal end (*i.e.,* gear may be marked at either both terminal ends or one terminal end).

(2) Open access commercial vertical hook-and-line gear that is closely tended, as defined at § 660.311, may be marked only with a single buoy of sufficient size to float the gear.

(3) At least one buoy used to mark fixed gear under paragraph (a)(1) or (a)(2) of this section must be marked with a legible number clearly identifying the owner or operator of the vessel. In addition, all buoys used to mark bottom longline or pot gear in the directed open access fishery must be marked with a legible number clearly identifying the owner or operator of the vessel. For these two gear types, the number must be marked directly on at least one buoy used with surface gear, and all other buoys must have the number directly on the buoy or included on gear marking tags attached to the buoy, as specified in paragraph (b)(1) of this section. For all these marking requirements, the number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(b) *Gear marking.* Bottom longline and pot gears used in the directed open access fishery (defined at § 660.11) must have gear-specific markings on any vertical lines (as defined at § 660.11) and all buoy(s). These gear-specific markings are in addition to identification requirements set out in paragraph (a) of this section and applicable gear restrictions set out in § 660.330.

(1) All buoys attached to the surface line of the subject gears in this paragraph (b)(1) must have a gear-specific marking. Marking may be either a permanent mark directly on the buoy or on a durable tag for each buoy; both are not required. Marks directly on the buoy must appear at least twice on each buoy and on opposing sides. Tags must be stamped or engraved, where there is a physical indentation along with a contrasting color. Prior to gear deployment, if the tags are not securely

attached to each buoy, tags for each buoy must be shown, upon request, to authorized agents. On a trip where a vessel takes and retains groundfish in the EEZ with the subject gear, all buoys are required to be marked either directly on the buoy or with a tag attached to the buoy with a single, exclusive gear-specific mark, as described in this paragraph (b)(1).

(i) Permanent buoy markings for bottom longline gear must be the capital letters ''GL,'' be legible, be at least 3 inches (7.7 cm) in height, and a gear-specific mark for pot gear may not be present. Tags used to mark buoys attached to bottom longline gear must be brown and large enough to accommodate a letter ''GL'' engraved that is at least 1.75 inches (4.5 cm) in height.

(ii) Permanent buoy markings for pot gear must use the capital letters ''GP,'' be legible, be at least 3 inches (7.7 cm) in height, and a gear-specific mark for bottom longline gear may not be present. Tags used to mark buoys attached to pot/trap gear must be orange and large enough to accommodate a letter ''GP'' engraved that is at least 1.75 inches (4.5 cm) in height.

(2) All vertical lines (as defined at § 660.11) of the subject gears in this paragraph (b)(2) must have gear-specific marks. Marks must be continuous in at least the top 20 fm (37 m) of the vertical line, measured from the main buoy down towards the groundline.

(i) Manufactured line in a gear-specific color scheme must be used for the marked portion of the line. Lines must be both brown and blue for use with bottom longline gear. Lines must be both orange and blue for use with pot gear. At least one-third of strands in marked line must be in one of the listed colors, and the remainder of the strands in the other color. Presence of any third color, besides white, is prohibited in the portion of the line required to be marked.

(ii) Until January 11, 2030, the colors specified in paragraph (b)(2)(i) of this section may be applied by temporary methods such that the colors are clearly visible and in continuous, alternating bands of 18–28 inches (46–71 cm) each, over the entire portion of the line required to be marked in this paragraph (b)(2)(ii). Marking is continuous if no more than 6 inches of the original, unmarked line color shows through. If any amount less than 6 inches of original line is visible it may not be in the full circumference of the line.

■ 8. Amend § 660.330 by:

■ a. Revising paragraphs (b) introductory text and (b)(2)(i) and (iii); and

■ b. Adding paragraph (b)(2)(v).

The revisions and addition read as follows:

§ 660.330 Open access fishery—management measures.

* * * * *

(b) *Gear restrictions.* Open access gear is defined at § 660.11, and includes but is not limited to, bottom longline, trap or pot, hook-and-line (fixed or mobile), set net (anchored gillnet or trammel net, which are permissible south of 38° N. lat. only), spear and non-groundfish trawl gear (trawls used to target non-groundfish species: pink shrimp or ridgeback prawns, and, south of Pt. Arena, CA (38°57.50′ N. lat.), California halibut or sea cucumbers). Restrictions for gears used in the open access fisheries are as follows:

* * * * *

(2) * * *

(i) *Fixed gear.* Fixed gear (bottom longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be attended at least once every 7 days and is subject to the identification requirements described at § 660.319. Vessels fishing with bottom longline and snap gears as defined at § 660.11, are subject to the requirements of the Seabird Avoidance Program described in § 660.21. Vessels fishing with bottom longline or pot and trap gears in the directed open access fishery, as defined at § 660.11, are subject to the gear identification and marking requirements described in § 660.319.

* * * * *

(iii) *Traps or pots must have escape panels.* (A) Traps or pots must have escape panels constructed with number 30 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates, and the resulting opening is positioned within 3 inches (7.7 cm) from the bottom of the pot.

(B) A collapsible pot (defined at § 660.11) is exempt from the placement requirements for escape panels described in this section. Instead, a collapsible pot must have one of the following:

(*1*) An escape panel placed anywhere on the mesh of the collapsible pot, constructed with number 30 or smaller untreated cotton twine and in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(*2*) One door on the pot must measure at least 8 inches (20.3 cm) in diameter and be attached with number 30 or smaller untreated cotton thread.

* * * * *

(v) *Surface line.* Surface line, defined at § 660.11, that is used with bottom longline or pot gear may not exceed 10 fm (18.3 m) in length, measured from the terminal end to the main buoy.

* * * * *

[FR Doc. 2026–20873 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 260305–0066; RTID 0648–XG100]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amounts of Pacific cod from catcher vessels using trawl gear to catcher vessels less than 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2026 total allowable catch (TAC) of Pacific cod in the BSAI to be harvested.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 13, 2026, through 2400 hours, A.l.t., December 31, 2026.

FOR FURTHER INFORMATION CONTACT: Andrew Olson, 907–206–5813.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared and recommended by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2026 Pacific cod TAC specified for catcher vessels using trawl gear in the BSAI is 26,056 mt as established by the final 2026 and 2027 harvest specifications for groundfish in the BSAI (91 FR 11750, March 10, 2026).

The 2026 Pacific cod TAC specified for catcher vessels less than 60 feet (18.3

m) LOA using hook-and-line or pot gear in the BSAI is 4,207 metric tons (mt) as established by the final 2026 and 2027 harvest specifications for groundfish in the BSAI (91 FR 11750, March 10, 2026) and reallocations (91 FR 16583, April 2, 2026 and 91 FR 55499, August 28, 2026).

The Regional Administrator, Alaska Region, NMFS (the Administrator) has determined that catcher vessels using trawl gear will not be able to harvest 350 mt of the 2026 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*9*). The Administrator has also determined that catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear have the capability to harvest an additional 350 mt of Pacific cod TAC.

Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS reallocates 350 mt of Pacific cod from catcher vessels using trawl gear to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

The harvest specifications for 2026 Pacific cod TAC included in final 2026 and 2027 harvest specifications for groundfish in the BSAI (91 FR 11750, March 10, 2026) and reallocations (91 FR 16583, April 2, 2026 and 91 FR 55499, August 28, 2026) are revised as follows: 25,706 mt to catcher vessels using trawl gear and 4,557 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data on Pacific cod catch in a timely fashion and would not allow for the full harvest of the Pacific cod TACs by the sectors with harvesting capability. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data on the catch of Pacific cod by sectors operating in the BSAI and the capability of certain sectors to harvest additional TAC only became available as of October 7, 2026.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date of this action. This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: October 8, 2026.

Shannon Bettridge,

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

[FR Doc. 2026–20860 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 260305–0067; RTID 0648–XG099]

Fisheries of the Exclusive Economic Zone off Alaska; Reallocation of Pacific Cod in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amounts of Pacific cod from catcher vessels using trawl gear and catcher/processors using trawl gear to catcher vessels using hook-and-line gear and vessels using pot gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to allow the 2026 total allowable catch (TAC) of Pacific cod to be harvested in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 13, 2026, through 2400 hours, Alaska local time (A.l.t.), December 31, 2026.

FOR FURTHER INFORMATION CONTACT: Adam Zaleski, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared and recommended by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2026 Pacific cod TAC allocated to catcher vessels using trawl gear in the Western Regulatory Area of the GOA is 2,506 metric tons (mt), as established by the final 2026 and 2027 harvest specifications for groundfish in the GOA (91 FR 11902, March 11, 2026).

The 2026 Pacific cod TAC allocated to catcher/processors using trawl gear in the Western Regulatory Area of the GOA is 157 mt, as established by the final 2026 and 2027 harvest specifications for groundfish in the GOA (91 FR 11902, March 11, 2026).

The 2026 Pacific cod TAC allocated to catcher vessels using hook-and-line gear in the Western Regulatory Area of the GOA is 91 mt, as established by the final 2026 and 2027 harvest specifications for groundfish in the GOA (91 FR 11902, March 11, 2026).

The 2026 Pacific cod TAC allocated to vessels using pot gear in the Western Regulatory Area of the GOA is 2,480 mt, as established by the final 2026 and 2027 harvest specifications for groundfish in the GOA (91 FR 11902, March 11, 2026).

The Administrator, Alaska Region, NMFS (the Administrator) has determined that catcher vessels using trawl gear will not be able to harvest 550 mt of the 2026 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(A)(*3*) and that catcher/processors using trawl gear will not be able to harvest 100 mt of the 2026 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(A)(*4*). The Administrator has also determined that catcher vessels using hook-and-line gear have the capability to harvest an additional 250 mt of Pacific cod TAC and vessels using pot gear have the capability to harvest an additional 400 mt of Pacific cod TAC.

Therefore, in accordance with § 679.20(a)(12)(ii)(B), NMFS apportions 550 mt of Pacific cod from catcher vessels using trawl gear and 100 mt of Pacific cod from catcher/processors using trawl gear to the annual amount specified for catcher vessels using hook-and-line gear and to the annual amount specified for vessels using pot gear.

The harvest specifications for 2026 Pacific cod TAC allocated to vessels in the Western Regulatory Area of the GOA included in the final 2026 and 2027 harvest specifications for groundfish in the GOA (91 FR 11902, March 11, 2026) is revised as follows: 1,956 mt to catcher vessels using trawl gear, 57 mt to catcher/processors using trawl gear, 341 mt to catcher vessels using hook-and-line gear, and 2,880 mt to vessels using pot gear.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR

part 679, which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data on Pacific cod catch in a timely fashion and would not allow for the full harvest of the Pacific cod TACs by the sectors with harvesting capability. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data on the harvest of Pacific cod by sectors operating in the Western Regulatory Area of the GOA and the capability of certain sectors to harvest additional TAC only became available as of October 5, 2026.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date of this action. This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: October 8, 2026.

Shannon Bettridge,

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

[FR Doc. 2026–20870 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 91, No. 196
Tuesday, October 13, 2026

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–11806; Project Identifier MCAI–2026–00589–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Helicopters Model H160–B helicopters. This proposed AD was prompted by a report of the inability to operate the jettisoning function of a window due to a blocked jettisoning mechanism. This proposed AD would require removing the jettisonable windows, cleaning the ropes of the jettisonable windows, and performing an operational test of the windows jettison systems. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by November 27, 2026.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2026–11806; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 10101 Hillwood Parkway, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Aryanna Sanchez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (520) 990–9321; email: *aryanna.t.sanchez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under **ADDRESSES**. Include ''Docket No. FAA–2026–11806; Project Identifier MCAI–2026–00589–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

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

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2026–0116, dated June 15, 2026 (EASA AD 2026–0116) (also referred to as the MCAI), to correct an unsafe condition on Airbus Helicopters Model H160–B helicopters. The MCAI states that an occurrence of the inability to operate the jettisoning function of a window was reported. The MCAI further states that a manufacturer investigation revealed the presence of white particles caused by fire retardant residue on the rope of the jettisoning system which prevented the rope from sliding and blocked the jettison mechanism of the window. This condition, if not addressed, could result in a reduced capability to evacuate helicopter occupants during an emergency and injury to helicopter occupants.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2026–11806.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2026–0116, which specifies procedures for removing the jettisonable windows, cleaning the ropes of the jettisonable windows, and performing an operational test of the windows jettison systems. This material is reasonably available because the interested parties

have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the material described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD. See ''Differences Between this Proposed AD and the MCAI'' for a discussion of the general differences included in this proposed AD.

Differences Between This Proposed AD and the MCAI

Where the MCAI specifies contacting Airbus Helicopters for corrective action instructions, this proposed AD would require using a method approved by the FAA, EASA, or Airbus Helicopters' EASA Design Organization Approval.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some CAA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2026–0116 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2026–0116 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2026–0116 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2026–0116. Material required by EASA AD 2026–0116 for compliance will be available at *regulations.gov* under Docket No. FAA–2026–11806 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 17 helicopters of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove, clean, and reinstall jettisonable windows (6 per helicopter).	1 work-hour × $85 per hour = $85 (per window).	$2,179	$2,689	$45,713
Perform operational test of windows jettison systems.	2 work-hours × $85 per hour = $170	0	170	2,890

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2026–11806; Project Identifier MCAI–2026–00589–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 27, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model H160–B helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5220, Emergency exits.

(e) Unsafe Condition

This AD was prompted by a report of the inability to operate the jettisoning function of a window due to a blocked jettisoning mechanism. The FAA is issuing this AD to prevent the inability to jettison the window(s) during an emergency. The unsafe condition, if not addressed, could result in a reduced capability to evacuate helicopter occupants during an emergency and injury to helicopter occupants.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2026–0116, dated June 15, 2026 (EASA AD 2026–0116).

(h) Exceptions to EASA AD 2026–0116

(1) Where EASA AD 2026–0116 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (3) of EASA AD 2026–0116 specifies contacting AH (Airbus Helicopters) for applicable corrective action instructions if any discrepancy is detected during the operational test, this AD requires, before further flight, performing these actions in accordance with a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus Helicopters' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Where EASA AD 2026–0116 defines ''Affected parts,'' this AD requires replacing that text with ''any part having a part number (P/N) and manufacturer P/N, as applicable, identified in the Applicability, Components affected, of the Airbus Helicopters Alert Service Bulletin ASB H160–52–20–0004, Issue 001, dated June 4, 2026.''

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2026–0116.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Additional Information

For more information about this AD, contact Aryanna Sanchez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (520) 990–9321; email: *aryanna.t.sanchez@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2026–0116, dated June 15, 2026.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 10101 Hillwood Parkway, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on October 8, 2026.

Steven W. Thompson,

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

[FR Doc. 2026–20885 Filed 10–9–26; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 38, and 39

RIN 3038–AF80

Regulation Crypto Asset Transactions and Regulation Crypto Asset Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is issuing an advanced notice of proposed rulemaking regarding section 2(c)(2)(D) of the Commodity Exchange Act (''CEA'' or ''Act'') to provide notice and seek public comment on its intent to develop and establish fit-for-purpose rules implementing section 2(c)(2)(D) of the Act with respect to transactions and markets in crypto assets.

DATES: Comments must be received on or before December 14, 2026.

ADDRESSES: You may submit comments, specifically referencing ''Regulation Crypto Asset Transactions and Regulation Crypto Asset Markets'' and RIN 3038–AF80, by any of the following methods:

- *Regulations.gov:* Go to *https://www.regulations.gov* and press the ''Search'' button, then proceed as follows:

1. Under Refine Documents Results—check the box to ''Only show documents open for comment'';

2. Under Agency—select ''See More'' and check the box for ''Commodity Futures Trading Commission,'' then press the ''Apply'' button; and

3. Identify this proposal in the list of CFTC documents open for comment, press the ''Comment'' button to open the submission form, and follow the instructions on the form.

Alternatively, if you are viewing this proposal on *www.federalregister.gov,* click the ''Submit A Public Comment'' button at the top of the page to open the comment form. Follow the instructions on the form to submit your comment to *Regulations.gov.*

- *Mail:* Send to—Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Address to—CFTC Comment Submission, Attn: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through *Regulations.gov* are encouraged.

All comments must be submitted in English or, if not, accompanied by an English translation. Do not include in your comment text or attachments any personal identifying information or business information that you do not want published online. Comments (regardless of submission method) will be published without review for, and without removal of, any personal identifying information or information your business may consider confidential.

If you wish to submit confidential information for the Commission's

consideration, please contact the CFTC personnel listed in this Notice under **FOR FURTHER INFORMATION CONTACT** before making any submission. Please also carefully review the Commission's procedures in 17 CFR 145.9 for requesting confidential treatment under the Freedom of Information Act (FOIA) of information submitted to the Commission.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, or redact all or any part of your comment submission. The CFTC also reserves the right, without further notification, to refuse to publish or to remove from public view all or any part of your submission to the extent it contains content inappropriate for publication in a comment file, such as—without limitation—obscene language, threats of violence, solicitations for commercial sales or illegal activity, or obvious spam. If a submission that is refused for or withdrawn from publication because of inappropriate content also contains comments on the merits of this proposal, such submission will be retained in the record for the matter and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

A plain language summary of the proposed rule is available at *Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Tyler S. Badgley, General Counsel, Office of the General Counsel, *rulemaking@cftc.gov,* 202–418–5000; Aaron Levine, Deputy General Counsel for Regulation, Office of the General Counsel, *rulemaking@cftc.gov,* 202–418–5000; Sean Yoo, Senior Assistant General Counsel, Office of the General Counsel, *rulemaking@cftc.gov,* 202–418–5000; Michael J. Passalacqua, Head, Innovation Task Force, *mpassalacqua@cftc.gov,* 202–418–5052; or, Hank Balaban, Senior Advisor, Innovation Task Force, *hbalaban@cftc.gov,* 202–418–5422, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is issuing an advanced notice of proposed rulemaking (''ANPRM'' or ''Notice'') on section 2(c)(2)(D) of the Act with respect to transactions and markets in crypto assets [1] to provide notice of its intent to establish a comprehensive regulatory framework comprised of fit-for-purpose rules concerning section 2(c)(2)(D), including defining certain terms therein, with respect to the retail commodity transactions described in section 2(c)(2)(D)(i) and that involve crypto assets (such crypto asset transactions referred to herein as, ''Crypto Asset Transactions'' or ''CTXs''). The proposals set forth herein are designed to further the purposes and objectives of the Act, including protecting retail customers from market abuses along with fostering ''responsible innovation'' and ''fair competition'' among Commission-registered boards of trade, other markets, and market participants.[2] The Commission is seeking public comment on all aspects of this Notice and also sets forth specific questions in Sections IV and V, *infra.*

A. Introduction

With certain exceptions, Congress has granted the CFTC exclusive jurisdiction over the transactions subject to the Act.[3] The markets that the Commission oversees pursuant to the Act are ''affected with a national public interest'' because they facilitate risk management and price discovery ''through trading in liquid, fair and financially secure trading facilities.'' [4] The Commission fosters that national public interest, in part, through sound regulation that protects the American public from fraudulent schemes and abusive practices in transactions over which the Act grants it jurisdiction and markets on which those transactions are executed.[5] The Act also requires the Commission to balance those objectives and purposes with the promotion of ''responsible innovation'' and ''fair competition.'' [6] To foster such objectives with respect to the transactions and markets subject to the Act, Congress demanded,[7] and the Commission has promulgated, a uniform national market regulatory framework. In 1973, futures exchanges recommended that ''federal policy [ ] be uniform throughout the United States'' and not ''subject to the vagaries'' of different obligations in ''different jurisdictions.'' [8] Congress responded with the creation of the Commission through the Commodity Futures Trading Commission Act in 1974.[9] The establishment of a uniform national system for regulating such

[1] As used herein, the term ''crypto asset'' means any digital representation of value that is recorded on a cryptographically-secured distributed ledger. Any crypto asset, other than a ''payment stablecoin'' issued by a ''permitted payment stablecoin issuer,'' as such terms are defined in section 2 of the Guiding and Establishing National Innovation for U.S. Stablecoins Act, Public Law 119–27, 139 Stat. 419 (2025) (''GENIUS Act''), could meet the definition of ''commodity'' under the Act. *See* CEA 1a(9), 7 U.S.C. 1a(9), as amended by GENIUS Act section 17(f); 12 U.S.C. 5901(22). Although not included in the statutory exclusion from the definition of ''commodity'' in section 17 of the GENIUS Act, payment stablecoins issued by a ''foreign payment stablecoin issuer'' (as the term is defined in the GENIUS Act) registered with the Office of the Comptroller of the Currency will generally not meet the definition of ''commodity'' under the Act. *See* 12 U.S.C. 5901(12). The term ''distributed ledger'' generally refers to databases that maintain information across a network of computers in a decentralized or distributed manner. These networks commonly use cryptographic protocols to ensure data integrity and consensus mechanisms to ensure data congruity. Blockchains are one type of distributed ledger, and they are often used to issue and transfer ownership of crypto assets. Further, for purposes of this release, ''onchain'' refers to transactions or data that are processed and recorded directly on a blockchain or similar system and ''offchain'' refers to transactions or data that are processed and recorded outside of a blockchain or similar system. *See Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets,* 91 FR 13714, 13715 n. 1 (Mar. 23, 2026) (''Joint Crypto Asset Taxonomy'').

[2] CEA 3(a)–(b), 7 U.S.C. 5(a)–(b); *see also* Philip McBride Johnson, Thomas Lee Hazen, Susan C. Ervin, Charles R. Mills & Kathryn M. Trkla, *Derivatives Regulation* § 2.07 (2d Ed.) (''Johnson et al.'') (''The CEA has a bountiful history—a statute at the intersection of financial history and public policy, at ground zero of financial innovation.'').

[3] CEA 2(a)(1)(A), 7 U.S.C. 2(a)(1)(A).

[4] CEA 3(a), 7 U.S.C. 5(a).

[5] CEA 3(a)–(b), 7 U.S.C. 5(a)–(b).

[6] *Id.*

[7] CEA 2(a)(1)(A), 7 U.S.C. 2(a)(1)(A). *See also Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Curran,* 456 U.S. 353, 355–356 (1982) (stating that the Act ''has been aptly characterized as 'a comprehensive regulatory structure''') (quoting H.R. Rep. No. 93–975, at 1 (1974)).

[8] *Review of Commodity Exchange Act and Discussion of Possible Changes: Hearings Before the H. Comm. on Agriculture,* 93d Cong. 121 (1973).

[9] The Act ''is one of two primary U.S. federal statutes that regulate how financial markets operate. The other, administered by the Securities and Exchange Commission (''SEC''), is the Securities Exchange Act of 1934 (''Exchange Act'').'' *See* Johnson et al., § 6.01. The year following the passage of the Commodity Futures Trading Commission Act in 1974 and its establishment of the CFTC to oversee a uniform national regulatory framework under the Act, the 94th Congress demonstrated a continued focus on the importance of uniform national rules that implement federal market regulation by enacting the 1975 Securities Act Amendments (the '''75 Amendments'') to the Securities Act of 1933 (''Securities Act'') and the Exchange Act. The impetus for the '75 Amendments resembled that which led to the Commodity Futures Trading Commission Act. Just as the Commodity Futures Trading Commission Act provided for a comprehensive regulatory structure to oversee the national public interest in the commodity derivatives markets, the '75 Amendments ''specifically endorsed the development of a *national market system*.'' *See Regulation of Exchanges,* 62 FR 30485, 30492 (June 4, 1997) (emphasis added). Decades later, the SEC relied in part on the Congressional findings of the '75 Amendments, including that ''[t]he securities markets are an important *national asset* which must be preserved and strengthened,'' as well as the broad discretionary exemptive authority in Section 36 of the Exchange Act that resembles that of CEA 4(c), to adopt a regulatory framework for alternative trading systems. *See Regulation of Exchanges and Alternative Trading Systems,* 63 FR 70844, 70845–46 & nn.6–7 (Dec. 22, 1998) (emphasis added).

transactions codified the Supreme Court's conclusion that an exchange offering transactions in commodity derivatives ''is engaged in a business affected with a public national interest and is subject to national regulation'' of the rules governing the exchange's conduct.[10]

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') [11] amended the CEA to require that transactions contemplated by section 2(c)(2)(D) be treated ''as if'' they were futures contracts under certain provisions of the Act.[12] The Dodd-Frank Act thereby deemed such transactions as affected with the same ''national public interest'' [13] as other commodity derivatives transactions subject to the Act by mandating that, unless conducted on or subject to the rules of a designated contract market (''DCM''),[14] it is unlawful to offer to enter into, to execute, to confirm the execution of, to conduct any business for the purpose of soliciting any order for, or to otherwise deal in 2(c)(2)(D) transactions (the ''on-exchange requirement'').[15]

Despite (i) the anti-evasion and customer protection motivations for section 2(c)(2)(D), which are discussed in Sections II.A and II.B, *infra;* (ii) the crypto asset market having ''grown exponentially since 2009 [ ] to an ecosystem supporting trillions of dollars in payments and trades[;]'' [16] (iii) the significant customer protection issues that have emerged in connection with obfuscated offers of leverage in those markets; [17] and (iv) ''the context of market regulation [that gives rise to the need] for uniform legal rules,'' [18] the Commission has not yet adopted rules that answer novel and complex questions regarding how section 2(c)(2)(D) applies to crypto assets, blockchain technologies, and CTXs.

The resulting uncertainty amongst market participants [19] as to how to comply with, among other obligations, the on-exchange requirement, has stymied Congress's intent to bring retail commodity transactions, including CTXs, onto DCMs and under the Act's uniform federal market regulatory regime applicable to futures contracts. Instead, U.S. retail participants in the crypto asset markets have been forced to rely primarily on state-level regulatory protections. For example, most states impose money transmission licensure regimes that generally apply to businesses offering crypto asset exchanges.[20] Individual states have also promulgated crypto asset-specific licensure regimes, such as New York's BitLicense [21] and California's Digital Financial Assets license.[22] Businesses offering crypto asset exchanges must typically also register with the Financial Crimes Enforcement Network (''FinCEN'') of the Department of the Treasury as money services businesses (''MSB'') and comply with various federal regulations.[23] Those regulations

[10] *Board of Trade of City of Chicago* v. *Olsen,* 262 U.S. 1, 41 (1923). *See also* Johnson et al., § 2.03 (''The 1974 legislation was a major turning point in U.S. derivatives regulation. The Commodity Futures Trading Commission Act of 1974 greatly expanded the CEA's reach, strengthened the authority and importance of the law's administrator by creating the [Commission] as an independent federal agency, and established a comprehensive framework for regulating the markets.''). Congress has repeatedly affirmed its intention to centralize the oversight and regulation of the transactions subject to the Act. The first federal legislation designed to create a comprehensive federal regulatory framework for futures markets was the Future Trading Act of 1921, Public Law 67–66, 42 Stat. 187 (1921), followed by the Grain Futures Act of 1922, Public Law 67–331, 42 Stat. 998 (1922). In passing these laws, Congress recognized the importance of uniform federal regulation of futures markets, despite concerns by some members of Congress who objected to the proposed law because it would interfere with state police powers. H.R. Rep. No. 67–1095, at 5 (1922). When Congress expanded federal oversight of futures markets by adopting the CEA in 1936, Public Law 74–675, 49 Stat. 1491 (1936), the boundary between federal and state authority remained unsettled as futures markets expanded beyond their agricultural origins. Market participants continued to face the persistent threat of state prosecution through a patchwork of state laws and regulations. Congress responded to this uncertainty with the passage of the Commodity Futures Trading Commission Act in 1974. Public Law 93–463, 88 Stat. 1389 (1974). Amendments to the CEA between 1978 and 2010 repeatedly reinforced and clarified the CFTC's exclusive jurisdiction over the operation of markets involving commodity derivatives. For example, the Futures Trading Act of 1982, Public Law 97–444, 96 Stat. 2294 (1983), further clarified the scope of the CEA's preemption of other federal and state laws and the role of the states in pursuing illegal or fraudulent off-exchange transactions, while still recognizing ''the CFTC['s] exclusive jurisdiction to regulate futures trading and enforce the provisions of the Act, thereby preempting any State regulatory laws.'' H.R. Rep. No. 97–565, at 44–45 & 102–03 (1982), *reprinted in* 1982 U.S.C.C.A.N. 3871, 3893–94 & 3951–52.

[11] *See* Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010).

[12] CEA 2(c)(2)(D)(iii), 7 U.S.C. 2(c)(2)(D)(iii). A ''2(c)(2)(D) transaction'' is, unless an exception applies, ''any agreement, contract, or transaction in any commodity that is—(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and (II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.'' CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i).

[13] CEA 3(a), 7 U.S.C. 5(a).

[14] CEA 2(c)(2)(D)(iii), 7 U.S.C. 2(c)(2)(D)(iii); *see also* CEA 4(a), 7 U.S.C. 6(a).

[15] *Id.*

[16] President's Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology,* at 16 (July 30, 2025) (''President's Working Group's Report''), available at *https://www.whitehouse.gov/crypto/.*

[17] *See, e.g.,* Press Release, U.S. Att'y's Off. for the S.D.N.Y., *Samuel Bankman-Fried Sentenced To 25 Years In Prison* (Mar. 28, 2024), available at *https://www.justice.gov/usao-sdny/pr/samuel-bankman-fried-sentenced-25-years-prison* (describing how Samuel Bankman-Fried ''orchestrated one of the largest financial frauds in history, stealing over $8 billion of his customers' money [. . .] The scale of his crimes is measured not just by the amount of money that was stolen, but by the extraordinary harm caused to victims, who in some cases had their life savings wiped out overnight.''); Section II.C.1, *infra,* for a further discussion around significant customer protection issues in crypto asset markets; *CFTC* v. *HDR Glob. Trading Ltd.,* No. 1:20-cv-08132, ECF No. 1 at 13 (S.D.N.Y. Oct. 1, 2020) (''BitMEX'') (''*BitMEX* allows customers to place buy or sell orders for its various [crypto asset] derivatives with leverage of up to 100 to 1, meaning a customer with $10,000 in his or her account may execute a trade with a notional value of $1,000,000.'').

[18] *American Agric. Movement* v. *Board of Trade of City of Chicago,* 977 F.2d 1147, 1156 (7th Cir. 1992).

[19] *See, e.g.,* Letter from Crypto Council for Innovation (''CCI'') to Christopher J. Kirkpatrick, Sec'y, CFTC (Aug. 18, 2025) (highlighting ''questions regarding how [CTXs] fit[ ] within key DCM requirements such as mandatory clearing. [ ] CCI encourages the Commission to closely examine [ ] how DCMs can begin to offer these products in a safe and viable manner''); Letter from Coinbase to Christopher J. Kirkpatrick, Sec'y, CFTC (Aug. 18, 2025) (''Coinbase Letter'') (emphasizing that ''the CFTC should carefully consider the proper application of the CEA to crypto asset spot markets listed and traded on a DCM''); Commissioner Dawn D. Stump, *Concurring Statement Regarding Enforcement Action Against Payward Ventures, Inc.* (d/b/a Kraken) (Sept. 28, 2021), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement092821b* (''Stump Payward Statement'') (emphasizing that with respect to the on-exchange requirement ''it is incumbent upon the Commission to undertake a rulemaking proceeding to supersede [the Commission's now withdrawn 2020 interpretive guidance on section 2(c)(2)(D)] by adopting binding and enforceable rules that will provide certainty to the marketplace and a shared understanding of the 'rules of the road.' ''). *See infra* note 87 for a further discussion of the withdrawn interpretive guidance referenced by Commissioner Stump.

[20] *See* Congressional Research Service, *Telegraphs, Steamships, and Virtual Currency: An Analysis of Money Transmitter Regulation,* at 1 (Aug. 20, 2020), available at *https://www.congress.gov/crs_external_products/R/PDF/R46486/R46486.2.pdf* (describing how the term ''money transmission'' typically refers to three general functions: (1) receiving and sending money on behalf of consumers; (2) providing products that receive, store, or send money for consumers; and (3) providing an exchange for currencies); *see also id.* at 16 (quoting testimony of SEC Chairman Jay Clayton that ''many of the U.S.-based [crypto asset] trading platforms have elected to be regulated as money-transmission services'' and are ''predominantly state-regulated'').

[21] 23 NYCRR 200.3.

[22] Cal. Fin. Code 3201.

[23] *See, e.g.,* FinCEN, FIN–2016–G001, *Guidance on Existing AML Program Rule Compliance Obligations for MSB Principals with Respect to Agent Monitoring* (Mar. 11, 2016); *see also* 31 CFR 1022.320 (requiring MSBs to file with the Department of the Treasury a report of any suspicious transaction relevant to a possible violation of law or regulation, under the circumstances described therein).

impose obligations pertaining to recordkeeping, reporting, risk management and ''know-your-customer'' programs, and other requirements.[24]

Market participants have noted that these fragmented, multi-jurisdictional regulatory frameworks may be duplicative, inefficient, and ultimately incompatible with the commercial realities of effectively operating national and international crypto asset exchanges.[25] Individual state money transmission laws differ in meaningful and fundamental ways, including with respect to the definition of a money transmitter, which determines whether a firm must obtain a particular license to operate in a particular state.[26] Oftentimes, it may also be unclear to market participants which or how regulatory requirements of different jurisdictions apply, due to inconsistencies in state-level regimes.[27] Companies operating in the crypto asset markets are thus often subject to significant uncertainty and differing state-by-state licensing, supervisory, and examination requirements.[28]

Moreover, these state licensing regimes address certain risks associated with payment transactions that materially differ from those risks presented by financial markets.[29] Unlike transactions on a properly functioning financial market such as trading facilities subject to the Act, payment transactions involve an identifiable sender instructing an intermediary to transmit a bespoke value to a recipient designated by the sender.[30] Money transmission regulation accordingly primarily pertains to transaction-level (rather than market-wide) risks, including those relating to an intermediary's performance of individualized contractual obligations to each specific customer thereof, transaction error resolution and refund rules, and the appropriate disclosure of fees to customers.[31]

These state licensure regimes that regulate payments activities accordingly do not protect retail customers in the same manner as the federal market structure regulatory framework promulgated under the Act.[32] For example, state licensure regimes neither feature robust rules and regulations designed to ensure orderly and transparent trading nor to prevent conflicts of interest and market manipulation.[33] They also do not address financial market instability or systemic market risk issues that may affect customers (including retail customers) in extreme market conditions.[34] Thus, while these state payments regimes may have lent themselves to the appropriate regulation of crypto asset exchanges before other use cases for crypto assets emerged, besides the ''peer-to-peer electronic payment system'' [35] introduced by Satoshi Nakamoto in 2008, they no longer adequately address risks arising in financial markets in crypto assets with consumptive uses and functionalities that have ''move[d] far beyond just currency.'' [36] Those consumptive uses and functionalities may typically more closely resemble those of traditional commodities than currency, and customers transacting therein should benefit from a national market regulatory framework.

Unlike these state licensure regimes, the Act contemplates, and the Commission's regulatory regime promulgated thereunder addresses, those unique customer abuse concerns that are present in national markets.[37] They do so in part by imposing the aforementioned ''uniform set of regulations'' that ensures impartial access [38] to commodity derivative markets across jurisdictions and the capacity of the Commission to enforce against violations of the Act across state lines.[39] They also do so by encouraging

[24] *See, e.g.,* 31 CFR 1010.311–314 (currency transaction reporting), 31 CFR 1010.410(e)–(f) (records and information accompanying transmittal of funds), 31 CFR 1022.210(b), (d) (risk-based anti-money-laundering programs, including customer identification verification, reporting, and recordkeeping); *see also* FinCEN, FIN–2019–G001, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies* (May 9, 2019), available at *https://www.fincen.gov/system/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf.*

[25] Timothy G. Massad, Economic Studies at Brookings, *It's Time to Strengthen the Regulation of Crypto-Assets* (Mar. 2019), available at *https://www.brookings.edu/wp-content/uploads/2019/03/Economis-Studies-Timothy-Massad-Cryptocurrency-Paper.pdf* (''As a general matter, state regulation would be a weak foundation for an industry that strives to be international. When regulatory requirements vary by state, it is expensive to build compliance systems, and difficult to create national, let alone international, markets. Our securities markets would not have become the envy of the world if we had relied solely on state blue sky laws and never adopted the Securities Act and [ ] Exchange Act. We should not expect state law to fill the need for this new [crypto asset] sector either.''); *see also* statement submitted by the Chamber of Digital Commerce, in *Examining Regulatory Frameworks for Digital Currency and Blockchain: Testimony for the Record United States Senate Committee on Banking, Housing, and Community Affairs Hearing* (July 30, 2019), available at *https://www.govinfo.gov/content/pkg/CHRG-116shrg38950/pdf/CHRG-116shrg38950.pdf* (''This patchwork of state and federal regulations is expensive[.] For blockchain companies, many of which are growing start-ups with seasoned industry executives, this antiquated and inconsistent framework poses a high barrier to entry. The current framework [. . .] [is] not well-suited for digital companies whose business and service models are inherently global in nature and may not fit the traditional descriptions of 'money transmitters.' '').

[26] *See* Congressional Research Service, *supra* note 20, at 2, 4 (describing ''49 unique state regulatory frameworks'' and noting that the absence of a federal framework has caused numerous efforts to reduce the friction associated with varying regulatory obligations across jurisdictions).

[27] *Id.*

[28] *See generally* U.S. Government Accountability Office, GAO–17–361, *Financial Technology: Information on Subsectors and Regulatory Oversight* (Apr. 2017), available at *https://www.gao.gov/assets/gao-17-361.pdf* (describing efforts to coordinate multistate licensing exams to address variations among state money transmitter requirements).

[29] *See* Congressional Research Service, *supra* note 20, at 2, 4.

[30] *See generally* Benjamin Geva, *The Concept of Payment Mechanism,* 24 Osgoode Hall L.J. 1, 4–5 (1986).

[31] *See, e.g.,* Conference of State Bank Supervisors, Money Transmission Modernization Act §§ 1.02, 9.01–9.03 (2021, as amended), available at *https://www.csbs.org/csbs-money-transmission-modernization-act-mtma.*

[32] In addition to the congressional findings discussed *supra* note 9, the other primary U.S. federal statute that regulates how financial markets operate, the Exchange Act, provides that ''[it] is in the public interest and appropriate for the *protection of investors* and the maintenance *of fair and orderly markets* to assure [ ] *fair competition* among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets[;] The linking of all markets for qualified securities through communication and data processing facilities will *foster efficiency, enhance competition,* increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders[.]'' 15 U.S.C. 78k–1 (emphasis added).

[33] *See* Financial Stability Oversight Council, *Report on Digital Asset Financial Stability Risks and Regulation,* at 5 (Oct. 3, 2022), available at *https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf.*

[34] *Id.* at 4.

[35] *See* Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System* (Oct. 31, 2008), available at *https://bitcoin.org/bitcoin.pdf.* The Commission notes that ''Satoshi Nakamoto'' is a pseudonym that was used by the person or group of persons that created the Bitcoin network. *See, e.g.,* LabCFTC, *A CFTC Primer on Virtual Currencies,* at 5 (Oct. 17, 2017), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf.*

[36] Vitalik Buterin, *Ethereum: A Next-Generation Smart Contract and Decentralized Application Platform,* at 34 (2014), available at *https://ethereum.org/content/whitepaper/whitepaper-pdf/Ethereum_Whitepaper_-_Buterin_2014.pdf. See also* Sections I.A.1 and II.C.2, *infra,* for a further discussion on how uses of crypto assets have evolved since the introduction of blockchain networks such as Ethereum.

[37] *See, e.g.,* CEA 3(b), 7 U.S.C. 5(b). *See also* Section II.C.1, *infra,* for a further discussion of the effectiveness of the Act's customer protection regime (describing how the customer assets held by a Commission-registered FTX entity remained properly segregated and safeguarded, in contrast to 130 other FTX affiliate entities that entered bankruptcy).

[38] *See, e.g.,* 17 CFR 38.151(b).

[39] *See* Massad, *supra* note 25, at 35 (with respect to the limited jurisdiction of state regulators, providing that ''it is worth considering whether this licensing requirement can significantly improve the [crypto asset] market. It is difficult for [the New

competition and efficiencies that benefit market participants,[40] protecting those market participants against manipulative trading activity and other abusive trading practices,[41] mitigating systemic market risks,[42] and ensuring market wide integrity, including the financial integrity of the clearing process.[43] One illustrative example of the difference in customer protections afforded under the Act and money transmission licensure regimes pertains to the segregation and safeguarding of customer property. On the one hand, the Act imposes a comprehensive regulatory regime that is designed to protect, and has effectively protected, retail customers' property under extreme market conditions.[44] On the other hand, state money transmission laws vary widely in how they restrict the investment of customer funds, with some states allowing licensees ''to invest funds in potentially risky publicly traded securities or accounts receivable, and some states imposing no restrictions at all.'' [45]

Further, Commission-registered DCMs are not just ''commercial enterprises'' subject to the Commission's regulatory framework, but also self-regulatory organizations ''charged with the public trust'' [46] in administering aspects of that regulatory framework in the markets in which they operate. The Act vests in DCMs the authority to, among other matters, establish and enforce rules [47] and disciplinary procedures.[48] The Act similarly obliges DCMs to surveil the markets in which they operate for abusive trading activity.[49] Crypto asset exchanges operating under state licensure regimes have no similar legal mechanism, authority, or obligation to self-regulate their markets.

In short, ''the consumer and investor protections offered by these state-based jurisdictions vary and are typically fewer and less extensive than federal laws applicable to securities and derivatives markets and products.'' [50] In this regard, market participants and regulators have noted,[51] and history has affirmed,[52] the varied regulatory

York Department of Financial Services], as a state regulator with limited jurisdiction over these markets, to have much of an impact. One could even question whether its licensing requirement has given a *false sense of legitimacy* to those that have bothered to register.'') (emphasis added).

[40] *See, e.g.,* CEA 5(d)(9), 7 U.S.C. 7(d)(9) (mandating the provision of competitive, open, and efficient market and mechanism for executing transactions); CEA 5(d)(16), 7 U.S.C. 7(d)(16) (mandating the minimization of conflicts of interest that could jeopardize the fair operation of a contract market); 17 CFR part 38, appendix C, subparagraph (a)(1) (providing guidance as to how to design contracts that meet the risk management needs of prospective users and promote price discovery of the underlying commodity).

[41] *See, e.g.,* CEA 5(d)(3), 7 U.S.C. 7(d)(3) (prohibiting contracts readily susceptible to manipulation); CEA 5(d)(5), 7 U.S.C. 7(d)(5) (mandating contracts impose position limitations to the extent necessary and appropriate to reduce the potential threat of market manipulation or congestion); CEA 5(d)(12), 7 U.S.C. 7(d)(12) (mandating the establishment and enforcement of rules to protect markets and market participants from abusive practices).

[42] *See, e.g.,* CEA 3(b), 7 U.S.C. 5(b) (''To foster these public interests, it is further the purpose of this chapter to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk'').

[43] *See, e.g.,* CEA 5(d)(11), 7 U.S.C. 7(d)(11) (mandating the establishment and enforcement of rules for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market, including the clearance and settlement of the transactions with a derivatives clearing organization (''DCO'')). A registered DCO is subject to 18 core principles set out in section 5b(c)(2) of the Act. The core principles cover areas ranging from clearing member eligibility standards, risk management, default procedures, treatment of funds, rule enforcement, and legal risk. A DCO must comply with the DCO core principles and the requirements of any rule the CFTC may impose pursuant to its general rulemaking authority. *See* Johnson et al., § 6.06; CFTC, Strategic Plan 2011–2015 (2011), available at *https://www.cftc.gov/sites/default/files/reports/strategicplan/2015/2015strategicplan04.html.*

[44] *See* Section II.C.1, *infra,* for a further discussion of the effectiveness of the Act's customer protection regime.

[45] Consumer Financial Protection Bureau, *Analysis of Deposit Insurance Coverage on Funds Stored Through Payment Apps* (June 1, 2023), available at *https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-analysis-of-deposit-insurance-coverage-on-funds-stored-through-payment-apps/full-report/* (providing, further, that the Consumer Financial Protection Bureau ''find[s] that stored funds can be at risk of loss in the event of financial distress or failure of the entity operating the nonbank payment platform, and often are not placed in an account at a bank or credit union and lack individual deposit insurance coverage.''); *see also* Complaint ¶ 2, *FTC* v. *Voyager Digital, LLC,* No. 1:23–cv–08960 (S.D.N.Y. Oct. 12, 2023), ECF No. 1 (alleging, among other matters, Voyager Digital, LLC and its affiliates (''Voyager''), which held money transmitter licenses in 13 states, deceived consumers into transferring their fiat and crypto assets to the Voyager platform by portraying Voyager as a safe alternative to the traditional financial system); Stipulated Order for Permanent Injunction, Monetary Judgment, and Other Relief at 7, *FTC* v. *Voyager Digital, LLC,* No. 1:23–cv–08960 (S.D.N.Y. Nov. 24, 2023), ECF No. 35 (entering, and suspending, a $1.65 billion judgment). *In re Voyager Digital LLC,* Order No. 22–70–S, at 1 (Alaska Div. of Banking & Sec. Sept. 3, 2022). Voyager pooled customers' crypto assets in an omnibus account and lent those crypto assets to institutional borrowers, including a loan of $350 million (denominated in stablecoins) and 15,250 BTC to Three Arrows Capital. *Id.* at 2–4; Voyager Digital Ltd., *Voyager Digital Provides Market Update* (PR Newswire June 27, 2022), available at *https://www.prnewswire.com/news-releases/voyager-digital-provides-market-update-301575492.html.* Moreover, at least one state in which Voyager was licensed permitted money transmitters to hold up to half of the investments backing customer obligations in higher-risk assets such as publicly traded stocks. *See* Iowa Code 533C.602(2)(b), (3) (2022); Settlement Agreement and Consent Order at 1, *In re Voyager Digital, LLC* (Ariz., Ark., Ill., Iowa, & S.D. Dec. 28, 2022). By contrast, the CFTC's regulatory framework limits investments of customer funds by an FCM or DCO to an enumerated set of low-risk instruments, subject to concentration limits, and requires an independent risk management unit, credit and liquidity risk tolerance limits, and periodic risk exposure reporting, as well as disclosure that customer funds are not insured against intermediary insolvency. *See* CEA 4d(a)(2), 7 U.S.C. 6d(a)(2); 17 CFR 1.11(c), (d), (e)(1)–(2), 1.25(a)(1), (b)(3), 1.55(a), (b)(2)–(c).

[46] *See, e.g., Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest,* 75 FR 63732, 63736 (Oct. 18, 2010) (''[T]herefore, although each DCM [ ] is a commercial enterprise, the fact that each entity has self-regulatory obligations means that each entity is not simply a corporation, but a corporation charged with the public trust.'').

[47] *See, e.g.,* CEA 5(d)(2), 7 U.S.C. 7(d)(2) (setting forth self-regulatory authority and obligations for DCMs).

[48] *See, e.g.,* CEA 5(d)(13), 7 U.S.C. 7(d)(13) (mandating DCMs establish and enforce disciplinary procedures that authorize the DCM to discipline, suspend, or expel members or market participants that violate the rules of the DCM).

[49] *See, e.g.,* CEA 5(d)(4), 7 U.S.C. 7(d)(4).

[50] U.S. Department of the Treasury, *Crypto-Assets: Implications for Consumers, Investors, and Businesses,* at 9 (Sept. 2022), available at *https://home.treasury.gov/system/files/136/CryptoAsset_EO5.pdf.*

[51] *See generally* the Honorable Dan Gallagher, Chief Legal, Compliance, and Corporate Affairs Officer, Robinhood Markets, Inc., *Testimony Before the U.S. House of Representatives Committee on Agriculture* (June 6, 2023), available at *https://docs.house.gov/meetings/AG/AG00/20230606/116051/HHRG-118-AG00-Wstate-GallagherD-20230606.pdf; see also* Press Release, SEC, *BlockFi Agrees to Pay $100 Million in Penalties and Pursue Registration of its Crypto Lending Product* (Feb. 14, 2022), available at *https://www.sec.gov/newsroom/press-releases/2022-26* (describing (i) that BlockFi Lending LLC (''BlockFi''), which held 47 licenses across 32 states and Washington, DC, made a false and misleading statement for more than two years on its website concerning the level of risk in its loan portfolio and lending activity, among other matters; and (ii) a resulting $50 million penalty to the SEC and $50 million in parallel state settlements); Declaration of Mark A. Renzi in Support of Debtors' Chapter 11 Petitions and First-Day Motions ¶ 23, *In re BlockFi Inc.,* No. 22–19361 (MBK) (Bankr. D.N.J Nov. 28, 2022), ECF. No. 17; Notice of Automatic Suspension, Notice of Intent To Revoke Money Transmission License, Notice of Intent To Issue Order To Cease And Desist, Notice of Intent To Impose Civil Penalty and Notice of Right To Hearing ¶¶ 7–11, 16, *In re BlockFi Trading LLC* (Conn. Dep't of Banking Feb. 14, 2023) (alleging that BlockFi Trading LLC, a Connecticut-licensed money transmitter, engaged in an unsafe or unsound practice by suspending all customer withdrawals before filing for bankruptcy). In the aftermath of the BlockFi collapse, then-Commissioner Kristin N. Johnson urged crypto asset intermediaries to adopt the governance, risk management, and financial reserve safeguards long required of traditional financial market participants. *See* Kristin N. Johnson, *Lessons Learned from the Recent Failures in the Crypto Asset Market,* Eurofi Magazine (Apr. 2023), at 88–89, available at *https://www.eurofi.net/wp-content/uploads/2023/06/eurofi_kristin-johnson_lessons-learned-from-the-recent-failures-in-the-crypto-market_stockholm_april-2023.pdf.*

[52] *See supra* notes 17, 45, 51 for examples of market abuses and customer protection failures in

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requirements of these regimes have predictably failed to adequately protect retail crypto asset customers against the market abuses that the Act, and section 2(c)(2)(D), were enacted to address.[53]

Recognizing these dynamics and that ''[r]etail participants have been a driving force behind the growth of [crypto] asset markets,'' [54] the President's Working Group on Digital Asset Markets (''President's Working Group'') directed the Commission to, among other matters, ''use [ ] existing rulemaking and exemptive authorities to enable the trading of [crypto] assets,'' [55] including with respect to the listing of CTXs.[56] To address the President's Working Group's directive and fulfill its statutory mandates under the Act, the Commission is now undertaking a reevaluation of its regulatory frameworks applicable to CTXs. As a component of that reevaluation, the Commission is issuing this Notice, including proposed Regulation Crypto Asset Transactions (or, ''Regulation CTX'') in Section III, *infra,* to explicitly identify certain transactions involving crypto assets that it preliminarily understands to be subject to section 2(c)(2)(D). The Commission is also introducing in this Notice, in Section V, *infra,* proposed Regulation Crypto Asset Markets (or, ''Regulation CAM''), which tailors ''the full array of regulatory requirements applicable to on-exchange futures under the [Act]'' [57] to the commercial realities of, and risks posed by, CTXs.

B. The History of the Commission's Regulation of Crypto Assets and 2(c)(2)(D) Transactions

The Commission has engaged with crypto assets for more than a decade across enforcement, adjudication, interpretation, guidance, no-action relief, registration and listing decisions, advisory committee work, and coordination with the SEC and other federal agencies. This section provides a brief overview of that history, including how the Commission's administrative experience in overseeing aspects of crypto asset markets and information gathering efforts informed this Notice, with additional reference to its historical and inadequate regulation by enforcement posture that the Commission is now seeking to remediate.

1. Early Commission Approach to Crypto Asset Markets (2014–2020)

Half a decade after Satoshi Nakamoto launched the Bitcoin network and mined the very first crypto assets,[58] former CFTC Chairman Timothy G. Massad asserted that crypto assets fell within the Commission's jurisdiction.[59] This early period was marked by the Commission's unsure attempts at charting a regulatory path with respect to a commodity ''unlike any [it had] dealt with in the past.'' [60] Several months before Chairman Massad's assertion of jurisdiction, Vitalik Buterin published a whitepaper describing a contemplated blockchain system ''with a built-in fully fledged Turing-complete programming language.'' [61] The principles underpinning that programming language significantly expanded the possible use cases for crypto assets and blockchain technologies, and significantly complicated any regulatory treatment thereof, by allowing anyone to ''create their own arbitrary rules for ownership, transaction formats and state transition functions'' with respect to crypto assets.[62]

Thus, while Bitcoin was originally conceived of as an ''electronic payment system,'' [63] market participants experimented with the Turing-complete functionality of the Ethereum protocol to produce a ''Cambrian explosion'' [64] of novel use cases for this new ''general purpose software primitive.'' [65] For example, crypto assets may be used as ''gas'' to obtain access to computational effort on a blockchain system [66] or function as a necessary input to facilitate network consensus.[67] In this

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the crypto asset markets; *see also* Consent Order, *In re Bittrex, Inc.,* Order No. 2023–010 (Tex. Dep't of Banking Apr. 5, 2023) (finding that Bittrex, Inc., a licensed money transmitter, failed to maintain the minimum net worth required of Texas money transmission licensees and requiring it to cease money transmission in Texas).

[53] The circumstances that led Congress to pass section 2(c)(2)(D) are discussed further in Sections II.A and B, *infra.* Although those circumstances related to fraud in the retail precious metals markets, and crypto assets were in nascent stages at that time, the legislative history of section 2(c)(2)(D) specifically contemplates that the market abuses addressed by section 2(c)(2)(D) in such precious metals markets would likely emerge in other commodity classes. Thus, section 2(c)(2)(D)'s extension of jurisdiction applies to 2(c)(2)(D) transactions in ''any commodity.'' *See* CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i); *see also Hearing to Review Implications of the CFTC* v. *Zelener Case Before the Subcomm. on General Farm Commodities and Risk Management of the H. Comm. on Agriculture,* 111th Cong. 52–664 (''*Zelener* Hearing'') (statement of Rep. Collin C. Peterson, Chairman, H. Comm. on Agriculture, providing that ''because the scope of the *Zelener* fix was limited to foreign exchange contracts, we need to be aware that similar problems could arise in other product areas like metals, energy, or any other commodity that can be sold to the public without effective regulation.'').

[54] President's Working Group's Report at 18.

[55] *Id.* at 51.

[56] *Id.* at 52 (recommending the CFTC ''[p]rovide guidance to designated contract markets (DCMs) regarding the listing of leveraged, margined, or financed spot retail commodity transactions on [crypto] assets pursuant to CEA section 2(c)(2)(D)'').

[57] 156 Cong. Rec. S5924 (daily ed. July 15, 2010) (statement of Sen. Lincoln, explaining the rationale for the legislation during floor debate on the Dodd-Frank Act).

[58] Satoshi Nakamoto, *Bitcoin v0.1 released,* Cryptography Mailing List (Jan. 8, 2009), available at *https://www.metzdowd.com/pipermail/cryptography/2009-January/014994.html* (announcing the first public release of the Bitcoin software); *see also* Bitcoin Block 0 (Genesis Block), hash 000000000019d6689c085ae165831e934ff763ae46a2a6c172b3f1b60a8ce26f (Jan. 3, 2009), available at *https://mempool.space/block/000000000019d6689c085ae165831e934ff763ae46a2a6c172b3f1b60a8ce26f.*

[59] CFTC Chairman Timothy Massad, *Testimony Before the U.S. Senate Committee on Agriculture, Nutrition & Forestry* (Dec. 10, 2014), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opamassad-6.*

[60] CFTC, *CFTC Statement on Self-Certification of Bitcoin Products by CME, CFE and Cantor Exchange,* Release No. 7654–17 (Dec. 1, 2017) (quoting former Chairman J. Christopher Giancarlo), available at *https://www.cftc.gov/PressRoom/PressReleases/7654-17.*

[61] *See* Buterin, *supra* note 36, at 1. The term ''Turing-complete'' refers to a programmable system that can solve any computational problem. The concept comes from the Turing machine, a theoretical model of computation devised by English mathematician and cryptographer Alan Turing. Conversely, a non-Turing-complete system, such as the Bitcoin network, is limited to performing particular tasks based on pre-defined instructions; *see generally* Gavin Wood, *Ethereum: A Secure Decentralised Generalised Transaction Ledger* (Apr. 4, 2022), available at *https://ethereum.org/content/developers/tutorials/yellow-paper-evm/yellow-paper-berlin.pdf* (explaining the impact of Turing-completeness for Ethereum); *see also* Nick Szabo, *Smart Contracts: Building Blocks for Digital Markets* (1996), available at *https://www.fon.hum.uva.nl/rob/Courses/InformationInSpeech/CDROM/Literature/LOTwinterschool2006/szabo.best.vwh.net/smart_contracts_2.html* (introducing the concept of smart contracts, which may be designed using a Turing-complete programming language).

[62] *See* Buterin, *supra* note 36, at 13.

[63] *See* Nakamoto, *supra* note 35, at 1.

[64] Fred Ehrsam, *Blockchain Governance: Programming Our Future* (Nov. 27, 2017), available at *https://www.fehrsam.xyz/blog/blockchain-governance-programming-our-future.*

[65] Chris Dixon, *Read, Write, Own: Building the Next Era of the internet,* at 75 (2024).

[66] *See Joint Crypto Asset Taxonomy, supra* note 1, 91 FR at 13718 (''a functional crypto system may require users to pay transaction (or ''gas'') fees in the system's native digital commodity. These gas fees—in addition to units of the digital commodity newly generated by the protocol—typically are used as an incentive mechanism to reward participation in and use of the associated functional crypto system.''); *see also* Andreas M. Antonopoulos & Gavin Wood, *Mastering Ethereum: Building Smart Contracts and DApps,* ch. 13 (2018), available at *https://github.com/ethereumbook/ethereumbook/blob/first_edition_first_print/13evm.asciidoc* (''While gas has a price, it cannot be 'owned' nor 'spent.' Gas exists only inside the [Ethereum Virtual Machine (''EVM'')], as a count of how much computational work is being performed. The sender is charged a transaction fee in ether, which is then converted to gas for EVM accounting and then back to ether as a transaction fee paid to the miners.'').

[67] *See* Proof of Stake Alliance, *U.S. Federal Securities and Commodity Law Analysis of Liquid Staking Receipt Tokens,* at 2 (Feb. 21, 2023), available at *https://www.proofofstakealliance.org/22123-posa-liquid-staking-legal-white-paper*

context, the consumptive use of crypto assets resembles that of traditional energy commodities.[68] Beyond gas and consensus, ''[v]irtually any type of security, good, service, right, or interest can be represented in a digital format as a crypto asset.'' [69] That breadth mirrors the scope of the definition of ''commodity'' in the Act. Recognizing that virtually anything might serve as the underlying for a derivative contract,[70] lawmakers defined the term ''commodity'' to include ''all goods and articles, [ ] and services, rights, and interests'' that may be the subject of a derivative contract,[71] including intangible commodities in the vein of crypto assets.[72]

Uses for blockchain technologies likewise developed in tandem beyond payment rails to other types of market infrastructure, including infrastructure used to match, route, clear, and settle secondary market transactions,[73] disseminate pricing information to market participants,[74] and otherwise facilitate market-based activity, such as by providing liquidity or extending leverage to market participants via onchain protocols.[75]

While market participants have noted that the unique technological properties of blockchain technologies may allow crypto asset markets to function in a manner that is ''more open, interoperable, and transparent'' [76] than traditional financial markets, crypto asset markets oftentimes continue to rely on intermediation.[77] For example, a broad swath of retail customers access crypto asset markets through centralized crypto asset exchanges, which have developed to perform a variety of critical market intermediary functions.[78] These functions may often closely resemble the traditional activities of financial market intermediaries, yet have historically been subject to payment systems' regulatory regimes that are inapplicable to the risks posed by intermediating financial market activity. The resulting lack of a comprehensive federal framework has resulted in crypto asset exchanges typically offering fewer and less robust protections than those afforded to customers who transact on national exchanges in other U.S. financial markets.

(''POSA Liquid Staking Paper'') (explaining that blockchains ''require a distributed group of users to operate computers, known as 'nodes,' which run all or part of the software necessary for the system to function because it has no central operator. Each blockchain's underlying code incorporates a method for validating transactions called a 'consensus algorithm' to incentivize nodes to contribute valuable resources to the blockchain to provide transaction settlement assurances to the network's users. The consensus algorithm ensures that each node will be rewarded with an amount of a digitally native resource—a crypto asset—in accordance with the rules of the algorithm, for so long as the node remains online and operates in accordance with the blockchain's technical requirements.''); *see also* Nic Carter, *It's the settlement assurances, stupid* (July 22, 2019), available at *https://medium.com/@nic__carter/its-the-settlement-assurances-stupid-5dcd1c3f4e41.*

[68] *See* Ethereum Foundation, *Gas and fees* (June 24, 2026), available at *https://ethereum.org/developers/docs/gas/* (''Gas is essential to the Ethereum network. It is the fuel that allows it to operate, in the same way that a car needs gasoline to run.''). Crypto assets may also convey rights to artwork, music, videos, trading cards, in-game items, *see* Joint Crypto Asset Taxonomy, *supra* note 1, at 13718, perform a practical function, such as a membership, ticket, credential, title instrument, or identity badge, *id.* at 13719, or enable holders to participate in the system's consensus mechanism by staking (or locking up) the system's native crypto asset, or to participate in onchain governance systems, *id.* at 13718. *See also* Ehrsam, *supra* note 64.

[69] *See* Joint Crypto Asset Taxonomy, *supra* note 1, at 13717.

[70] *See* CEA 1a(9), 7 U.S.C. 1a(9). ''Even the SEC envied the CFTC—or soon envied it. Congress buried among the 1974 amendments to the Commodity Exchange Act an expanded definition of the term 'commodity' to include literally anything, with one exception [for onions], which was or might in the future be the subject of futures trading.'' John H. Stassen, *The Commodity Exchange Act in Perspective: A Short and Not-So-Reverent History of Futures Trading Legislation in the United States,* 39 Wash. & Lee L. Rev. 825, 834 (1982). Congress subsequently added a second exclusion in 2010 for motion picture box office receipts. *See* CEA 1a(9), 7 U.S.C. 1a(9) (excluding ''onions . . . and motion picture box office receipts . . . [.]'').

[71] *See* Johnson et al., *supra* note 2, § 2.03. The breadth of this definition makes clear that lawmakers chose not to fragment regulatory authority over commodity derivatives markets based upon the underlying commodity. They reasoned that ''[t]he nature of the underlying commodity is not an adequate basis to divide regulatory authority.'' Report on S. 2391 of the Senate Agriculture, Nutrition, and Forestry Committee, S. Rep. No. 95–850, at 22–23 (1978). While ''Federal regulation of most derivatives pivots on whether a 'commodity' is involved,'' the CEA excludes certain transactions in commodities from the CFTC's jurisdiction. *See* Johnson et al., *supra* note 2, § 3.02. For example, although a ''security'' (as defined in the Federal securities laws, *infra* note 112) may constitute a ''commodity'' under the Act, CEA 2(c)(2)(D)(ii) excepts from the Commission's jurisdiction thereunder a contract of sale of ''any security,'' regardless of whether the transaction otherwise satisfies the statutory criteria in CEA 2(c)(2)(D)(i). CEA 2(c)(2)(D)(i)–(ii), 7 U.S.C. 2(c)(2)(D)(i)–(ii); Johnson et al., *supra* note 2, § 4.03.

[72] CEA 1a(19), 7 U.S.C. 1a(19); *see also* Johnson et al., *supra* note 2, § 3.02. The enactment of the Commodity Futures Trading Commission Act dramatically expanded the definition of ''commodity,'' which, before 1974, only encompassed certain itemized agricultural commodities. *Id.* Then, in amendments adopted in 2000, three additional types of commodities were introduced, including ''excluded commodities,'' which is defined to encompass various intangible commodities such as ''financial measures, instruments and risks, such as interest rates, exchange rates, currencies, credit risks or measures, securities and macroeconomic indices or measures and the 'occurrence, extent of an occurrence[,] or contingency' subject to various limitations[.]'' *Id.;* CEA 1a(19), 7 U.S.C. 1a(19); *see also CFTC* v. *McDonnell,* 287 F. Supp. 3d 213, 228 (E.D.N.Y. 2018) (''[crypto assets] can be regulated by [the] CFTC as a commodity. They fall well-within the common definition of 'commodity' as well as the CEA's definition of 'commodities' as 'all other goods and articles . . . in which contracts for future delivery are presently or in the future dealt in.'''').

[73] Hayden Adams, Noah Zinsmeister & Dan Robinson, *Uniswap v2 Core,* at 1 (Mar. 2020), available at *https://app.uniswap.org/whitepaper.pdf* (''Uniswap v1 is an on[ ]chain system of smart contracts on the Ethereum blockchain, implementing an automated liquidity protocol based on a 'constant product formula.' Each Uniswap v1 pair stores pooled reserves of two [crypto] assets, and provides liquidity for those two [crypto] assets, maintaining the invariant that the product of the reserves cannot decrease.'').

[74] Lorenz Breidenbach et al., *Chainlink 2.0: Next Steps in the Evolution of Decentralized Oracle Networks,* at 1 (Apr. 15, 2021), available at *https://research.chain.link/Chainlink-Whitepaper-Next-Steps-in-the-Evolution-of-Decentralized-Oracle-Networks.pdf* (''We foresee an increasingly expansive role for oracle networks, one in which they complement and enhance existing and new blockchains by providing fast, reliable, and confidentiality-preserving universal connectivity and [offchain] computation for smart contracts.'').

[75] Aave, *Protocol Whitepaper,* at 1 (Jan. 2020), available at *https://github.com/aave/aave-protocol/blob/master/docs/Aave_Protocol_Whitepaper_v1_0.pdf* (''The birth of the Aave Protocol marks Aave's shift from a decentralized [peer to peer] lending strategy [ ] to a pool-based strategy. Lenders provide liquidity by depositing cryptocurrencies in a pool contract. Simultaneously, in the same contract, the pooled funds can be borrowed by placing a collateral. Loans do not need to be individually matched, instead they rely on the pooled funds, as well as the amounts borrowed and their collateral.''); s*ee also* Rebecca Rettig, Michael Mosier & Katja Gilman, *Genuine DeFi as Critical Infrastructure: A Conceptual Framework for Combating Illicit Finance Activity in Decentralized Finance* 11 J. Fin. Reg. 215, 227 (2025), available at *https://doi.org/10.1093/jfr/fjaf005* (providing that ''DeFi protocols have proliferated in the last half decade to include exchanging or swapping through decentralized exchanges or 'DEXs' (*e.g.,* Uniswap) or DEX aggregators (*e.g.,* Paraswap), liquidity provision and borrowing (*e.g.,* Compound, Aave), yield generation via liquid staking (*e.g.,* Lido), investing (*e.g.,* Enzyme Finance); and insurance (*e.g.,* Nexus Mutual), among others''); *see also* Fabian Schär, *Decentralized Finance: On Blockchain- and Smart Contract-Based Financial Markets,* 103 Fed. Res. Bank of St. Louis Rev. 153, 153 (2021), available at *https://www.stlouisfed.org/publications/review/2021/02/05/decentralized-finance-on-blockchain-and-smart-contract-based-financial-markets* (''The term decentralized finance (DeFi) refers to an alternative financial infrastructure built on top of the Ethereum blockchain. DeFi uses smart contracts to create protocols that replicate existing financial services in a more open, interoperable, and transparent way.'').

[76] Schär, *supra* note 75, at 153 (describing ''an immutable and highly interoperable financial system with unprecedented transparency, equal access rights, and little need for custodians, central clearing houses, or escrow services, as most of these roles can be assumed by 'smart contracts.'); *see also* Fabian Schär et al., *The Anatomy of Stablecoin Transactions,* BIS Working Paper No. 1359 (June 2026), available at *https://www.bis.org/publ/work1359.pdf.*

[77] *See* Kristin N. Johnson, *Decentralized Finance: Regulating Cryptocurrency Exchanges,* 62 Wm. & Mary L. Rev. 1911 (2021).

[78] *See generally* Yesha Yadav, *The Centralization Paradox in Cryptocurrency Markets,* 100 Wash. U. L. Rev. 1725 (2023).

In 2016, then-Commissioner J. Christopher Giancarlo prefaced the significant challenges the CFTC would face in overseeing crypto asset markets when he noted that crypto assets and blockchain technologies ''may revolutionize the world of finance'' but that their respective development was ''at risk of being stymied by disparate and uncertain regulation.'' [79] Over the years that followed, the Commission contributed to that risk by never settling on a cohesive and transparent regulatory approach. Instead, under former Chairman Massad, the Commission applied section 2(c)(2)(D) to a crypto asset exchange for the first time in June 2016 when it charged BFXNA Inc. (''Bitfinex'') with violations of the on-exchange requirement, among other matters.[80]

On March 14, 2017, President Donald J. Trump nominated Commissioner Giancarlo as Chairman of the Commission. Under Chairman Giancarlo's leadership, the Commission swiftly attempted to operationalize a ''do no harm'' [81] regulatory approach, and earnestly undertook various information gathering initiatives as it sought to understand ''the technology, mechanics, and markets'' [82] surrounding crypto assets and blockchain technologies. Just months after former Chairman Giancarlo was sworn in, the Commission launched LabCFTC ''to help [ ] bridge the gap from where we are today to where we need to be: 21st century regulation for today's digital markets.'' [83] Chairman Giancarlo also stewarded the trading of the first regulated U.S.-bitcoin derivatives products when CME and Cboe self-certified cash-settled bitcoin futures in December 2017. These listings were the product of ''rigorous discussions'' with market participants regarding contract design, settlement, margining, and market surveillance, among other matters.[84]

However, the period was also marked by increased interest from retail investors in crypto assets and a significant focus from both the Commission and other federal regulators on fraud in crypto asset markets.[85] These circumstances led the Commission staff to issue an advisory with respect to crypto asset derivative product listings that emphasized the uncharted territory in which the Commission found itself.[86] Around this same time, the Commission, under the leadership of Chairman Giancarlo, first proposed interpretive guidance concerning crypto assets, which addressed questions around the Commission's jurisdiction under section 2(c)(2)(D).[87] In 2018, the Commission attempted to stem a growing tide of fraud and illicit activity in the crypto asset markets when it charged 1pool Ltd. for violating section 2(c)(2)(D) and failing to implement adequate anti-money laundering procedures, among other matters.[88]

Speaking in 2019, former Chairman Heath Tarbert said, ''[w]e've been very clear on bitcoin: bitcoin is a commodity. We haven't said anything about ether—until now. It is my view as [C]hairman of the CFTC that ether is a commodity.'' [89] This statement followed a request for input to better inform the Commission's understanding of the Ethereum network.[90] However, despite this declaration and the Commission's persistent information gathering efforts, Chairman Giancarlo's prediction from 2016 that ''[r]ules regarding [blockchain technologies] are currently unwritten and likely years away'' proved prescient.[91] By the time that President Joseph R. Biden took office in 2021, the Commission's educational efforts had not led to the promulgation of fit-for-purpose rules.

2. Regulation by Enforcement (2021–2024)

The lack of a clear regulatory framework enabled the Commission under the Biden administration to enforce its interpretation of the Federal commodity laws without constraint.[92] In 2021, the Commission imposed a $1.25 million penalty on Payward Ventures, Inc. (''Kraken'') for unlawful activities conducted in connection with off-exchange CTXs.[93] Former Commissioner Dawn D. Stump identified the issues with the Commission's approach in a concurring statement: ''Congress added [s]ection 2(c)(2)(D) to the CEA to make clear that these retail commodity transactions must be traded on a DCM pursuant to [s]ection 4(a) ''as if'' they are futures contracts. But it did not comprehensively address how these transactions are to be regulated—and, in the decade since the Dodd-Frank Act was enacted, nor has the Commission.'' [94] The former Commissioner proceeded to call the

[79] CFTC Commissioner J. Christopher Giancarlo, *Special Address Before the Depository Trust & Clearing Corporation 2016 Blockchain Symposium* (Mar. 29, 2016), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-13.*

[80] *In re BFXNA Inc. (d/b/a Bitfinex),* CFTC Docket No. 16–19, 2016 WL 3137612 (June 2, 2016); *see also* CFTC, *CFTC Orders Bitcoin Exchange Bitfinex to Pay $75,000 for Offering Illegal Off-Exchange Financed Retail Commodity Transactions and Failing to Register as a Futures Commission Merchant,* Release No. 7380–16 (June 2, 2016), available at *https://www.cftc.gov/PressRoom/PressReleases/7380-16.*

[81] *See* Giancarlo, *supra* note 79.

[82] *Request for Input on Crypto-Asset Mechanics and Markets,* 83 FR 64563 (Dec. 17, 2018).

[83] CFTC, *CFTC Launches LabCFTC as Major Fintech Initiative,* Release No. 7558–17 (May 17, 2017), available at *https://www.cftc.gov/PressRoom/PressReleases/7558-17.* Several months later, LabCFTC published its inaugural explanatory volume on crypto assets, and, the following year, a follow-on primer on smart contracts; *see A CFTC Primer on Virtual Currencies, supra* note 35; LabCFTC, *A Primer on Smart Contracts* (Nov. 27, 2018), available at *https://www.cftc.gov/sites/default/files/2018-11/LabCFTC_PrimerSmartContracts112718.pdf.*

[84] *See CFTC Statement on Self-Certification of Bitcoin Products, supra* note 60.

[85] CFTC and SEC, *Joint Statement from CFTC and SEC Enforcement Directors Regarding Virtual Currency Enforcement Actions* (Jan. 19, 2018), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/mcdonaldstatement011918; see also* Jay Clayton & J. Christopher Giancarlo, *Regulators Are Looking at Cryptocurrency,* Wall St. J. (Jan. 24, 2018), available at *https://www.wsj.com/articles/regulators-are-looking-at-cryptocurrency-1516836363.*

[86] CFTC, *Advisory with Respect to Virtual Currency Derivative Product Listings,* CFTC Staff Advisory No. 18–14 (May 21, 2018) (later withdrawn), available at *https://www.cftc.gov/PressRoom/PressReleases/9059-25.*

[87] *See Retail Commodity Transactions Involving Virtual Currency,* 82 FR 60335 (Dec. 20, 2017). Three years later in 2020, the Commission issued final interpretive guidance on the same subject. *See Retail Commodity Transactions Involving Certain Digital Assets,* 85 FR 37734 (June 24, 2020) (''2020 Actual Delivery Guidance''). However, the Commission later withdrew the 2020 Actual Delivery Guidance (i) in order to reevaluate its relevance in light of the rapid technological evolution of crypto assets and blockchain technologies; and (ii) in response to the findings and recommendations for the CFTC contained in the President's Working Group's Report; *see Withdrawal of Interpretive Guidance: Retail Commodity Transactions Involving Certain Digital Assets,* 90 FR 58149 (Dec. 16, 2025); President's Working Group's Report at 141. At the time of the withdrawal, then-Acting Chairman Pham described the 2020 Actual Delivery Guidance as ''outdated and overly complex guidance that penalizes the crypto industry and stifles innovation.'' CFTC, *Acting Chairman Pham Announces Withdrawal of Outdated Digital Assets Guidance,* Release No. 9152–25 (Dec. 11, 2025), available at *https://www.cftc.gov/PressRoom/PressReleases/9152-25.*

[88] CFTC, *CFTC Charges Trading Platform with Illegal Transactions Margined in Bitcoin, Failing to Implement Procedures to Prevent Money-Laundering, and Failing to Register with the CFTC,* Release No. 7809–18 (Sept. 27, 2018), available at *https://www.cftc.gov/PressRoom/PressReleases/7809-18.*

[89] CFTC, *Chairman Tarbert Comments on Cryptocurrency Regulation at Yahoo! Finance All Markets Summit* (Oct. 10, 2019), available at *https://www.cftc.gov/PressRoom/PressReleases/8051-19.*

[90] *See generally Request for Input on Crypto-Asset Mechanics and Markets, supra* note 82.

[91] CFTC, *Keynote Address of CFTC Commissioner J. Christopher Giancarlo Before the Cato Institute, Cryptocurrency: The Policy Challenges of a Decentralized Revolution* (Apr. 12, 2016), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-14.*

[92] *See generally* Stump Payward Statement, *supra* note 19.

[93] *In re Payward Ventures, Inc.* (d/b/a Kraken), CFTC No. 21–20 (Sept. 28, 2021).

[94] *See* Stump Payward Statement, *supra* note 19.

application of the Act under those circumstances ''uncharted territory'' and further noted that ''it is incumbent upon the Commission to explain in a transparent manner the relevant legal requirements.'' [95]

The Commission did not heed Commissioner Stump at that time. Rather, the Commission continued to pursue enforcement actions against market participants for alleged violations of the Act rather than ''explain[ing] in a transparent manner'' how section 2(c)(2)(D) applies to transactions in crypto assets or developing a fit-for-purpose regulatory framework.[96] In September 2022, the Commission charged the Ooki decentralized autonomous organization (''DAO'') in its first action against a DAO on a novel theory that characterized the holders of Ooki crypto assets who voted on governance proposals concerning the operation of the Ooki DAO business as liable members of an unincorporated association.[97] The subsequent default judgment entered by a federal court was widely criticized as epitomizing the pitfalls of regulation by enforcement.[98] Indeed, critics have noted that the precedent-setting decision resulted from an ''un-litigated settlement order[ ]'' [99] based on ''no public notice or input whatsoever,'' [100] and that the default judgment failed to ''provide notice to the public about the way in which the Commission [was] thinking about'' [101] the complicated issues under the Act presented by crypto assets and blockchain technologies.

In this regard, then-Director of Enforcement, Ian McGinley, stated in 2023 that although the issues presented by crypto assets and blockchain technologies ''may be novel, complex, and evolving, [ ] the Division of Enforcement will continue to [ ] aggressively pursue'' its interpretation of unlawful activities under the Act in crypto assets through enforcement actions.[102] Shortly thereafter, in September 2023, the Commission brought enforcement actions against the developers of three decentralized finance (''DeFi'') protocols [103] and then, in September 2024, against Universal Navigation Inc. (''Uniswap''),[104] alleging in each case violations of section 2(c)(2)(D) and other provisions of the Act. These actions were similarly criticized by members of the Commission at that time [105] and market participants more generally.[106] In fact, then-Commissioner Kristin N. Johnson echoed former Commissioner Stump's concerns and specifically noted how the absence of Commission regulations setting forth the manner in which CTXs may be conducted lawfully had left off-exchange retail customers vulnerable to the same fraudulent practices that led to Congress channeling 2(c)(2)(D) transactions onto and through Commission-registered entities.[107]

3. President Trump's Working Group on Digital Asset Markets (2025)

In early 2025, the Commission's approach to crypto assets began to shift. On January 23, 2025, President Trump issued an executive order titled ''Strengthening American Leadership in Digital Financial Technology'' [108] that established the President's Working Group. In July 2025, Congress then passed the GENIUS Act to regulate payment stablecoins.[109] Shortly thereafter, the President's Working Group responded to the directives in E.O. No. 14178 [110] by recommending the Commission and the SEC (the ''Commissions'') to ''use their existing authorities to immediately enable the trading of digital assets at the federal level.'' [111] Specifically, the President's Working Group's Report directed the Commissions to, among other matters, (i) establish a legal taxonomy for crypto assets that clarifies the application of the Federal securities laws to crypto assets; [112] and (ii) enable the trading of

[95] *Id.*

[96] *Id.*

[97] *In re bZeroX, LLC,* CFTC No. 22–31, 2022 WL 4597664 (Sept. 22, 2022) (administrative case imposing $250,000 penalty); *CFTC* v. *Ooki DAO,* No. 22–cv–05416, 2023 WL 5321527 (N.D. Cal. June 8, 2023) (entering default judgment).

[98] *See, e.g.,* Reply Brief of Amicus Curiae DeFi Education Fund Regarding Plaintiff's Motion for Alternative Service, *CFTC* v. *Ooki DAO,* No. 3:22–cv–05416 (N.D. Cal. Nov. 21, 2022)*; see also* Commissioner Summer K. Mersinger, *Dissenting Statement Regarding Enforcement Actions Against: (1) bZeroX, LLC, Tom Bean, and Kyle Kistner; and (2) Ooki DAO* (Sept. 22, 2022), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement092222* (''Mersinger Ooki Statement'') (criticizing the enforcement action as constituting ''blatant 'regulation by enforcement' by setting policy based on new definitions and standards never before articulated by the Commission or its staff, nor put out for public comment.'').

[99] Letter from Daniel Lasko, on behalf of dYdX, to Christopher Kirkpatrick, Sec'y, CFTC (Sept. 24, 2025) (''dYdX Letter'').

[100] *See* Mersinger Ooki Statement, *supra* note 98.

[101] *Id.*

[102] CFTC, *CFTC Issues Orders Against Operators of Three DeFi Protocols for Offering Illegal Digital Asset Derivatives Trading,* Release No. 8774–23 (Sept. 7, 2023), available at *https://www.cftc.gov/PressRoom/PressReleases/8774-23.*

[103] *Id.*

[104] CFTC, *CFTC Issues Order Against Uniswap Labs for Offering Illegal Digital Asset Derivatives Trading,* Release No. 8961–24 (Sept. 4, 2024), available at *https://www.cftc.gov/PressRoom/PressReleases/8961-24.*

[105] Commissioner Summer K. Mersinger, *Dissenting Statement Regarding Settlement with Uniswap Labs* (Sept. 4, 2024), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement090424* (''Mersinger Uniswap Statement'') (''Notice-and-comment rulemaking would provide the DeFi community, consumer advocates, industry representatives, and the American public with the opportunity to engage with the Commission and utilize their expertise and experience to suggest how DeFi could properly be regulated while remaining true to our obligations under the CEA. Regulation through enforcement is at best a band-aid.'').

[106] *See generally* Chris Brummer, Yesha Yadav, and David Zaring, *Regulation by Enforcement,* 96 S. Cal. L. Rev. 1297 (2024).

[107] *See* Commissioner Kristin N. Johnson, *Statement Regarding CFTC Resolving Charges Against Three Decentralized Finance Companies: The Need for Oversight* (Sept. 7, 2023), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement090723b* (''As I have stated many times, the absence of regulation directly addressing supervision of the growing [crypto] asset marketplace leaves vulnerable retail customers exposed and lacking long-established customer protections available in other asset classes. [. . .] In a largely unregulated market like [crypto] assets, information asymmetries may not only be more pronounced, but coupled with near opacity in certain business models, there may be a shroud obscuring information regarding the design and deployment of critical operational infrastructure, necessary risk management and corporate governance protocols (including policies governing conflicts of interest such as conflicts involving affiliated entities), sufficient liquidity reserves (effective recovery and resilience plans), dedicated commitment to the segregation of customer funds and separation of customer property, cyber risk resilience, or general system safeguards. In the dark, it may be difficult for customers to appreciate real risks and for regulators to use traditional surveillance tools to prevent fraud and market manipulation.'').

[108] E.O. No. 14178, *Strengthening American Leadership in Digital Financial Technology,* 90 FR 8647 (Jan. 31, 2025).

[109] *See* GENIUS Act, *supra* note 1.

[110] E.O. No. 14178, *supra* note 108, at section 4(c)(i).

[111] President's Working Group's Report at 6; *see also* E.O. No. 14178, *supra* note 108, at section 4(c)(i).

[112] President's Working Group's Report at 48. The definition of ''security'' in both the Securities Act and the Exchange Act enumerates several instrument types, including ''investment contract.'' *See* 15 U.S.C. 77b(a)(1); 15 U.S.C. 78c(a)(10). The definitions are ''virtually identical'' in the Securities Act and Exchange Act and are treated by the courts as identical in ''decisions dealing with the scope of the term.'' *Landreth Timber Co.* v. *Landreth,* 471 U.S. 681, 686 n.1 (1985). The SEC and federal courts have historically applied the ''*Howey* test'' to determine if a crypto asset or transaction therein constitutes an investment contract and therefore a security. *See SEC* v. *W.J. Howey Co.,* 328 U.S. 293 (1946) (''*Howey*''). The *Howey* test defines an investment contract as a contract, transaction, or scheme involving (1) an investment of money, (2) in a common enterprise, (3) with an expectation of profits derived from the efforts of others. *Id.; see also Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO,* SEC Release No. 34–81207 (July 25, 2017); *Gladius Network LLC,* Release No. 33–10608 (Feb. 20, 2019); *Paragon Coin, Inc.,* SEC Release No. 33 10574 (Nov. 16, 2018); *In re Munchee, Inc.,* SEC Release No. 33–10445 (Dec. 11, 2017); SEC, Division of Corporation Finance no-action letter to IMVU, Inc. (Nov. 19, 2020).

crypto assets in secondary markets,[113] including by facilitating the listing of CTXs using the Commission's existing statutory authority.[114] These directives echoed persistent calls from market participants to do the same.[115]

The Commission and the SEC swiftly operationalized the President's Working Group's directives. Throughout 2025, the SEC's Crypto Task Force,[116] under the leadership of Commissioner Hester M. Peirce, supported the SEC's efforts to respond to the President's Working Group's directives, including by soliciting input from the public [117] and coordinating with the SEC's Division of Corporation Finance to issue a series of staff statements providing the Division's views regarding the application of the Federal securities laws to various crypto asset-related matters.[118]

The CFTC likewise announced a ''Crypto Sprint'' to implement the President's Working Group's recommendations,[119] and, directly relevant to this Notice, requested public input on how DCMs could list and trade CTXs.[120] The Commission received 11 comments that offered varied perspectives on the Commission's legal authority,[121] contemplated regulatory frameworks,[122] and operational considerations,[123] among other matters. On December 4, 2025, the Commission announced that CTXs would trade for the first time on a U.S. regulated exchange.[124] However, it did not promulgate a fit-for-purpose regulatory framework at that time.

4. Regulatory Clarity for Crypto Asset Markets (2026)

After being sworn in as the 16th Chairman of the CFTC on December 22, 2025, Chairman Selig set forth the priorities of the Commission with respect to crypto assets in his first public remarks on January 29, 2026. He declared the end of regulation by enforcement and indicated the Commission would explore rulemaking initiatives with respect to CTXs.[125] On that same day, Chairman Selig and SEC Chairman Atkins announced that ''Project Crypto'' would proceed as a joint effort between the Commissions to harmonize federal oversight of crypto asset markets.[126]

Shortly thereafter, on March 11, 2026, the Commissions entered into a memorandum of understanding (''MOU'') [127] to establish a structured framework for sustained interagency cooperation. In announcing the MOU, SEC Chairman Atkins observed that ''[f]or decades, regulatory turf wars, duplicative agency registrations, and different sets of regulations between the SEC and CFTC have stifled innovation and pushed market participants to other jurisdictions,'' and that the MOU ''will serve as a roadmap for a new era of harmonization between the agencies.'' [128]

The MOU represented a critical step in addressing how the novel technological properties of crypto assets and blockchain technologies had exacerbated the effects of the Commissions' fragmented and inconsistent federal oversight of the U.S. capital markets. For over a decade, market participants, regulators,[129] and federal courts [130] grappled with the fluid status of crypto assets and secondary transactions therein under the Federal securities laws [131] as a threshold issue to unleashing the ''enormous commercial promise'' [132] of crypto assets and blockchain technologies. In short, ''[t]he status of crypto assets under the securities laws is fundamental to

[113] President's Working Group's Report at 51.

[114] *Id.* at 52.

[115] *See, e.g.,* dYdX Letter, *supra* note 99; Coinbase, Petition for Rulemaking—Digital Asset Securities Regulation (July 21, 2022), available at *https://www.sec.gov/rules/petitions/2022/petn4-789.pdf;* Letter from Robinhood Markets, Inc. (Mar. 13, 2025), available at *https://www.sec.gov/files/ctf-input-robinhood-2025-03-13.pdf;* Letter from Andreessen Horowitz (Mar. 13, 2025), available at *https://dwt2zme5yrom6.cloudfront.net/uploads/2025/03/a16z-Crypto-SEC-RFI-Questions-1-through-6-March-13-2025.pdf.*

[116] *See* SEC, Crypto Task Force, available at *https://www.sec.gov/about/crypto-task-force.*

[117] *See, e.g.,* SEC, Crypto Task Force Roundtables, available at *https://www.sec.gov/about/crypto-task-force/crypto-task-force-roundtables; see also https://www.sec.gov/about/crypto-task-force/crypto-task-force-meetings; https://www.sec.gov/about/crypto-task-force/crypto-task-force-written-input.*

[118] *See, e.g.,* SEC, Division of Corporation Finance, Staff Statement on Meme Coins (Feb. 27, 2025), available at *https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme coins; see also* SEC, Division of Corporation Finance, Statement on Certain Proof of-Work Mining Activities (Mar. 20, 2025), available at *https://www.sec.gov/newsroom/speechesstatements/statement-certain-proof-work-mining-activities-032025.* The SEC staff statements are not a rule, regulation, guidance, or statement of the SEC, and the SEC has neither approved nor disapproved their content. SEC staff statements have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

[119] CFTC, *Acting Chairman Pham Announces CFTC Crypto Sprint,* Release No. 9104–25 (Aug. 1, 2025), available at *https://www.cftc.gov/PressRoom/PressReleases/9104-25.*

[120] CFTC, *Acting Chairman Pham Launches Listed Spot Crypto Trading Initiative,* Release No. 9105–25 (Aug. 4, 2025), available at *https://www.cftc.gov/PressRoom/PressReleases/9105-25.*

[121] *See, e.g.,* Letter from Allison Lurton, General Counsel, Chief Legal Officer, on behalf of Futures Industry Association, to Christopher Kirkpatrick, Sec'y, CFTC (Aug. 18, 2025), at 3.

[122] *See, e.g.,* Letter from Thomas Johnson, Chief Compliance Officer, on behalf of tastyfx LLC, to Commissioners of the CFTC (Aug. 19, 2025), at 1.

[123] *See, e.g.,* Letter from Linda Lacewell, Global Chief Legal Officer, on behalf of OKX US, to Christopher Kirkpatrick, Sec'y, CFTC (Aug. 18, 2025), at 4–5 (''OKX Letter'').

[124] CFTC, *Acting Chairman Pham Announces First-Ever Listed Spot Crypto Trading on U.S. Regulated Exchanges,* Release No. 9145–25 (Dec. 4, 2025), available at *https://www.cftc.gov/PressRoom/PressReleases/9145-25.*

[125] Chairman Michael S. Selig, *The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance* (Jan. 29, 2026), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig1* (''Chairman Selig Project Crypto Remarks''), providing that that ''thanks to the leadership of President Trump, [ ] regulation by enforcement is dead.''

[126] *Id.* (''Today, we are building on that foundation. Rather than running a parallel initiative with the SEC, I am pleased to announce that the CFTC is partnering with the SEC on Project Crypto—bringing coordination, coherence, and a unified approach to the federal oversight of crypto asset markets. Project Crypto recognizes that crypto markets span across our agencies' respective regulatory boundaries.'').

[127] CFTC, SEC, *CFTC and SEC Announce Historic Memorandum of Understanding Between Agencies,* Release No. 9192–26 (Mar. 11, 2026) (''MOU Announcement''), available at *https://www.cftc.gov/PressRoom/PressReleases/9192-26.*

[128] *Id. See* Section II.C, *infra,* for a further discussion of how the Commission's regulatory approach to crypto assets has driven innovation away from federally regulated venues. Other federal regulators have highlighted the harmful effects of friction between the Commissions. *See, e.g.,* Department of the Treasury, *Blueprint for a Modernized Financial Regulatory Structure,* at 11 (Mar. 31, 2008), available at *https://home.treasury.gov/system/files/136/archive-documents/Blueprint.pdf* (''Product and market participant convergence, market linkages, and globalization have rendered regulatory bifurcation of the futures and securities markets untenable, potentially harmful, and inefficient. To address this issue, the CFTC and the SEC should be merged to provide unified oversight and regulation of the futures and securities industries.'').

[129] *See* SEC Chairman Paul S. Atkins, *The SEC's Approach to Digital Assets: Inside ''Project Crypto''* (Nov. 12, 2025), available at *https://www.sec.gov/newsroom/speeches-statements/atkins-111225-secs-approach-digital-assets-inside-project-crypto* (''Commissioner Peirce has rightly observed that while a project's [crypto asset] launch might initially involve an investment contract, those promises may not remain forever. Networks mature. Code is shipped. Control disperses. The issuer's role diminishes or disappears.'').

[130] *See, e.g., SEC* v. *Terraform Labs Pte. Ltd.,* 684 F. Supp 3d 170, 197 (S.D.N.Y. July 31, 2023) (''It may also be mentioned that the Court declines to draw a distinction between these [crypto assets] based on their manner of sale, such that [crypto assets] sold directly to institutional investors are considered securities and those sold through secondary market transactions to retail investors are not. In doing so, the Court *rejects the approach recently adopted by another judge of this District in a similar case, SEC* v. *Ripple Labs, Inc.* 2023 WL 4507900 (S.D.N.Y. July 13, 2023)'') (emphasis added); *SEC* v. *Coinbase, Inc.,* 726 F. Supp. 3d 260, 293 (S.D.N.Y. Mar. 27, 2024) (similarly rejecting the *Ripple* court's reasoning and instead adopting reasoning akin to the *Terraform* court).

[131] *See supra* note 112, setting forth the definition of ''security'' under the Federal securities laws.

[132] Chairman J. Christopher Giancarlo, *Remarks at the 4th Annual DC Blockchain Summit* (Mar. 6, 2019), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo66* (''Giancarlo Blockchain Summit Remarks'').

resolving many other questions,''[133] including which of the Commission's or SEC's regulatory framework applies.[134] Market participants have observed that the uncertainty concerning whether a crypto asset is a security or not can restrict trading in secondary markets, and that without broad distribution, ownership, and trading thereof, a crypto asset may be unable to achieve the network effects necessary for it to function as designed.[135] Accordingly, during the course of litigation with the SEC, one market participant aptly described the scope of the SEC's authority to regulate secondary transactions in crypto assets as a ''cloud that currently hangs over the [crypto asset] market.'' [136]

On March 17, 2026, under the leadership of Chairman Selig and SEC Chairman Atkins, the Commissions took decisive action to resolve these questions by issuing the Joint Crypto Asset Taxonomy, which clarified how the SEC would apply the Federal securities laws to the different categories of crypto assets and transactions therein, with the Commission providing guidance that it will administer the Act consistent with the interpretation.[137] Specifically, the Joint Crypto Asset Taxonomy classified crypto assets into five categories based on their characteristics, uses, and functions, providing that digital securities [138] are securities, stablecoins [139] may or may not be securities depending on their characteristics, and digital commodities,[140] digital collectibles,[141] and digital tools [142] are not themselves securities.[143] The Joint Crypto Asset Taxonomy further addressed how non-security crypto assets may become subject to an investment contract [144] and how they may cease to be subject to an investment contract.[145]

Around that same time, the Commission launched an Innovation Task Force (''ITF''), led by Michael J. Passalacqua, to deliver regulatory clarity and foster market integrity and responsible technological progress across the new frontier of finance, including with respect to crypto assets and blockchain technologies.[146] Over the following months, the ITF, together with Commission staff, delivered on the ITF's purposes and objectives and the priorities Chairman Selig had set forth for the Commission.[147] As part of executing those priorities set forth by Chairman Selig, the Commission's staff clarified the application of its

[133] SEC Commissioner Hester M. Peirce, *The Journey Begins* (Feb. 4, 2025), available at *https://www.sec.gov/newsroom/speeches-statements/peirce-journey-begins-020425*.

[134] President's Working Group's Report at 45 (''U.S. regulatory agencies have attempted to classify [crypto] assets under existing frameworks. For example, the CFTC recognized that bitcoin and ether are commodities, while the SEC has treated other [crypto] assets as securities based on their structures, methods of distribution, and uses. Yet, without a clear and comprehensive classification system, market participants have had to navigate a patchwork of interpretations and guidance—a proverbial minefield for honest actors trying to lead the industry forward.'').

[135] The Board Of The International Organization Of Securities Commissions, *IOSCO Decentralized Finance Report,* at 30, 32 (Mar. 1, 2022), available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD699.pdf* (describing how in order to accrue the network effects that are ''crucial'' to most protocols, a project's pathway to decentralization may include a distribution of crypto assets to ''early adopters (sometimes accomplished through ''airdrops''), protocol users and liquidity providers, engineers that evolve and improve the code, purchasers of the [crypto asset] in the secondary market, and third-party service providers (*e.g.,* auditing firms) that are paid in [crypto assets] for their services''); *see also* Section II.C.2, *infra,* for a further discussion regarding how restricted or limited secondary markets in crypto assets can hinder or prevent decentralized market forces from facilitating network effects that otherwise could harness productive behavior for the benefit of a blockchain system; Andreessen Horowitz, *Comments on the SEC Crypto Task Force's Questions Concerning the Security Status of Crypto Assets* (Mar. 13, 2025), available at *https://dwt2zme5yrom6.cloudfront.net/uploads/2025/03/a16z-Crypto-SEC-RFI-Questions-1-through-6-March-13-2025.pdf* (''a16z Letter'') (''[d]istribution of [crypto assets] can facilitate decentralization by enabling the system to function autonomously (eliminating operational control) as well as by eliminating voting control and reducing economic control of the system''); Stephen Wink & Shaun Musuka, *Crypto—The Pursuit of Sufficient Decentralization,* Bloomberg L. (Aug. 21, 2019), available at *https://news.bloomberglaw.com/securities-law/insight-crypto-the-pursuit-of-sufficient-decentralization* (''[i]t is difficult to imagine a scenario in which such [crypto asset] networks could achieve the critical mass of network participants necessary if such network participants were restricted [by the Federal securities laws] from exchanging their [crypto assets] in some way with other participants for other [crypto assets] as a means to continually broaden the universe of [crypto asset] holders.'').

[136] Petition for Permission to Appeal Pursuant to 28 U.S.C. 1292(b), *SEC* v. *Coinbase, Inc.,* No. 25–145, at 1 (2d Cir. Jan. 17, 2025) (''There is no more pressing issue in securities law today than the scope of the [SEC's] authority to regulate secondary trades of digital assets'').

[137] CFTC, *CFTC Joins SEC to Clarify the Application of Federal Securities Laws to Crypto Assets,* Release No. 9198–26 (Mar. 17, 2026), available at *https://www.cftc.gov/PressRoom/PressReleases/9198-26; see also* Joint Crypto Asset Taxonomy, *supra* note 1.

[138] *See* Joint Crypto Asset Taxonomy, *supra* note 1, at 13720, providing that a digital security (commonly known as a ''tokenized'' security) is a financial instrument enumerated in the definition ''security'' that is formatted as or represented by a crypto asset, where the record of ownership is maintained in whole or in part on or through one or more crypto networks. *See also supra* note 71, describing the jurisdictional boundaries between the CFTC and SEC with respect to transactions or derivatives referencing, involving, or relating to a security.

[139] *See* Joint Crypto Asset Taxonomy, *supra* note 1, at 13720, providing that a stablecoin is a crypto asset that is designed to maintain a stable value relative to a reference asset like the U.S. dollar. *See also supra* note 1 (describing how the GENIUS Act creates a comprehensive regulatory framework for a specific type of stablecoin called a ''payment stablecoin'').

[140] *See* Joint Crypto Asset Taxonomy, *supra* note 1, at 13718, providing that a digital commodity is a crypto asset that is intrinsically linked to and derives its value from the programmatic operation of a crypto system that is functional, as well as supply and demand dynamics, rather than from the expectation of profits from the essential managerial efforts of others. In the Joint Crypto Asset Taxonomy, the Commissions provided their views as to examples of digital commodities, which include, among others, Bitcoin (BTC); Ether (ETH); Solana (SOL); Stellar (XLM); Tezos (XTZ); and XRP (XRP).

[141] *See id.,* at 13718, providing that a digital collectible is a crypto asset that is designed to be collected and/or used and may represent or convey rights to artwork, music, videos, trading cards, in-game items, or digital representations or references to internet memes, characters, current events, or trends, among other things. A digital collectible does not have intrinsic economic properties or rights, such as generating a passive yield or conveying rights to future income, profits, or assets of a business enterprise or other entity, promisor, or obligor.

[142] *See id., supra* note 1, at 13719, providing that a digital tool is a crypto asset that performs a practical function, such as a membership, ticket, credential, title instrument, or identity badge. Digital tools are commonly issued for use in connection with crypto systems and are designed to perform practical functions within such systems. Digital tools often are non-transferrable or ''soulbound,'' and their value is derived from their practical functionality.

[143] This Notice also refers to each of digital commodities, digital collectibles, and digital tools as ''non-security crypto assets.''

[144] *See* Joint Crypto Asset Taxonomy, *supra* note 1, at 13721. The Joint Crypto Asset Taxonomy provided the Commissions' views that a non-security crypto asset becomes subject to an investment contract when an issuer offers it by inducing an investment of money in a common enterprise with representations or promises to undertake essential managerial efforts from which a purchaser would reasonably expect to derive profits. Under such circumstances, secondary market offers and sales of such a non-security crypto asset would constitute securities transactions that must be registered under the Securities Act or conducted pursuant to an available exemption from registration. The associated investment contract will continue to be transferred to subsequent purchasers of the non-security crypto asset in secondary market transactions until the non-security crypto asset separates from the issuer's representations or promises.

[145] *See* Joint Crypto Asset Taxonomy, *supra* note 1, at 13722–3. The Joint Crypto Asset Taxonomy set forth the Commissions' view that a non-security crypto asset would no longer be subject to an investment contract when: (1) the issuer has fulfilled its representations or promises to engage in essential managerial efforts, or (2) the purchaser would not reasonably expect the issuer to be able to fulfill or to continue to engage in the essential managerial efforts it represented or promised it would undertake.

[146] CFTC, *Chairman Selig Announces Formation of New Innovation Task Force,* Release No. 9201–26 (Mar. 24, 2026), available at *https://www.cftc.gov/PressRoom/PressReleases/9201-26* (''Innovation Task Force Release'').

[147] *See* Chairman Selig Project Crypto Remarks, *supra* note 125.

regulations concerning introducing brokers to crypto asset software developers,[148] issued guidance concerning CFTC-registered entity activities relating to crypto assets and blockchain technologies,[149] and issued an advisory on 24/7 trading, including in crypto asset markets.[150] During this time period, the Commission also approved a product submission for a ''true'' bitcoin perpetual contract on a CFTC-registered DCM.[151]

On August 20, 2026, Chairman Selig hosted the inaugural meeting of the CFTC's Innovation Advisory Committee (''IAC''). At the inaugural IAC meeting, American innovators, entrepreneurs, academics, and builders at the center of both the new frontier of finance and traditional U.S. financial markets provided advice to the Commission regarding complex issues pertaining to the future of U.S. financial markets.[152] The discussion at the inaugural meeting reflected some of the same priorities of the President's Working Group's Report, including how to enable the trading of crypto assets, and CTXs, under a federal regulatory regime.

In relation to enabling the trading of crypto assets, on August 18, 2026, the SEC proposed new rules that would create a clear and fit-for-purpose regulatory framework for certain investment contracts involving crypto assets.[153] The proposed Regulation Crypto Assets included a conditional safe harbor that would codify the circumstances set forth in the Joint Crypto Asset Taxonomy pursuant to which a non-security crypto asset may cease to be subject to an investment contract, and therefore freely tradable in secondary markets outside the purview of the SEC and the Federal securities laws.[154]

This Notice thus seeks to advance the recommendations included in the President's Working Group's Report for the Commission to explore how to enable secondary market trading in crypto assets, including CTXs, and to provide a complementary federal regulatory framework for crypto assets subject to the safe harbor proposed in Regulation Crypto Assets and thus freely tradable in secondary markets.[155]

II. The History, Application, and Scope of Section 2(c)(2)(D)

A. Sections 2(c)(2)(D)(i)–(ii) and Their Anti-Evasion Origins [156]

For decades, the Commission maintained that certain retail commodity transactions offered with leverage were futures contracts subject to the Act.[157] The Seventh Circuit called that view into question when it held in *CFTC* v. *Zelener* that the Commission's jurisdiction did not extend to retail foreign-currency contracts that rolled over indefinitely, rarely settled by delivery, and were formalistically documented as cash market transactions.[158] The court's holding ''created the distinct possibility that, through clever draftsmanship, completely unregulated firms and individuals could sell retail customers [ ]contracts that looked like futures, acted like futures, and were sold like futures and could do so outside the [Commission's] jurisdiction.'' [159]

In 2010, Congress addressed concerns about this perceived loophole by extending comprehensive Commission jurisdiction to all retail commodity transactions under the circumstances described in section 2(c)(2)(D)(i).[160] The enacting legislative record is explicit about the anti-evasion impetus for granting the Commission additional statutory authority.[161] The floor manager for Title VII of the Dodd-Frank Act characterized section 2(c)(2)(D) as a ''*Zelener* fraud fix'' that addressed ''instances of fraudsters using [*Zelener*-style rolling spot contracts] to evade the CFTC's jurisdiction over futures contracts.'' [162] Another Congressman similarly stated the governing principle directly: ''[i]f in substance it is a futures contract, it is going to be regulated. It doesn't matter how clever your draftsmanship is.'' [163] Congress underscored its intention to equip the Commission with expansive jurisdiction

[148] CFTC, *CFTC Staff Issues No-Action Position to Self-Custodial Crypto Asset Wallet Software Provider,* Release No. 9197–26 (Mar. 17, 2026), available at *https://www.cftc.gov/PressRoom/PressReleases/9197-26* (providing that the Commission's Market Participants Division would not recommend that the Commission take an enforcement action against the developer of self-custodial crypto asset wallet software or its relevant personnel for failure to register as an IB or an associated person (''AP'') of an IB in relation to the developer's proposed provision and marketing of software to facilitate trading by its users with registered FCMs, IBs, and DCMs).

[149] CFTC, *CFTC Staff Issues FAQs Concerning Registrant and Registered Entity Activities Relating to Crypto Assets and Blockchain Technologies,* Release No. 9200–26 (Mar. 20, 2026), available at *https://www.cftc.gov/PressRoom/PressReleases/9200-26.*

[150] CFTC, *CFTC Staff Issues Advisory on 24/7 Trading, Clearing, and Settlement,* Release No. 9239–26 (May 29, 2026), available at *https://www.cftc.gov/PressRoom/PressReleases/9239-26.*

[151] CFTC, *CFTC Approves BTCPERP Contract Submitted by KalshiEX, LLC,* Release No. 9240–26 (May 29, 2026), available at *https://www.cftc.gov/PressRoom/PressReleases/9240-26.*

[152] *See, e.g.,* Vladimir Tenev, Chief Executive Officer, Robinhood Markets, Inc., *Statement at the Inaugural CFTC Innovation Advisory Committee Meeting,* at 00:32:38 (Aug. 20, 2026), *https://www.youtube.com/watch?v=9rTCARzj98I* (''It's been a challenge navigating the patchwork of state-by-state regulations because [ ] not all of our products are available to all of our customers. [ ] So I think just a federal framework, aside from providing a certainty and durability and not, you know, having our customers worry about rules changing every four or eight years or whether an asset they're going to hold is going to have to be delisted one way or another, preventing their access to it, which I think just puts a cloud of uncertainty over everything, will directly make it so that we don't have to deal with multi-state access issues where some of our products are available in certain states. And I think that the customer, unfortunately, ends up suffering here, you know, more than the broker or the crypto firm in most cases''); *see also* Vicky Ge Huang, *DRW's Don Wilson Encourages CFTC to Approve Perpetual Futures,* Wall St. J. (Aug. 20, 2026), available at *https://www.wsj.com/livecoverage/stock-market-today-dow-sp-500-nasdaq-08-20-2026/card/drw-s-don-wilson-encourages-cftc-to-approve-perpetual-futures-WBLJH1WD8D8M0rufCWC9;* Caitlin Ostroff & Vicky Ge Huang, *CFTC Committee Discussion on Prediction Markets Gets Heated,* Wall St. J. (Aug. 20, 2026), available at *https://www.wsj.com/livecoverage/stock-market-today-dow-sp-500-nasdaq-08-20-2026/card/cftc-committee-discussion-on-prediction-markets-gets-heated-yQwCEYhWu7zrrUU7vg67.*

[153] SEC, *Regulation Crypto Assets,* 91 FR 54510 (proposed Aug. 21, 2026) (''Regulation Crypto Assets'').

[154] *Id.* at 54553. The proposed Regulation Crypto Assets further contemplates codifying two exemptions from the registration requirements of the Securities Act that would facilitate capital formation and innovation within the crypto asset markets. *Id.* at 54529–53.

[155] President's Working Group's Report at 51.

[156] *See* proposed Regulation CTX in Section III, *infra,* which explicitly identifies certain circumstances that the Commission preliminarily understands would result in transactions in crypto assets being subject to section 2(c)(2)(D).

[157] The Ninth Circuit endorsed that approach in *CFTC* v. *Co Petro Marketing Group, Inc.,* 680 F.2d 573, 576 (9th Cir. 1982) (holding that leveraged retail commodity contracts ''sold merely for speculative purposes and which are not predicated upon the expectation that delivery of the actual commodity by the seller to the original contracting buyer will occur in the future'' must be traded ''through a member of a board of trade which has been designated by the [Commission] as a contract market.'').

[158] *CFTC* v. *Zelener,* 373 F.3d at 868–69 (7th Cir. 2004).

[159] *Zelener* Hearing, *supra* note 53, at 10 (statement of Daniel Roth, President and Chief Executive Officer of the National Futures Association).

[160] *See* section 742 of the Dodd-Frank Act; *see also* CEA 2(c)(2)(D), 7 U.S.C. 2(c)(2)(D).

[161] 156 Cong. Rec. S5924 (daily ed. July 15, 2010) (statement of Sen. Lincoln, explaining the rationale for the legislation during floor debate on the Dodd-Frank Act); *see also* Dodd-Frank Act, section 742(a), 124 Stat. 1376, 1732–33 (2010).

[162] *Id.*

[163] *Zelener* Hearing, *supra* note 53, at 22 (statement of Rep. Marshall, Member, H. Comm. on Agriculture). Section 2(c)(2)(D)'s legislative history thereby frames the subparagraph's additional grant of statutory authority as an extension of the Commission's settled regulatory function to a new avenue of evasion, echoing the Congressional concerns that led to the passage of the Act in 1974. *See, e.g.,* H.R. Rep. No. 93–975, at 44 (1974) (enacting Member of the CEA noting there had been 5.7 million unregulated commodity derivative contracts traded in the prior fiscal year, including new contract types that could not be regulated under the then current federal law).

to protect retail market participants by explicitly delegating the Commission discretionary authority [164] to further define each term in section 2(c)(2)(D).[165] In short, with respect to retail commodity contracts that function like futures contracts but, prior to section 2(c)(2)(D)'s enactment, fell outside of the Commission's jurisdiction as a result of the *Zelener* holding, the Commission noted in 2016 that ''in enacting the statute Congress expressed its intent that [s]ection 2(c)(2)(D) should be applicable to a broad range of agreements, contracts, and transactions.'' [166]

This broad jurisdiction extends to various transaction structures with the economic substance of an open futures contract, which therefore implicate the risks to retail customers that are addressed by section 2(c)(2)(D). In extending the Commission's jurisdiction, Congress explicitly specified that the mere offer of a transaction on a leveraged, margined, or financed basis to a retail customer, even if the offer of leverage, margin, or financing is declined,[167] subjects the resulting fully paid and open 2(c)(2)(D) transaction to the Commission's jurisdiction, unless a statutory exception applies (a ''fully paid, open 2(c)(2)(D) transaction'').[168]

Consistent with Congress's intent to prevent the evasion of the Commission's jurisdiction over futures contracts (or agreements, contracts, and transactions that are, in substance, futures contracts), but not to ''interfere with the legitimate spot market,'' [169] section 2(c)(2)(D)(ii) excepts certain classes of contracts of sale that demonstrate typical cash market activity rather than mimicking the economic substance of an open futures contract, including a contract of sale that ''results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved'' (the ''actual delivery exception'').[170] However, the exceptions enumerated in section 2(c)(2)(D)(ii) prove the breadth of Commission jurisdiction insofar as they represent the sole off-ramps from the on-exchange requirement. In other words, unless actual delivery occurs or another statutory exception applies, the execution of a fully paid, open 2(c)(2)(D) transaction following a retail customer's rejection of an offer of leverage, margin, or financing does not alone result in the Commission's jurisdiction falling away. Instead, the fully paid, open 2(c)(2)(D) transaction remains subject to the Act, including the on-exchange requirement, unless or until a statutory exception applies. Congress mandated this result when it provided that section 2(c)(2)(D) will apply to the transactions described in section 2(c)(2)(D)(i), ''except as provided in clause (ii) [of section 2(c)(2)(D)].'' [171] As discussed further in Section III.C, *infra,* this statutory construction reflects that a fully paid, open 2(c)(2)(D) transaction continues to exhibit the characteristics of an open futures contract until ''actual delivery'' occurs (assuming no other statutory exceptions apply).[172]

The controlling actual delivery exception case law dates back to 2019, when the Ninth Circuit in *CFTC* v. *Monex Credit Co.*[173] held that the actual delivery exception required giving ''real and immediate possession [of the underlying commodity] to the buyer or buyer's agent.'' [174] The court found that the plain meaning of the statutory text required more than a constructive delivery such as where the commodities remain ''in the broker's chosen depository, never exchange hands, and are subject to the broker's exclusive control.'' [175] Those circumstances demonstrated the entire *Monex* transaction was ''merely a book-entry'' that only resulted in a ''sham delivery,'' [176] and not actual delivery.

B. The Comprehensive Regulatory Framework Mandated by Section 2(c)(2)(D)(iii) [177]

Section 2(c)(2)(D) grants the Commission broad authority to regulate 2(c)(2)(D) transactions. The Act provides that, unless an exception applies (including the actual delivery exception, of which the Commission provides its preliminary interpretation in Sections III.B and C, *infra*), any agreement, contract, or transaction in any commodity that is (i) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity (''retail'') and (ii) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis, constitutes a 2(c)(2)(D) transaction.[178]

Specifically, section 2(c)(2)(D)(iii) provides that 2(c)(2)(D) transactions are

[164] *See Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369, 371 (2024) (''when the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the [Administrative Procedure Act] is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits. The court fulfills that role by recognizing constitutional delegations, fixing the boundaries of the delegated authority, and ensuring the agency has engaged in 'reasoned decisionmaking' [ ] within those boundaries.'').

[165] 15 U.S.C. 8321(a), providing that the ''Commission may adopt a rule to define [ ] (1) the term 'commercial risk'; and (2) any other term included in an amendment to the [CEA] made by [the Dodd-Frank Act].''

[166] *See Bitfinex, supra* note 80, at 5.

[167] CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i) (including within the scope of section 2(c)(2)(D) any transaction that is ''offered (even if not entered into), on a leveraged or margined basis . . .''). Courts have interpreted the provision in the same manner. *See, e.g., CFTC* v. *Laino Group Limited d/b/a PaxForex,* 2021 WL 4059385 (S.D.T. June 30, 2021) (''Accordingly, Defendant *by offering to enter into, or entering into* transactions in gold, silver, bitcoin, ether, and litecoin with non-ECP U.S. customers on a leveraged or margined basis engaged in retail commodity transactions subject to 7 U.S.C. 2(c)(2)(D)(i)'') (emphasis added).

[168] CEA 2(c)(2)(D)(i)–(ii), 7 U.S.C. 2(c)(2)(D)(i)–(ii). This Notice further discusses fully paid, open (2)(c)(2)(D) transactions in Section III.C, *infra.*

[169] *Zelener* Hearing, *supra* note 53, at 9 (statement of Daniel Roth, President of the National Futures Association).

[170] CEA 2(c)(2)(D)(ii)(III)(aa), 7 U.S.C. 2(c)(2)(D)(ii)(III)(aa) (providing that ''[t]his subparagraph shall not apply to [ ] (III) a contract of sale that—(aa) results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved[.]'').

[171] CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i).

[172] The Commission notes that ''a contract of sale that creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with the line of business of the seller and buyer'' is similarly excepted from the Commission's jurisdiction, regardless of whether it satisfies the statutory criteria contained in CEA 2(c)(2)(D)(i). CEA 2(c)(2)(D)(ii)(III)(bb), 7 U.S.C. 2(c)(2)(D)(ii)(III)(bb). The presence of the ''enforceable obligation'' described therein mirrors the act of ''actual delivery'' in that each distinguishes genuine cash market transactions from those that function as open futures contracts by merely serving as a vehicle for price exposure.

[173] *CFTC* v. *Monex Credit Co.,* 931 F.3d 966, 974 (9th Cir. 2019) (''*Monex*''). In addition to case law pertaining to the actual delivery exception and the withdrawn 2020 Actual Delivery Guidance, discussed *supra* note 87, the Commission issued in 2011 a proposed interpretation of the term ''actual delivery'' in the context of section 2(c)(2)(D) on an asset-class-agnostic basis, accompanied by a request for comment. *Retail Commodity Transactions Under Commodity Exchange Act,* 76 FR 77670 (Dec. 14, 2011). After reviewing public comments, the Commission issued a final interpretation in 2013. *Retail Commodity Transactions Under Commodity Exchange Act,* 78 FR 52426 (Aug. 23, 2013).

[174] *Monex* 931 F.3d at 974; *see also CFTC* v. *Hunter Wise Commodities, LLC,* 749 F.3d 967, 979 (11th Cir. 2014) (''[a]ctual' is that which 'exist[s] in fact' and is 'real,' rather than constructive.'') (quoting *Black's Law Dictionary* 494 (9th ed. 2009)).

[175] *Monex* 931 F.3d at 975.

[176] *Id.*

[177] *See* proposed Regulation CAM in Section V, *infra,* which contemplates the implementation of a fit-for-purpose regulatory framework that addresses the on-exchange requirement in the context of the commercial realities of, and risks posed by, CTXs.

[178] CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i).

subject to sections 4(a),[179] 4(b),[180] and 4b [181] of the Act as if they were futures contracts. Section 4(a) implements the on-exchange requirement described above,[182] and thereby subjects 2(c)(2)(D) transactions to the same ''comprehensive regulatory structure'' [183] applicable to futures contracts by requiring the listing DCM to continuously comply with a comprehensive set of regulations [184] that reaches virtually every aspect of trading in 2(c)(2)(D) transactions, including with respect to listing standards,[185] prevention of market disruptions,[186] exercises of emergency authority,[187] publication of information,[188] execution of transactions,[189] the financial integrity of transactions,[190] protection against abusive practices,[191] conflicts of interests,[192] and recordkeeping practices,[193] among other areas.

The Act also provides for the comprehensive regulation of intermediaries other than the exchange that lists a 2(c)(2)(D) transaction. A person that solicits or accepts orders for a 2(c)(2)(D) transaction and holds related customer assets under the circumstances described in section 1a(28)(A) [194] of the Act constitutes an FCM subject to the Act's customer protection requirements, including disclosures,[195] capital requirements,[196] and customer property segregation,[197] among other areas. The Act further comprehensively regulates the clearance and settlement of 2(c)(2)(D) transactions by a DCO.[198]

The Commission preliminarily believes that in subjecting 2(c)(2)(D) transactions, and thus CTXs, to such comprehensive regulation, Congress made clear that varying state laws did not apply to the operation of trading facilities that offer CTXs.[199] As noted, CTXs are subject to the on-exchange requirement and, in turn, must be treated ''as if'' they were futures contracts. Indeed, ''[a]s Congress recognized in enacting the [Commodity Futures Trading Commission Act of 1974], a contract market could not operate efficiently, and perhaps not at all, if varying and potentially contradictory legal standards governed its duties to [market participants].'' [200] Concurrent regulation by the states of ''the actual operation'' of such contract markets would lead to ''total chaos.'' [201] In fact, the members of section 2(c)(2)(D)'s enacting Congress echoed those concerns of appropriately addressing the ''public interest of regulation of market forces and market practices'' [202] by questioning the adequacy of varying state laws as a bona fide ''substitute for the Federal scheme'' of the Act.[203] Accordingly, state money transmission laws generally defer to federal market regulatory structures [204] and the Federal MSB regulatory framework similarly does not apply to ''a person registered with, and functionally regulated or examined by, the [CFTC].'' [205]

C. The Failure of the Commission's Historical Approach to 2(c)(2)(D) Transactions

1. Regulation by Enforcement Drove CTXs Outside of the Commission's Federal Regulatory Framework

As discussed above, Congress required the application of a comprehensive federal regulatory regime to 2(c)(2)(D) transactions by channeling dealings in them onto [206] and through [207] Commission-registered entities. Section 2(c)(2)(D) thereby authorizes the Commission to supervise and regulate firms pursuant to ''the full array of regulatory requirements applicable to on-exchange futures under the [Act],'' [208] separate and apart from the Commission's post-hoc enforcement authority.[209] However, the

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[179] CEA 4(a), 7 U.S.C. 6(a) (prohibiting the off-exchange trading of futures transactions unless the transaction is conducted on or subject to the rules of a DCM, subject to certain exceptions).

[180] CEA 4(b), 7 U.S.C. 6(b) (permitting foreign boards of trade registered with the Commission with the ability to provide direct access to U.S. persons).

[181] CEA 4b, 7 U.S.C. 6b (prohibiting fraudulent conduct in connection with any contract of sale of any commodity in interstate commerce, among other things).

[182] CEA 4(a), 7 U.S.C. 6(a).

[183] *Curran,* 456 U.S., at 356 (1982). Commenters concur. For example, one commenter, Bitnomial Exchange, LLC (''Bitnomial''), explained that the provision ''requires that any leveraged retail commodity transaction involving actual delivery after 28 days be regulated as a futures contract and occur on a DCM.'' Letter from James Walsh, Chief Regulatory Officer, on behalf of Bitnomial Exchange, LLC, to Commissioners of the CFTC (Aug. 19, 2025) at 1 (''Bitnomial Letter'').

[184] *See* CEA 5(d), 7 U.S.C. 7(d); *see also* 17 CFR part 38.

[185] CEA 5(d)(3), 7 U.S.C. 7(d)(3).

[186] CEA 5(d)(4), 7 U.S.C. 7(d)(4).

[187] CEA 5(d)(6), 7 U.S.C. 7(d)(6).

[188] CEA 5(d)(7), (8), 7 U.S.C. 7(d)(7), (8).

[189] CEA 5(d)(9), 7 U.S.C. 7(d)(9).

[190] CEA 5(d)(11), 7 U.S.C. 7(d)(11).

[191] CEA 5(d)(12), 7 U.S.C. 7(d)(12).

[192] CEA 5(d)(16), 7 U.S.C. 7(d)(16).

[193] CEA 5(d)(18), 7 U.S.C. 7(d)(18).

[194] CEA 1a(28)(A), 7 U.S.C. 1a(28)(A) (providing that the term ''futures commission merchant'' means an individual, association, partnership, corporation, or trust (i) that—(I) is—(aa) engaged in soliciting or in accepting orders for— [. . .] (DD) any agreement, contract, or transaction described in [. . .] section 2(c)(2)(D)(i) of this title; and (II) in or in connection with the activities described in items (aa) or (bb) of subclause (I), accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom[.]'').

[195] 17 CFR 1.55.

[196] CEA 4f(b), 7 U.S.C. 6f(b).

[197] CEA 4d(a)(2), 7 U.S.C. 6d(a)(2).

[198] A registered DCO is subject to 18 core principles set out in section 5b(c)(2) of the Act. *See* Johnson et al., *supra* note 2, § 6.06. (''The core principles cover areas ranging from clearing member eligibility standards, risk management, default procedures, treatment of funds, rule enforcement, and legal risk. A DCO must comply with the DCO core principles and the requirements of any rule the CFTC may impose pursuant to its general rulemaking authority [. . .] The Commission's primary rules governing DCOs are set in [17 CFR 39].'').

[199] *See* Johnson et al., *supra* note 2, § 4.05 (''Where the CEA is found by a court to preempt state law, it is predicated on the doctrine of conflict preemption, under a case-by-case analysis. Courts have found that a state law conflicts with and is thus preempted by the CEA '[w]hen application of state law would directly affect trading on or operation of a futures market, it would stand ''as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,'' and is hence preempted.' '') (quoting *American Agric. Movement,* 977 F.2d at 1156.

[200] *American Agric. Movement,* 977 F.2d at 1156. In contrast to the operation of a DCM, the Commission recognizes that ''there is no need for uniformity when it comes to the rules that govern'' certain other aspects of the commodity derivatives markets, including, for example, the ''principal-agent relationships between brokers and investors. [. . .] [T]he possibility that different states would impose dissimilar fiduciary duties upon brokers might affect those private relationships, but would not appreciably hamper the efficient operation'' of the markets and transactions subject to Commission jurisdiction. *Id.*

[201] *Id.;* Commodity Futures Trading Act of 1974: Hearings Before the S. Comm. on Agric. & Forestry on S. 2485, S. 2578, S. 2837, H.R. 13113, 93d Cong., 2d Sess. 685 (1974) (statement of Sen. Clark).

[202] H.R. Rep. No. 93–975, at 28 (1974).

[203] *Zelener* Hearing, *supra* note 53, at 25 (statement of Rep. Marshall); *cf. Zelener* Hearing, *supra* note 53, at 11 (statement of Philip A. Feigin, on behalf of Monex Deposit Company). One witness arguing on behalf of the Monex Deposit Company that state-by-state regulation of leveraged commodity transactions represented a better way to protect retail consumers than the contemplated federal regime. In 2019, the Monex Deposit Company was a codefendant in *Monex,* a Commission action prosecuting the fraudulent deception of retail customers in offering leveraged commodity transactions while evading the on-exchange requirement of section 2(c)(2)(D). *See generally Monex,* 931 F.3d.

[204] *See, e.g.,* Money Transmission Modernization Act (''MTMA''), *supra* note 31, § 3.01(i), (j) (providing that the MTMA does not apply to a board of trade designated as a contract market under the Act or ''a registered [FCM] under the [F]ederal commodities laws to the extent of its operation as such a merchant''). 31 states have enacted the MTMA in whole or in part. Conference of State Bank Supervisors, *CSBS Money Transmission Modernization Act (MTMA)* (Feb. 26, 2026), available at *https://www.csbs.org/csbs-money-transmission-modernization-act-mtma.*

[205] *See Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual* Currencies, *supra* note 24.

[206] *See* CEA 2(c)(2)(D)(iii), 7 U.S.C. 2(c)(2)(D)(iii); CEA 4(a), 7 U.S.C. 6(a).

[207] *See* CEA 1a(28)(A), 7 U.S.C. 1a(28)(A).

[208] See *supra* note 57 (statement of Sen. Lincoln, explaining the rationale for the legislation during floor debate on the Dodd-Frank Act).

[209] *See* Johnson et al., *supra* note 2, § 4.02 (''The Commission's principal regulatory tool is the

Commission's historical approach to CTXs has frustrated Congress' intent to bring these transactions onto Commission-registered exchanges and under the Commission's supervision.[210] Regulation by enforcement has inadequately addressed the fundamental commercial and operational differences between CTXs and other commodity derivatives contracts and thereby failed to provide market participants a durable and fit-for-purpose pathway to list CTXs in compliance with the on-exchange requirement.[211]

On November 11, 2022, an $8 billion dollar fraud perpetrated by FTX Trading Ltd. d/b/a FTX.com (''FTX Trading'') and affiliates thereof[212] reverberated through the global crypto asset markets, including those markets overseen by the Commission. The circumstances that led to and enabled the FTX scheme demonstrate how the Commission's regulation by enforcement posture has failed to effectuate the purposes and objectives of the Act and section 2(c)(2)(D), including protecting market participants from fraudulent or other abusive sales practices and misuses of customer assets.[213]

While the scale of FTX's and Samuel Bankman-Fried's fraud was unforeseeable, Congress and regulators alike predicted that market abuses would result from inapposite regulatory requirements hindering, or in some cases, precluding, market participants from offering CTXs on DCMs. The legislative history of section 2(c)(2)(D) highlights that the on-exchange requirement was designed to prophylactically ''prevent fraud, not just prosecute it,'' [214] because off-exchange abusive practices would migrate from one area under the enforcement focus of regulatory authorities to the next less scrutinized area.[215] That is, a regulation by enforcement posture cannot effectively combat abusive off-exchange market practices at scale.[216]

Those very concerns played out in the FTX scheme, with the defendants able to take advantage of the Commission's inability to police on an ad-hoc basis every corner of a market with monthly trading volumes exceeding trillions of dollars.[217] Notably, however, the customers of an FTX entity that was subject to the Commission's comprehensive supervision and regulation emerged from FTX's collapse largely unscathed,[218] demonstrating the effectiveness of the prophylactic nature of the on-exchange requirement. As former Chairman Behnam noted in Congressional testimony following the collapse of FTX's scheme, ''to understand why comprehensive regulation of trading platforms is critically important to protect the largely retail customer base of these speculative [crypto asset] markets, one need look no further than where the CFTC's regime intersected with FTX.'' [219] He further noted that in contrast with the ''[m]any public reports [that] indicate that segregation and customer security failures at the bankrupt FTX entities resulted in huge amounts of FTX customer funds being misappropriated[,]'' the customer property held by CFTC-registered FTX entities ''remained exactly where it should be, segregated and secure. This is regulation working.'' [220]

In 2024, Chairman Behnam again testified in front of the U.S. Senate Committee on Agriculture, Nutrition, and Forestry.[221] In the intervening two year period, the Commission had continued to use the full scope of its enforcement authority to pursue customer abuses in the crypto asset markets.[222] The Commission preliminarily agrees with Chairman Behnam's assessment at that time that the regulation by enforcement approach is ''unsustainable[,]'' and reiterates his concerns that ''rampant fraud and manipulation in the crypto [asset] market'' will likely continue to hurt American customers absent a change in course by the Commission.[223] Thus, the

promulgation of regulations governing the conduct of those over whom it has jurisdiction. Although enforcement actions [ ] contribute to the development of standards for derivatives and related activity, the most pervasive manifestation of the Commission's influence is the exercise of its general and specialized rulemaking powers under the Act. From its inception in 1975, the CFTC has had broad rulemaking authority. Pursuant to that authority, it has adopted a variety of rules to implement the provisions of the CEA applicable to the futures industry and markets.'').

[210] *See, e.g.,* Mersinger Ooki Statement, *supra* note 98.

[211] *See* Coinbase Letter, *supra* note 19, at 2 (stating that ''crypto asset markets have several key differences from futures markets''); *see also* Letter from Kraken to Christopher J. Kirkpatrick, Sec'y, CFTC, at 3 (Aug. 18, 2025) (''[A]s the Commission considers the applicability of its existing authority and potential rulemakings and guidance to industry, Kraken encourages the staff to work with industry stakeholders.'').

[212] Samuel Bankman-Fried co-founded Alameda Research LLC (''Alameda''), a crypto asset trading and investment firm, in 2017. In May 2019, he and others launched FTX Trading and various subsidiaries, affiliates, and related entities, collectively doing business as ''*FTX.com*'' or simply ''FTX,'' a centralized digital asset exchange. *See Declaration of John J. Ray III In Support of Chapter 11 Petitions and First Day Pleadings,* Case No. 22–11068 (JTD) (Bankr. D. Del Nov. 17, 2022). Bankman-Fried also operated LedgerX LLC (d/b/a FTX US Derivatives) (''LedgerX'') to offer futures, options, and swaps contracts pursuant to its registration with the CFTC as a DCM and DCO. *See* Chairman Rostin Behnam, *Testimony Before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry: Why Congress Needs to Act: Lessons Learned from the FTX Collapse* (Dec. 1, 2022), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam29* (''Behnam 2022 FTX Senate Testimony''). This Notice collectively refers to Alameda, FTX Trading, *FTX.com*, FTX US, and each of their affiliates, as ''FTX''.

[213] CEA 3(a), 7 U.S.C. 5(a); *see also supra* notes 17, 45, 51 (examples of breakdowns in customer protection in crypto asset markets).

[214] *Zelener* Hearing, *supra* note 53, at 9, 18 (statements of Rep. Leonard L. Boswell, Chairman, and Daniel Roth, President of the National Futures Association).

[215] *See, e.g., Zelener* Hearing, *supra* note 53, at 18 (statement of Daniel Roth, President of the National Futures Association, providing that ''[w]e have seen the migration of abusive practices away from the foreign currency trade to the unregulated, right now it is precious metals, tomorrow it might be something else. But we have seen these [websites], 30 of them, that have this unregulated; futures market even though they call it something else. So the point that I made earlier was that anti-fraud authority is not enough. The whole point of the [Act] is that retail customers need regulatory protection when they are trading futures contracts, and that goes beyond anti-fraud authority. We are trying to prevent the fraud, not just prosecute it.'').

[216] *See supra* note 107 (former Commissioner Johnson describing how the Commission's approach has left vulnerable retail customers exposed and lacking long-established customer protections available in other asset classes).

[217] *See* Chairman Rostin Behnam, *Testimony Before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry* (Feb. 9, 2022), available at *https://www.agriculture.senate.gov/imo/media/doc/Testimony_Behnam_020920225.pdf* (''According to public data, every month in 2021 except one saw over $1 trillion in monthly trading volume in the digital asset cash market, with a high of $2.23 trillion in trading volume in May 2021.'').

[218] Behnam 2022 FTX Senate Testimony, *supra* note 212.

[219] *Id.*

[220] *Id.*

[221] *See* Chairman Rostin Behnam, *Testimony Before the Subcommittee on Financial Services and General Government, Committee on Appropriations, U.S. Senate* (June 13, 2024), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam47* (''Behnam 2024 Appropriations Testimony'').

[222] *See generally* Section I.B.2, *supra* (providing a history of the Commission's enforcement actions in the crypto asset markets during this period); *see also* CFTC, *CFTC Charges Binance and Its Founder, Changpeng Zhao, with Willful Evasion of Federal Law and Operating an Illegal Digital Asset Derivatives Exchange,* Release No. 8680–23 (Mar. 27, 2023), available at *https://www.cftc.gov/PressRoom/PressReleases/8680-23* (Former CFTC's Enforcement Division Principal Deputy Director and Chief Counsel providing that the enforcement action ''reflects that the CFTC and its Enforcement Division will pursue those [crypto] asset platforms and individuals who flout and actively attempt to circumvent CFTC regulatory requirements[;]'' CFTC, *CFTC Charges Alexander Mashinsky and Celsius Network, LLC with Fraud and Material Misrepresentations in Massive Commodity Pool Scheme Involving Digital Asset Commodities,* Release No. 8749–23 (July 13, 2023), available at *https://www.cftc.gov/PressRoom/PressReleases/8749-23* (Commission enforcement action alleging that defendants falsely touted high profits and security to induce customers to deposit their digital asset commodities on the platform).

[223] *See* Behnam 2024 Appropriations Testimony, *supra* note 221; *see also* Mersinger Uniswap

Continued

proposed rules in this Notice intend to address such fraud and manipulation through a comprehensive regulatory scheme that properly effectuates the on-exchange requirement with respect to CTXs.

2. Legacy Regulatory Frameworks Have Impeded Innovation

The effects of a fragmented regulatory framework for crypto asset exchanges extend beyond a failure to protect retail customers from market abuses. The Commission's approach, and the resulting lack of liquid, fair, and financially secure trading facilities in crypto assets,[224] has also frustrated broader promises of permissionless [225] innovation. Soon after the introduction of the Bitcoin network in 2008,[226] market participants and regulators alike began to contemplate innovative applications of crypto assets and blockchain technologies. In short, ''the excitement surrounding the infinite possibilities created by these technologies is palpable.'' [227] However, as Chairman Selig remarked, ''fragmented oversight imposes real economic costs—raising barriers to entry, reducing competition, increasing compliance expenses, and encouraging regulatory arbitrage rather than productive investment.'' [228] The Commission preliminarily believes that the economic costs imposed by its historical approach to crypto asset regulation has jeopardized the contemplated promises of crypto assets and blockchain technologies, and with them, the United States's position as the ''crypto capital'' of the world.[229]

With respect to U.S. financial market infrastructure, former Chairman Giancarlo forecasted in 2019 that the unique technological characteristics of crypto assets and blockchain technologies were ''likely to have a broad and lasting impact in payments, banking, securities settlement, title recording, cyber security and trade reporting and analysis.'' [230] He discussed the difference that a ''real-time distributed ledger'' may have made in the U.S. regulatory response to the 2008 financial crisis, noting that ''[a]t a minimum, it would certainly have allowed for far prompter, better-informed, and more calibrated regulatory intervention instead of the disorganized response that unfortunately ensued.'' [231] While those broad and lasting impacts have been materially impeded by an outdated regulatory framework designed for legacy financial technologies, the Commission preliminarily believes that the fit-for-purpose regulatory framework proposed under Regulation CAM in Section V, *infra,*[232] would help fulfill ''the original promise of blockchain technologies: more open, transparent, and efficient market infrastructure.'' [233]

Beyond U.S. financial market infrastructure, technologists predicted that distributed control over networks and platforms enabled by crypto assets and blockchain technologies would lead to a more efficient, inclusive, and innovative internet economy.[234] The Commission preliminarily believes that the effects of its historical approach have similarly stifled that vision of a more open internet. For example, a crypto asset may confer certain rights and entitlements that enable network effects to facilitate the programmatic and permissionless operation of a related blockchain system.[235] Those network effects may derive from incentive structures codified in the source code underlying a blockchain system that harnesses market forces into productive activity.[236] However, harnessing market forces requires efficient markets in the first instance. That is, the predicted flywheel dynamic generally requires price discovery that is derived from liquid, fair, and financially secure trading facilities, which facilities have been hampered by a lack of clear rules of the road.[237]

Despite those regulatory headwinds, developers of crypto asset projects that have withstood the hostile regulatory environment in the U.S. have leveraged the unique technological properties of crypto assets and blockchain technologies to build novel networks that, for example, empower consumers to lower their electricity-related costs,[238] incentivize the construction of clean energy infrastructure,[239] enhance

Statement, *supra* note 105 (''Additionally, if we continue with this enforcement-first approach, one or several DeFi protocols we target may choose to litigate rather than settle out of court. Facing litigation in these cases will not only come at the cost of expending substantial government (and private sector) resources, but also risks a morass of court cases yielding mixed results and conflicting conclusions.'').

[224] *See* CEA 3(a), 7 U.S.C. 5(a) (finding that the management and assumption of price risks, discovery of prices, and disseminating pricing information through trading in liquid, fair and financially secure trading facilities as affected with a national public interest).

[225] *See, e.g.,* Peter Van Valkenburgh, *Testimony to the Committee on Energy and Commerce, U.S. House of Representatives* (June 6, 2017) (''The most exciting aspect of open blockchain networks is that they are entirely open for experimentation. They are permissionless. There is no patent or copyright to license, no university or corporation from which to seek a job, no exclusive membership fee to pay. Anyone with a computer and an internet connection can develop and share her own currency, her own financial contracts and strategies, her own vision of the future.''); Rebecca Lewis, John McPartland, and Rajeev Ranjan, Fed. Res. Bank of Chicago, *Blockchain and Financial Market Innovation* (June 2017) (''The chief advantage of a permissionless network is that it does not require a central authority to confirm or deny specific transactions; individuals who do not trust one another or any single central authority can transact on the permissionless network, trusting the consensus mechanism, which we discuss below, to ensure the ledger's accuracy.'').

[226] *See* Nakamoto, *supra* note 35.

[227] Chairman Michael S. Selig, CFTC, *America's Financial Markets are Ready for a Golden Age* (Jan. 20, 2026), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/seligstatement012026.*

[228] Chairman Selig Project Crypto Remarks, *supra* note 125.

[229] Donald J. Trump, *Keynote Address at the Bitcoin 2024 Conference,* Nashville, Tenn. (July 27, 2024).

[230] Giancarlo Blockchain Summit Remarks, *supra* note 132.

[231] *Id.*

[232] The proposed Regulation CAM is discussed in Section V, *infra,* and contemplates the implementation of a fit-for-purpose regulatory framework that addresses the on-exchange requirement in the context of the commercial realities of, and risks posed by, CTXs.

[233] Chairman Selig Project Crypto Remarks, *supra* note 125 (discussing how onchain tools could be used to facilitate the programmatic monitoring of risks in real time and thereby ''fulfill the original promise of blockchain technologies: a more open, transparent, and efficient market infrastructure.'').

[234] *See* Chris Dixon, *I wrote a book: Read Write Own* (June 22, 2023), available at *https://cdixon.org/2023/06/22/read-write-own/* (stating that ''blockchains and the software movement around them [. . .] provide the only plausible path to sustaining the original vision of the internet as an open platform that incentivizes creativity and entrepreneurship.''); *see also* Miles Jennings, *Decentralization is why we fight for crypto* (Dec. 17, 2024), available at *https://a16zcrypto.com/posts/article/decentralization-fight-for-crypto/.*

[235] *See* Miles Jennings, *Defining decentralization: It comes down to control,* a16z crypto (Feb. 13, 2025), *https://a16zcrypto.com/posts/article/defining-decentralization-control/* (''This amelioration of trust dependencies with respect to a blockchain network and its crypto asset [ ] is made possible by the fact that such systems are capable of decentralization—operation absent human intervention and control.'').

[236] *See* Aztec Foundation, *Token Regulatory Characterisation Report* (Nov. 13, 2025), available at *https://aztec.network/token-regulatory-report* (describing how the AZTEC crypto asset (''AZTEC'') is a ''necessary component'' of the programmatic and permissionless operation of the blockchain system to which AZTEC relates because of the right AZTEC confers on its holders to ''fully control the governance and operation'' of that blockchain system.).

[237] CEA 3(a), 7 U.S.C. 5(a).

[238] *See* SEC, *Fuse Crypto Limited, No-Action Letter* (Nov. 24, 2025), available at *https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/fuse-crypto-limited-112425* (''Fuse is a vertically integrated energy technology group focused on accelerating the decentralization of electricity grids, optimizing energy delivery, and empowering consumers to lower their electricity related costs. Through its operations in the United States[ ], Fuse endeavors to deliver tools that enable households and businesses to actively participate in the energy system—improving grid resilience, reducing congestion, and unlocking new forms of distributed value for consumers[ ].'').

[239] *See* Union Square Ventures, *Our Investment in Glow Protocol: DePIN at the Edge of Energy Markets*

the financial resilience of vulnerable populations,[240] and allow persons who are connected only through the governance rights of a crypto asset to deploy shared resources to make donations for charitable causes,[241] purchase historical artifacts,[242] and build communities around jointly-owned infrastructure.[243] The Commission preliminarily believes that a fit-for-purpose regulatory framework for CTXs would facilitate the next generation of similar American innovations and ensure those innovations ''take root on American soil, under American law, and in service of American investors, customers, and businesses.'' [244]

3. The Commission's Statutory Authority To Implement Regulation CTX and Regulation CAM

In summary, the Commission preliminarily believes that achieving the liquid, fair, and financially secure trading facilities in CTXs that the Act's purposes and objectives contemplate may require a tailored regulatory approach.[245] The Commission has longstanding experience in facilitating the development of robust markets in novel commodities, having done so consistently over the decades since the Act's passage.[246] It has done so, in part, through the extensive authority granted by Congress to address the risks posed by, and commercial realities of, transactions in emergent asset classes.[247] Specifically, (i) section 4(c) allows the Commission to promote responsible economic or financial innovation and fair competition by exempting by rule any class of transactions subject to section 4(a) from any requirement of the Act, subject to certain limitations; [248] (ii) Congress granted the Commission explicit rulemaking authority to define any term in section 2(c)(2)(D); [249] and (iii) the Commission has general rulemaking authority to promulgate such rules and regulations reasonably necessary to effectuate any of the provisions of the Act, including the core principles applicable to DCMs contained in section 5(d) (''DCM Core Principles'').[250]

The Commission preliminarily believes that it can further the Act's purposes and objectives by using such statutory authorities to address through rulemaking the risks posed by, and commercial realities of, CTXs. As discussed above, Commissioners and market participants alike have called for the Commission to do so specifically in the context of section 2(c)(2)(D), which this Notice intends to address.[251] The Commission has reviewed those calls to inform this Notice and has found they fall into four overlapping categories.

First, the Commission's existing rules are not fit-for-purpose with respect to the novel properties of crypto assets and blockchain technologies, and accordingly do not provide a fit-for-purpose path to offer CTXs in compliance with the on-exchange requirement.[252] When Congress rendered 2(c)(2)(D) transactions subject to section 4(a) ''as if'' they were futures contracts, it affected those transactions with the same national interest that has justified uniform federal regulation since *Board of Trade of Chicago* v. *Olsen*.[253] While the on-exchange requirement places such CTXs in the unique ''context of market regulation that [gives rise to the need] for uniform legal rules,'' [254] the Commission has failed to provide those rules for such transactions.

Second, enforcement actions further failed to even provide ''transparency with respect to who [the Commission] will hold accountable and for what,'' [255] which has stifled the ability of market participants to avoid running afoul of the on-exchange requirement in the first instance and thereby forced them offshore in the face of Commission enforcement actions.

Third, while the use of flexible and efficient regulatory tools such as the Commission's enforcement authority may have been in attempted furtherance of the mandate from Congress to protect market participants from fraud, abusive sales practices, and other violations of

(Oct. 31, 2024), available at *https://blog.usv.com/our-investment-in-glow-protocol-depin-at-the-edge-of-energy-markets* (''Glow's approach is radically different from existing subsidy systems for green energy, drawing inspiration from Bitcoin's open and highly competitive incentive model.'').

[240] *See* Circle, *A new paradigm for blockchain & international aid,* available at *https://www.circle.com/circle-impact* (''Rumee Singh founded Rahat in 2020 to address the financial inclusion gap in her native Nepal and to channel humanitarian aid to people around the world. Rahat uses blockchain technology with smart contracts for fast, accurate aid payouts directly to beneficiaries' phones. Their use of parametric data automatically triggers early warning messages and targeted disbursements *before* disasters strike, even in low-tech environments.'').

[241] *See* Center for a Digital Future, *Nouns DAO: Problem Addressed and Project Description* (Apr. 2024), available at *https://www.centerforadigitalfuture.org/blog/60kqfdgb4f8kljqy1j4ujvaqr1bx5y-364pg-bskhw-4zy2x* (''Nouns DAO members who hold Nouns NFTs create and vote on proposals which guide the direction of the organization and allocate the funds in the [DAO] treasury. Funded initiatives include charitable donations to organizations like Coral Restoration Foundation, Freedom of the Press Foundation, and the Rainforest Foundation.'').

[242] *See* ConstitutionDAO, *A Historic Attempt to Buy the U.S. Constitution Together,* available at *https://constitutiondao.org/* (''ConstitutionDAO was a groundbreaking decentralized initiative that united thousands of [crypto asset] enthusiasts to bid on an original copy of the U.S. Constitution. Powered by community collaboration and blockchain transparency, it showcased the potential of decentralized governance and collective action in the Web3 era.'').

[243] *See* LinksDAO, *Building the Golf Club for the Modern Era,* available at *https://www.linksdao.io/* (''We are a global community of passionate golfers reimagining what it means to be a golf club. LinksDAO owns two golf courses on two continents that are being transformed into world-class venues.'').

[244] *See* Chairman Selig Project Crypto Remarks, *supra* note 125.

[245] CEA 3(a)–(b), 7 U.S.C. 5(a)–(b).

[246] Indeed, Chairman Selig recently acknowledged this dynamic when he noted that ''[a]ccess to computing power is at the center of the growing artificial intelligence economy and critical to America winning the AI race. The CFTC will continue to act to ensure access to this critical commodity by improving the financial market for compute.'' CFTC, *CFTC Requests Comment on the Listing of Compute Derivatives Contracts,* Release No. 9286–26 (Aug. 19, 2026), available at *https://www.cftc.gov/PressRoom/PressReleases/9286-26; see also Proposal To Exempt Certain Transactions Involving Not-for-Profit Electric Utilities,* 77 FR 164 (Aug. 23, 2012) (the Commission proposing bespoke regulatory treatment of certain derivatives referencing electric energy based on the unique physical properties of the underlying commodity); Giancarlo Blockchain Summit Remarks, *supra* note 132 (Chairman Giancarlo describing how ''[w]ith respect to the bitcoin products, because they were novel and based on a unique crypto-asset, the exchanges did engage in substantial prior discussions with CFTC staff before launch; this allowed for incorporation of risk mitigating elements, including around higher margin requirements and contract sizes.'').

[247] *See, e.g.,* House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213 (Congress noting that the Commission's exemptive authority under the section 4(c) of the Act is intended ''to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.'').

[248] *See* CEA 4(c)(1), 7 U.S.C. 6(c)(1).

[249] *See* 15 U.S.C. 8321(a).

[250] *See* CEA 5(d)(5), 7 U.S.C. 7(d)(5).

[251] *See, e.g.,* Section I.B.2, *supra;* Commissioner Summer K. Mersinger, *Dissenting Statement Regarding Enforcement Actions Against: (1) Opyn, Inc.; (2) Deridex, Inc.; and (3) ZeroEx, Inc.* (Sept. 7, 2023), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement090723.*

[252] *See* Mersinger Ooki Statement, *supra* note 98 (describing how the Commission has failed its statutory mandate to promote the responsible innovation and fair competition made possible by a ''world of [crypto] assets, blockchain technology, and decentralized autonomous organizations (DAOs)—technology that did not exist when the [Act] was enacted in 1974, and that has just started to develop since Congress last amended the statute as part of the Dodd-Frank Act in 2010.'').

[253] *Board of Trade of Chicago* v. *Olsen* 262 US, at 41 (1923) (''The Chicago Board of Trade is engaged in a business affected with a public national interest and is subject to national regulation as such.'').

[254] *American Agric. Movement,* 977 F.2d at 1156 (''Only in the context of market regulation does the need arise for uniform legal rules. As Congress recognized in enacting the 1974 Act, a contract market could not operate efficiently, and perhaps not at all, if varying and potentially contradictory legal standards governed its duties to investors[.]'').

[255] Mersinger Ooki Statement, *supra* note 98.

the Act,[256] regulating trillions of dollars in crypto asset transactions requires an approach that scales with transaction volume.[257] Regulation by enforcement has misallocated Commission resources that would be better spent on building a fit-for-purpose regulatory regime.

Fourth, unlike a slew of enforcement actions, a notice-and-comment rulemaking process would allow the Commission to benefit from ''information, views, and public input from interested parties.'' [258] The Commission would be better served if it were to ''communicate to, and engage with, the public in a transparent manner and seek out the input of those with expertise to share.'' [259]

4. Unleashing Innovation for the New Frontier of Finance [260]

The Commission is therefore undertaking a reevaluation of its regulatory framework pursuant to these calls, consistent with its understanding of congressional intent and its statutory authority to make and promulgate rules that are reasonably necessary to effectuate any provisions or to accomplish any purposes of the Act, including the on-exchange requirement, among other matters, with respect to CTXs. Thus, the Commission preliminarily believes that its statutory mandates require it to consider:

1. clarifying how market participants may elect to conduct business in crypto asset markets under a uniform set of regulations that provides a national regime for CTXs, while preserving access to ''other markets[;]'' [261]

2. providing market participants with crypto asset-specific contextual information regarding certain requirements and practices that are commonly accepted in the industry and have been found, based on the Commission's experience in overseeing aspects of crypto asset markets since 2014, to represent the best-practice means of complying with the regulatory requirements that attach to CTXs; and

3. codifying through rulemaking a subcategory of DCM registration that is purpose-built for CTXs.[262]

III. Regulation CTX: The Commission's Preliminary Interpretation of Certain Terms in Section 2(c)(2)(D)

A. Covered Offers Under Section 2(c)(2)(D)(i)

As discussed above, the offer of a transaction on a leveraged, margined, or financed basis, ''even if not entered into'' on one of those bases, subjects a transaction to section 2(c)(2)(D).[263] Despite calls from market participants to do so and Congress's delegation of the authority to further define the terms in section 2(c)(2)(D), including the term ''offer,'' [264] the Commission has not clarified the circumstances pursuant to which such an offer renders an agreement, contract, or transaction subject to section 2(c)(2)(D) (a ''covered offer''). The Commission preliminarily believes it would be prudent to clarify those circumstances in the context of crypto assets and blockchain technologies through rulemaking and sets forth its preliminary understanding below.

Section 2(c)(2)(D)(i) provides that ''[e]xcept as provided in clause (ii),'' (which statutory exceptions are preliminarily interpreted by the Commission in Sections III.B and C, *infra*), ''this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is [. . .] entered into, or offered (even if not entered into)'' on the leveraged, margined or financed bases described in section 2(c)(2)(D)(i). The plain meaning of this statutory construction extends the subparagraph to agreements, contracts, and transactions where a covered offer is declined and the agreement, contract, or transaction is subsequently executed on a fully paid basis, provided all other statutory criteria are met (or in other words, the transaction constitutes a fully paid, open 2(c)(2)(D) transaction). Accordingly, the Commission preliminarily believes that a covered offer attaches to all agreements, contracts, or transactions to which it is applicable. That is, all agreements, contracts, or transactions pursuant to which a retail customer may accept a covered offer to transact on a leveraged, margined, or financed basis, regardless of whether any individual transaction is entered into on one of those bases.

The Commission further preliminarily believes that a covered offer may be established by the provision of documentation that sets forth the terms pursuant to which a customer may execute a CTX. An offeror or counterparty to a CTX could provide such a covered offer, for example, in standard customer documentation such as customer onboarding documents (including those required by law or regulation), exchange terms and conditions, or credit and margin documentation. While a covered offer may be made with respect to a specific transaction or transactions, the Commission preliminarily believes that section 2(c)(2)(D) contemplates that a covered offer could also be made with respect to all transactions available on an exchange, all transactions available through a customer account, all transactions in a product class, or another class of transactions.

Under certain circumstances, section 2(c)(2)(D)(i) provides that a ''person acting in concert with the offeror or counterparty or on a similar basis'' may extend a covered offer of financing.[265] The Commission preliminarily understands that the term ''acting in concert or a similar basis'' may capture financing arrangements facilitated, arranged, or otherwise endorsed by the offeror or counterparty, including where the financing arrangement or terms thereof are set or influenced by the offeror or counterparty, introduced by the offeror or counterparty through marketing or advertising, subject to revenue-sharing agreements with the offeror or counterparty, accessed through a financing platform operated

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[256] *SEC* v. *Chenery Corp.,* 332 U.S. 194, 202–03 (1947) (''In other words, problems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. [. . .] In those situations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective.'').

[257] *See* Behnam 2024 Appropriations Testimony, *supra* note 221 (''Nowhere have we been more active than in the [crypto asset] space. [. . .] With many agency resources which are not considered in our budget appropriation being allocated to an unregulated market, I fear the current trajectory is unsustainable. Namely, we will continue to see rampant fraud and manipulation in the [crypto asset] market that will hurt American customers, and possibly infect the traditional financial markets.''); *see also* Mersinger Uniswap Statement, *supra* note 105 (''Additionally, if we continue with this enforcement-first approach, one or several DeFi protocols we target may choose to litigate rather than settle out of court. Facing litigation in these cases will not only come at the cost of expending substantial government (and private sector) resources, but also risks a morass of court cases yielding mixed results and conflicting conclusions.'').

[258] Mersinger Ooki Statement, *supra* note 98.

[259] *Id.*

[260] Chairman Selig Project Crypto Remarks, *supra* note 125.

[261] *Id; see also* CEA 5(b), 7 U.S.C. 5(b) (stating that the purposes of the CEA include the promotion of fair competition among boards of trade, *other markets* and market participants) (emphasis added).

[262] *See, e.g.,* Mersinger Ooki Statement, *supra* note 98.

[263] *See* CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i) (''Except as provided in clause (ii), this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is [. . .] entered into, *or offered (even if not entered into),* on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.'').

[264] *See* 15 U.S.C. 8321(a), providing that the ''Commission may adopt a rule to define [ ] (1) the term 'commercial risk'; and (2) any other term included in an amendment to the [CEA] made by [the Dodd-Frank Act].''

[265] CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i).

by the offeror or counterparty, or otherwise involve the material assistance of the offeror or counterparty.

B. Scope and Meaning of ''Actual Delivery''

As described above, a contract of sale resulting in ''actual delivery'' [266] is one way that an agreement, contract, or transaction that otherwise would be captured by section 2(c)(2)(D)(i) may be excepted from the Commission's jurisdiction. The current law on the actual delivery exception is primarily derived from court cases interpreting the term.[267] The Commission preliminarily believes it could be prudent to provide further clarity, through rulemaking, on the meaning of actual delivery in the context of 2(c)(2)(D) transactions in crypto assets and blockchain technologies.

For example, the Commission takes note of the holding in *Monex* that actual delivery requires the transfer of some meaningful degree of possession or control.[268] The Commission further notes that the unique characteristics of crypto assets and blockchain technologies may be relevant to an analysis of whether that possession or control standard has been met. In this regard, the Commission preliminarily believes that possession and control of a crypto asset may require possession of the credentials (*e.g.,* private key(s)) to the digital wallet address or account associated with such crypto asset.[269] Further, a demonstration of the possession and control required to satisfy the actual delivery standard may depend on the *specific* characteristics of the crypto asset at issue. For example, where a crypto asset conveys certain governance rights or the right to participate in a blockchain system's operation that provides network rewards for doing so (*i.e.,* to participate in staking),[270] possession and control thereof may require unfettered access to those rights or entitlements. As illustrative examples, actual delivery may require the capacity to participate in governance directly and on a disintermediated basis; or, in the case of staking, the capacity to do so without being subject to fees charged by an intermediary.

Further, the Commission preliminarily believes that the text of the actual delivery exception demonstrates Congress' intent for the act of, and means to achieve, actual delivery itself to be subject to the Commission's jurisdiction. Whereas section 2(c)(2)(D)(ii)(III)(bb) considers the contractual terms of contracts of sale by examining if they ''create[ ] an enforceable obligation[,]'' [271] the actual delivery exception applies based on if the contract of sale ''results in actual delivery.'' [272] That is, Congress granted the Commission the authority to regulate the mechanics, or ''result[,]'' of actual delivery. Moreover, because a constructive delivery does not satisfy the actual delivery exception, section 2(c)(2)(D) tasks the Commission with regulating the act of giving real and immediate possession to the buyer or the buyer's agent. In the case of a CTX, this act involves the transfer of crypto assets from the crypto asset exchange to the digital wallet address or account associated with such crypto asset.

C. Actual Delivery of Fully Paid, Open CTXs

As discussed above, the Commission preliminarily believes that a fully paid, open 2(c)(2)(D) transaction remains subject to the Act unless an exception in section 2(c)(2)(D)(ii) applies.[273] Accordingly, the Commission preliminarily believes that a fully paid, open CTX is subject to the Act as described in section 2(c)(2)(D)(iii) and the comprehensive regulatory framework applicable to futures contracts during the period such fully paid, open CTX is only recorded on an internal book-entry of the exchange, prior to actual delivery.[274] The statutory construction of section 2(c)(2)(D) mandates this result by providing that the subparagraph applies to the agreements, contracts, and transactions described in section 2(c)(2)(D)(i), ''*[e]xcept as provided in clause (ii)*'' of section 2(c)(2)(D).[275]

The *Monex* court summarized the point succinctly: the ''Dodd-Frank [Act] expanded the CEA to close the so-called *Zelener* loophole [. . .] because these transactions mimic conventional futures trades long regulated by the CFTC. On the other hand, sales where customers obtain meaningful control or possession of commodities, *i.e.,* when actual delivery occurs, do *not* mimic futures trading and are therefore exempt from registration and related CEA requirements.'' [276] Said another way, the actual delivery exception identifies those transactions that cease to exhibit the characteristics of the rolling spot contracts at issue in *Zelener.*[277] Because of the statutory construction of section 2(c)(2)(D)(i) and the fact that the proceeds of the fully paid, open CTX are constructively, but not actually, delivered through an internal book-entry, and thus would continue to exhibit the characteristics of the rolling spot contracts at issue in *Zelener,* the Commission preliminarily believes that Congress intended the retail purchaser of that fully paid, open CTX to continue benefitting from the full array of regulatory requirements applicable to on-exchange futures, unless actual delivery (or another exception) occurs.[278]

The Commission seeks comment on this preliminary interpretation.[279]

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[266] CEA 2(c)(2)(D)(ii)(III)(aa), 7 U.S.C. 2(c)(2)(D)(ii)(III)(aa).

[267] *See* Section III.B, *supra; see also Monex,* 931 F.3d 966.

[268] *See Monex* 931 F.3d, at 974.

[269] *See, e.g., SEC* v. *Coinbase,* 726 F. Supp. 3d 260, 271 (S.D.N.Y. Mar. 27, 2024) (explaining that ''[c]ritically important to a [crypto asset] owner's exercise of control over her [crypto assets] are the 'public key' and 'private key' associated with a crypto asset, which keys permit the user to effectuate transactions on the associated blockchain. Owners typically store these keys on a piece of hardware or software known as a 'crypto wallet.' The wallets, in turn, use both a public key and a private key. The public key is colloquially known as the user's blockchain 'address' and can be freely shared with others. The private key is analogous to a password and confers the ability to transfer a [crypto asset].'').

[270] *See generally* POSA Liquid Staking Paper, *supra* note 67; *see also* U.S. Securities and Exchange Commission, *Statement on Certain Protocol Staking Activities* (May 29, 2025), available at *https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925.*

[271] CEA 2(c)(2)(D)(ii)(III)(bb), 7 U.S.C. 2(c)(2)(D)(ii)(III)(bb).

[272] CEA 2(c)(2)(D)(ii)(III)(aa), 7 U.S.C. 2(c)(2)(D)(ii)(III)(aa).

[273] *See* CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i) (''*Except as provided in clause (ii),* this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is . . .'') (emphasis added).

[274] This Notice provides the Commission's preliminary interpretation of the term ''actual delivery'' solely as it is used in CEA 2(c)(2)(D) and in the context of CTXs. It does not address, and the Commission does not express any view regarding, (i) the means by which delivery may be effected within the context of the Federal securities laws, including with respect to book-entry arrangements involving securities held through SEC-registered intermediaries such as broker-dealers and clearing agencies, or (ii) the meaning of the term ''delivery'' as it is used within the Federal securities laws, including with respect to the ''clearing agency'' definition set forth in 15 U.S.C. 78c(a)(23) (providing that the term ''clearing agency'' means ''any person who [ ] (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical *delivery* of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical *delivery* of securities certificates[.]'') (emphasis added).

[275] CEA 2(c)(2)(D)(i)–(ii), 7 U.S.C. 2(c)(2)(D)(i)–(ii).

[276] *Monex,* at 14 (emphasis added).

[277] *See Zelener,* 373 F.3d at 868–69.

[278] *Id.*

[279] The Commission notes that following the actual delivery of a crypto asset purchased pursuant

Continued

IV. Questions and Request for Comment on Regulation CTX

A. General Request for Comment

The Commission sets forth specific questions regarding the proposed Regulation CTX below, and encourages responses from all interested parties, including state-regulated crypto asset exchanges, DCMs, FCMs, DCOs, financial institutions, technology firms, trade associations, retail and institutional investors, and other market participants with experience in or knowledge of crypto asset markets. The Commission also solicits any relevant comments not specifically responsive to the questions herein. Comments received in response to this Notice will inform the Commission's consideration of whether and how to proceed with rulemaking concerning 2(c)(2)(D) transactions and CTXs specifically.

B. Scope and Meaning of ''Offer'' Within Section 2(c)(2)(D)(i)

i. The Commission solicits comment on all aspects of its preliminary interpretation set forth in Section III.A, *supra,* of the term ''offer'' in section 2(c)(2)(D)(i). Would the Commission's preliminary interpretation of ''offer'' provide market participants who elect to offer or otherwise conduct business in CTXs the opportunity to do so in a manner subject to Commission regulation?

ii. Would the Commission's preliminary interpretation of ''offer'' provide a commercially viable avenue for an exchange to elect to not offer CTXs and thereby continue to operate under the state-level regulatory framework described in Section I.A, *supra*?

iii. What novel mechanisms of offering leverage, margin, or financing that may exist in crypto asset markets should the Commission consider with respect to this Notice? [280] For example, could a covered offer include the facilitation of access to onchain ''vaults'' via the same exchange interface in which retail customers may purchase crypto assets?

C. Scope and Meaning of ''Actual Delivery''

i. The Commission solicits comment on all aspects of its preliminary interpretation set forth in Sections III.B and C, *supra,* of the term ''actual delivery'' as used in section 2(c)(2)(D)(ii).

ii. The Commission preliminarily understands that many onchain trading protocols may settle transactions in a manner that results in actual delivery. In other words, the Commission preliminarily understands transactions executed via onchain trading protocols typically result in a purchaser obtaining possession and control of the purchased crypto asset in a manner that satisfies the Commission's preliminary interpretation of ''actual delivery'' set forth in Sections III.B and C, *supra.*[281] The Commission solicits comment on this preliminary understanding. The Commission also notes that the controlling case law distinguishes between the existence of a lien or security interest and meaningful possession and control, such that actual delivery may occur where a lien or security interest remains outstanding.[282] The Commission also solicits comment on this distinction.

iii. The Commission solicits comment on any unique technological or other properties of crypto assets or blockchain technologies that the Commission should consider with respect to its interpretation of ''actual delivery'' in the context of CTXs. As discussed in Section III.C, *supra,* such properties may include the conferral of certain governance rights or an entitlement to participate in staking.[283]

V. Regulation CAM: A Purpose-Built Regulatory Framework for CTXs

A. Overview of Proposed Regulation CAM

As discussed generally throughout this Notice and in greater detail in Section II.C, *supra,* the Commission preliminarily believes that a purpose-built regulatory framework for exchanges and other Commission-registered intermediaries that deal in CTXs would effectuate the objectives of the Act, comport with the statutory construction and purposes of section 2(c)(2)(D), and unleash innovation in the new frontier of finance. The Commission accordingly sets forth in this Section V certain preliminary understandings concerning the proposed Regulation CAM, which includes details concerning a preliminary regulatory framework (Section V herein, the ''CAM Proposal'') tailored to the commercial realities of, and risks posed by, exchanges that deal in CTXs. The Commission preliminarily believes that such exchanges could satisfy their statutory obligations under the Act and obtain designation as a Commission-registered crypto asset market (a ''CAM''), solely with respect to dealings in CTXs, by complying with the regulatory obligations contemplated by the CAM Proposal, *infra.*

The CAM Proposal proceeds by first providing in Section V.A.1, *infra,* an overview of the different manners in which an exchange offering CTXs could structure its corporate family with respect to Commission-registered intermediaries that are required under the CAM Proposal. In Section V.A.2, *infra,* the Commission provides its preliminary understanding of a typical CTX structure and lifecycle, which informed the CAM Proposal.

In Section V.B, *infra,* the Commission provides its preliminary understanding of how the regulatory regime applicable to traditional DCMs could be modified to accommodate the commercial realities of, and risks posed by, CTXs. Sections V.C and V.D, *infra,* provide an overview of the manners in which leverage, margin, or financing may be permissibly extended to retail customers under a margin regime that accommodates the structure of, and risks posed by, CTXs. Sections V.E and

to a CTX, the transaction is excepted from section 2(c)(2)(D)(i), and the Commission no longer has jurisdiction with respect to such asset, aside from its anti-fraud and anti-manipulation authority.

[280] *See* SEC Commissioner Hester M. Peirce, *Headstands and Summervaults: A Statement on Crypto Vaults and Lending Strategies* (July 22, 2026), available at *https://www.sec.gov/newsroom/speeches-statements/peirce-statement-crypto-vaults-lending-strategies-072226.* Vaults facilitate asset deployment by using smart contracts to allocate user assets to various yield-generating activities, including staking and lending. Vaults have attracted recent attention as a tool for facilitating disintermediated credit and leverage arrangements.

[281] The Commission notes its preliminary understanding that crypto assets purchased through onchain trading protocols are typically delivered directly to the purchaser's digital wallet, as opposed to an account or custodial relationship with an intermediary via an internal book-entry. *See* U.S. Department of the Treasury, *Illicit Finance Risk Assessment of Decentralized Finance* at 6, n.15, 28 (Apr. 2023), available at *https://home.treasury.gov/system/files/136/DeFi-Risk-Full-Review.pdf.*

[282] *Monex,* at 15 (''even if the commodity serves as collateral, there is no reason why the buyer cannot control it [pursuant to actual delivery thereof]. In many financing contexts, some degree of buyer possession or control is commonplace.''). For example, the Commission preliminarily understands that certain onchain transactions may result in actual delivery despite a lien or security interest in the purchased assets remaining outstanding, such as where the rules of an onchain protocol provide for the free use in commerce of a crypto asset purchased on a margined basis, subject to the purchased crypto asset, or collateral securing it, being liquidated and/or destroyed (*i.e.,* ''burned'') if the margin collateral securing the purchase falls below a certain threshold.

[283] *See generally* POSA Liquid Staking Paper, *supra* note 67; *see also* U.S. Securities and Exchange Commission, *Statement on Certain Protocol Staking Activities* (May 29, 2025), available at *https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925.*

V.F, *infra,* set forth a contemplated FCM regime and contemplated DCO regime, respectively, that detail the requirements applicable to such intermediaries under the CAM Proposal.

Section V.G, *infra,* sets forth the Commission's preliminary thoughts on how the proposed Regulation CAM would address issues that may arise in connection with the integrated structures that are previewed directly below in Section V.A.1, *infra.* The CAM Proposal concludes with a discussion on exemptions from registration as a CAM in Section V.H, *infra.*

Throughout the CAM Proposal, the Commission solicits comment on specific questions and also invites any other relevant input from market participants on issues related to the CAM Proposal that are not specifically addressed herein.

1. CAM Corporate Structures

As an initial matter, the Commission sets forth below its preliminary understanding of the different ways that a designated board of trade offering or otherwise dealing in CTXs could structure its corporate family. Unlike the intermediary structures typical of the firms that are subject to the futures regulatory regime under the Act and the Commission's regulations promulgated thereunder, the Commission preliminarily understands that firms dealing in crypto asset transactions typically employ integrated infrastructures to facilitate the listing, trading, settlement, and custody of crypto assets and transactions therein. Market participants have noted, and the Commission preliminarily believes, that retail customers would benefit if crypto asset trading facilities were allowed under the CAM Proposal to continue operating under certain integrated models around which crypto asset markets have historically formed.[284] The Commission also preliminarily believes that integrated models may, under certain circumstances, deliver superior outcomes for retail customers, regulators, and the national public interest in the transactions subject to the Act by fostering greater transparency, enhancing capital efficiency, reducing fees, and facilitating market resiliency.[285] The potential issues surrounding the contemplated regulatory approach to such integrated structures are discussed further in Sections V.G. *infra.* As set forth in Appendix A, the CAM Proposal accordingly contemplates the ability of a CAM to also register as an FCM and/or DCO, or permitting the affiliation between a CAM and an FCM and/or DCO.

As discussed in greater detail in Sections V.A.1.b and V.E, *infra,* the CAM Proposal preliminarily contemplates the substantial modification of the regulatory obligations applicable to FCMs dealing in CTXs in a similar manner to those modifications applicable to the Commission's DCM regulatory regime. The Commission is exploring whether those modifications would be best suited to a subcategory of FCM registration and solicits comment on all related issues. Likewise, the Commission is also considering how to best implement the substantial modifications to the Commission's DCO regulatory framework that are discussed in greater detail in Sections V.A.1.c and V.F, *infra.*

a. The CAM Entity and the CAM Core Principles

The CAM Proposal contemplates a tailored subcategory of DCM designation for trading facilities that only list CTXs. Section 5 of the Act governs the designation and operation of boards of trade as contract markets, including CAMs under the proposed Regulation CAM.[286] Under the CAM Proposal, an exchange that only offers CTXs could elect to obtain and maintain designation as a subcategory of Commission-registered DCM by complying with a tailored set of regulations (the ''CAM Core Principles'') that implement the statutory DCM Core Principles contained in section 5.[287] The CAM Proposal would thus operationalize the on-exchange requirement by providing that the offer, entry, execution, confirmation of execution, conduct of any business for the purpose of soliciting any order, and other dealings[288] in CTXs may be conducted on or subject to the rules of a CAM that, at designation, and continuously thereafter, complies with the statutory DCM Core Principles and the CAM Core Principles that the Commission would, under the proposed Regulation CAM, promulgate thereunder.

The Commission preliminarily believes that other market participants may wish to include CTXs in a broader range of Commission-regulated commodity derivatives pursuant to their current registration as a DCM. Accordingly, and as previewed in Section V.A.1, *supra,* the CAM Proposal is therefore intended, to the extent consistent with the Federal commodity laws, to allow trading facilities to choose to either register as a CAM or DCM.[289]

b. FCM Intermediation and Permitted Depositories: the FCM CTX Regime

The Act attaches status as an FCM, and the comprehensive FCM regulatory regime, to persons intermediating CTXs in the same manner and under the same circumstances as a person that intermediates futures contracts.[290] The regulatory protections under the FCM regulatory regime are fundamental to the Act's customer protection framework,[291] and, accordingly, the

[284] Coinbase Letter, *supra* note 19, at 2.

[285] *See, e.g., Conflicts and Affiliations,* 91 FR 50926, 50927 (Aug. 6, 2026) (''Conflicts and Affiliations NPRM''), providing that the ''Commission preliminarily believes that [an affiliated] market structure [in which a DCM and DCO share common ownership] may provide benefits to the derivatives markets and market participants. In this regard, the Commission believes that facilitating market structure innovation and competition, subject to appropriate safeguards, advances the Commission's mission of promoting the integrity, resilience, and vibrancy of the U.S. derivatives markets.'' The Conflicts and Affiliations NPRM also discusses conflicts of interest that may arise in connection with integrated structures, as well as the contemplated establishment of additional regulatory obligations that are intended to mitigate related risks. *See generally* Conflicts and Affiliations NPRM.

[286] *See generally* CEA 5(d), 7 U.S.C. 7(d). There are 23 statutory Core Principles for DCMs.

[287] The CAM Core Principles are discussed further in Section V.B, *infra.*

[288] CEA 4(a), 7 U.S.C. 6(a).

[289] The Commission preliminarily believes that such market participants, who may have invested significantly to comply with the current regulatory structure, should have the opportunity to do so without undue costs from additional compliance obligations stemming from the CAM Proposal.

[290] *See* CEA 1a(28)(A), 7 U.S.C. 1a(28)(A), *supra* note 194 (providing that the term ''futures commission merchant'' means an individual, association, partnership, corporation, or trust (i) that—(I) is—(aa) engaged in soliciting or in accepting orders for— [. . .] (DD) any agreement, contract, or transaction described in [. . .] section 2(c)(2)(D)(i) of this title; and (II) in or in connection with the activities described in items (aa) or (bb) of subclause (I), accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom[.]'').

[291] *See, e.g., Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,* 77 FR 67866 (Nov. 14, 2012) (''The protection of customers—and the safeguarding of money, securities or other property deposited by customers with an FCM—is a fundamental component of the Commission's disclosure and financial responsibility framework.''). Requiring FCM intermediation of CTXs also ensures that customer-facing activity on a CAM would be subject to the Bank Secrecy Act's (''BSA'') applicable anti-money laundering, customer identification, and suspicious activity reporting requirements, among other related legal and regulatory obligations that the BSA and Commission regulations impose on FCMs. *See, e.g.,* 17 CFR 42.2. These legal and regulatory obligations support the detection and prevention of money laundering and other illicit financial activity, facilitate regulatory oversight of such FCMs' compliance controls, and require the provision of relevant information to law enforcement authorities. *See Protection of Clearing*

Continued

proposed Regulation CAM contemplates the required FCM intermediation of all CTXs. Proposed Regulation CAM further contemplates (i) the modification of certain of the regulatory requirements of the FCM regime to align with the commercial realities of, and risks posed by, an FCM's regulated activities in CTXs (the ''FCM CTX regime'') and (ii) the permitted dual registration of a CAM as an FCM and/or the integration of a CAM with an affiliated FCM entity (''CAM–FCM integration'').

The Commission provides additional relevant information and requests input on each of the FCM CTX regime and CAM–FCM integration *infra* in Sections V.E and V.G.1, respectively.

c. Clearing and Settling: the DCO CTX Regime

DCM Core Principle 11 and the Commission's regulations require the clearance and settlement of transactions executed on a DCM through a DCO. Market participants have noted the structural differences between a traditional futures contract and a typical CTX,[292] the latter of which may be comprised of both a transaction resembling a cash-market purchase of a crypto asset (the ''spot CTX leg'') and a separate agreement pursuant to which such retail customer obtains financing. The CAM Proposal accordingly contemplates (i) the modification of the Commission's DCO regulatory regime to align with a typical CTX structure and the risks posed by the clearance and settlement thereof (the ''DCO CTX regime'') and (ii) the permitted dual registration of a CAM as a DCO and/or the integration of a CAM with an affiliated DCO entity (''CAM–DCO integration'').

The Commission provides additional relevant information and requests input on each of the DCO CTX regime and CAM–DCO integration *infra* in Sections V.F and V.G.2, respectively.

d. Eligible Leverage Providers

The CAM Proposal contemplates the offer of leverage, margin, or financing to retail customers in connection with CTXs to be permissibly available solely pursuant to arrangements (''leverage arrangements'') administered by an FCM or a qualified banking institution [293] which is sponsored by an FCM (a ''sponsored leverage provider'' or ''sponsored qualified banking institution,'' and collectively with any FCM, ''eligible leverage providers''). The CAM Core Principles would require the enumeration of each leverage arrangement in the CAM's rulebook.[294] In order to allow a leverage arrangement administered by a qualified banking institution to be enumerated in the CAM's rulebook, and thus made available to customers of a CAM, the sponsoring FCM would be required to obtain a written representation from the sponsored qualified banking institution that it will comply with the regulations applicable to FCMs related to the administration of leverage arrangements.[295]

Pursuant to the general terms and conditions of a leverage arrangement, retail customers could obtain financing (''financing'') from the eligible leverage provider that administers the applicable leverage arrangement. The Commission preliminarily understands that such financing would be extended pursuant to bilateral financing agreements with individualized terms. Such financing would be extended for the purpose of purchasing a crypto asset listed on the CAM (the resulting position consisting of the purchased crypto asset, any margin collateral, and outstanding financing, a ''leveraged position''). The Commission provides additional relevant information and requests input with respect to the regulatory requirements applicable to (i) eligible leverage providers in Section V.C, *infra;* and (ii) leverage arrangements, leveraged positions, and the regulation thereof under a contemplated fit-for-purpose margin regime in Section V.D, *infra.*

2. Overview of CTX Transaction Structures in the Proposed Regulation CAM

The CAM Proposal is designed to be sufficiently flexible to accommodate varied CTX transaction structures. However, a core motivation for the CAM Proposal is to address certain differences between a typical CTX and a typical futures contract. Market participants have noted that these differences pose significant challenges to compliance with certain regulatory requirements, and that these differences have frustrated the on-exchange requirement's purpose of channeling CTXs onto and through Commission-registered entities.[296] The Commission's understanding of a typical CTX structure is set forth below and the Commission solicits comment on all aspects of it, including any alternative CTX structures that the Commission should consider in connection with any rulemaking.

Under the CAM Proposal, a CAM would list crypto assets on its trading facilities.[297] In order for a CTX on a listed crypto asset to be subject to comprehensive federal regulation by the Commission, a covered offer must be made to the retail customer that executes the CTX. One manner in which such a covered offer may be made is pursuant to the enumeration of a leverage arrangement that provides the manners in which the retail customer may enter a bilateral financing agreement with an eligible leverage provider.[298] A retail customer could either (i) elect to execute a fully paid, open CTX after declining to obtain financing pursuant to a leverage arrangement or (ii) elect to execute a CTX with a portion of the purchase price extended under a financing agreement pursuant to a leverage arrangement. The Commission preliminarily understands that the execution of a typical CTX would result in the retail customer receiving the title to the purchased crypto asset through a book-entry on the CAM's internal records. Alternatively, a retail customer could elect to take actual delivery of the purchased crypto asset under the circumstances described in Sections III.B and C, *supra.*

As described above, if a retail customer elects to execute a CTX on a leveraged basis, they would do so by obtaining financing pursuant to bilateral financing agreement with an eligible leverage provider that administers a leverage arrangement. The financing

Member Funds Held by Derivatives Clearing Organizations, 89 FR 286, 304–306; Commissioner Christy Goldsmith Romero, *Dissenting Statement on Rushed Rulemaking Related to FTX's Direct-to-Retail Market Structure* (Dec. 18, 2023), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement121823c.*

[292] Coinbase Letter, *supra* note 19, at 2.

[293] As used herein, the Commission preliminarily understands the term ''qualified banking institution'' to mean a depository institution, as defined in 12 U.S.C. 1813(b).

[294] In order to make a leverage arrangement available to retail customers of a CAM, an FCM would be required to comply with regulations promulgated in conjunction with the CAM Proposal and pertaining to customer protection issues specifically applicable to the administration of a leverage arrangement and any extension of financing made thereunder, including around customer disclosures, initial margin and maintenance margin, and liquidation procedures.

[295] *Id.*

[296] *See* Coinbase Letter *supra* note 19 (stating that ''crypto asset markets have several key differences from futures markets''); *see also* Letter from Kraken to Christopher J. Kirkpatrick, Sec'y, CFTC, at 3 (Aug. 18, 2025) (''as the Commission considers the applicability of its existing authority and potential rulemakings and guidance to industry, Kraken encourages the staff to work with industry stakeholders to study the unique technical aspects of operating a spot digital asset exchange.'').

[297] Unlike a typical futures contract listed on a DCM, the asset listed for trading on a CAM is a commodity itself (*i.e.,* a crypto asset) rather than a contract that settles by reference to that commodity.

[298] *See supra* Sections IV.B and IV.C for further discussion of the actual delivery exception.

would be used to purchase a crypto asset in the spot CTX leg. The intermediating FCM would custody the purchased crypto asset in accordance with the requirements of the Act and the Commission's regulations thereunder.[299] In connection with the resulting leveraged position, the applicable leverage provider may obtain a security interest in either the customer's account containing the CTX proceeds (*i.e.,* the purchased crypto assets) [300] or other collateral. The leveraged position would be subject to liquidation if the retail customer's margin falls below a threshold provided in the leverage arrangement, as modified by the terms and conditions of the applicable bilateral financing agreement and subject to the CAM margin regime that is described in Section V.D, *infra.*[301]

B. CAM Core Principles

In order to obtain and maintain designation as a contract market with the CFTC, a DCM must comply with statutory DCM Core Principles that are set forth in the CEA,[302] as well as applicable CFTC rules and regulations promulgated thereunder.[303] The CAM Proposal is designed to accommodate the differences between the commercial realities of, and risks posed by, CTXs and standard futures contracts. In furtherance of that objective, the CAM Proposal contemplates modifications to the Commission's regulatory framework promulgated under the statutory DCM Core Principles, while ensuring that the protections and public trust afforded by the DCM Core Principles continue to be met.[304]

The Commission sets forth below its preliminary understanding of how certain regulatory obligations under the DCM Core Principles might be modified and solicits comment generally, as well as on the specific questions below.

1. Listing Standards, Susceptibility To Manipulation, and Prevention of Market Disruptions

DCM Core Principle 3 prohibits a DCM from listing contracts that are readily susceptible to manipulation.[305] A DCM may elect to list a new derivative contract for trading either by ''self-certifying'' to the Commission that the contract complies with the CEA and Commission regulations promulgated thereunder,[306] or by seeking Commission approval to list the contract.[307] In either case, the DCM must submit the contract's terms and conditions, and other prescribed information relating to the contract, to the Commission prior to listing.[308] With respect to DCM Core Principle 3, the Commission has adopted guidance in appendix C to part 38 (the ''Appendix C Guidance'') [309] that outlines certain relevant considerations for a DCM both when designing a derivative contract and providing supporting documentation and data in connection with the submission of the listing to the Commission.[310] If the CAM Proposal were adopted, the Commission preliminarily believes that it would be prudent to provide similar guidance for CAMs.

i. The Commission seeks comment on certain factors that it preliminarily understands may inform whether a crypto asset underlying a CTX is readily susceptible to manipulation: (i) whether there is an adequate economically available supply or the current circulating supply of the crypto asset that is not subject to restrictions on transfer, as well as other liquidity dynamics; (ii) details regarding economic, operational, and governance control of the blockchain system(s) to which the crypto asset relates; (iii) the nature of the source code of the blockchain system(s) to which the crypto asset relates, including whether the source code is open source and publicly available; and (iv) the reliability, resilience, and security of the blockchain system(s) to which the crypto asset relates.[311] In addition to these factors, the Commission seeks public input regarding other factors that the Commission should consider.

ii. The Commission preliminarily believes that compliance with Core Principle 3 may require a CAM to make certain disclosures (''crypto asset disclosures'') demonstrating that a listed crypto asset is not susceptible to manipulation. These crypto asset disclosures would not be intended to serve the purpose of issuer-style disclosures that allow investors to assess the merit of a CTX or the underlying crypto asset.[312] The required contents of the crypto asset disclosures would instead reflect the novel characteristics of crypto assets that could lead to manipulation risks, particularly those that may not be present where a derivative contract has a more traditional commodity underlier. The Commission seeks comment on all aspects of the contemplated crypto asset disclosures.

iii. The Commission seeks comment on whether the existing part 40 process, used for, among other things, the listing of traditional and crypto asset futures products, is sufficient for listing CTXs, or whether a modified listing mechanism is necessary or preferable. What modifications, if any, would be required? [313]

iv. Core Principle 4 prescribes certain measures a DCM must take to prevent manipulation and price distortions of listed contracts, including the real-time monitoring of trading and the ability to comprehensively and accurately reconstruct trading.[314] In this regard, the Commission seeks comment on how it should consider whether and to what extent a CAM has the capacity to surveil the trading, both in the CTX market and the underlying spot markets. For example, to what extent should a CAM integrate pricing and trading information from other trading facilities, including those that may be located in other jurisdictions, and which blockchain technologies or tools (*e.g.,* pricing oracles) should be permitted to be utilized in such integration? [315]

v. The Commission solicits comment regarding how the CAM Proposal

[299] This Notice provides additional information and specific requests for comment pertaining to an FCM's custody of customer funds in Section V.E, *infra,* including with respect to the type of account in which such assets are held (*e.g.,* a Section 4d-compliant segregated account or a delivery account).

[300] The Commission notes that the applicable leverage provider (*i.e.,* the customer's creditor) cannot, under the current FCM regulatory framework promulgated under the Act, have a security interest in the assets in an FCM's segregated account.

[301] For example, a sponsored qualified banking institution may have the power to direct the FCM (on behalf of the customer) to liquidate the leveraged position under such circumstances.

[302] *See generally* CEA 5(d), 7 U.S.C. 7(d). There are 23 statutory Core Principles for DCMs.

[303] CEA 5(d)(1)(A), 7 U.S.C. 7(d)(1)(A); 17 CFR part 38.

[304] *See, e.g., Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, supra* note 46, 75 FR at 63736 (''[T]herefore, although each DCM[ ] is a commercial enterprise, the fact that each entity has self-regulatory obligations means that each entity is not simply a corporation, but a corporation charged with the public trust.'').

[305] CEA 5(d)(3), 7 U.S.C. 7(d)(3); *see also* 17 CFR 38.200 through 38.201.

[306] CEA 5c(c)(1), 7 U.S.C. 7a–2(c)(1); *see also* 17 CFR 40.2.

[307] CEA 5c(c)(4) through (5), 7 U.S.C. 7a–2(c)(4) through (5); *see also* 17 CFR 40.3.

[308] *See generally* 17 CFR 40.2 and 40.3. Amendments to contract terms and conditions also must be submitted to the Commission in accordance with procedures set forth at CEA 5c(c), 7 U.S.C. 7a–2(c), and part 40 of the Commission's regulations.

[309] *Id.*

[310] *See Core Principles and Other Requirements for Designated Contract Markets,* 77 FR 36612 at 36632 (June 19, 2012).

[311] *See, e.g.,* a16z Letter, *supra* note 135.

[312] *Cf. Regulation Crypto Assets, supra* note 153.

[313] a16z Letter, *supra* note 135, at 6, 7.

[314] CEA 5(d)(4), 7 U.S.C. 7(d)(4).

[315] OKX Letter, *supra* note 123, at 4.

should account for market disruptions that are idiosyncratic to crypto asset markets. For example, should the CAM Core Principles specifically address congestion or downtime of a blockchain system to which a listed crypto asset relates, blockchain system events such as forks and other blockchain system reorganizations, or pricing oracle failures?

vi. The Commission has adopted, in appendix B to part 38,[316] guidance and acceptable practices for DCMs to consider with respect to certain of the Core Principles [317] (the ''Appendix B Guidance''). The Appendix B Guidance provides that in order to prevent manipulation, price distortion, and disruptions, a DCM should conduct market surveillance and monitor trading activity. The Commission notes that surveillance and trade monitoring for CTXs may incorporate innovative methods and technologies, including blockchain technologies. The Commission solicits comment on how the CAM Proposal should consider market surveillance and trade monitoring in CTX markets.

2. Position Limits and Accountability Levels

DCM Core Principle 5 requires the establishment of position limits and accountability levels tailored to the characteristics of the particular asset at issue.[318] The Commission seeks comment on appropriate position limits and accountability levels for CTXs. Should the Commission set position limits for any particular crypto assets, or classes thereof, as it has for certain agricultural, metals, and energy contracts? If not, should the CAM Proposal provide guidance for how CAMs should set position limits and accountability levels? If so, how, if at all, should that guidance differ from how DCMs set limits and levels for traditional asset classes today?

3. Trade Information Reporting and Recordkeeping

DCM Core Principles 8, 10, and 18 require DCMs to capture, verify, retain,[319] and publish [320] information related to trading activity and the DCM's business operations.[321] For example, DCM Core Principle 8 requires that DCMs make available to the public accurate information on settlement prices, volume, and opening and closing ranges for actively traded contracts,[322] and DCM Core Principle 10 requires that DCMs maintain rules and procedures regarding the recording and safe storage of all identifying trade information in a manner that enables the prevention of customer and market abuses.[323]

i. The Commission seeks comment on how blockchain technologies may provide innovative avenues for CAMs to comply with DCM Core Principles 8, 10, and 18.[324] For example, certain markets in crypto assets may be inherently more transparent than traditional derivatives markets because of the public and transparent nature of public blockchains systems, which may make available trade information and data. Under what circumstances could such data be sufficient to monitor trading in crypto asset markets?

ii. What challenges, if any, do the requirements of DCM Core Principles 8, 10, and 18 present with respect to markets in CTXs that may not be present in the traditional derivatives markets? What modifications, if any, to the current regulatory framework could address these challenges?

iii. The Commission seeks comment on whether, if a CAM incorporates public blockchain data, that CAM also should have policies and procedures for financial reporting, valuation, and reconciliation of internal ledgers to public blockchain systems as a condition for compliance with DCM Core Principles 8, 10, and 18. How should such reconciliation obligations be structured to address the recordkeeping and reporting challenges that may be idiosyncratic to crypto asset markets? [325]

iv. How should the Commission consider the 24/7 nature of certain crypto asset markets in relation to Core Principle obligations?

4. Trade Execution

Core Principle 9 requires a DCM to provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process in the centralized market of the board of trade.[326]

i. How, if at all, do the typical execution methods in crypto asset markets differ from markets in traditional assets? Which of those execution methods, if any, are incompatible with the DCM regulatory framework which requires an order book? Are there any clarifications or guidance regarding Core Principle 9 that the Commission should consider in the context of CTXs and crypto asset markets?

ii. Core Principle 9 allows for certain transactions to occur subject to the rules of a DCM rather than being executed on the DCM's centralized market (*e.g.,* transfer trades, exchange for related positions, block trades).[327] Are there comparable execution methods in crypto asset markets? Are any regulatory changes necessary?

iii. Should the Commission confirm that a CAM (or DCM) may use a blockchain system as its matching and execution layer or otherwise incorporate blockchain technologies for such purposes? If so, what compliance procedures should a CAM have in place? Please describe the measures a CAM or DCM would need to take to ensure compliance if it were to use a blockchain system as its matching and execution layer or otherwise incorporate blockchain technologies for such purposes.

5. Operational Risk and System Safeguards

Core Principle 20 requires a DCM to maintain a program of risk analysis and oversight to identify and minimize operational risk, establish and maintain emergency procedures and other backup resources, and periodically test the sufficiency of those backup resources.[328] The Commission's regulations generally contemplate traditional financial and technological infrastructure rather than onchain infrastructure, including public and private blockchains that are often associated with crypto asset markets. Different operational risks—and, therefore, required systems safeguards—may arise in this regard. For example, open source software underlying many blockchain systems may have greater cybersecurity vulnerabilities as compared to the typically closed-source software more commonly utilized in traditional financial infrastructure.

The Commission seeks comment on the following questions, in addition to

[316] 17 CFR part 38, appendix B (the ''Appendix B Guidance'').

[317] *See* 17 CFR part 38, appendix B. Guidance set forth in the Appendix B Guidance states that a DCM may use the Appendix C Guidance as guidance in meeting DCM Core Principle 3 for both new product listings and existing listed contracts.

[318] CEA 5(d)(5), 7 U.S.C. 7(d)(5).

[319] CEA 5(d)(10), 7 U.S.C. 7(d)(10).

[320] CEA 5(d)(8), 7 U.S.C. 7(d)(8).

[321] CEA 5(d)(18), 7 U.S.C. 7(d)(18).

[322] CEA 5(d)(8), 7 U.S.C. 7(d)(8).

[323] CEA 5(d)(10), 7 U.S.C. 7(d)(10).

[324] For example, onchain records of settlement of transactions may be immutably stored on the relevant public blockchain in a manner that protects against alteration or loss, and such records may be retained indefinitely by the nature of blockchain technology. Those records may also be publicly available in a manner that would obviate the need for a CAM to otherwise publish such information.

[325] OKX Letter, *supra* note 123, at 5.

[326] CEA 5(d)(9), 7 U.S.C. 7(d)(9).

[327] *Id.*

[328] CEA 5(d)(20), 7 U.S.C. 7(d)(20).

any other comments concerning operational risks or related systems safeguards that may be relevant to the proposed Regulation CAM.

i. What operational risks and related systems safeguards requirements should the CAM Proposal consider that may be idiosyncratic to crypto asset markets and the use of innovative technologies, such as blockchain technologies?

ii. What specific operational, technical, and institutional capabilities should a CAM be required to demonstrate to address any idiosyncratic operational processes and risks typical of markets in crypto assets? [329]

iii. How should the Commission consider innovative applications of blockchain technologies, including smart contracts or similar programmatic systems, in assessing appropriate operational risk mitigation and management?

iv. How should a CAM account for governance, maintenance, and other operational risks with respect to the blockchain systems over which the CAM may have no or limited control? What contingency and business-continuity measures should the Commission require?

v. Market participants have observed that the operational resilience of a blockchain system may scale with the number, independence and diversity of the validators,[330] and participants in the network.[331] Should the Commission consider validator/operator count, independence, and geographic and client diversity as relevant inputs into a CAM's operational risk assessment?

vi. Should the Commission treat a CAM's operation of its own node or validation infrastructure as a mitigant of third-party operational risk? Are there circumstances in which the Commission should encourage or expect self-operation of critical infrastructure rather than reliance (even if partial) on third parties?

vii. If a CAM incorporates smart contract or similar programmatic systems that execute workflows without human intervention or discretion, how should the Commission evaluate the adequacy of a CAM's controls over such systems? Should the Commission require pre-deployment testing, formal verification, audit, or fail-safe mechanisms?

viii. Security of certain blockchain systems infrastructure may be achieved through a combination of cryptography and economic incentives. How should the Commission assess a CAM's reliance on cryptographic and economic incentive mechanisms, rather than, for example, contractual recourse, to ensure the integrity of functions the CAM performs?

ix. How should the Commission address the absence of any service-level agreement, guaranteed throughput, or negotiated pricing where a CAM relies on blockchain technologies or infrastructure it does not control? What disclosures, capacity planning, or contingency measures should a CAM maintain to address throughput constraints, fee volatility, and the inability to negotiate or guarantee network blockchain system performance?

6. Proof of Reserves

The Commission notes the current typical practice of crypto asset exchanges in maintaining customer property in omnibus accounts held for their customers' benefit.

i. The Commission solicits comment on all aspects of the risks arising from the typical commercial custodial practices by crypto asset exchanges.

ii. The Commission notes that certain market participants have implemented safeguards for segregated customer property whereby the custodian obtains an audit from a third-party auditing firm that attests that the crypto asset intermediary's assets in reserves are sufficient to cover all liabilities to its customers (colloquially referred to as ''proof of reserves''). The Commission solicits comment as to any proof of reserve practices that it should consider in conjunction with the CAM Proposal, including any practices that involve innovative applications of blockchain technologies.

C. Leverage Arrangements and Leveraged Positions Under the CAM Proposal

The CAM Proposal contemplates allowing retail customers to obtain financing extended by an eligible leverage provider in connection with CTXs pursuant to leverage arrangements enumerated, for example, in a CAM's rulebook. In this regard, DCM Core Principle 7 requires a DCM to provide accurate information regarding the terms and conditions of the DCM, as well as the rules, regulations, and mechanisms for executing transactions on or through the DCM's trading facilities.[332] A CAM's rulebook would describe the general terms and conditions on which an eligible leverage provider may extend financing, including, for example, purchase price, margin requirements, collateral, fees and financing charges, liquidation procedures, and customer disclosures. The leverage arrangement would also set forth the criteria the eligible leverage provider uses to determine individualized terms and conditions of any bilateral financing agreements extended pursuant to the leverage arrangement.

i. Should persons other than an FCM or a sponsored qualified banking institution be permitted to qualify as an eligible leverage provider? What qualifications should the Commission consider in this regard?

ii. The CAM Proposal contemplates that an FCM sponsor a qualified banking institution to offer leverage arrangements to the FCM's retail customers. As discussed above, the FCM would be required to obtain a written representation from the qualified banking institution that it will comply with certain regulations that would be applicable to FCMs related to the administration of leverage arrangements and offers or extension of bilateral financing made to retail customers pursuant to the terms and conditions of such leverage arrangements. The Commission seeks comment on this proposed requirement, as well any other input on the relationship between an FCM and a qualified banking institution that offers leverage arrangements.

iii. What financing arrangements structures, other than those described *supra,* should the Commission consider in relation to the CAM Proposal, if any?

iv. DCM Core Principle 2 requires a DCM to establish rules to prohibit

[329] *See, e.g.,* OKX Letter, *supra* note 123, at 4–5.

[330] The term ''validator'' means a person who operates a node on a blockchain system and in the course of doing so is selected according to the programmatic rules of the blockchain system to validate new blocks of data to, and update the state of, the blockchain system. In exchange for providing validation services, validators earn ''rewards'' of two types: (1) newly minted (or created) crypto assets that are programmatically distributed to the validator by the blockchain system in accordance with its underlying software protocol; and (2) a percentage of the transaction fees, paid in crypto assets, by parties who are seeking to add their transactions to the blockchain system. *See generally* SEC, *Statement on Certain Protocol Staking Activities, supra* note 270.

[331] Rebecca Rettig, Omid Malekan & Michael Mosier, *The Compatibility of Permissionless Networks and Financial Integrity: A Practical Guide for Financial Institutions* (Aug. 24, 2026), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7343938.*

[332] *See* CEA 5(d)(7), 7 U.S.C. 7(d)(7) (providing in part that a board of trade shall make available to market authorities, market participants, and the public accurate information concerning the terms and conditions of the contracts of the contract market; and the rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market). Other relevant Commission regulations include, for example, self-certification of rule amendments under 17 CFR 40.6 or Commission approval pursuant to 17 CFR 40.5.

abusive trade practices.[333] What practices or terms and conditions should be considered abusive in relation to the offer of financing pursuant to a leverage arrangement?

D. The CAM Margin Regime

The Commission is considering how to approach margin requirements under the CAM Proposal. For example, the Commission could extend the existing regime, under which the DCO generally is responsible for, among other things, setting initial and maintenance margin requirements, determining the types of assets eligible to be used as margin collateral (''eligible margin collateral'') and setting rules concerning the risk management of leveraged positions. Alternatively, the Commission could take a more prescriptive approach in setting requirements for margin and eligible margin collateral.

i. Would it be appropriate or advisable for the Commission to take a more prescriptive approach to margin requirements for CTXs? If so, what should those requirements be? What would the process be for the Commission to revise margin requirements, particularly in times of market volatility or stress? For example, would it be advisable for the Commission to delegate authority to NFA (as it does in the RFED space regarding margin levels) or to DCR?

ii. Market participants have noted that the differences between CTXs and futures contracts may render the traditional futures margin regime inapposite to commercial realities of, and risks posed by CTXs.[334] The Commission solicits comment on all aspects of the contemplated CAM margin regime, including alternative market and regulatory structures.

iii. The Commission seeks comment on the extent to which it should draw upon lessons learned from its supervision of crypto asset futures, including cash-settled, physically-settled, and perpetual products, in setting principles-based standards for margin requirements and clearing and operational parameters for CTXs under the CAM margin regime. Which aspects of the current margin regime might be appropriately applied to CTXs?

iv. What role should the Commission or any self-regulatory organizations have in establishing principles-based standards for determining the eligibility of specific crypto assets for use as margin collateral? Should individual eligible leverage providers or self-regulatory organizations be authorized to set their own eligibility criteria?

v. Should certain crypto assets or classes thereof be restricted from use as margin collateral? What criteria should the Commission consider in this regard? For example, should the Commission require that a crypto asset have a minimum level of capitalization and daily trading volume to demonstrate liquidity and stable pricing to absorb a sale in stressed markets?

vi. The Commission recognizes that blockchain technologies, including smart contracts, could enable innovative market functions such as continuous margining, auto-liquidation, and other programmatic risk management practices. The Commission requests comment on the benefits and risks of market participant use of such technologies, and regulatory structures that can provide confidence that the implementation of the technologies will effectively manage risks related to leveraged positions, consistent with DCM and DCO Core Principles.

vii. What other operational, credit, market, or other risk mitigants regarding leveraged positions extended under leverage arrangements and the contemplated CAM margin regime should the Commission consider with respect to the CAM Proposal?

viii. Should the Commission permit rehypothecation of customer crypto assets in margined transactions? If so, how can rehypothecation be limited to ensure effective protection of customer assets? Would such rehypothecation potentially result in an FCM failing to hold sufficient funds in segregation to meet its obligations to all customers? How can an FCM address this under-segregation? Does the Commission's part 190 regulations and the U.S. Bankruptcy Code present issues with respect to the rehypothecation of customer assets by an FCM?

ix. How should the Commission consider the custody and property segregation requirements for fully paid, open CTXs? For example, does the Commission's part 190 and the U.S. Bankruptcy Code present issues in the event of an FCM's insolvency if customer fully paid, open CTX positions are not held in customer segregated accounts under Commission regulations?

x. DCM Core Principle 6 requires a DCM to have rules that provide for the exercise of emergency authority, including to liquidate or transfer open positions, suspend or curtail trading, and require market participants to meet special margin requirements. For example, in the traditional futures markets, porting is a common practice. How would this apply for leveraged spot positions? Would there be any constraints that are related to the nature of the transaction? The Commission solicits comment on whether traditional DCM emergency powers and DCO liquidation authorities are adequate to administer the liquidation of leveraged positions contemplated under the CAM margin regime, or whether the contemplated CAM margin regime requires a different approach.[335]

E. FCM and IB Intermediation of CTX Orders

The CAM Proposal contemplates intermediation of CTXs by an FCM under the FCM CTX regime.

i. Under the FCM CTX regime, an FCM would be required to furnish to its retail customers certain disclosures regarding the risks of CTXs generally, as well as disclosures pertaining to each specific crypto asset that is the subject of a solicited transaction.[336] The Commission preliminarily believes that such disclosures would describe (i) the blockchain technologies underlying the crypto asset; (ii) the functionality and utility of the crypto asset; (iii) the governance and control of the crypto asset; (iv) the trading volume and volatility of the crypto asset; and (v) any material incentives or conflicts of interest that the FCM may have, among other matters. The Commission solicits comment on the form and substance of such disclosures.

ii. Under what circumstances, if any, should retail customers be able to trade CTXs on a CAM on a non-intermediated basis?

The Act and Commission regulations thereunder stipulate that an FCM must separately account for all futures customer funds[337] and segregate such

[333] CEA 5(d)(2), 7 U.S.C. 7(d)(2); *see also* 17 CFR 38.152.

[334] *See* Coinbase Letter, *supra* note 19, at 5.

[335] Bitnomial Letter, *supra* note 183, at Part II.

[336] *See* Section V.B.1, *supra.*

[337] 17 CFR 1.30 (providing that ''futures customer funds'' means all money, securities, and property received by a futures commission merchant or by a derivatives clearing organization from, for, or on behalf of, futures customers: (1) To margin, guarantee, or secure contracts for future delivery on or subject to the rules of a contract market or derivatives clearing organization, as the case may be, and all money accruing to such futures customers as the result of such contracts; and (2) In connection with a commodity option transaction on or subject to the rules of a contract market, or derivatives clearing organization, as the case may be: (i) To be used as a premium for the purchase of a commodity option transaction for a futures customer; (ii) As a premium payable to a futures customer; (iii) To guarantee or secure performance of a commodity option by a futures customer; or (iv) Representing accruals (including, for purchasers of a commodity option for which the full premium has been paid, the market value of such commodity option) to a futures customer. (3) Notwithstanding paragraphs (1) and (2) of this definition, the term futures customer funds shall exclude money, securities or property held to margin, guarantee or

funds as belonging to its customers.[338] The FCM must also perform due diligence on any locations where futures customer funds may be held. As discussed above, the Commission preliminarily understands that the typical market practice of crypto asset trading facilities may involve the exchange recording a retail customer's ownership interest in purchased crypto assets only through a book-entry on its internal ledgers. That exchange may in turn employ a custodian (which may be an affiliated entity) to custody the crypto assets.

i. What relief, if any, would be necessary from current regulatory obligations for FCMs under the CAM Proposal? The Commission specifically seeks comment on the existing FCM obligation to segregate customer funds and comply with the customer protection requirements under section 4d of the CEA, and whether modifications would be required to address the commercial realities of, and risks posed by, CTXs and/or the related custody of crypto assets.[339] What revisions, if any, to the Commission's part 190 rules would be required to address such commercial realities?

ii. The Commission preliminarily understands that if the proceeds of a CTX (*e.g.,* the underlying crypto asset bought pursuant to the CTX, or the funds used to sell a crypto asset pursuant to a CTX) are held in a segregated account that complies with the requirements of Section 4d of the Act that may be used to ''purchase, margin, guarantee, secure or settle the trades, contracts or commodity options'' of a retail customer, that account (and the funds held therein) is subject to the Commission's exclusive jurisdiction under section 2(a)(1)(A) of the Act.[340] The Commission seeks comment on this preliminary understanding.

iii. Should the Commission clarify how an FCM may use blockchain technologies to accept customer orders and funds and otherwise carry out its business? What innovative mechanisms for the acceptance of customer funds and order handling should the Commission consider in this context? What regulatory obligations of an FCM would pose issues with respect to the incorporation of blockchain technologies for use in these market functions?

iv. How should the Commission consider an FCM's obligations under Commission Regulations 1.20 (futures customer funds to be segregated and separately accounted for) and 1.49 (denomination of customer funds and location of depositories) in the context of the CAM Proposal, including specifically an FCM's obligation to hold customer funds at a permitted depository?

v. What conditions, if any, should apply with respect to the use of a custodian by an exchange to custody assets? How should those conditions differ, if at all, from those that apply to custodians in the traditional futures market?

vi. The Commission solicits comment on the appropriate role of introducing brokers (''IBs'') in CTXs and whether any modifications to IB regulations are necessary in the context of CTXs.[341]

vii. In addition to the Act and the Commission's regulations promulgated thereunder, FCMs are required to be members of a futures association registered under section 17 of the CEA. Currently, the only such futures association is the National Futures Association (''NFA''). The Commission solicits comment on whether NFA's FCM framework is compatible with the CAM Proposal and what changes, if any, would be necessary to make it compatible.

viii. Commission regulations impose a comprehensive risk management framework on FCMs.[342] The Commission solicits comment regarding whether this risk management framework is compatible with the CAM Proposal and any specific regulatory obligations it should consider amending.

ix. The Commission notes that, once registered, an FCM may engage in all lawful activity of an FCM. Should the Commission consider a limited-purpose FCM registration category for an FCM that desires to only intermediate CTXs? What additional risks, if any, are present where an FCM that intermediates CTXs also intermediates traditional futures transactions?

x. How should the Commission consider the disparate regulatory obligations under the contemplated FCM CTX regime in conjunction with an FCM's regulatory obligations under the current framework applicable to futures contracts? The Commission requests that commenters specifically identify such obligations and suggest how the Commission should approach them.

xi. Commission rules impose net capital requirements on FCMs.[343] How would the net capital rules be implicated by the CAM Proposal? Should the Commission consider any changes to the net capital regime? For example, would the Commission's RFED capital regime present a viable alternative? The Commission requests comment on all aspects of the FCM capital regime in the context of the CAM Proposal and requests that commenters specifically identify any aspects of the FCM capital regulations that may prove problematic and propose alternatives.

F. Clearing and Settling CTXs

Core Principle 11 requires a DCM to ensure the financial integrity of transactions in part through the clearing and settlement of transactions by a DCO.[344]

The Commission seeks comment on whether the regulatory framework applicable to DCOs is fit-for-purpose in light of the characteristics of, and risks posed by, CTXs. Which regulations may need to be amended, and how, in order to properly tailor that framework? Are there statutory or regulatory provisions for which exemption may be necessary? If so, are there conditions that should be applied to achieve the regulatory goals those provisions are designed to achieve? The Commission seeks comment on all aspects of the appropriate regulatory frameworks for both the clearing and settlement of CTXs, including with respect to the questions set forth below. The Commission requests that commenters identify specific regulatory requirements in this regard, as well as proposed alternatives.

1. Clearing and Settling the Spot CTX Leg

The Commission understands that the spot CTX leg may, under certain circumstances, settle on the internal books and records of a CAM in a manner that may substantially mitigate the counterparty performance risks or credit risks present in a traditional futures contract or that arise from

secure security futures products held in a securities account, and all money accruing as the result of such security futures products.).

[338] 17 CFR 1.20.

[339] Bitnomial Letter, *supra* note 183, at Part II. ''FCMs must segregate customer funds and comply with strict customer protection requirements under section 4d of the CEA.''

[340] *See* CEA 2(a)(1)(A), 7 U.S.C. 2(a)(1)(A) (providing that the ''Commission shall have exclusive jurisdiction [. . .] with respect to accounts [. . .] involving swaps or contracts of sale of a commodity for future delivery (including significant price discovery contracts), traded or executed on a contract market designated pursuant to section 7 of this title.'').

[341] Bitnomial Letter, *supra* note 183, at Part III (''IBs complement this structure by soliciting customer orders and coordinating with FCMs to ensure proper execution of delivery instructions and compliance with regulatory requirements.'').

[342] 17 CFR 1.73.

[343] 17 CFR 1.17.

[344] CEA 5(d)(11), 7 U.S.C. 7(d)(11).

delayed settlement. The Commission is interested in exploring whether, and if so how, any residual counterparty performance risk, credit risk, or legal risk associated with the spot CTX leg can most appropriately be addressed. Can such risks be appropriately addressed without a traditional clearing and settlement process, and instead by the regulatory frameworks applicable to other registered entities? The Commission solicits comment on the following topics.

i. The Commission preliminarily understands that market participants in spot crypto asset markets have sought to implement or have explored alternative clearing and settlement processes to facilitate capital efficiency or similar considerations. Please describe any clearing and settlement processes that the Commission should consider in relation to the spot CTX leg and the associated appropriate regulatory obligations for registered intermediaries. How can these arrangements meet regulatory goals under the CEA, including effective customer protection and risk management?

ii. How should the Commission consider the ways in which a DCO (which may be a dual-registered CAM or an affiliate entity of a CAM) may use blockchain technologies for any market functions related to clearing and settling the spot CTX leg under the CAM Proposal? Are there regulatory obligations that would need to be modified in light of the uses of blockchain technologies?

2. Clearing and Settling Leveraged Positions; Insolvency

i. The Commission seeks comment on whether a CAM could adequately ensure the financial integrity of leveraged positions under DCM Core Principle 11 by requiring a DCO (which may be a dual-registered CAM or an affiliate entity of a CAM) to substitute its credit for those of the counterparties to leveraged positions in a limited capacity. Specifically, could a limited guaranty address residual clearing and settlement risks, including the default of its members under certain circumstances? Would a limited guaranty adequately address the risks posed by leveraged positions on crypto assets contemplated by the CAM Proposal?

ii. If a limited guaranty were required, how would it interact with Core Principle B(ii)(I) of the CEA [345] and Regulation 39.11(a), which requires a DCO to have financial, operational, and managerial resources adequate to meet its financial obligations to its clearing members, notwithstanding a default by ''the clearing member creating the largest financial exposure for the [DCO] in extreme but plausible market conditions[?]'' [346]

iii. The Commission solicits input regarding whether there are circumstances pursuant to which mutualization of losses related to leveraged positions may be appropriate under the CAM Proposal.

iv. In what ways may a DCO arrange or provide, on a multilateral basis, for the settlement or netting of obligations resulting from agreements, contracts, or transactions executed by participants in a CAM? Would that be separate from settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity?

v. The Commission's part 190 rules and subchapter IV of chapter 7 of the Bankruptcy Code provide a framework for the treatment of customer property following a ''commodity broker'' [347] insolvency.

a. To the extent that CTXs intermediated by an FCM are cleared by a DCO, they would fall within the definition of ''commodity contracts'' under the Bankruptcy Code.[348] If not cleared by a DCO,[349] by what analysis could CTXs intermediated by an FCM be considered to be a type of ''commodity contract'' that is ''similar to'' a contract, option, agreement, or transaction referred to in 11 U.S.C. 761(4),[350] such that crypto assets held by the FCM are treated as ''customer property'' under part 190?

b. In the alternative, should the Commission consider whether an arrangement built on the foundation of the bankruptcy protections provided under UCC Article 8 may be an adequate substitute for the bankruptcy protections provided under subchapter IV and part 190? If so, how might such an arrangement be designed?

vi. Should registered entities that intermediate CTXs be required to disclose to customers how an insolvency of the platform or intermediary would affect the treatment of their assets? How would these disclosures differ, if at all, from disclosures made by registered entities under existing regulations?

G. Multiple Commission Registrations Under the CAM Proposal

i. Would relief be necessary to address potential duplicative requirements, including with respect to reporting and capital requirements? If so, please explain how the Commission should consider and address such duplicative requirements? For instance, should the Commission impose FCM capital and financial reporting obligations regulations on a CAM, or should the Commission consider alternative approaches to capital and financial reporting requirements, as noted *supra*?

ii. Does the CAM Proposal raise novel conflicts of interest concerns? If so, how should the Commission consider requirements to mitigate and resolve such conflicts?

iii. Currently, many of the registered FCMs are dually-registered with the SEC as brokers or dealers. Does the CAM Proposal raise issues for dually-registered FCMs/broker-dealers to comply with regulations of the CFTC and SEC? Please explain such issues and suggest how the Commission should address them.

1. CAM–FCM Integration

In addition to the traditional functions of an FCM, an affiliate FCM under the CAM Proposal may undertake activities related to (i) the provision of leverage arrangements to retail customers, including underwriting or extending individualized loans; (ii) sponsoring other eligible leverage providers; (iii) liquidating leveraged positions; and (iv) making disclosures to its customers regarding crypto assets and the risks of transacting in them, including on a leveraged basis.

i. Are there any unique conflicts of interest that may arise from these activities that the Commission should address with new regulations?

ii. The Commission seeks comment on whether the Commission needs to address Regulation 1.30 regarding FCM loans. The Commission notes that this

[345] CEA 5b(c)(2)(B)(ii)(I), 7 U.S.C. 7a–1(c)(2)(B)(ii)(I).

[346] *See* 17 CFR 39.11(a).

[347] *See* 11 U.S.C. 101(6), providing that a ''commodity broker'' is defined to include an FCM.

[348] *See* 11 U.S.C. 761(4)(F)(ii) (defining ''commodity contract'' to include ''with respect to [an FCM] [. . .] any [. . .] contract, [. . .] or transaction [. . .] that is cleared by a'' DCO).

[349] Subject to certain exceptions, the Act defines a derivatives clearing organization as a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to an agreement, contract, or transaction—''(i) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties; (ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or (iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants.'' *See* CEA 1a(15), 7 U.S.C. 1a(15).

[350] *See* 11 U.S.C. 761(4)(F)(i).

regulation is in place to ensure that the loan does not place other customers of the FCM at risk if the customer/borrower does not repay a loan and the security is not sufficient to cover the loan balance. If the Commission needs to address Regulation 1.30, how should it do so? In this regard, the Commission seeks comment on whether the CAM Proposal implicates the Regulation 1.56 prohibition on guarantees against loss.

2. CAM–DCO Integration

The contemplated activities of a DCO under the CAM Proposal substantially differ from those undertaken in the traditional futures context. The CAM Proposal contemplates a DCO measuring, monitoring, and supervising the risks arising from bilateral loans with individualized terms, as described in Section V.F, *supra.* Relatedly, a DCO may also be responsible for setting maintenance margin requirements for classes of crypto assets that affect trading activity therein, which may be the primary source of revenue for its affiliated CAM and/or FCM. Conversely, a DCO sets parameters that could affect the liquidation or losses of unaffiliated market participants. Further, an affiliated FCM may bear the aforementioned risks as the eligible leverage provider in a leverage arrangement. The Commission seeks comments on any unique conflicts of interest that may arise from these activities, to the extent applicable.

H. CAM Designation, Exemptions From Registration, and Permissible Subject Crypto Assets

A fundamental objective of the CAM Proposal is to effectuate the on-exchange requirement by channeling CTXs onto and through Commission-registered intermediaries. However, while the Act contemplates broad Commission jurisdiction over CTXs, including fully paid, open CTXs, Congress did not grant the Commission the statutory authority to regulate genuine cash-market retail commodity transactions. The Commission accordingly solicits comment below on these dynamics and certain tensions between them.

i. Would the CAM Proposal provide market participants the opportunity to comply with the on-exchange requirement under a comprehensive federal regulatory framework and a ''uniform set of legal rules''? [351] What regulatory requirements of other jurisdictions could frustrate Congress' intent to bring 2(c)(2)(D) transactions under a comprehensive regulatory framework that is insulated from varying and potentially contradictory legal standards of other jurisdictions?

ii. The Commission accordingly solicits comment as to how it could facilitate responsible innovation and fair competition among DCMs and CAMs by accommodating DCMs' inclusion of CTXs on their trading facilities. Would such DCMs benefit from targeted relief or other Commission action, such as allowing the selective incorporation of components of the CAM Proposal into the DCM regulatory structure as it relates to CTXs?

iii. The CAM Proposal is not intended to ''interfere with the legitimate spot market,'' [352] and the Commission preliminarily believes that certain market participants may wish to elect to continue operating under the state-by-state regulatory regime described in Section I.A, *supra.* Does the CAM Proposal provide a commercially viable avenue for a crypto asset exchange to elect to continue operating under the state spot market regime?

iv. The Commission preliminarily understands that a typical onchain application [353] may settle transactions executed thereon in a manner that results in the satisfaction of the Commission's preliminary interpretation of the actual delivery exception, as described in the Sections III.B and C, *supra;* that is, such CTXs result in the retail purchaser obtaining possession and control of the crypto assets [and unfettered access thereto pursuant to actual delivery of the purchased crypto assets]. The Commission notes that the controlling case law distinguishes between the existence of a lien or security interest and meaningful possession and control, such that actual delivery may not occur where a lien or security interest remains outstanding.[354] The Commission solicits comment on these preliminary understandings or any other issues related to the offer of CTXs through onchain applications.

v. The Commission preliminarily believes that an exemption from CAM registration would be appropriate for trading facilities that offer less than *de minimis* amounts of trading volume in CTXs and/or a notional amount of leveraged positions. The Commission solicits comment on this contemplated exemption and an appropriate *de minimis* threshold.

vi. The Commission notes that the Act typically prohibits Commission-registered entities from listing derivative contracts referencing securities, as defined in the Federal securities laws.[355] The Commission solicits comment on the securities-law implications that arise where a crypto asset underlying a CTX is asserted to be, or to be part of, an investment contract or another enumerated instrument in 15 U.S.C. 77b(a)(1) and 15 U.S.C. 78c(a)(10).

vii. The Commission similarly notes the fungible nature of commodities typically referenced by commodity derivatives subject to the Act's jurisdiction.[356] (In addition to enumerated commodities, the Act specifies that ''all services, rights, and interests [. . .] in which contracts for future delivery are presently or in the future dealt in'' constitute commodities that may be subject to the Commission's jurisdiction.) How should the Commission consider non-fungible tokens (or, ''NFTs'') with respect to its jurisdiction under the Act?

VI. Executive Order 12866

The Office of Management and Budget (''OMB'') has determined that this action is a significant regulatory action as defined under section 3(f) of Executive Order 12866 and therefore this action has been reviewed by OMB, consistent with Executive Order 14215.

[351] *See American Agric. Movement,* 977 F.2d, at 1156 (''Only in the context of market regulation does the need arise for uniform legal rules. As Congress recognized in enacting the 1974 [CEA], a contract market could not operate efficiently, and perhaps not at all, if varying and potentially contradictory legal standards governed its duties to investors (or farmers).'').

[352] *Zelener* Hearing, *supra* note 53, at 9 (statement of Daniel Roth, President of the National Futures Association).

[353] *See* Buterin, *supra* note 36 (describing smart contracts and onchain applications enabled by Turing-complete programming languages).

[354] *Monex,* at 15 (''Monex argues that in the context of a provision regulating leveraged commodity sales, it would make little sense for 'actual delivery' to turn on possession or control, because such a reading would clash with 'margin, which means '[c]ash or collateral required to be paid to a securities broker by an investor to protect the broker against losses from securities bought on credit.' Black's Law Dictionary (9th ed. 2009). Because the very meaning of the word 'margin' requires that the buyer deposit *collateral* with the seller, actual delivery must mean something other than transferring possession or control to the buyer. Otherwise, Monex argues, margin would mean nothing. Yet, even if the commodity serves as collateral, there is no reason why the buyer cannot control it. In many financing contexts, some degree of buyer possession or control is commonplace. While permitting customers to obtain significant control over or possession of metals might be practically difficult here, that fact does not displace the statute's plain meaning.'').

[355] *See supra* note 124 and *supra* Section I.B.4 (describing historical and statutory frictions between the Commission and the SEC).

[356] CEA 1a(9), 7 U.S.C. 1a(9).

Issued in Washington, DC, on October 8, 2026, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

Appendices to Regulation Crypto Asset Transactions and Regulation Crypto Asset Markets—Commission Voting Summary and Appendix A—Commission-Registered Entity Structures Under the CAM Proposal

Appendix—Commission Voting Summary

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

Appendix A—Commission-Registered Entity Structures Under the CAM Proposal

COMMISSION-REGISTERED ENTITY STRUCTURES UNDER THE CAM PROPOSAL

[As discussed further in the CAM Proposal, the Commission preliminarily believes that CTXs must be intermediated by an FCM and cleared and settled by a DCO, in the manner and under the circumstances described in the CAM Proposal. While not required and a standalone CAM entity is allowable under the CAM Proposal, this table sets forth how a CAM entity could register as either or both of an FCM and DCO.]

Multiple registrations under the CAM proposal	CAM registration [1]	FCM registration	DCO registration	Traditional DCM registration	Notes on contemplated CAM corporate family structure
Fully Integrated CAM	X	X	X		The CAM entity registers as each of an FCM and DCO.
CAM–FCM Dual Registration	X	X			The CAM entity dually registers as an FCM (''CAM–FCM''). The CAM–FCM may also be affiliated with a DCO, as discussed in Section V.G, *supra.*
CAM–DCO Dual Registration	X		X		The CAM entity dually registers as a DCO (''CAM–DCO''). The CAM–DCO may also be affiliated with an FCM, as discussed in Section V.G, *supra.*
Traditional DCM				X	The Commission preliminarily believes that under the CAM Proposal, a DCM could offer CTXs under its current registration. This exemption is discussed further in Section V.H, *supra.*
On chain					The Commission sets forth its preliminary understanding as to why a CTX executed via an onchain protocol typically results in actual delivery, as discussed further in Section V.H, *supra.*

[1] As discussed in Section V.A, *supra,* designation as a CAM results from registering as a subcategory of DCM and continued compliance with a tailored set of the regulations promulgated under the statutory DCM Core Principles.

[FR Doc. 2026–20888 Filed 10–9–26; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 123

[Docket No. USCBP–2026–0992]

RIN 1651–AB60

Advance Traveler Information for Rail

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: U.S. Customs and Border Protection (CBP) is proposing to require rail carriers to transmit advance electronic traveler information to CBP for any individual (crew and passengers) who is arriving in or departing from the United States on board a train. The rail carrier also would be required to transmit an advance notice of arrival or departure, as applicable, for the train. This rule would enhance security while facilitating legitimate international travel on board trains.

DATES: Comments must be received by December 14, 2026.

ADDRESSES: Please submit comments, identified by docket number, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2026–0992.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents, a plain language summary of the rule, or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Timothy Tyler, Director, External Engagements and Initiatives, Office of Field Operations, U.S. Customs and Border Protection, at (202) 344–3801 or *Timothy.A.Tyler@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the notice of proposed rulemaking. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal.

Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Executive Summary

A. Purpose of the Rulemaking

The purpose of this proposed rule is to increase security in the rail environment while simultaneously facilitating the legitimate travel of passengers and crew. The current regulations applicable to rail carriers fail to provide CBP with timely information necessary to evaluate in advance the risk of individuals arriving in or departing from the United States by

train; or to detect violations relating to immigration, customs, agricultural, or other laws that CBP is responsible for enforcing or administering. The lack of this advance information in the rail environment has left a gap in U.S. national security that terrorists or other criminals could exploit. This risk has increased for rail travel as security measures for other modes of travel, such as air and commercial vessels, have increased.

To respond to this risk, CBP established a program that allows rail carriers to voluntarily transmit to CBP advance electronic information relating to individuals arriving in or departing from the United States on board a train.[1] CBP regularly uses the voluntarily transmitted information to identify rail travelers requiring additional vetting or inspection and to identify violations of immigration, customs, agriculture, and other laws while simultaneously facilitating the travel of legitimate passengers and crew.

Based on this experience with the voluntary program, CBP has determined that the proposed mandatory reporting requirements are necessary to ensure CBP has sufficient and reliable information and the time necessary to perform its border security obligations for all international rail traffic. Mandatory reporting of this information would also ensure that CBP receives accurate and timely information in an acceptable format, which is essential for an effective vetting process. By mandating the transmission of this electronic information in advance, CBP would improve its ability to: (1) vet all travelers attempting to cross the U.S. border on board a train; and (2) timely respond to any identified risk or non-compliance with U.S. civil or criminal laws that CBP enforces or administers. CBP also expects that the knowledge that all rail travelers will be vetted in advance would deter travelers planning to use rail travel for illicit purposes.

Additionally, the proposed rule is intended to increase CBP's operational efficiency. Based on CBP's experience with the voluntary program, when the required information is received in advance and the data is accurate and complete, the overall processing time for that train and the travelers on board improves. As a result of increased efficiencies and the additional electronic information received in advance, this rule would enable CBP officers to focus their resources more effectively at ports of entry through improved vetting and targeting.

Finally, this proposed rule would promote CBP's efforts to continue to move toward establishing consistent procedures across all modes of transportation and ports of entry.

B. Legal Authority

The requirements proposed by this rule are authorized pursuant to sections 431 and 433 of the Tariff Act of 1930, as amended (Tariff Act) (19 U.S.C. 1431, 1433). Specifically, section 433(d) of the Tariff Act requires the person in charge of a vehicle (which includes a train) to transmit to the Secretary of Homeland Security (Secretary),[2] pursuant to an electronic data interchange system, such information, data, documents, papers, or manifests that the Secretary may require by regulation.[3] 19 U.S.C. 1433(d). Section 431(b) of the Tariff Act requires that the master, person in charge of a vehicle (including a train), or an authorized agent of the owner or operator of a vehicle, sign, produce, deliver, or electronically transmit any manifest required by the Secretary in accordance with the regulations. 19 U.S.C. 1431(b).

Section 431(d) of the Tariff Act requires the Secretary to promulgate regulations that specify the form for and the information and data that must be contained in a manifest and prescribe the manner of production for, and the delivery for electronic transmittal of, a manifest. 19 U.S.C. 1431(d).

Finally, section 433(e) of the Tariff Act states that a train arriving in the United States may only depart from the port or place of arrival in accordance with regulations prescribed by the Secretary, unless otherwise authorized by law. 19 U.S.C. 1433(e).

C. Summary of the Proposed Rule

This rule would require rail carriers to transmit an advance notice of arrival or departure, as applicable, for any train that is arriving in or departing from the United States with a traveler on board, including a train that crosses the U.S. border while in transit. The notice of arrival and notice of departure would be due no later than 24 hours prior to the train's arrival at the U.S. border crossing location on the inbound and outbound trips, respectively.

Additionally, the rule would require rail carriers to transmit advance electronic traveler information to CBP for any individual (including crew and passengers) who will arrive in or depart from the United States on board the train or who crosses the U.S. border while in transit. The required information would include information generally found on a passport or other DHS-approved travel document, including name, date of birth, sex, country of citizenship, country of residence, and DHS-approved travel document type, number, country of issuance and expiration date, if applicable. The information would also include other identifying information such as status on board the train (*i.e.,* conductor, engineer, passenger, crew); complete itinerary of the traveler; address while in the United States for all travelers, except those in transit; alien registration number, if applicable; traveler's passenger name record locator, if available; known traveler number, if applicable; redress number, if applicable; baggage tag information, if applicable; and seat location, including car and seat number, if available. The required information would also include contact phone number with country code and email address, if available.

After the rail carrier transmits the required information, CBP would conduct an initial vetting of the advance information and send a response message to the carrier. The response message would state either that CBP accepted the transmission or that the rail carrier must contact CBP prior to departure. If CBP's vetting of the traveler information does not identify any traveler of concern, then the response message will state that CBP has accepted the transmission. In such a case, no further advance action by the rail carrier is required. However, if CBP has identified a traveler of concern, then the response message will indicate that the carrier should call CBP and will provide a phone number for the carrier to call. Upon contacting CBP, the carrier and CBP will attempt to resolve any

[1] DHS/CBP/PIA–001(d), Privacy Impact Assessment for the Advance Passenger Information System Voluntary Rail and Bus Submissions (APIS–VRBS) (2009) (APIS–VRBS PIA); DHS/CBP/PIA–001(h), Privacy Impact Assessment Update for the Advance Passenger Information System (APIS): Land Pre-Arrival System (LPAS) for Bus and Rail (2019), (regarding mobile application for voluntary rail and bus submissions); DHS, DHS/CBP/PIA–001(i), Privacy Impact Assessment for the Advance Passenger Information System (APIS): Voluntary Expansion (2021), available at *www.dhs.gov/privacy.*

[2] Sections 403(1) and 411 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2135, 2178–79), codified at 6 U.S.C. 203(1) and 211, transferred certain functions from the U.S. Customs Service of the Department of the Treasury to the Department of Homeland Security.

[3] Sections 431(b) and 433(d) of the Tariff Act (19 U.S.C. 1431(b), 1433(d)) impose requirements on vehicle transportation. The term ''vehicle'' includes ''every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft.'' Tariff Act sec. 401(b) (19 U.S.C. 1401(b)). Accordingly, sections 431(b) and 433(d) of the Tariff Act (19 U.S.C. 1431, 1433) apply to rail transportation.

concerns regarding the traveler, such as by confirming whether there are any errors in the transmitted information. If CBP's vetting flags a traveler as having potential security, immigration, customs, or other law enforcement issues, then CBP may recommend that the carrier not board the traveler.

Carriers would have two options for transmitting the required advance electronic information to CBP. Under the first option, rail carriers would transmit the advance electronic information through a CBP-certified transmission system. Under this option, a carrier would be required to submit its electronic transmission system to CBP for testing and CBP would have to certify that the rail carrier's system is capable of communicating with the CBP system for effective transmissions of data and receipt of appropriate messages. Under the second option, rail carriers could transmit the advance electronic information through any CBP-approved electronic data interchange system, such as the Electronic Advance Passenger Information System (eAPIS) web portal,[4] or any CBP-approved application with manifest capabilities.

D. Summary of Costs and Benefits

CBP evaluated the costs and benefits that would arise from the implementation of this proposed rule. The estimated costs and benefits of the proposed rule are summarized below in Section VI.A. CBP anticipates that during the time period of analysis (2026–2030), this proposed rule would result in costs and benefits to CBP, carriers, passengers, and the public.

The implementation of this proposed rule is expected to result in a total net benefit to passenger rail carriers of $1,542,478 and $1,329,350 using a 3-percent and 7-percent discount rate respectively and annualized benefits of $346,911. Cargo rail carriers are expected to experience net benefits of −$1,691,802 and −$1,458,042 using a 3-percent and 7-percent discount rate respectively and annualized net benefits of −$380,495.[5] Rail passengers are expected to experience net benefits of $36,330,246 and $31,310,416 using a 3-percent and 7-percent discount rate respectively and annualized net benefits of $8,170,861. CBP expects to experience net benefits of $278,193 and $239,754 using a 3-percent and 7-percent discount rate respectively and annualized net benefits of $62,567. Passengers, passenger rail carriers, cargo rail carriers, and the general public would all benefit from the increased security that would result from this proposed rule. Security benefits remain unquantified in this analysis.

III. Background and Purpose

A. Legal Authority

These proposed regulations are authorized by sections 431 and 433 of the Tariff Act of 1930, as amended (Tariff Act) (19 U.S.C. 1431, 1433).[6] Specifically, section 433(d) of the Tariff Act requires the person in charge of a vehicle (which includes trains) to transmit to the Secretary of Homeland Security (Secretary), pursuant to an electronic data interchange system, such information, data, documents, papers, or manifests that the Secretary may require by regulation.[7] 19 U.S.C. 1433(d). Section 431(b) of the Tariff Act requires that the master, person in charge of a vehicle, or an authorized agent of the owner or operator of a vehicle, to sign, produce, deliver, or electronically transmit any manifest required by the Secretary in accordance with the regulations. 19 U.S.C. 1431(b).

Section 431(d) of the Tariff Act requires the Secretary to promulgate regulations that specify the form for and the information and data that must be contained in a manifest and prescribe the manner of production for, and the delivery for electronic transmittal of, a manifest. 19 U.S.C. 1431(d). Additionally, a train arriving in the United States may only depart from the port or place of arrival in accordance with regulations prescribed by the Secretary, unless otherwise authorized by law. Tariff Act sec. 433(e) (19 U.S.C. 1433(e)).

These statutory provisions grant the Secretary the authority to issue regulations that require a person in charge of a train to electronically transmit data, documents, papers, or manifests and to specify in the regulations what information and data must be transmitted. The Secretary has delegated its statutory authority relating to these requirements to the Commissioner of U.S. Customs and Border Protection (CBP). *See* DHS, Delegation No. 07010.3, Delegation of Authority to the Commissioner of U.S. Customs and Border Protection II.A (Rev. No. 03.2, Incorporating Change 2) (Dec. 11, 2024).

B. Current Regulations and Need for Rulemaking

CBP intends for this rulemaking to promote the dual goals of increasing security in the rail environment while simultaneously facilitating the legitimate international travel of passengers and crew. CBP developed these proposed regulations based on its experience with a voluntary program that permits rail carriers to transmit advance electronic traveler information to CBP and the successful implementation of similar regulations for air carriers and commercial vessel carriers. This section discusses the current requirements applicable to rail carriers and the insufficiencies of those requirements. This section also describes the voluntary program for rail carriers and the current regulations for air carriers and commercial vessel carriers.

1. Current Regulations for Rail Carriers

Rail carriers operating trains that cross the U.S. border with either Mexico or Canada are subject to part 123 of title 19 of the Code of Federal Regulations (19 CFR part 123). Part 123 includes provisions governing the report of arrival, manifesting, unlading and lading, instruments of international traffic, shipments in transit, commercial traveler's samples, and baggage.

Pursuant to 19 CFR part 123, rail carriers are required to make a report of arrival to CBP for any train arriving in the United States from a foreign location. 19 CFR 123.1(b). The report of arrival must be made upon arrival of the train at the U.S. port of entry. 19 CFR 123.1(b). Individuals arriving in the United States from a foreign location on board a train must report their arrival to CBP once they arrive in the United States. 19 CFR 123.1(a).

Rail carriers are also subject to reporting requirements relating to baggage, merchandise, and commercial cargo traveling on board a train arriving in the United States from a foreign location.[8] For example, the conductor of a train is required to present to CBP

[4] The eAPIS is an online transmission system that meets all current and future APIS data element requirements for all mandated APIS transmission types. More information on eAPIS generally is available at *https://www.cbp.gov/travel/travel-industry-personnel/apis/eapis-transmission-system* (last accessed May 26, 2026).

[5] Negative net benefits reflect a net cost.

[6] Sections 403(1) and 411 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2135, 2178–79, codified at 6 U.S.C. 203(1) and 211, transferred certain functions from the U.S. Customs Service of the Department of the Treasury to the Department of Homeland Security.

[7] Sections 431(b) and 433(d) of the Tariff Act (19 U.S.C. 1431(b), 1433(d)) impose requirements on vehicle transportation. The term ''vehicle'' includes ''every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft.'' Tariff Act sec. 401(b) (19 U.S.C. 1401(b)). Accordingly, sections 431(b) and 433(b) of the Tariff Act (19 U.S.C. 1431, 1433) apply to rail transportation.

[8] *See* 19 CFR part 123, subparts C and D (merchandise), subpart G (baggage), and subpart J (commercial cargo).

individual car manifests and a train sheet, sometimes called a consist, bridge sheet, or trip sheet, listing each car and showing the car numbers and initials. 19 CFR 123.6. Additionally, baggage or merchandise carried on a train arriving from a foreign location must be listed on an inward foreign manifest and must be presented to a CBP officer at the time the rail carrier makes the report of arrival, unless an exception applies.[9] 19 CFR 123.3 and 123.5. Finally, for any train arriving in the United States from a foreign location with commercial cargo on board, the rail carrier must electronically transmit certain information concerning the cargo to CBP two hours prior to the cargo's arrival at its first U.S. port of entry. 19 CFR 123.91. The required information generally identifies the rail carrier, the shipper, the consignee, and the train; includes a description of the cargo; and specifies when the train will arrive in the United States. *See* 19 CFR 123.91(d).[10]

2. Need for Rulemaking and Voluntary Program

The current regulations applicable to rail carriers fail to provide CBP with timely information necessary to evaluate in advance the risk of individuals arriving in or departing from the United States by train or to detect violations relating to immigration, customs, agricultural, or other laws. For example, the current regulations do not require any advance information relating to any passengers or crew traveling on board the train; rather, CBP collects information about the passengers and crew on the train only after they arrive in the United States and report to a CBP officer, if the rail carrier has not voluntarily provided such information to CBP. The current regulations in 19 CFR part 123 also do not include any reporting requirements for individuals departing the United States on board a train. Although the regulations require rail carriers operating trains with commercial cargo on board to report an estimated time of arrival, see 19 CFR 123.91, there is no equivalent requirement for carriers operating trains without commercial cargo (*i.e.,* most passenger trains). Even for passenger trains operating on schedules, CBP may not be aware of schedule changes and delays.

The lack of this advance information in the rail environment leaves a gap in U.S. national security that terrorists or other criminals could exploit. Without advance, electronic data, CBP's ability to assess risk for the rail industry is severely limited until the train physically arrives at the port of entry. This risk is increased for rail travel as security measures for other modes of travel, such as air and commercial vessels, have increased, potentially diverting illicit activities to less regulated modes of travel, such as by train. An attack on a passenger or cargo train involves the potential for mass casualties, extensive property damage, and negative effects on the economy and legitimate travel.[11] Terrorist attacks on trains throughout the world are well documented, including attacks on passenger trains in Madrid, Spain in 2004, and Mumbai, India in 2006.[12] In North America, two individuals were convicted and sentenced for conspiring to carry out a terrorist attack against a passenger train traveling from New York Penn Station to Toronto, Canada in April 2013.[13] Since terrorists tend to emulate and repeat methods of prior attacks, this has long been an important area of concern for DHS and CBP.[14]

In 2005, CBP established a program that allows rail carriers to voluntarily transmit to CBP manifest information relating to individuals arriving in or departing from the United States on board a train.[15] The purpose of the voluntary program is to respond to the threat in the rail environment and to more effectively identify rail travelers requiring additional vetting or inspection, while facilitating legitimate international travel and trade. This voluntary program requests that rail carriers transmit to CBP information regarding the rail carrier, the train's route, and each individual on board the train. Specifically, CBP requests the following data: rail carrier's name, point of contact, carrier's telephone number and email address, carrier code, trip identifier, departure/arrival location code, and estimated time of departure/arrival. *See* APIS–VRBS PIA at 2–3. Additionally, CBP requests the following data elements for each individual traveling on board the train: name; date of birth; sex; DHS-approved travel document type, number, and issuing country, if required; traveler status (passenger or crew); address, if available; and departure or arrival code. *Id.* This information is generally referred to as manifest information or as an arrival or departure manifest. *Id.* at 1.

CBP regularly uses the voluntarily transmitted information to identify rail travelers requiring additional vetting or inspection and to identify violations of immigration, customs, agriculture, and other laws while simultaneously facilitating the international travel of legitimate passengers and crew. *Id.*

One rail carrier currently voluntarily transmits information to CBP through this voluntary program. *Id.* However, because the transmission of the information is not mandatory and there are no penalties for noncompliance, the information transmitted is not always complete, valid, timely, or in an electronic format. When the transmitted information is incomplete or inaccurate, CBP officers must update the information when inspecting the train at

[9] When baggage arrives in the actual possession of a traveler, the traveler's declaration will be accepted in lieu of a manifest. *See* 19 CFR 123.3(b) and 123.62. Merchandise transported from one U.S. port to another U.S. port through Canada or Mexico may be included on an in-transit manifest. *See* 19 CFR part 123, subpart C. Merchandise transported in transit across the United States to Canada or Mexico is governed by 19 CFR part 18.

[10] Specifically, the rail carrier must transmit the following information for all required incoming cargo: the rail carrier identification code; the carrier-assigned conveyance name, equipment number and trip number; the scheduled date and time of arrival at the first port of entry in the United States; the numbers and quantities of the cargo laden on board the train; a precise cargo description; the shipper's complete name and address or identification number; the name and address of the consignee; the place where the rail carrier takes possession of the cargo shipment; any hazardous material code; container numbers or rail car numbers; and the seal numbers for all seals affixed to containers and/or rail cars. 19 CFR 123.91(d).

[11] *See* DHS, Biennial National Strategy for Transportation Security 3, & app. C Surface Security Plan at 55 (Apr. 18, 2023), *https://www.dhs.gov/publication/2023-biennial-national-strategy-transportation-security* (last accessed May 26, 2026).

[12] CBP, Report to Congress on Northern Border Railroad Passenger and Cargo Screening (Mar. 3, 2009); University of Maryland, Global Terrorism Database, GTD ID: 200403110007 (Madrid, Spain); and University of Maryland, Global Terrorism Database, GTD ID: 200607120001 (Mumbai, India).

[13] CBC News, 2 Via Rail terror plotters sentenced to life in prison (Sept. 23, 2015), *https://www.cbc.ca/news/canada/toronto/via-rail-terror-sentences-1.3240050* (last accessed May 26, 2026).

[14] *See e.g.,* Section 1523 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53, Aug. 2, 2007); CBP, Report to Congress on Northern Border Railroad Passenger and Cargo Screening (Mar. 3, 2009); DHS, Northern Border Threat Analysis Report—Public Summary (2017), available at *https://www.dhs.gov/publication/northern-border-threat-analysis-report* (last accessed May 26, 2026); DHS, Biennial National Strategy for Transportation Security, app. C Surface Security Plan (Apr. 18, 2023), *https://www.dhs.gov/publication/2023-biennial-national-strategy-transportation-security* (last accessed May 26, 2026).

[15] DHS/CBP/PIA–001(d), Privacy Impact Assessment for the Advance Passenger Information System Voluntary Rail and Bus Submissions (APIS–VRBS) (2009) (APIS–VRBS PIA); DHS/CBP/PIA–001(h), Privacy Impact Assessment Update for the Advance Passenger Information System (APIS): Land Pre-Arrival System (LPAS) for Bus and Rail (2019), (regarding mobile application for voluntary rail and bus submissions); DHS, DHS/CBP/PIA–001(i), Privacy Impact Assessment for the Advance Passenger Information System (APIS): Voluntary Expansion (2021), available at *www.dhs.gov/privacy.*

the U.S. port of entry or may not use the advance information for processing at all. Additionally, not all carriers currently participate in the voluntary program. Making the reporting mandatory, along with the requirement for rail carriers to verify travel documents against transmitted information, will ensure that CBP receives accurate and timely information, which is essential for an effective vetting process. This improved data quality directly contributes to more reliable security assessments.

Based on this experience, CBP has determined that the proposed mandatory reporting requirements are necessary to ensure CBP has sufficient and reliable information and the time necessary to perform its border security obligations for all international rail traffic. Mandatory reporting of this information would also ensure that CBP receives accurate and timely information, in an accessible electronic format, which is essential for effective advance vetting processes. By mandating the transmission of this information in advance, CBP would improve its ability to: (1) pre-vet all travelers attempting to cross the U.S. border on board a train; and (2) timely respond to any identified risk or non-compliance with U.S. civil or criminal laws enforced or administered by CBP. This means that if a traveler of concern is identified during vetting, CBP has sufficient time to investigate, resolve concerns, or prepare for an interdiction, rather than reacting in real-time at the border, which can be less efficient and potentially more dangerous. CBP also expects that the knowledge that all rail travelers will be vetted in advance would deter travelers planning to use rail travel for illicit purposes.

Accordingly, this proposed rule would support CBP's core missions of border security, including screening, reviewing, identifying, and prioritizing the inspection of travelers arriving in and departing from the United States; detecting, responding to, and interdicting terrorists, drug smugglers and traffickers, human smugglers and traffickers, and other persons who may undermine the security of the United States; and ensuring the interdiction of persons illegally entering the United States. *See, e.g.,* 6 U.S.C. 211(c).

Additionally, the proposed rule is intended to increase efficiency in CBP's ability to process individuals arriving in or departing from the United States on board a train. Based on the experience with the voluntary program, when the required information is received in advance and the data is accurate and complete, the overall processing time for that train and the travelers on board improves. With advance information, CBP officers can access the data prior to traveler arrival and use the information to make better informed admissibility and enforcement decisions. By identifying high-risk individuals in advance, CBP officers can focus their resources more effectively at ports of entry. This allows for quicker processing of legitimate travelers while dedicating more attention to those who require additional scrutiny, thereby optimizing security operations. Additionally, by mandating the advance information, CBP would improve the accuracy and completeness of the traveler data so that advance technologies could be used effectively. For example, when CBP has access to advance traveler information, CBP is able to use the Traveler Verification Service to build galleries of photographs based on arriving or departing individuals, which facilitates traveler processing.[16] CBP processes large volumes of travelers at the rail ports of entry every day, and increasing efficiencies for CBP train traveler operations would result in benefits to all entities that are processed by CBP.

Finally, this proposed rule would promote CBP's efforts to continue to move toward establishing consistent procedures across all modes of transportation and ports of entry. The Advance Passenger Information System (APIS) requirements currently in effect for passengers and crew arriving or departing on board aircraft and commercial vessels, described in Section III.B.3. of this document below, have been successful at promoting both security and the international travel of legitimate passengers, and CBP proposes to implement similar requirements for other modes of travel. In addition to this rule, CBP also expects to propose similar reporting requirements for cross-border bus travel. CBP's goal is to ensure a consistent level of security across all modes of cross-border transportation.

In conclusion, CBP is proposing mandatory advance reporting requirements for passengers and crew arriving and departing the United States on board a train. CBP would use the information to identify high-risk passengers and crew who may: pose a risk to border or public security; be a terrorist or suspected terrorist or affiliated with or suspected of being affiliated with terrorists or terrorist organizations; be a person of interest; otherwise be engaged in activity in violation of U.S. law; be the subject of wants or warrants; or be inadmissible, while simultaneously facilitating the international travel of legitimate passengers and crew.

3. Current Regulations for Commercial Air Carriers, Private Aircraft and Commercial Vessel Carriers

In order to address the concerns identified above in the rail environment, CBP is proposing reporting requirements for rail carriers that are very similar to the regulations currently applicable to air carriers and commercial vessel carriers.[17] Accordingly, a brief summary of those requirements follows.

In response to the September 11, 2001, terrorist attacks, CBP developed regulations requiring commercial air carriers or commercial vessels to electronically transmit prior to departure information relating to individuals traveling to or from the United States on board commercial air carriers or commercial vessels.[18] CBP also developed similar regulations requiring private aircraft pilots to electronically transmit information for individuals travelling on board private aircraft arriving in and departing from the United States. *See* 19 CFR 122.22.

Currently, commercial air carriers and private aircraft pilots are required to electronically transmit arrival and departure manifests to CBP at specified times prior to departing to or from the United States. 19 CFR 122.49a, 19 CFR 122.75a and 19 CFR 122.22. The advance arrival and departure information must contain information regarding each individual (passengers, crew, and non-crew) on board the aircraft. Although the required information varies depending on whether the individual is a passenger,

[16] *See* DHS/CBP/PIA–056, Privacy Impact Statement for the Traveler Verification Service 5 (2018), available at *www.dhs.gov/privacy.*

[17] For regulations relating to commercial aircraft, see 19 CFR 122.49a, 122.49b, 122.49c, 122.75a, and 122.75b. For regulations relating to commercial vessels, see 19 CFR 4.7b and 4.64.

[18] These regulations were implemented pursuant to several statutory mandates including, but not limited to, section 115 of the Aviation and Transportation Security Act, Public Law 107–71, 115 Stat. 597, 623 (2001) (adding 49 U.S.C. 44909(c)); section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173, 116 Stat. 543, 557 (amending section 231 of the Immigration and Nationality Act of 1952, Public Law 82–414, 66 Stat. 163 (8 U.S.C. 1221) regarding passenger manifests); and section 4012 of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, 118 Stat. 3638, 3717 (amending 49 U.S.C. 44909(c)); and pursuant to certain authorities administered by the Transportation Security Administration (TSA) (49 U.S.C. 114; 49 CFR parts 1544, 1546, and 1550). For additional information regarding the statutory authority for the air and commercial vessel regulations, see 70 FR 17820 (Apr. 7, 2005) and 72 FR 48320 (Aug. 23, 2007).

crew, or non-crew, the arrival and departure manifests must generally contain: the name; date of birth; sex; citizenship; status on board the aircraft; and DHS-approved travel document type, number, and expiration date, as well as information regarding the flight, such as the date of arrival or departure. *See* 19 CFR 122.49a, 122.49b, 122.75a, 122.75b.

Commercial air carriers and private aircraft pilots may transmit the manifest information through a CBP-certified electronic transmission system or through a CBP-approved electronic transmission system, such as the Electronic Advance Passenger Information System (eAPIS). Upon receipt of timely transmitted arrival or departure information,[19] CBP performs enforcement and security queries against various multi-agency law enforcement databases and the terrorist watchlist. CBP then responds to the carrier with instructions regarding the clearance of the aircraft (for transmissions made through a non-interactive CBP-approved transmission method, such as eAPIS) or each individual (for transmission made through a CBP-certified electronic transmission method).

Commercial vessel carriers (other than ferries) must transmit to CBP advance electronic data for each individual on board the vessel. *See* 19 CFR 4.7b and 4.64. Although the information required is different for arrivals and departures, the carrier must generally transmit the following information for each individual on board: full name; date of birth; sex; citizenship; country of residence; status on board the vessel; travel document type, number, country of issuance, and expiration date; alien registration number, where applicable; passenger name record locator, if available; details of each passenger and crew's itinerary; and vessel information. *See* 19 CFR 4.7b(b)(3) and 4.64(b)(3). The vessel carriers must transmit the information prior to arriving in or departing from the United States in order to provide CBP with the time necessary to process the information.[20]

[19] Commercial air carriers are required to electronically transmit arrival and departure manifest information 30 minutes prior to the securing of the aircraft or up to the securing of the aircraft, depending on the type of transmission. *See* 19 CFR 122.49a(b)(2) and 19 CFR 122.75a(b)(2).

[20] Commercial vessels arriving in the United States must transmit arrival manifest information between 24 hours and 96 hours prior to the vessel's entry at a U.S. port or place of destination, depending on the length of the voyage. *See* 19 CFR 4.7b(b)(2). Commercial vessels departing from the United States must transmit departure manifest information no later than 60 minutes prior to departure from the United States. *See* 19 CFR 4.64(b)(2).

Commercial vessels transmit passenger and crew manifests through the U.S. Coast Guard electronic Notice of Arrival/Departure System (eNOA/D), the electronic data interchange system approved by CBP for use by commercial vessel carriers. *See* 72 FR 48320, 48320.

These existing regulations have been effective at mitigating risks and detecting violations of immigration, customs, agricultural, and other laws in the air and sea environment by providing CBP with the information and time necessary to identify high-risk passengers on aircraft or commercial vessels and to take appropriate action. For that reason, CBP is proposing in this document to require similar reporting requirements in the rail environment.

IV. Proposed Requirements

This document proposes to require rail carriers to transmit to CBP an advance electronic transmission of information for any train arriving in or departing from the United States, including a train in transit, with a traveler on board (that is, any individual, including passengers and crew, who will cross the U.S. border on board the train). Specifically, proposed new subpart K of 19 CFR part 123, titled Advance Traveler Information for Rail, would add eight new sections to the regulations, requiring rail carriers to transmit an advance notice of arrival or notice of departure, as applicable, for the train and advance traveler information for each traveler crossing the U.S. border on board the train. After the rail carrier transmits the required information, CBP would conduct an initial vetting of the advance information and send a response message to the carrier. The response message would state either that CBP has accepted the transmission or that the rail carrier must contact CBP prior to departure. CBP also proposes conforming amendments to § 123.0, Scope, and § 123.6, Train sheet for arriving railroad trains, in 19 CFR part 123. Each new proposed requirement is explained in detail below.

A. Definitions

Proposed 19 CFR 123.100 provides definitions for terms as they are used in the proposed new subpart K. Specifically, for purposes of this subpart the terms *conductor, crew, depart* and *departure, DHS-approved travel document, emergency, engineer, passenger, station, stop, train, traveler,* and *United States* are defined as set out in the proposed regulatory text below. For example, proposed 19 CFR 123.100 defines the term ''train,'' for purposes of proposed subpart K, to include any conveyance being used to provide railroad transportation for commercial or private purposes, including cargo conveyances and passenger conveyances. Additionally, proposed 19 CFR 123.100 defines the term ''traveler,'' for purposes of proposed subpart K, to mean any individual, including passengers and crew, who will cross the U.S. border while on board a train that will arrive in the United States from a foreign location or depart the United States for a foreign location, including a train that will cross the U.S. border while in transit. The terms ''depart'' and ''departure'' would mean the point at which the train doors are closed, and the train leaves the last station or stop prior to crossing the U.S. border on either an inbound or outbound trip. Emergency would be defined to mean an urgent situation due to a mechanical, medical, or security problem, natural or manmade disasters, evacuations due to chemical, biological, or radiological events, or the transport of emergency responders to such incidents. These definitions were developed to be consistent with the existing APIS regulations for commercial air, private air, and commercial sea carriers, with adjustments made to reflect the rail industry. Additionally, the definition for ''emergency'' is based on CBP's experience with the voluntary program for rail carriers and existing APIS regulations for other travel modes.

B. Advance Notice of Arrival or Departure for All Trains With a Traveler On Board

Proposed 19 CFR 123.101 would require a rail carrier to transmit to CBP an advance notice of arrival or departure for any train with a traveler on board arriving in the United States from a foreign location or departing the United States for a foreign location, including any train that crosses the U.S. border while in transit, unless the U.S. military exemption under proposed 19 CFR 123.105 applies.

Proposed 19 CFR 123.101(a) would generally require the rail carrier to transmit the notice of arrival or departure through a CBP-certified electronic transmission system or a CBP-approved electronic data interchange system in accordance with proposed 19 CFR 123.104. Proposed 19 CFR 123.101(a) provides that the rail carrier may authorize another party to submit the notice of arrival or departure on the rail carrier's behalf, while also providing that the rail carrier would remain responsible at all times for the submission, accuracy, timeliness, and completeness of the transmitted

information. Additionally, section 123.101(b) would require a rail carrier to electronically transmit the notice of arrival or notice of departure no later than 24 hours prior to the train's arrival at the U.S. border crossing location.

The advance notice of arrival and notice of departure would be required to contain the following data elements, pursuant to proposed 19 CFR 123.101(c): the rail carrier's code (as provided by CBP); the trip number; the train number; car numbers in order, if more than one car; place of origination (or code as provided by CBP); estimated local time and date that the train will leave from the origination station or stop; place of U.S. border crossing (or code as provided by CBP); estimated local time and date of arrival at the U.S. border crossing location; place of final destination (or code as provided by CBP); estimated local time and date of arrival at the final destination; complete itinerary, including all scheduled stops; the full name and phone number of a 24-hour emergency point of contact, who must be an individual knowledgeable about the particular trip reported in the notice of arrival or departure; and the rail carrier's name and address.

CBP's purpose in collecting this information would be to be able to identify and locate a train if CBP identified a concern with a particular traveler. CBP would link the information provided in the notice of arrival or departure with the advance traveler information that would also be required under 19 CFR 123.102 and 19 CFR 123.103 so that CBP could quickly locate any traveler of concern.

Proposed 19 CFR 123.101(d) sets forth the requirements for transmitting changes to an advance notice of arrival or departure. Specifically, proposed 19 CFR 123.101(d)(1) provides that each time any of the information in an advance notice of arrival or departure changes after transmission to CBP and prior to the train crossing the U.S. border, the rail carrier would be required to transmit the new or revised information to CBP. The new or revised information would be due prior to the train leaving the station or stop at which the rail carrier received the updated information or, if the information was received between stations or stops, no later than when the train leaves the next station or stop after receiving the information. If the rail carrier receives new or revised information after departure but prior to the train crossing the U.S. border, then the rail carrier would be required to transmit such updated information to CBP prior to crossing the U.S. border.

Proposed 19 CFR 123.101(d)(2) details that if there is a change of 30 minutes or more to the estimated time of arrival at the U.S. border crossing location on either the inbound or outbound trip, the rail carrier would be required, in addition to transmitting the updated estimated time of arrival, to contact CBP at the border crossing location to confirm that CBP resources would be available to inspect the train. The carrier must contact CBP either prior to departure or, if the change arises after departure, prior to arrival at the U.S. border crossing location. If CBP does not have resources available to inspect the train, the train would not be inspected immediately upon arrival, consistent with current practices.

C. Advance Electronic Information Required for All Travelers Arriving in the United States On Board a Train

Proposed 19 CFR 123.102 would require a rail carrier to electronically transmit advance traveler information to CBP for all travelers on board a train arriving in the United States from a foreign location, including any train that crosses the U.S. border while in transit, unless the U.S. military exemption under proposed 19 CFR 123.105 applies. Proposed 19 CFR 123.102(a) would require the rail carrier to electronically transmit the advance information through a CBP-certified transmission system or a CBP-approved electronic data interchange system in accordance with proposed 19 CFR 123.104. Proposed 19 CFR 123.102(a) provides that the rail carrier may authorize another party to submit the advance information on the rail carrier's behalf, while also providing that the rail carrier would remain responsible at all times for the submission, accuracy, timeliness, and completeness of the transmitted information.

Proposed 19 CFR 123.102(b) provides that the required information would be due no later than 60 minutes prior to the train's departure. The rail carrier would be required to transmit the following information, set forth in proposed 19 CFR 123.102(c), for each traveler on board the train: full name (last, first, and, if available, middle); date of birth; sex; country of citizenship; country of residence; DHS-approved travel document type, number, country of issuance, and expiration date, if required;[21] traveler's status on board the train (*i.e.,* conductor, engineer, passenger, crew); complete itinerary of the traveler, including origination and destination station or stop; address while in the United States, including a number and street, city, state, and zip code (not required for travelers who are in transit to a location outside the United States); alien registration number, if applicable; traveler's passenger name record locator, if available; known traveler number, if applicable; redress number, if applicable;[22] baggage tag information, if applicable; seat location, including car and seat number, if available; contact phone number, including country code; and email address. The carrier would be required to request a contact phone number and email address from each traveler, and if the traveler provides one, the carrier must transmit it to CBP. The carrier is not required to transmit a contact phone number or email address for the traveler if the traveler does not provide the information to the carrier.

The transmitted information would provide CBP with the information necessary to perform accurate and sufficient vetting of the travelers prior to their arrival in or departure from the United States. As stated above, CBP would use the information collected from the rail carriers to identify high-risk passengers and crew who may pose a risk to border or public security, may be a terrorist or suspected terrorist or affiliated with or suspected of being affiliated with terrorists or terrorist organizations, may be a person of interest, may otherwise be engaged in activity in violation of U.S. law, may be the subject of wants or warrants, or may be inadmissible. CBP has identified the above-listed information as necessary to identify such travelers.

Currently, CBP collects some of the information required by this rule from the travelers upon their arrival at the port of entry.[23] Rail carriers generally require travelers to provide similar information as part of the carrier's ticket booking process, including full name, email address, and phone number. Some carriers also collect additional

[21] The DHS-approved travel document information would be required for the majority of travelers but may not be required in certain circumstances. If a DHS-approved travel document is not required for a traveler, the rail carrier would not be required to transmit the DHS-approved travel document type, number, country of issuance, or expiration date.

[22] A redress number is a number assigned by DHS to an individual processed through the redress procedures described in 49 CFR part 1560, subpart C.

[23] Generally, CBP collects biographical information from travelers upon their arrival at the port of entry such as name, date of birth, passport number, country of residence, and address in the United States. CBP does not generally collect information relating to the traveler's train trip, such as estimated time of arrival, itinerary, seat number, or baggage information. CBP also does not generally collect traveler's phone numbers or email address during inspection.

details from travelers when booking a ticket, including passport or other travel document details such as date of birth and sex. For many of the data elements, rail carriers have the information, such as traveler's status on board, complete itinerary, baggage tag information, and seat location. Rail carriers, despite having many of these data elements in electronic format, are not currently sharing that information with CBP (except through the voluntary program). CBP is proposing to require rail carriers to both collect and transmit information electronically and in advance of departure to ensure that CBP has the relevant information at the time and in the format that is necessary to conduct sufficient vetting and to respond to any potential situation.

Proposed 19 CFR 123.102(d) sets forth that after transmission of the required information, CBP would conduct vetting of the transmitted traveler information and transmit a response message to the rail carrier. The response message will state either that CBP accepted the transmission or that the rail carrier must contact CBP prior to departure. This response message serves as confirmation that the required electronic transmission was received by CBP.

If CBP's vetting of the traveler information does not identify any concerns, then the response message back to the rail carrier would state that CBP has accepted the transmission. In such a case, no further action by the rail carrier would be required. However, if CBP were to identify a traveler as having potential security, immigration, customs, or other law enforcement issues, then the response message would indicate that the carrier should call CBP and would provide a phone number for the carrier to call. Upon contacting CBP, the carrier and CBP could determine, for example, whether there are any typographical errors in the traveler information because incorrect information could result in an inaccurate vetting result. If potential security, immigration, customs, or other law enforcement issues remain, then CBP may recommend that the carrier not transport the traveler on board the train, although the rail carrier would retain the authority to decide whom to transport on board the train.

The response message process would be necessary to ensure the integrity of the transmitted information. CBP needs accurate traveler information, before the train arrives at the port of entry, so that CBP can prepare for any security or enforcement concerns presented by a particular traveler. CBP's vetting of the travelers prior to departure may also be relevant to the rail carriers, who have an interest in protecting the security of their travelers. Additionally, communication between the carrier and CBP improves the accuracy of the information transmitted because it provides the carriers with an opportunity to correct any potential errors in the transmission.

Proposed 19 CFR 123.102(e) sets forth the requirements for transmitting changes to the traveler data to CBP. Specifically, proposed 19 CFR 123.102(e)(1) would require that each time any of the required information changes after transmission to CBP and prior to the train crossing the U.S. border, including if travelers get on or off the train prior to crossing the U.S. border, the rail carrier would be required to electronically transmit the new or revised information. The rail carrier would be required to transmit the new or revised information no later than when the train leaves the station or stop during which the rail carrier received the new or revised information. If the carrier receives information between station or stops, the carrier would be required to transmit it to CBP no later than when the train leaves the next station or stop after receiving the information. If the rail carrier receives new or revised information after departure but prior to the train crossing the U.S. border, then the rail carrier would be required to transmit the new or revised information to CBP prior to crossing the U.S. border. Proposed 19 CFR 123.102(e)(2) provides that upon receipt of the new or revised information, CBP would vet the updated information and transmit a response message to the rail carrier. The response message will state either that CBP has accepted the transmission or that the rail carrier must contact CBP prior to departure or crossing the U.S. border, as detailed above.

Proposed paragraph 123.102(f) provides that the rail carrier would be responsible for comparing the travel documents presented by the traveler with the travel document information it is transmitting to CBP in order to ensure that the information matches the information contained on the travel document, the document appears to be valid for travel purposes, and the traveler is the person to whom the travel document was issued. This requirement would ensure that CBP receives accurate and timely information, which is essential for an effective vetting process. This improved data quality would directly contribute to more reliable security assessments.

D. Advance Electronic Information Required for All Travelers Departing From the United States On Board a Train

Proposed 19 CFR 123.103 would require a rail carrier to electronically transmit advance traveler information to CBP for all travelers on board a train departing from the United States for any location outside the United States, including any train that crosses the U.S. border while in transit, unless subject to the military exemption under proposed 19 CFR 123.105. Proposed 19 CFR 123.103(a) would require the rail carrier to transmit the advance information through a CBP-certified transmission system or a CBP-approved electronic data interchange system in accordance with proposed 19 CFR 123.104. Proposed 19 CFR 123.103(a) provides that the rail carrier may authorize another party to submit the advance information on the rail carrier's behalf, while also providing that the rail carrier would remain responsible at all times for the submission, accuracy, timeliness, and completeness of the transmitted information.

Proposed 19 CFR 123.103(b) provides that the required information would be due no later than 60 minutes prior to the train's departure. The data elements required for departing travelers would be the same as those required for arriving travelers. Specifically, the rail carrier would be required to transmit the following information, as set forth in proposed 19 CFR 123.103(c), for each traveler on board the train: full name (last, first, and, if available, middle); date of birth; sex; country of citizenship; country of residence; DHS-approved travel document type, number, country of issuance, and expiration date, if required;[24] traveler's status on board the train (*i.e.,* conductor, engineer, passenger, crew); complete itinerary of the traveler, including origination and destination station or stop; address while in the United States including a number and street, city, state, and zip code (not required for travelers who are in transit to a location outside the United States); alien registration number, if applicable; traveler's passenger name record locator, if available; known traveler number, if applicable; redress number, if

[24] As noted above, the DHS-approved travel document information would be required for the majority of travelers but may not be required in certain circumstances. If a DHS-approved travel document is not required for a traveler, the rail carrier would not be required to submit the DHS-approved travel document information.

applicable;[25] baggage tag information, if applicable; seat location, including car and seat number, if available; contact phone number, including country code; and email address. As with arrivals, the carrier must request a phone number and email address from the traveler but is not required to transmit a phone number with country code or email address if the traveler does not provide it.

CBP's purpose in collecting this information would be the same as stated above for arriving passengers, that is, to enable CBP to perform accurate and sufficient vetting of the information and identify travelers of concern prior to departure from the United States. Currently, CBP can collect biographical information from departing travelers at the port of entry at the time of departure. Rail carriers generally collect similar information electronically from travelers, but they currently are not sharing it with CBP (except through the voluntary program). CBP is proposing to require rail carriers to both collect and transmit information electronically and in advance of departure to ensure that CBP has the relevant information at the time and in the format that is necessary to conduct vetting and to respond to any potential situation.

Proposed 19 CFR 123.103(d) sets forth that after transmission of the required information, CBP would conduct vetting of the transmitted traveler information and transmit a response message to the rail carrier stating either that CBP has accepted the transmission or that the rail carrier must contact CBP prior to departure. CBP's process of responding to the transmission would be the same as stated above for arriving passengers. This response message serves as confirmation that the required electronic transmission has been received by CBP.

Proposed 19 CFR 123.103(e) sets forth the requirements for transmitting changes to the traveler data to CBP for departing trains. Specifically, proposed 19 CFR 123.102(e)(1) would require that each time any of the required information changes after transmission to CBP and prior to the train crossing the U.S. border, including if travelers get on or off the train prior to crossing the U.S. border, the rail carrier would be required to electronically transmit the new or revised information to CBP. The rail carrier would be required to transmit the new or revised information no later than when the train leaves the station or stop during which the rail carrier received the new or revised information. If the carrier receives information between station or stops, it must transmit the new or revised information to CBP no later than when the train leaves the next station or stop after receiving the information. If the rail carrier receives new or revised information after departure but prior to the train crossing the U.S. border, then the rail carrier would be required to transmit the new or revised information to CBP prior to crossing the U.S. border. Proposed 19 CFR 123.103(e)(2) provides that upon receipt of the new or revised information, CBP would vet the updated information and transmit a response message to the rail carrier. The response message would state either that CBP has accepted the transmission or that the rail carrier must contact CBP prior to departure or prior to crossing the U.S. border, as detailed above.

Proposed paragraph 123.103(f) provides that the rail carrier collecting the required information would be responsible for comparing the travel documents presented by the traveler with the travel document information it is transmitting to CBP in order to ensure that such information matches the information contained on the travel documents, the documents appear to be valid for travel purposes, and the traveler is the person to whom the travel documents were issued. As with arrivals, this requirement would ensure that CBP receives accurate and timely information, which is essential for an effective vetting process. This improved data quality would directly contribute to more reliable security assessments.

E. Transmission to CBP

Proposed 19 CFR 123.104 would provide rail carriers with two options for transmitting the required advance electronic information to CBP. Under the first option, provided in proposed 19 CFR 123.104(a), rail carriers would transmit the advance electronic information through a CBP-certified electronic transmission system. Under this option, a carrier would be required to submit its electronic transmission system to CBP for testing and CBP would have to certify that the rail carrier's system is capable of communicating with the CBP system for effective transmissions of data and receipt of appropriate messages. Transmissions made via a CBP-certified electronic transmission system may be transmitted as interactive individual submissions, interactive batch submissions, or non-interactive batch submissions. If a rail carrier uses an interactive transmission method (batch or individual), the rail carrier would be required, in addition to the other transmissions proposed in this rule, to transmit to CBP a message that identifies all travelers that boarded the train. The message would be required to identify the travelers by a unique identifier assigned by the rail carrier or by specific traveler data, such as the traveler's full name. This is commonly referred to as a ''close-out'' message. The close-out message would be due to CBP no later than 30 minutes after departure.

Close-out messages are necessary specifically for interactive transmission because the carrier can send traveler information one-by-one and get almost immediate responses from CBP. For non-interactive transmission, the carrier sends all the information in one batch and receives a single response message. In certain situations, when a carrier is transmitting traveler information interactively, a traveler that books a ticket but does not board the train would appear on the manifest, and, therefore, would appear to CBP to be on the train. The close-out message ensures that only those travelers that boarded the train are included in the manifest.

Under the second option, provided in proposed 19 CFR 123.104(b), rail carriers would transmit the advance electronic information through a CBP-approved electronic data interchange system. Currently, CBP has approved transmissions through the Electronic Advance Passenger Information System (eAPIS) web[26] portal, and through the CBP-approved application with manifest capabilities. Transmissions through eAPIS are non-interactive transmissions. In order for CBP to approve an electronic data interchange system, CBP must be able to test the system to ensure it can effectively transmit data and receive messages and meet all applicable DHS-established security and connectivity standards.

Additionally, on a limited case-by-case basis and upon request by a rail carrier, CBP may permit a rail carrier to submit the required information telephonically or through another approved alternative procedure when unforeseen circumstances preclude transmission of the information electronically, as set forth in proposed paragraph 123.104(c). Under such circumstances, CBP would manually enter the information provided by the rail carrier, vet the information, and

[25] A redress number is a number assigned by DHS to an individual processed through the redress procedures described in 49 CFR part 1560, subpart C.

[26] The eAPIS is an online transmission system that meets all current and future APIS data element requirements for all mandated APIS transmission types. More information on eAPIS generally is available at *https://eapis.cbp.dhs.gov/eapis/help.do* (last accessed May 26, 2026).

provide a response message to the carrier. CBP's response message could be received electronically or through another alternative procedure such as telephonically.

F. Exemption for Certain U.S. Military

Proposed 19 CFR 123.105 would provide an exemption for rail carriers from reporting certain U.S. military personnel. Under this section, advance electronic information otherwise required by part 123, subpart K, would not be required for active-duty U.S. military personnel traveling on orders as travelers on board a U.S. Department of War-chartered train.

G. Penalties

Violations of the advance notice of arrival or departure or advance traveler information requirements provided for in this part may result in certain civil penalties, as provided in section 436 of the Tariff Act of 1930, as amended (19 U.S.C. 1436), in addition to other penalties applicable under other provisions of law. Furthermore, any conveyance used in connection with any such violation is subject to seizure and forfeiture. Criminal penalties would also be authorized under section 436 of the Tariff Act, as amended (19 U.S.C. 1436), for intentional violations or when prohibited merchandise is found on board, as detailed in proposed 19 CFR 123.106(b).

H. Emergencies

Proposed 19 CFR 123.106(c) provides that in the case of non-compliance with any of the reporting requirements of part 123, subpart K, due to an emergency, CBP would take into consideration the circumstances of the emergency and whether, but for the emergency, the carrier would have been capable of making the required transmissions. The term ''emergency'' would mean an urgent situation due to a mechanical, medical, or security problem, including natural or manmade disasters, evacuations due to chemical, biological, or radiological events, or the transport of emergency responders to such incidents. *See* proposed 19 CFR 123.100.

I. Changes to the Train Sheet for Trains Arriving in the United States Without Commercial Cargo On Board

Under the current language of 19 CFR 123.6, a conductor of a train arriving from Canada or Mexico is required to present to the CBP officer at the port of arrival individual car manifests and a train sheet, sometimes called a consist, bridge sheet, or trip sheet, listing each car and showing the car numbers and initials. This proposed rule would require rail carriers to transmit advance electronic data that is the same or substantially similar to the information currently required by 19 CFR 123.6 as referenced below. For example, the advance notice of arrival or departure proposed by this rule would provide CBP with sufficient information, including car numbers and the train number to identify the train and the relevant trip. In order to avoid requiring carriers to submit the same information multiple times in different formats, CBP is proposing to amend 19 CFR 123.6 by adding a provision which states that a conductor of a train arriving from Canada or Mexico without commercial cargo on board would not be required to present individual car manifests or a train sheet if the carrier has transmitted the information required by subpart K of this part for that train in accordance with those provisions. A train consist will continue to be required for trains with commercial cargo on board because CBP continues to rely on the consist as part of the commercial cargo manifest process. *See, e.g.,* 19 CFR 123.91(a). CBP is not at this time proposing changes to the requirements related to manifest information for commercial cargo.

J. Severability

CBP has authority to implement this proposed rule and the exercise of its authority reflects sound policy. To protect CBP's goals for this rule, CBP is proposing regulatory text stating that the provisions be severable so that, if necessary, the regulations may continue to function even if a provision is rendered inoperable. The purpose of the severability clause is to ensure that, in the event a specific provision of the rule is invalidated or otherwise unenforceable due to legal challenge, the remaining provisions can continue to operate independently to the extent possible. This approach is consistent with standard rulemaking practices and is intended to preserve the functionality of the rule while minimizing disruption.

Accordingly, in the event that any portion of a subsequent final rule were to be declared invalid or unenforceable, CBP intends for the remaining aspects of the rule to be severable. Although the provisions collectively will strengthen the overall security of international rail travel, they each operate independently to serve this purpose as well. For example, the requirements for arriving travelers could operate independently from the requirements for departing travelers, and vice versa.

V. Related Rulemakings

CBP is engaging in multiple rulemakings to implement APIS requirements across different modes of travel. For example, CBP published a notice of proposed rulemaking (Advance Passenger Information System: Electronic Validation of Travel Documents, 88 FR 7016 (Feb. 2, 2023)), which proposed to amend the APIS regulations applicable to commercial air carriers. Additionally, CBP is concurrently drafting a separate notice of proposed rulemaking (NPRM) to require bus carriers to transmit advance electronic traveler information to CBP for any individual (passengers or crew) who is arriving in or departing from the United States on board a bus. The NPRM for bus travel proposes to amend 19 CFR part 123, similar to this proposed rule.

Although this proposed rule generally does not directly intersect with the rulemakings for commercial air or bus travel, CBP has endeavored to use consistent regulatory text in these rulemakings. CBP also acknowledges that the regulatory text ultimately promulgated for the various APIS rulemakings may differ from the exact provisions in the relevant proposed rules in order to align the text with any updated regulations as of the time of publication. For example, both this rule and the NPRM for bus travel amends 19 CFR 123.0 to reflect the scope of 19 CFR part 123. This provision, therefore, may require edits at the final rule stage, to accurately align both rules.

CBP realizes that policy and regulatory changes can affect staffing needs, costs, fee revenue, and processing times. CBP will consider these other rulemakings for peripheral, overlapping, or interrelated effects on this rule, and will analyze and incorporate the potential effects of rules that may impact or substantively overlap with this proposal, if any, at a later date.

VI. Statutory and Regulatory Reviews

A. Executive Orders 12866, 13563, and 14192

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14192

(Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that ''any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.''

The Office of Management and Budget (OMB) has designated this proposed rule a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, although not economically significant under section 3(f)(1). Accordingly, the rule has been reviewed by OMB.

A determination of whether this proposed rule is considered ''regulatory'' or ''deregulatory'' under the requirements of Executive Order 14192 will be made when any final rule in this rulemaking is issued. *See* OMB's Memorandum ''Guidance Implementing Section 3 of Executive Order 14192,'' titled 'Unleashing Prosperity Through Deregulation' (March 26, 2025).

1. Purpose of the Rule

Before the implementation of voluntary reporting, international rail carriers did not transmit information to CBP for travelers on board a train prior to arriving in or departing from the United States at a port of entry (POE).[27] As a result, information regarding train passengers and crew was not provided to CBP in time to adequately and accurately assess potential threats posed by individuals planning to cross the U.S. border by train. CBP did receive an estimated time of arrival for trains arriving in or departing from the United States and carrying commercial cargo. This information was provided informally and voluntarily.

This lack of information resulted in a gap in national security that terrorists and other criminals could exploit to cross the U.S. border or transport weapons and contraband without detection.[28] This risk is increased for rail travel because other modes of travel, such as by air and sea, generally require advance traveler information, which CBP uses to identify potential threats from terrorists and other criminals.

To mitigate this security gap, in 2005, CBP established a voluntary reporting program in the rail environment that enables rail carriers to transmit advance traveler information for trains crossing the U.S. border. Since 2005, three passenger rail carriers transmitted advance traveler information to CBP through the voluntary program; however, only one rail carrier currently participates in the voluntary program.[29] No freight rail carriers have participated in the voluntary program. CBP has been able to use the voluntarily transmitted data to identify travelers who require additional vetting or inspection and to identify violations of immigration, customs, agriculture, and other laws prior to a train's arrival at the border while simultaneously facilitating the international travel of legitimate travelers by saving passengers and carriers time waiting at the border. However, because transmission of advance traveler information is not mandatory, not all rail carriers transmit this information and the information they do transmit is not always valid, accurate, or timely. Accordingly, the security gap is still present.

This proposed rule would further mitigate the risk to national security by making the transmission of advance traveler information and a notice of arrival or departure mandatory for all trains arriving in or departing from the United States.

2. Costs and Benefits of Rule

In this regulatory impact analysis, CBP discusses the costs and benefits that international rail carriers, passengers, and CBP would experience with the implementation of this rule in qualitative, and when possible, quantitative, and monetized terms. The period of analysis for this proposed rule is from 2026 through 2030. Additionally, rail carriers, passengers, and CBP have experienced costs and benefits involving the voluntary reporting program since 2005. Though not a result of this rule, CBP will also discuss the effects of the voluntary reporting program for rail carriers and CBP. The voluntary reporting program began in 2005, but quality CBP data on rail carriers begins in 2012. Therefore, the period of the analysis of the voluntary reporting program spans from 2012 to 2025. The effects of this rule and the voluntary reporting period can be added together to see the total effect of these two periods of analysis.

a. Costs

This rule would introduce new costs to both passenger rail carriers and cargo rail carriers largely as a result of additional time necessary to prepare, and transmit required information. The costs for passenger rail carriers and cargo rail carriers will be discussed separately as they experience different time burdens. CBP experiences costs related to labor and research and development as a result of this rule. CBP did not identify any new costs for passengers that would result from this rule. CBP requests comment on any potential costs, including any costs associated with changes in passenger behavior or travel patterns, that would be borne by passengers as a result of this rule.

i. International Passenger Rail Carriers

This rule would introduce costs to international passenger rail carriers by requiring them to transmit a notice of arrival/departure no later than 24 hours before arrival at the border and traveler information (including both passenger and crew information) to CBP before the train departs from the final station or stop to approach the U.S. border.[30] Before departing a station or stop en route to the border, rail carriers would also be required to transmit amendments to the transmitted traveler information if a person boards or disembarks the train after the traveler manifest has been transmitted to CBP. CBP requests comment on any other costs or changes to operations that would be borne by international passenger rail carriers as a result of this rule.

International passenger rail carriers have several options for how they could record passenger data for the manifests. One option is for rail carriers to record APIS information into an electronic spreadsheet using programs that they are likely to already have access to or are available for free. To transmit the traveler manifest to CBP, rail carriers can take advantage of the free eAPIS web portal. International passenger rail carriers already have computers, internet access, software to record manifests, and may transmit manifests to CBP through the free eAPIS web portal. CBP also plans to allow rail carriers to use any CBP-approved application or system with manifest capabilities to transmit traveler information directly from documents to CBP. CBP believes that this proposed rule would require only minimal technology costs for international passenger rail carriers because they already have most resources needed to transmit a manifest and could take advantage of the free eAPIS web portal.

[27] For all subsequent mentions of ''rail carriers'' in this section, CBP is referring only to rail carriers whose trains travel internationally.

[28] Examples are provided in section III.B.2, *Need for Rulemaking and Voluntary Program.*

[29] Two small passenger rail carriers ceased international travel during the COVID–19 pandemic and neither have resumed international rail travel since.

[30] For the purposes of this analysis, ''traveler'' refers to both the crew and passengers on board a train.

International passenger rail carriers would experience costs associated with the preparation and transmission of notices of arrival/departure, passenger manifests, crew manifests, and amendments to manifests. Based on its experience with the voluntary reporting program, CBP believes passenger rail carriers would transmit crew manifest information separately and prior to the transmission of passenger manifest information. Accordingly, for the purpose of this analysis, CBP estimated the costs associated with the collection and submission of crew information separately from the costs associated with the collection and submission of passenger manifests.

Under this rule, for each train intending to cross the U.S. border, international passenger rail carriers would be required to transmit one notice of arrival/departure and one arrival/departure manifest in all cases. Additionally, international passenger rail carriers would be required to submit amended manifests if any of the manifest information changes after it is transmitted to CBP. Based on CBP's experience with the voluntary program, CBP's Office of Field Operations (OFO) estimates that an average of five amendments would be transmitted per passenger train, due to passengers boarding or departing at stations or stops along the route before the final approach to the border and after the traveler information has been initially transmitted. CBP estimates the total transmissions expected by multiplying the number of passenger trains, shown in Table 1 by the number of notices of arrival/departure (1), passenger manifests (1), crew manifests (1), and manifest amendments (5).[31] The estimated number of transmissions per calendar year are shown in Table 2.

TABLE 1—NUMBER OF TRAINS CROSSING THE U.S. BORDER BY CALENDAR YEAR

Calendar year	Passenger trains	Cargo trains
2012	3,445	71,517
2013	3,433	73,943
2014	3,468	73,532
2015	3,516	78,404
2016	3,550	76,300
2017	3,547	63,969
2018	3,580	66,292
2019	3,293	66,111
2020	597	60,435
2021	0	60,450
2022	422	62,958
2023	3,172	60,582
2024	2,817	61,797
2025	3,497	70,215
2026	3,497	70,215
2027	3,497	70,215
2028	3,497	70,215
2029	3,497	70,215
2030	3,497	70,215

Source: Workbook: Border Crossing Data, *https://explore.dot.gov/views/BorderCrossingData/Annual,* accessed April 22, 2025. CBP estimated figures for 2012–2020 using train arrival data and train manifest data of passenger rail carriers participating in the voluntary reporting program. CBP estimated the figures for 2025–2030 using an average number of passenger train crossings from 2015–2019 with an assumption of 0% growth based on communication with CBP subject matter experts. CBP does not track the number of passenger and cargo rail separately. CBP assumes that all trains that arrive to the United States will also depart the United States so the total rail traffic is double the arrivals.

TABLE 2—PASSENGER RAIL MANIFEST TRANSMISSIONS

Calendar year	Notice of arrival/ departure	Passenger manifest	Crew manifest	Manifest amendments	Total
2012	0	2,899	2,253	0	5,152
2013	0	2,910	2,550	0	5,460
2014	0	2,914	2,550	0	5,464
2015	0	2,902	1,882	0	4,784
2016	0	2,918	2,069	0	4,987
2017	0	2,915	2,925	0	5,840
2018	0	2,936	2,505	0	5,441
2019	0	2,753	2,409	0	5,162
2020	0	401	591	0	992

[31] On March 11, 2020, the World Health Organization (WHO) Director General characterized COVID–19 as a pandemic. *See* WHO, WHO Director-General's opening remarks at the media briefing on COVID–19—11 March 2020, *https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020* (last accessed Jan. 31, 2022). On March 13, 2020, the President declared that the COVID–19 outbreak in the United States constituted a national emergency. Proclamation No. 9994, 85 FR 15337 (Mar. 18, 2020) (Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak). This national emergency was terminated by joint resolution on April 10, 2023. Public Law 118–3, 137 Stat. 6 (Apr. 10, 2023). The outbreak of COVID–19 and subsequent travel restrictions and requirements reduced the number of trains crossing the U.S. border in the short run and may have had an unknown impact in the long run. *See* DHS, Fact Sheet: DHS Measures on the Border to Limit the Further Spread of Coronavirus, *https://www.dhs.gov/archive/news/2020/10/19/fact-sheet-dhs-measures-border-limit-further-spread-coronavirus.* (last accessed Feb. 18, 2026). Consequently, using historical growth rates and figures from 2014–2019 to estimate train traffic does not reflect any impacts from the COVID–19 pandemic. When this analysis was initially prepared, it was not clear what level of reductions the pandemic would have on future train traffic or train passenger numbers or how CBP would estimate such an impact with any precision given the available data. Therefore, passenger train and cargo train projections CBP uses in this analysis are expected to be overestimations for the period of the analysis, resulting in potential overestimations of this rule's costs and benefits.

TABLE 2—PASSENGER RAIL MANIFEST TRANSMISSIONS—Continued

Calendar year	Notice of arrival/ departure	Passenger manifest	Crew manifest	Manifest amendments	Total
2021	0	0	0	0	0
2022	0	421	417	0	838
2023	0	2,421	2,419	0	4,840
2024	0	2,685	2,692	0	5,377
2025	0	2,862	2,344	0	5,206
2026	3,497	3,497	3,497	17,485	27,976
2027	3,497	3,497	3,497	17,485	27,976
2028	3,497	3,497	3,497	17,485	27,976
2029	3,497	3,497	3,497	17,485	27,976
2030	3,497	3,497	3,497	17,485	27,976

Note: Manifest data from the APIS database for 2024 and earlier was provided by CBP OFO subject matter experts on 8/26/2020, 5/13/2021, 6/8/2021, 3/19/2024, and 5/1/2025. Figures for 2025–2030 are based on an average of passenger train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP OFO subject matter experts. Train crossings include both arrivals and departures, combined.

CBP subject matter experts estimate preparing and transmitting an advance notice of arrival/departure to take three minutes, a passenger manifest to take ten minutes, a crew manifest to take three minutes, and an amendment for a passenger manifest to take 30 seconds.[32] [33]

TABLE 3—PASSENGER RAIL CARRIER TIME BURDEN PER SUBMISSION

[In minutes]

	Passenger rail carriers		
	Pre-voluntary program baseline	Voluntary program (participants only)	Proposed regulatory requirements
Notice of Arrival/Departure	0	0	3
Passenger Manifest	0	10	10
Crew Manifest	0	3	3
Manifest Amendment	0.0	0.0	0.5
Time spent at border for processing	60	30	30

Multiplying the annual time burdens in Table 4 by the estimated wage rate for locomotive engineers ($54.19) results in the estimated annual cost to international passenger rail carriers as shown in Table 5.[34] The voluntary reporting program did not require nor request trains to transmit a notice of arrival/departure or manifest amendments so there were no costs for these transmissions for the duration of the program.

TABLE 4—TOTAL PASSENGER RAIL TIME BURDEN

[In hours]

Calendar year	Notice of arrival/departure	Passenger manifest	Crew manifests	Manifest amendment	Total
2012	0	483	113	0	596
2013	0	485	128	0	613
2014	0	486	128	0	613
2015	0	484	94	0	578

[32] The source for passenger manifest time burden is CBP's Supporting Statement for Paperwork Reduction Act Submission for OMB Control No. 1651–0088, Passenger and Crew Manifest for Passenger Flights (Aug. 21, 2020), *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202201-1651-002* (last accessed Feb. 18, 2026). Other time burdens were provided by CBP subject matter experts on Aug. 17, 2021.

[33] Discussion of what is included in a Report of Arrival can be found in Section III.B.1 and discussion of what is proposed to be included in the Advance Notice of Arrival can be found in Section IV.A–D of this rule.

[34] U.S. Bureau of Labor Statistics. Occupational Employment and Wage Statistics, ''May 2023 National Occupational Employment and Wage Estimates United States.'' Updated April 3, 2024. Available at *https://www.bls.gov/oes/2023/may/oes_nat.htm*. Accessed June 4, 2024. The total compensation to wages and salaries ratio is equal to the total compensation cost per hour worked for Transportation and Material Moving occupations ($34.89) divided by the wages and salaries cost per hour worked for the same occupation category ($23.99). See ''Table 2. Employer Costs for Employee Compensation for civilian workers by occupational and industry group.'' Bureau of Labor Statistics, ''Employer Costs for Employee Compensation—December 2023.'' Released March 13, 2024. Available at *https://www.bls.gov/news.release/archives/ecec_03132024.pdf*. Accessed June 4, 2024. To adjust to 2024 dollars, multiply by the 2022 Q1—2024 Q1 percent change in the Bureau of Economic Analysis's Implicit Price Deflators for Gross Domestic Product (124.203/107.668–1). See ''Table 1.1.9. Implicit Price Deflators for Gross Domestic Product,'' Line 1 Gross Domestic Product, quarterly. Bureau of Economic Analysis (updated May 30, 2024), available at *https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey&_gl=1*175tbc1*_ga*MTEyNTU1Nzc4Ny4xNzE3NTEyMTUw*_ga_J4698JNNFT*MTcxOTQzMDIwNS4xLjEuMTcxOTQzMDIzMi4zMy4wLjA.#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDNdLCJkYXRhIjpbWyJjYXRlZ29yaWVzIiwiU3Vydm V5Il0sWyJOSVBBX1RhYmx lX0xpc3QiLCIxMyJdXX0=* (last accessed June 4, 2024).

TABLE 4—TOTAL PASSENGER RAIL TIME BURDEN—Continued

[In hours]

Calendar year	Notice of arrival/departure	Passenger manifest	Crew manifests	Manifest amendment	Total
2016	0	486	103	0	590
2017	0	486	146	0	632
2018	0	489	125	0	615
2019	0	459	120	0	579
2020	0	67	30	0	96
2021	0	0	0	0	0
2022	0	70	21	0	91
2023	0	404	121	0	524
2024	0	448	135	0	582
2025	0	477	117	0	594
2026	175	583	175	146	1,078
2027	175	583	175	146	1,078
2028	175	583	175	146	1,078
2029	175	583	175	146	1,078
2030	175	583	175	146	1,078

Note: Manifest data for 2024 and earlier were provided by CBP OFO subject matter experts on 8/26/2020, 5/13/2021, 6/8/2021, 3/19/24, and 5/1/25. Figures for 2025–2030 are based on an average of passenger train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP OFO subject matter experts. Train crossings include both arrivals and departures combined.

Figures may not sum to total due to rounding.

TABLE 5—PASSENGER RAIL COSTS

[In undiscounted 2024 dollars]

Calendar year	Notice of arrival/departure	Passenger manifest	Crew manifests	Manifest amendment	Total
2012	$0	$26,183	$6,105	$0	$32,287
2013	0	26,282	6,909	0	33,191
2014	0	26,318	6,909	0	33,228
2015	0	26,210	5,099	0	31,309
2016	0	26,354	5,606	0	31,960
2017	0	26,327	7,925	0	34,253
2018	0	26,517	6,787	0	33,304
2019	0	24,864	6,527	0	31,391
2020	0	3,622	1,601	0	5,223
2021	0	0	0	0	0
2022	0	3,802	1,130	0	4,932
2023	0	21,866	6,554	0	28,420
2024	0	24,250	7,294	0	31,544
2025	0	25,852	6,350	0	32,202
2026	9,475	31,584	9,475	7,896	58,430
2027	9,475	31,584	9,475	7,896	58,430
2028	9,475	31,584	9,475	7,896	58,430
2029	9,475	31,584	9,475	7,896	58,430
2030	9,475	31,584	9,475	7,896	58,430
2012–2025 average	0	20,603	5,343	0	25,946
2026–2030 average	9,475	31,584	9,475	7,896	58,430

Note: Manifest data for 2024 and earlier were provided by CBP OFO subject matter experts on 8/26/2020, 5/13/2021, 6/8/2021, 3/19/24, and 5/1/25. Figures for 2025–2030 are based on an average of passenger train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP OFO subject matter experts. Train crossings include both arrivals and departures combined.

Figures may not sum to total due to rounding.

International passenger rail carriers may also experience costs when required to call CBP related to document errors or CBP determining that someone on a manifest would not be allowed to enter the United States. CBP estimates that this could be required for one percent of all rail passengers arriving in the United States and that total costs to the industry would be less than $1,000 annually. CBP believes this cost to be negligible due to the rarity of the occurrence and the minimal time it would take to address issues. CBP requests comments on this estimate.

ii. International Cargo Rail Carriers

International cargo rail carriers, like international passenger rail carriers, can record APIS manifest information into an electronic spreadsheet using programs that they are likely to already have access to or that are available for free. To transmit the APIS manifest to CBP, rail carriers can take advantage of the eAPIS web portal to which a rail carrier can create a free account and upload an existing spreadsheet of data. International cargo rail carriers already have computers, internet access, software to record manifests, and may transmit manifests to CBP through the free eAPIS web portal. CBP also plans to allow rail carriers to use any CBP-approved application or system with manifest capabilities to transmit traveler information directly from documents to CBP.

CBP believes that this proposed rule would require only minimal technology costs for international cargo rail carriers because they already have most resources needed to transmit a manifest and could take advantage of the free eAPIS web portal. International cargo rail carriers would experience costs associated with the preparation and transmission of notices of arrival/departure and arrival and departure manifests for all travelers on board. The total transmissions expected for each are assumed to be equal to the number of cargo trains shown in Table 1. For the years 2026–2030, CBP estimates the number of transmissions to be 70,215 annually. As previously stated, CBP estimates preparing and transmitting a notice of arrival/departure to take three minutes and a crew manifest to take three minutes.[35] CBP multiplied the respective time burdens of 3 minutes, or 0.05 hours, by the number of transmissions results to estimate the total annual time burden. CBP does not anticipate that cargo rail carriers will need to submit manifest amendments because they typically only have a couple crew members on-board and no passengers. Since no cargo rail carriers participated in the voluntary reporting program, the annual time and monetized cost for 2012–2025 are zero. The total expected time burden for years 2026–2030 are shown in Table 7.

TABLE 6—CARGO RAIL TIME BURDEN PER SUBMISSION

Time burden per submission (in minutes)	Cargo rail carriers		
	Baseline	Voluntary program (participants only)	Regulatory requirements
submit notice of arrival/departure	0	0	3
Crew Manifests	0	3	3

TABLE 7—CARGO RAIL TIME BURDEN

[In hours]

Calendar year	Notice of arrival/departure	Crew manifests	Total
2026	3,511	3,511	7,022
2027	3,511	3,511	7,022
2028	3,511	3,511	7,022
2029	3,511	3,511	7,022
2030	3,511	3,511	7,022

Note: Figures for 2026–2030 are based on an average of train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.

CBP then multiplied the annual time burdens in Table 7 by the estimated wage rate for locomotive engineers ($54.19), resulting in the estimated annual cost to international cargo rail carriers as shown in Table 8.

TABLE 8—CARGO RAIL COSTS

[In undiscounted 2024 dollars]

Calendar year	Notice of arrival/departure	Crew manifests	Total
2026	$190,248	$190,248	$380,495
2027	190,248	190,248	380,495
2028	190,248	190,248	380,495
2029	190,248	190,248	380,495
2030	190,248	190,248	380,495

Note: Figures for 2026–2030 are based on an average of train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.
Figures may not sum to total due to rounding.

iii. CBP

CBP experiences costs related to labor and research and development as a result of this rule. Research and development of systems required to accommodate the transmission of information by rail carriers resulted in an initial cost to CBP of $2,039,255 in 2012 and annual costs of $611,766 for four years after for a five-year total cost of $4,486,319 for research and development. CBP does not expect additional research and development costs as a result of the rule.

During the voluntary reporting program, CBP subject matter experts report that a CBP officer took approximately ten minutes on average to perform initial vetting and approve a train to approach the border for each passenger train which had transmitted manifest information for travelers on board the train prior to arrival at the border.[36] This is a new time burden resulting from the implementation of the voluntary reporting program and will continue as part of this rule. This time burden is offset by time saved at the border which is addressed later in the analysis. CBP estimated the annual

[35] Cargo rail carriers may need to submit manifest amendments, but CBP believes manifest amendments will be rare for cargo rail carriers.

[36] CBP OFO subject matter expert time estimates provided on Aug. 17, 2021.

time burden of initial vetting as a result of the voluntary reporting program and this rule by multiplying the time burden per passenger train (ten minutes) by the annual number of passenger trains arriving or departing with a manifest transmitted in advance (Table 9).

CBP estimates the time burden to perform an initial vetting and approve a cargo train to approach the border to be on average five minutes.[37] CBP estimated the annual time burden of initial vetting for cargo trains by multiplying the time burden per cargo train (five minutes) by the annual number of cargo trains arriving or departing with a manifest transmitted in advance (Table 10). No cargo train carriers transmitted crew manifests as part of the voluntary reporting program but would be required to transmit manifests for all travelers on board, including all crew, as a result of this rule. CBP's total time burden for performing initial vetting for both passenger trains and cargo trains is shown in Table 11.

TABLE 9—MANIFESTED AND UNMANIFESTED PASSENGER TRAINS

Calendar year	Arriving with manifest	Arriving without manifest	Departing with manifest	Departing without manifest
2012	1,450	273	1,449	273
2013	1,455	261	1,456	261
2014	1,460	277	1,454	277
2015	1,450	307	1,452	307
2016	1,457	316	1,461	316
2017	1,467	311	1,458	311
2018	1,467	322	1,469	322
2019	1,358	270	1,395	270
2020	268	0	329	0
2021	0	0	0	0
2022	211	0	211	0
2023	1,211	373	1,215	373
2024	1,348	62	1,345	62
2025	1,440	309	1,447	302
2026	1,749	0	1,749	0
2027	1,749	0	1,749	0
2028	1,749	0	1,749	0
2029	1,749	0	1,749	0
2030	1,749	0	1,749	0

Note: Manifest data for 2024 and earlier were provided by CBP OFO subject matter experts on 8/26/2020, 5/13/2021, 6/8/2021, 3/19/24, and 5/1/25. Figures for 2025–2030 are based on an average of passenger train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP OFO subject matter experts. Train crossings include both arrivals and departures combined.

TABLE 10—MANIFESTED AND UNMANIFESTED CARGO TRAINS

Calendar year	Arriving with manifest	Arriving without manifest	Departing with manifest	Departing without manifest
2012	0	35,758	0	35,759
2013	0	36,972	0	36,971
2014	0	36,763	0	36,769
2015	0	39,203	0	39,201
2016	0	38,152	0	38,148
2017	0	31,980	0	31,989
2018	0	33,147	0	33,145
2019	0	33,074	0	33,037
2020	0	30,248	0	30,187
2021	0	30,225	0	30,225
2022	0	31,479	0	31,479
2023	0	30,293	0	30,289
2024	0	30,897	0	30,900
2025	0	35,108	0	35,107
2026	35,108	0	35,107	0
2027	35,108	0	35,107	0
2028	35,108	0	35,107	0
2029	35,108	0	35,107	0
2030	35,108	0	35,107	0

Note: Manifest data for 2024 and earlier were provided by CBP OFO subject matter experts on 8/26/2020, 5/13/2021, 6/8/2021, 3/19/24, and 5/1/25. Figures for 2025–2030 are based on an average of train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP OFO subject matter experts. Train crossings include both arrivals and departures combined.

[37] CBP OFO subject matter expert time estimate provided on June 8, 2020.

TABLE 11—ANNUAL CBP TIME BURDEN FOR INITIAL VETTING OF MANIFESTED TRAINS

[In hours]

Calendar year	Passenger trains		Cargo trains		Total time
	Arrivals	Departures	Arrivals	Departures	
2012	242	242	0	0	483
2013	243	243	0	0	485
2014	243	242	0	0	486
2015	242	242	0	0	484
2016	243	244	0	0	486
2017	245	243	0	0	488
2018	245	245	0	0	489
2019	226	233	0	0	459
2020	45	55	0	0	100
2021	0	0	0	0	0
2022	35	35	0	0	70
2023	202	203	0	0	404
2024	225	224	0	0	449
2025	240	241	0	0	481
2026	291	291	2,926	2,926	6,434
2027	291	291	2,926	2,926	6,434
2028	291	291	2,926	2,926	6,434
2029	291	291	2,926	2,926	6,434
2030	291	291	2,926	2,926	6,434

Note: Figures for 2025–2030 are based on an average of train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.

Figures may not sum to total due to rounding.

CBP monetized annual CBP costs for initial vetting by multiplying the annual time burden by the wage rate of a CBP officer ($99.33 per hour).[38] The total annual cost of initial vetting is shown in Table 12.

TABLE 12—ANNUAL MONETIZED CBP COST FOR INITIAL VETTING OF MANIFESTED TRAINS

[In undiscounted 2024 dollars]

Calendar year	Passenger trains		Cargo trains		Total cost
	Arrivals	Departures	Arrivals	Departures	
2012	$24,004	$23,987	$0	$0	$47,991
2013	24,087	24,103	0	0	48,190
2014	24,169	24,070	0	0	48,239
2015	24,004	24,037	0	0	48,041
2016	24,120	24,186	0	0	48,305
2017	24,285	24,136	0	0	48,421
2018	24,285	24,318	0	0	48,603
2019	22,481	23,093	0	0	45,574
2020	4,437	5,446	0	0	9,883
2021	0	0	0	0	0
2022	3,493	3,493	0	0	6,986
2023	20,047	20,113	0	0	40,161
2024	22,315	22,266	0	0	44,581
2025	23,835	23,954	0	0	47,789
2026	28,945	28,945	290,594	290,586	639,071
2027	28,945	28,945	290,594	290,586	639,071
2028	28,945	28,945	290,594	290,586	639,071
2029	28,945	28,945	290,594	290,586	639,071
2030	28,945	28,945	290,594	290,586	639,071

Note: Figures for 2025–2030 are based on an average of train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.

Figures may not sum to total due to rounding.

CBP then adds the annual costs for initial security vetting to the costs of research and development to prepare the APIS system for rail which results in the total cost to CBP. The total annual costs of this rule for CBP are shown in Table 13.

[38] CBP bases this wage on the FY 2024 salary and benefits of the national average of CBP Officer Positions, which is equal to a GS–11, Step 10. Source: CBP Office of Finance, Position Model.

TABLE 13—TOTAL ANNUAL MONETIZED CBP COST

[In undiscounted 2024 dollars]

Calendar year	Initial security vetting	Research and development	Total costs
2012	$47,991	$2,039,255	$2,087,246
2013	48,190	611,766	659,956
2014	48,239	611,766	660,005
2015	48,041	611,766	659,807
2016	48,305	611,766	660,071
2017	48,421	.....	48,421
2018	48,603	.....	48,603
2019	45,574	.....	45,574
2020	9,883	.....	9,883
2021	0	.....	0
2022	6,986	.....	6,986
2023	40,161	.....	40,161
2024	44,581	.....	44,581
2025	47,789	.....	47,789
2026	639,071	.....	639,071
2027	639,071	.....	639,071
2028	639,071	.....	639,071
2029	639,071	.....	639,071
2030	639,071	.....	639,071
2012–2025 average	38,055	320,451	358,506
2026–2030 average	639,071	.....	639,071

Note: Figures for 2025–2030 are based on an average of passenger train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.

Figures may not sum to total due to rounding.

iv. Summary of Costs

Using the data in Table 5, CBP estimates that passenger rail carriers experienced an average undiscounted annual cost of $25,946 during the voluntary reporting program between 2012 and 2025 and are expected to experience an average undiscounted annual cost of $58,430 in years 2026–2030 as a result of this rule compared to a baseline of no rule or voluntary reporting program.[39] Using data from Table 8, Cargo rail carriers are expected to experience an average undiscounted annual cost of $380,495 as a result of this rule. Cargo rail carriers experienced no costs as a result of the voluntary reporting period because they did not participate. CBP does not anticipate passengers to experience any costs as a result of this rule because CBP assumes the information required by this rule is already provided by passengers to either CBP or rail carriers. During the voluntary reporting program, CBP experienced an average undiscounted annual cost of $38,055 as a result of the initial vetting. Between 2012 and 2016, CBP also experienced total research and development costs of $4,486,319 for systems to implement this program. CBP expects the average annual cost attributed to initial vetting to increase to an undiscounted $639,071 as a result of this rule compared to a baseline of no voluntary reporting program. CBP does not expect additional research and development costs.

In Table 14 below, the discounted costs are shown for passenger rail carriers, cargo rail carriers, and CBP, expected as a result of this proposed rule. Passenger rail carriers would be expected to experience a total cost from 2026 to 2030 of $259,798 and $223,901 using a 3-percent and 7-percent discount rate respectively and annualized costs of $58,430. From 2026 to 2030, cargo rail carriers would be expected to experience a total cost of $1,691,802 and $1,458,042 using a 3-percent and 7-percent discount rate respectively and annualized costs $380,495. CBP would be expected to experience a total cost of $2,841,511 and $2,488,894 using a 3-percent and 7-percent discount rate respectively and annualized costs of $639,071.

TABLE 14—SUMMARY OF DISCOUNTED COSTS OF RULE

Calendar year	Passenger rail carriers		Cargo rail carriers		CBP	
	3% discount rate	7% discount rate	3% discount rate	7% discount rate	3% discount rate	7% discount rate
2026	$55,076	$51,035	$358,653	$332,339	$602,385	$558,189
2027	53,472	47,696	348,207	310,597	584,840	521,672
2028	51,914	44,576	338,065	290,278	567,806	487,544
2029	50,402	41,660	328,218	271,288	551,268	455,649
2030	48,934	38,934	318,659	253,540	535,212	425,840

[39] The average undiscounted annual cost for passenger rail carriers between 2012 and 2019 is $32,615.

TABLE 14—SUMMARY OF DISCOUNTED COSTS OF RULE—Continued

Calendar year	Passenger rail carriers		Cargo rail carriers		CBP	
	3% discount rate	7% discount rate	3% discount rate	7% discount rate	3% discount rate	7% discount rate
Total	259,798	223,901	1,691,802	1,458,042	2,841,511	2,448,894
Annualized Cost	58,430	58,430	380,495	380,495	639,071	639,071

Note: Figures for 2026–2030 are based on an average of train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.
Figures may not sum to total due to rounding.

In Table 15 below, the discounted costs are shown for passenger rail carriers, cargo rail carriers, and CBP relating to the voluntary reporting period that has been active since 2005. Passenger rail carriers experienced a total cost from 2012 to 2025 of $439,448 and $573,971 using a 3-percent and 7-percent discount rate respectively. CBP experienced total costs of $6,794,793 and $10,103,253 using a 3-percent and 7-percent discount rate respectively. From 2012 to 2025, cargo rail carriers experienced no costs as they did not participate in the voluntary reporting period.

TABLE 15—SUMMARY OF DISCOUNTED COSTS OF VOLUNTARY REPORTING PERIOD

[2012–2025]

Calendar year	Passenger rail carriers		CBP		Total	
	3% discount rate	7% discount rate	3% discount rate	7% discount rate	3% discount rate	7% discount rate
2012	$46,034	$72,717	$2,975,914	$4,700,878	$3,021,948	$4,773,595
2013	45,945	69,863	913,533	1,389,109	959,478	1,458,972
2014	44,655	65,364	886,992	1,298,330	931,647	1,363,694
2015	40,851	57,561	860,898	1,213,028	901,749	1,270,588
2016	40,486	54,914	836,159	1,134,126	876,645	1,189,040
2017	42,126	55,002	59,552	77,754	101,679	132,756
2018	39,767	49,981	58,035	72,941	97,802	122,921
2019	36,391	44,028	52,833	63,920	89,224	107,948
2020	5,879	6,846	11,123	12,954	17,002	19,801
2021	0	0	0	0	0	0
2022	5,233	5,647	7,411	7,998	12,644	13,645
2023	29,273	30,409	41,366	42,972	70,638	73,381
2024	31,544	31,544	44,581	44,581	76,125	76,125
2025	31,264	30,096	46,397	44,663	77,661	74,758
Total	439,448	573,971	6,794,793	10,103,253	7,234,241	10,677,224
Annualized Cost	26,491	27,234	409,605	479,390	436,095	506,624

Note: Figures for 2026–2030 are based on an average of train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.
Figures may not sum to total due to rounding.

b. Benefits

When international rail carriers provide advance notice of arrival, departure, and manifest information for travelers, as would be required by this proposed rule, CBP would be able to perform initial vetting of the individuals crossing the U.S. border by train and allow for additional security vetting. This additional vetting would significantly reduce the wait times at the border for passenger rail carriers and passengers while increasing security for passenger rail carriers, cargo rail carriers, and passengers. CBP would also benefit from the reduced time burden at the border. Benefits are discussed using a baseline of no voluntary reporting program or rule.

i. International Passenger Rail Carriers—Crew

Upon implementation of this rule, passenger rail carriers would see a reduction in the time spent waiting at the border for CBP to process travelers. CBP OFO estimates that approximately one percent of departing passenger trains are held at the border for inspection; all arriving passenger trains are held for inspection.[40] According to CBP's Office of Field Operations (OFO), passenger trains that did not transmit a passenger or crew manifest before arriving in or departing from the United States could expect to have a one hour wait at the port of entry while CBP officers work to process all the travelers for entry or exit. CBP expects the advance transmission of crew and passenger manifest information, as described in this rule, would reduce the

[40] CBP OFO subject matter experts provided this estimate on May 26, 2020.

wait at the border by half an hour on average.[41]

To estimate the time savings for passenger rail crew, CBP first used manifest data from the voluntary program to obtain the number of crew on a passenger train in years 2012–2025 and found the average number of crew in those years to be 4.46 per passenger train. CBP then multiplied 4.46 by the number of estimated passenger rail manifest transmissions (Table 2) in years 2026–2030, to estimate the total number of crew in those years (Table 16).

TABLE 16—ANNUAL MANIFESTED PASSENGER TRAIN CREW PROCESSED

Calendar year	Arrivals	Departures	Total
2012	6,107	60	6,167
2013	6,345	71	6,416
2014	6,514	70	6,584
2015	4,830	42	4,872
2016	6,139	57	6,196
2017	10,158	75	10,233
2018	8,848	65	8,913
2019	9,161	92	9,253
2020	2,005	22	2,027
2021	0	0	0
2022	1,047	8	1,055
2023	7,256	54	7,310
2024	5,116	60	5,176
2025	7,827	66	7,893
2026	14,812	148	14,960
2027	14,812	148	14,960
2028	14,812	148	14,960
2029	14,812	148	14,960
2030	14,812	148	14,960

Note: Manifest data from the APIS database for 2024 and earlier was provided by CBP OFO subject matter experts on 8/26/2020, 5/13/2021, 6/8/2021, 3/19/2024, and 5/1/2025.
Figures for 2025–2030 are based on an average of passenger train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.

To estimate the annual time savings for arriving and departing passenger rail carriers as a result of this rule, CBP multiplied the time savings per passenger train (0.5 hours) by the number of passenger train crew arriving or departing with manifests (Table 16). The total estimated person-hours saved are shown in Table 17.

TABLE 17—ANNUAL PASSENGER TRAIN CREW PERSON-HOURS SAVED AT BORDER

Calendar year	Arrivals	Departures	Total
2012	3,054	30	3,084
2013	3,173	36	3,208
2014	3,257	35	3,292
2015	2,415	21	2,436
2016	3,070	29	3,098
2017	5,079	38	5,117
2018	4,424	33	4,457
2019	4,581	46	4,627
2020	1,003	11	1,014
2021	0	0	0
2022	524	4	528
2023	3,628	27	3,655
2024	2,558	30	2,588
2025	3,914	33	3,947
2026	7,406	74	7,480
2027	7,406	74	7,480
2028	7,406	74	7,480
2029	7,406	74	7,480
2030	7,406	74	7,480

Note: Figures for 2025–2030 are based on an average of passenger train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.
Figures may not sum to total due to rounding.

CBP then estimated the total monetized benefits for crew of passenger rail carriers by multiplying the person-hours saved (Table 17) by the estimated hourly wage rate. CBP understands that there are typically several employees of various roles on any passenger train but due to a lack of information regarding their positions

[41] CBP OFO subject matter experts provided this estimate on Feb. 27, 2020.

and wage rates, CBP uses the locomotive engineer wage rate ($54.19) for these employees to estimate the benefits for passenger rail carriers. The total monetized benefits for passenger rail carriers can be found in Table 18.

TABLE 18—MONETIZED PASSENGER TRAIN CARRIER BENEFITS

Calendar year	Arrivals	Departures	Total
2012	$165,469	1,626	167,095
2013	171,918	1,924	173,842
2014	176,497	1,897	178,393
2015	130,869	1,138	132,007
2016	166,336	1,544	167,881
2017	275,231	2,032	277,263
2018	239,737	1,761	241,498
2019	248,217	2,493	250,710
2020	54,325	596	54,922
2021	0	0	0
2022	28,368	217	28,585
2023	196,601	1,463	198,064
2024	138,618	1,626	140,244
2025	212,078	1,794	213,872
2026	401,331	4,010	405,341
2027	401,331	4,010	405,341
2028	401,331	4,010	405,341
2029	401,331	4,010	405,341
2030	401,331	4,010	405,341
2012–2025 average	157,447	1,436	158,884
2026–2030 average	401,331	4,010	405,341

Note: Figures for 2025–2030 are based on an average of passenger train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.
Note: Figures may not sum to total due to rounding.

ii. International Rail Passengers

Passengers traveling internationally by rail would experience a shorter wait at the U.S. border as a result of this rule because CBP can perform the initial vetting before the train arrives at the border. To determine the time saved for all passengers shown in Table 20, CBP multiplied the wait time saved per passenger train (0.5 hours) by the number of passengers processed at the U.S. border on passenger trains for which a manifest has been transmitted to CBP, shown in Table 19.[42] CBP then multiplied the hourly wage rate for all-purpose rail travelers ($70.45) by the total time saved in Table 20 to monetize the savings passengers would experience as a result of this rule as shown in Table 21.[43]

TABLE 19—ANNUAL MANIFESTED TRAIN PASSENGERS PROCESSED AT BORDER

Calendar year	Arrivals	Departures	Total
2012	177,259	1,343	178,602
2013	171,911	1,356	173,267
2014	154,391	1,343	155,734
2015	156,732	1,375	158,107
2016	160,228	1,414	161,642
2017	157,751	1,358	159,109
2018	147,704	1,336	149,040
2019	122,059	1,178	123,237
2020	13,605	48	13,653
2021	0	0	0
2022	16,176	125	16,301
2023	128,027	1,099	129,126
2024	115,875	1,362	117,237
2025	148,895	1,332	150,227
2026	229,665	2,297	231,962
2027	229,665	2,297	231,962
2028	229,665	2,297	231,962
2029	229,665	2,297	231,962

[42] CBP OFO subject matter experts estimate for passenger time savings provided on Sept. 28, 2020.

[43] CBP estimated the passenger wage rate ($70.45) using the weighted average of personal travel and business travel by high-speed rail (($51.50 * 40.4%) + ($83.30 * 59.6%)). Source for the passenger wage rate: U.S. Department of Transportation, Office of Transportation Policy. Benefit-Cost Analysis Guidance for Discretionary Grant Programs, ''Table A–2: Value of Travel Time Savings.'' November 2024. Available at: *https://www.transportation.gov/sites/dot.gov/files/2024-11/Benefit%20Cost%20Analysis%20Guidance%202025%20Update%20%28Final%29.pdf.* Original DOT policy is available at *https://www.transportation.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf.* Accessed June 17, 2024. U.S. Bureau of Labor Statistics. Occupational Employment and Wage Statistics, ''May 2023 National Occupational Employment and Wage Estimates United States.'' Updated April 3, 2024. Available at *https://www.bls.gov/oes/2023/may/oes_nat.htm.* Accessed June 4, 2024. ''Table 2. Employer Costs for Employee Compensation for civilian workers by occupational and industry group.'' Bureau of Labor Statistics, ''Employer Costs for Employee Compensation—December 2023.'' Released March 13, 2024. Available at *https://www.bls.gov/news.release/archives/ecec_03132024.pdf.* Accessed June 4, 2024. CBP assumes the 2023 passenger wage rate calculated above is equal to the 2024 passenger wage rate.

TABLE 19—ANNUAL MANIFESTED TRAIN PASSENGERS PROCESSED AT BORDER—Continued

Calendar year	Arrivals	Departures	Total
2030	229,665	2,297	231,962

Note: Figures for 2025–2030 are based on an average of passenger train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.

TABLE 20—ANNUAL PASSENGER TIME SAVED AT BORDER

[In hours]

Calendar year	Arrivals	Departures	Total time saved
2012	88,630	672	89,301
2013	85,956	678	86,634
2014	77,196	672	77,867
2015	78,366	688	79,054
2016	80,114	707	80,821
2017	78,876	679	79,555
2018	73,852	668	74,520
2019	61,030	589	61,619
2020	6,803	24	6,827
2021	0	0	0
2022	8,088	63	8,151
2023	64,014	550	64,563
2024	57,938	681	58,619
2025	74,447	666	75,114
2026	114,833	1,149	115,981
2027	114,833	1,149	115,981
2028	114,833	1,149	115,981
2029	114,833	1,149	115,981
2030	114,833	1,149	115,981

Note: Figures for 2025–2030 are based on an average of passenger train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.

TABLE 21—ANNUAL MONETIZED PASSENGER SAVINGS AT BORDER

Calendar year	Arrivals	Departures	Total savings
2012	$6,243,948	$47,307	$6,291,255
2013	6,055,565	47,765	6,103,330
2014	5,438,423	47,307	5,485,730
2015	5,520,885	48,434	5,569,319
2016	5,644,031	49,808	5,693,839
2017	5,556,779	47,836	5,604,615
2018	5,202,873	47,061	5,249,934
2019	4,299,528	41,495	4,341,023
2020	479,236	1,691	480,927
2021	0	0	0
2022	569,800	4,403	574,203
2023	4,509,751	38,712	4,548,463
2024	4,081,697	47,976	4,129,673
2025	5,244,819	46,927	5,291,746
2026	8,089,950	80,912	8,170,861
2027	8,089,950	80,912	8,170,861
2028	8,089,950	80,912	8,170,861
2029	8,089,950	80,912	8,170,861
2030	8,089,950	80,912	8,170,861
2012–2025 average	4,203,381	36,909	4,240,290
2026–2030 average	8,089,950	80,912	8,170,861

Note: Figures for 2025–2030 are based on an average of passenger train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.
Figures may not sum to total due to rounding.

iii. International Cargo Rail Carriers

International cargo trains typically cross the border multiple times per day with the same crew aboard. Due to this unique circumstance, CBP subject matter experts believe that international cargo rail carriers would see some time savings as a result of this rule. Currently, the crew of cargo trains must bring a cargo train to a complete stop in order for CBP to inspect the crew on either arrival or departure. The crew then must restart the train's motion, which is a time-consuming process. Under this rule, because CBP would have crew information prior to arrival at the border and likely would have already processed the crew previously

that day, CBP could perform the crew inspection while the train is moving slowly, as opposed to at a complete stop. To the extent that this saves cargo rail carriers time at the border, the benefits to cargo rail carriers would be higher than reported in this analysis. CBP does not currently have quantitative estimate of this time savings and requests comment on this subject.

iv. Security Benefits

Passengers, passenger rail carriers, cargo rail carriers, and the general public would all benefit from the increased security that would result from this proposed rule. By allowing CBP the time to perform an initial vetting before the train arrives at the border, CBP can provide instruction regarding the clearance of each passenger.[44] In 2008, a Canadian citizen was apprehended by CBP and refused entry after an exact Terrorist Screening Dataset (previously known as the Terrorist Screening Database) match on an APIS manifest.[45] The traveler manifest data, provided as part of the voluntary reporting program, allowed CBP officers the time to research the individual extensively and check the manifest for any potential co-travelers of the individual. CBP also checked service records and open sources to find as much information on the individual before the arrival of the train. Security benefits remain unquantified in this analysis. As a result of this rule, CBP will be able to perform the same level of vetting for all travelers arriving or departing the U.S. border by train, as CBP currently does for air and sea.

v. CBP

CBP OFO reports that it currently takes approximately one hour for six CBP officers to process an average passenger train (six person-hours) and five minutes for an average cargo train at the border if no passenger or crew manifest was received beforehand and no initial vetting was possible. While cargo trains are expected to see only a negligible decrease in processing time with this rule, time may be saved from reducing the time spent decelerating the train to a full stop and then bringing the train back up to speed. Data from the voluntary reporting program shows that this rule can reduce the time burden to process a passenger train to half an hour for four CBP officers (two person-hours). Multiplying the time saved per train (four person-hours) by the number of manifested trains processed per year from Table 9 yields the total time saved by CBP annually and is shown in Table 22. Similar to the passenger savings section, while the CBP time savings applies to inspections of all arriving trains, only a portion of departing trains results in savings for CBP. For departing trains, CBP OFO estimates that one percent of departing passenger trains are held at the border for inspection by CBP. To monetize this savings, the time saved is multiplied by the fully loaded wage rate for a CBP officer ($99.33) and the results are shown in Table 23.

TABLE 22—ANNUAL CBP TIME SAVED PROCESSING PASSENGER TRAINS

Calendar year	Arriving with manifest	Departing with manifest	Total
2012	5,800	58	5,858
2013	5,820	58	5,878
2014	5,840	58	5,898
2015	5,800	58	5,858
2016	5,828	58	5,886
2017	5,868	58	5,926
2018	5,868	59	5,927
2019	5,432	56	5,488
2020	1,072	13	1,085
2021	0	0	0
2022	844	8	852
2023	4,844	49	4,893
2024	5,392	54	5,446
2025	5,759	58	5,817
2026	6,994	70	7,064
2027	6,994	70	7,064
2028	6,994	70	7,064
2029	6,994	70	7,064
2030	6,994	70	7,064

Note: Figures for 2025–2030 are based on an average of passenger train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.

TABLE 23—MONETIZED CBP BENEFITS PROCESSING PASSENGER TRAINS

Calendar year	Arriving with manifest	Departing with manifest	Total
2012	$576,090	$5,761	$581,851
2013	578,076	5,761	583,837
2014	580,063	5,761	585,824
2015	576,090	5,761	581,851
2016	578,871	5,761	584,632
2017	582,844	5,761	588,605

[44] This is the same as for other modes of transportation that already submit advance passenger data, such as commercial aircraft, private aircraft, and vessels. For example, for commercial aircraft, air carriers typically follow CBP's recommendations but if they transport an alien who CBP determines is inadmissible, the carrier may be required to pay for transporting the inadmissible alien out of the United States and be subject to fines. *See, e.g.,* INA 231(c), (d) (8 U.S.C. 1221(c), (d)); INA 273(a)(1), (b) (8 U.S.C. 1323(a)(1), (b)).

[45] Information provided by CBP subject matter experts on March 9, 2020. For more examples see section III.B.2, *Need for Rulemaking and Voluntary Program.*

TABLE 23—MONETIZED CBP BENEFITS PROCESSING PASSENGER TRAINS—Continued

Calendar year	Arriving with manifest	Departing with manifest	Total
2018	582,844	5,860	588,704
2019	539,538	5,562	545,100
2020	106,477	1,291	107,769
2021	0	0	0
2022	83,831	795	84,626
2023	481,134	4,867	486,001
2024	535,565	5,364	540,929
2025	572,037	5,761	577,798
2026	694,685	6,953	701,638
2027	694,685	6,953	701,638
2028	694,685	6,953	701,638
2029	694,685	6,953	701,638
2030	694,685	6,953	701,638
2012–2025 average	455,247	4,576	459,823
2026–2030 average	694,685	6,953	701,638

Note: Figures for 2025–2030 are based on an average of passenger train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.
Figures may not sum to total due to rounding.

vi. Summary of Benefits

Passenger rail carriers experienced an average undiscounted annual benefit of $158,884 during the voluntary reporting program and are expected to collectively experience an undiscounted annual benefit of $405,341 as a result of this rule compared to a baseline of no rule or voluntary reporting program. Cargo rail carriers experienced no benefits as a result of the voluntary reporting period because they did not participate. Cargo rail carriers are expected to collectively experience only negligible benefits from faster traveler processing as a result of this rule due to the low number of crew aboard cargo trains, and CBP estimates them to be $0. International rail passengers experienced an undiscounted annual benefit of $4,240,290 during the voluntary reporting program and are expected to experience an undiscounted annual benefit of $8,170,861 as a result of this rule compared to a baseline of no rule or voluntary reporting program. CBP experienced an average undiscounted annual benefit of $459,823 as a result of the initial vetting during the voluntary reporting program and is expected to experience an undiscounted annual benefit of $701,638 as a result of this rule compared to a baseline of no rule or voluntary reporting program.

In Table 24 below, the discounted benefits of this proposed rule are shown for passenger rail carriers, cargo rail carriers, rail passengers, and CBP. Passenger rail carriers are expected to experience a total benefit from 2026 to 2030 of $1,802,276 and $1,553,251 using a 3-percent and 7-percent discount rate respectively. Annualized benefits for passenger rail carriers would be $405,341. Cargo rail carriers are expected to experience only negligible benefits from this rule, and therefore CBP estimates them to be $0. From 2026 to 2030, rail passengers are expected to experience a benefit of $36,330,246 and $31,310,416 using a 3-percent and 7-percent discount rate respectively. Annualized benefits for rail passengers would be $8,170,861. CBP is expected to experience a benefit of $3,119,704 and $2,688,648 using a 3-percent and 7-percent discount rate respectively. Annualized benefits for CBP would be $701,638.

TABLE 24—SUMMARY OF DISCOUNTED BENEFITS OF RULE

Calendar year	Passenger rail carriers		Cargo rail carriers		Rail passengers		CBP	
	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
2026	$382,073	$354,041	$0	$0	$7,701,821	$7,136,747	$661,361	$612,838
2027	370,945	330,879	0	0	7,477,496	6,669,857	642,098	572,745
2028	360,140	309,233	0	0	7,259,705	6,233,511	623,396	535,276
2029	349,651	289,003	0	0	7,048,257	5,825,711	605,239	500,258
2030	339,467	270,096	0	0	6,842,968	5,444,590	587,611	467,531
Total	1,802,276	1,553,251	0	0	36,330,246	31,310,416	3,119,704	2,688,648
Annualized Benefits	405,341	405,341	0	0	8,170,861	8,170,861	701,638	701,638

Note: Figures for 2026–2030 are based on an average of train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.
Figures may not sum to total due to rounding.

In Table 25 below, the discounted benefits are shown for passenger rail carriers, cargo rail carriers, rail passengers, and CBP relating to the voluntary reporting period from 2012 through 2025. Passenger rail carriers experienced a total benefit from 2012 to 2025 of $2,667,560 and $3,440,358 using a discount rate of 3-percent and 7-percent respectively. Passenger rail carriers experienced annualized benefits of $160,806 and $163,242 using a discount rate of 3-percent and 7-percent respectively. From 2012 to 2025, cargo rail carriers experienced no benefits as

they did not participate in the voluntary reporting program. Rail passengers experienced a total benefit of $72,566,876 and $96,025,942 during the voluntary reporting period using a 3-percent and 7-percent discount rate respectively. Annualized benefits for rail passengers were $4,374,486 and $4,556,343, using a 3-percent and 7-percent discount rate, respectively. CBP experienced total benefits of $7,797,150 and $10,198,237 when using a 3-percent and 7-percent discount rate. Annualized benefits for CBP were $470,029 and $483,897, using a 3-percent and 7-percent discount rate, respectively.

TABLE 25—SUMMARY OF BENEFITS OF VOLUNTARY REPORTING PERIOD

[2012–2025]

Calendar year	Passenger rail carriers		Cargo rail carriers		Rail passengers		CBP	
	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
2012	$238,237	$376,330	$0	$0	$8,969,826	$14,169,113	$829,580	$1,310,439
2013	240,637	365,911	0	0	8,448,436	12,846,606	808,167	1,228,891
2014	239,746	350,927	0	0	7,372,363	10,791,262	787,298	1,152,404
2015	172,239	242,689	0	0	7,266,698	10,238,966	759,183	1,069,709
2016	212,666	288,450	0	0	7,212,785	9,783,076	740,594	1,004,506
2017	340,999	445,224	0	0	6,892,969	8,999,786	723,910	945,171
2018	288,361	362,423	0	0	6,268,696	7,878,735	702,944	883,486
2019	290,642	351,634	0	0	5,032,436	6,088,510	631,921	764,531
2020	61,815	71,991	0	0	541,287	630,397	121,294	141,263
2021	0	0	0	0	0	0	0	0
2022	30,326	32,727	0	0	609,172	657,405	89,779	96,888
2023	204,006	211,929	0	0	4,684,917	4,866,856	500,581	520,021
2024	140,244	140,244	0	0	4,129,673	4,129,673	540,929	540,929
2025	207,642	199,880	0	0	5,137,618	4,945,557	560,969	539,998
Total	2,667,560	3,440,358	0	0	72,566,876	96,025,942	7,797,150	10,198,237
Annualized Benefits	160,806	163,242	0	0	4,374,486	4,556,343	470,029	483,897

Note: Figures for 2025 are based on an average of train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.

Figures may not sum to total due to rounding.

c. Net Impact of Rule

CBP estimated the net impact of the rule by subtracting the expected costs from the expected benefits. Undiscounted net benefits for the voluntary reporting period (2012–2025) and the regulatory period (2026–2030) are shown below in Table 26. Passenger rail carriers experienced an average undiscounted annual net benefit of $132,938 while participating in the voluntary reporting program and are expected to experience undiscounted annual net monetized benefits of $346,911 as a result of this rule. The undiscounted annual net benefits for passengers under the voluntary reporting program were $4,240,290 and are expected to increase to $8,170,861 in time saved. Cargo rail carriers experienced no net benefits under the voluntary reporting program and are expected to experience undiscounted annual net benefits of −$380,495 (a net cost) as a result of this rule.[46] CBP's undiscounted annual net benefits averaged $101,317 under the voluntary reporting program. CBP expects to see undiscounted annual benefits of $62,567 as a result of this rule.

TABLE 26—NET BENEFIT

[In undiscounted 2024 dollars]

Calendar year	Passenger rail carriers	Cargo rail carriers	Rail passengers	CBP	Total
2012	$134,808	$0	$6,291,255	−$1,505,395	$4,920,668
2013	140,650	0	6,103,330	−76,118	6,167,862
2014	145,166	0	5,485,730	−74,181	5,556,715
2015	100,698	0	5,569,319	−77,956	5,592,061
2016	135,920	0	5,693,839	−75,440	5,754,320
2017	243,011	0	5,604,615	540,184	6,387,809
2018	208,193	0	5,249,934	540,101	5,998,228
2019	219,319	0	4,341,023	499,526	5,059,868
2020	49,699	0	480,927	97,886	628,511
2021	0	0	0	0	0
2022	23,653	0	574,203	77,640	675,495
2023	169,645	0	4,548,463	445,841	5,163,948
2024	108,700	0	4,129,673	496,348	4,734,721
2025	181,669	0	5,291,746	530,009	6,003,425
2026	346,911	−380,495	8,170,861	62,567	8,199,845

[46] This excludes any potential benefit of no longer having to completely stop a cargo train at the border as discussed in the section specific to cargo rail carrier benefits.

TABLE 26—NET BENEFIT—Continued

[In undiscounted 2024 dollars]

Calendar year	Passenger rail carriers	Cargo rail carriers	Rail passengers	CBP	Total
2027	346,911	−380,495	8,170,861	62,567	8,199,845
2028	346,911	−380,495	8,170,861	62,567	8,199,845
2029	346,911	−380,495	8,170,861	62,567	8,199,845
2030	346,911	−380,495	8,170,861	62,567	8,199,845
2012–2025 average	132,938	0	4,240,290	101,317	4,474,545
2026–2030 average	346,911	−380,495	8,170,861	62,567	8,199,845

Note: Figures for 2025–2030 are based on an average of train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts. CBP costs for 2012–2015 include R&D sunk costs.
Figures may not sum to total due to rounding.

All rail carriers, passengers, and the general public would benefit from increased national security as a result of this proposed rule though this remains a qualitative benefit. CBP believes that this benefit justifies the expected costs for cargo rail carriers.

Table 27 and Table 28 provide estimates of the discounted net benefits of this rule for the time period from 2026 to 2030. Passenger rail carriers are expected to experience a total net benefit of $1,542,478 and $1,329,350 using a 3-percent and 7-percent discount rate respectively and annualized benefits of $346,911. Cargo rail carriers are expected to experience net benefits of −$1,691,802 and −$1,458,042 using a 3-percent and 7-percent discount rate respectively and annualized net benefits of −$380,495.[47] Rail passengers are expected to experience net benefits of $36,330,246 and $31,310,416 using a 3-percent and 7-percent discount rate respectively and annualized net benefits of $8,170,861. CBP expects to experience net benefits of $278,193 and $239,754 using a 3-percent and 7-percent discount rate respectively and annualized net benefits of $62,567. Table 29 provides the undiscounted net benefits, present value of net benefits, and the annualized net benefits of the proposed rule. Passengers, passenger rail carriers, cargo rail carriers, and the general public would all benefit from the increased security that would result from this proposed rule though the benefits remain unquantified.

TABLE 27—TOTAL MONETIZED PRESENT VALUE AND ANNUALIZED NET BENEFITS

[2024 U.S. dollars; 3% discount rate]

Calendar year	Passenger rail carriers	Cargo rail carriers	Rail passengers	CBP	Total
2026	$326,997	−$358,653	$7,701,821	$58,975	$7,729,140
2027	317,473	−348,207	7,477,496	57,258	7,504,019
2028	308,226	−338,065	7,259,705	55,590	7,285,456
2029	299,249	−328,218	7,048,257	53,971	7,073,258
2030	290,533	−318,659	6,842,968	52,399	6,867,241
Total	1,542,478	−1,691,802	36,330,246	278,193	36,459,114
Annualized Benefits	346,911	−380,495	8,170,861	62,567	8,199,845

Note: Figures for 2026–2030 are based on an average of train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.
Figures may not sum to total due to rounding.

TABLE 28—TOTAL MONETIZED PRESENT VALUE AND ANNUALIZED NET BENEFITS

[2024 U.S. dollars; 7% discount rate]

Calendar year	Passenger rail carriers	Cargo rail carriers	Rail passengers	CBP	Total
2026	$303,006	−$332,339	$7,136,747	$54,648	$7,162,062
2027	283,183	−310,597	6,669,857	51,073	6,693,516
2028	264,657	−290,278	6,233,511	47,732	6,255,622
2029	247,343	−271,288	5,825,711	44,609	5,846,376
2030	231,162	−253,540	5,444,590	41,691	5,463,903
Total	1,329,350	−1,458,042	31,310,416	239,754	31,421,479
Annualized Benefit	346,911	−380,495	8,170,861	62,567	8,199,845

Note: Figures for 2026–2030 are based on an average of train crossings from 2015–2019 and an assumption of 0% growth based on communication with CBP subject matter experts.
Figures may not sum to total due to rounding.

[47] Negative net benefits reflect a net cost.

TABLE 29—SUMMARY OF TOTAL NET BENEFITS, CY2026–2030

[2024 U.S. dollars]

	Undiscounted net benefits	3% Discount rate		7% Discount rate	
		Present value	Annualized	Present value	Annualized
Passenger Rail Carriers	$1,734,556	$1,542,478	$346,911	$1,329,350	$346,911
Cargo Rail Carriers	−1,902,475	−1,691,802	−380,495	−1,458,042	−380,495
Rail Passengers	40,854,307	36,330,246	8,170,861	31,310,416	8,170,861
CBP	312,835	278,193	62,567	239,754	62,567
Total	40,999,223	36,459,114	8,199,845	31,421,479	8,199,845

Figures may not sum to total due to rounding.

3. Regulatory Alternatives

CBP considered two alternatives to this rule but determined the rule was the optimal path forward to achieve the security benefits discussed above.

The first alternative to this rule was to keep the voluntary reporting program in place indefinitely. This alternative would effectively continue the costs and benefits of the voluntary reporting program into the future with no new costs or benefits. This alternative was rejected because not all rail carriers that cross the border are participating in the program and to achieve the security benefits stated earlier, CBP needs all carriers to participate. Since carriers may be withholding their participation until the program becomes mandatory, this proposed rule would be the catalyst carriers need to begin providing the necessary information to CBP to achieve the security benefits of this rule.

The second alternative to this rule was to subject only passenger rail carriers to the requirements in this proposed rule. This alternative would result in no new costs or benefits to cargo rail carriers but does not allow CBP time to effectively review traveler information on cargo trains before their arrival. This alternative was rejected as insufficient since all rail carriers would need to participate for the stated security benefits of this rule to be achieved.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

CBP identified seven small U.S.-based cargo rail carriers that would be affected by this proposed rule. The smallest of these companies has an annual revenue of $155,000 and the median annual revenue of the seven companies is $2,576,000. CBP believes that implementation of this rule would not result in a significant cost to small cargo carriers. Using the sum of the time burdens for documents that would be required for each cargo train (a total of 0.1 hours or six minutes) and multiplying by the wage rate for a locomotive engineer ($54.19) provides the cost per cargo train crossing the U.S. border which is $5.42. At this rate, it would take 286 crossings for the smallest business to experience costs of around one percent of their revenue and 5,122 crossings for the median small business. CBP has determined this would not constitute a significant cost to small cargo rail carriers but requests comment on this.

There are currently no small U.S.-based passenger rail carriers that would be affected by this proposed rule.

CBP certifies that the proposed rule, if promulgated, would not have a significant economic impact to any U.S.-based small businesses.

C. Paperwork Reduction Act

The collections of information in this document will be submitted for OMB review in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0088. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collections of information for this rulemaking are included in an existing collection for the automated information collection system, APIS, under the OMB control number 1651–0088.

OMB-approved collection 1651–0088 would be amended to reflect the additional passenger rail carrier and cargo rail carrier respondents. We estimate that this rule would result in an additional 141,381 responses annually and 6,512 additional burden hours. The revision to the information collection would include 10,491 commercial passenger rail submissions, which would be an increase of the previously approved 9,540 total submissions annually. It would also establish new submission requirements for cargo rail carriers. This revision to this information collection would include 140,430 new cargo rail submissions annually.

Comments should be submitted to CBP and include the OMB Control Number 1651–0088 per the instructions outlined in the introductory text of this proposed rulemaking. The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden on those who are to respond, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers form the collection of information (total capital/startup costs and operations and maintenance costs).

OMB collection 1651–0088, Passenger and Crew Manifest for Passenger Flights, would be revised to reflect the increased burden hours for the additional passenger rail carrier submissions and cargo rail submissions, for a total of 198,821,756 Estimated Number of Total Annual Responses, 1,004,608 Annual Burden Hours, as follows: [48]

[48] OMB collection 1651–0088 includes burden hours for commercial airlines, private aircraft

Commercial Airlines

Estimated Number of Respondents: 1,130.
Estimated Number of Total Annual Responses: 1,850,878.
Estimated Time per Response: 10 minutes.
Estimated Total Annual Burden Hours: 307,246

Commercial Airline Passengers (3rd party)

Estimated Number of Respondents: 184,050,663.
Estimated Number of Total Annual Responses: 184,050,663.
Estimated Time per Response: 10 seconds.
Estimated Total Annual Burden Hours: 496,937.

Private Aircraft Pilots

Estimated Number of Respondents: 460,000.
Estimated Number of Total Annual Responses: 460,000.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 115,000.

New: Commercial Passenger Rail Carrier

Notice of Arrival/Departure

Estimated Number of Respondents: 2.
Estimated Number of Total Annual Responses: 3,497.
Estimated Time per Response: 3 minutes.
Estimated Total Annual Burden Hours: 175.

Passenger Manifest

Estimated Number of Respondents: 2.
Estimated Number of Total Annual Responses: 3,497.
Estimated Time per Response: 12.5 minutes.
Estimated Total Annual Burden Hours: 729.

Crew Manifest

Estimated Number of Respondents: 2.
Estimated Number of Total Annual Responses: 3,497.
Estimated Time per Response: 3 minutes.
Estimated Total Annual Burden Hours: 175.

New: Commercial Cargo Rail Carrier

Notice of Arrival/Departure

Estimated Number of Respondents: 14.
Estimated Number of Total Annual Responses: 70,215.
Estimated Time per Response: 3 minutes.
Estimated Total Annual Burden Hours: 3,511.

Crew Manifest

Estimated Number of Respondents: 14.
Estimated Number of Total Annual Responses: 70,215.
Estimated Time per Response: 3 minutes.
Estimated Total Annual Burden Hours: 3,511.

Bus Passenger Carrier

Estimated Number of Respondents: 9.
Estimated Number of Total Annual Responses: 309,294.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 77,324.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. *See* 2 U.S.C. 1532(a). This rule will not 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. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

E. Privacy Act

The information required to be transmitted under this rule would be retained in CBP systems in a manner consistent with all requirements of the Privacy Act of 1974, 5 U.S.C. 552a (Privacy Act). If this rule is finalized, CBP will issue or update any necessary Privacy Impact Assessment and/or Privacy Act System of Records Notice(s) to fully outline processes that will ensure compliance with Privacy Act protections. Current Privacy Act compliance documents related to the APIS system and the voluntary transmission of APIS data by rail carriers are available at *https://www.dhs.gov/publication/advanced-passenger-information-system-apis-update-national-counterterrorism-center-nctc. See also* footnote 1, above.

F. Executive Order 14294

Executive Order 14294 (Fighting Overcriminalization in Federal Regulations) aims to promote regulatory transparency for proposed or final rules, the violation of which may constitute a criminal regulatory offense. Pursuant to section 8 of Executive Order 14294, the order does not apply to the enforcement of the immigration laws or regulations or to the enforcement of laws or regulations related to national security or defense. This proposed rule involves enforcement of the immigration laws and is related to national security. Accordingly, Executive Order 14294 does not apply.

Signing Authority

The signing authority for these amendments falls under 19 CFR 0.2(a). Accordingly, this document is signed by the Secretary of Homeland Security (or the Secretary's delegate).

List of Subjects in 19 CFR Part 123

Canada, Freight, International boundaries, Mexico, Railroads, Reporting and recordkeeping requirements.

Proposed Regulatory Amendments

For the reasons stated in the preamble, CBP proposes to amend part 123 of title 19 of the Code of Federal Regulations (19 CFR part 123) as follows:

PART 123—CBP RELATIONS WITH CANADA AND MEXICO

■ 1. The authority citation is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1415, 1431, 1433, 1436, 1448, 1624.

* * * * *

■ 2. Amend § 123.0 by revising the second sentence to read as follows:

§ 123.0 Scope.

* * * Included are provisions governing report of arrival, manifesting, unlading and lading, instruments of international traffic, shipments in transit through Canada or Mexico or through the United States, commercial traveler's samples transiting the United States or Canada, baggage arriving from Canada or Mexico including baggage transiting the United States or Canada or Mexico, electronic information for rail and truck cargo in advance of arrival, and advance electronic information required for travelers arriving in or departing from the United States on board a train. * * *

pilots, and bus passenger carriers, which are repeated here. This rule would not change the burden hours for these respondents.

■ 3. Revise and republish § 123.6 to read as follows:

§ 123.6 Train Sheet for arriving railroad trains.

The conductor of a railroad train arriving from Canada or Mexico shall present to the CBP officer at the port of arrival individual car manifests and a train sheet, sometimes called a consist, bridge sheet, or trip sheet, listing each car and showing the car numbers and initials. However, a conductor of a railroad train arriving from Canada or Mexico without commercial cargo on board is not required to present individual car manifests or a train sheet if the carrier has transmitted the information in accordance with the provisions required by subpart K of this part.

■ 4. Add a new subpart K to read as follows:

Subpart K—Advance Traveler Information for Rail

Sec.

123.100 Definitions.
123.101 Advance notice of arrival or departure for all trains with a traveler on board.
123.102 Advance electronic information required for all travelers arriving in the United States on board a train.
123.103 Advance electronic information required for all travelers departing from the United States on board a train.
123.104 Transmission to CBP.
123.105 U.S. military exemption.
123.106 Penalties.
123.107 Severability.

Authority: 6 U.S.C. 203, 211; 19 U.S.C. 1431, 1433, 1436.

§ 123.100 Definitions.

For purposes of this subpart, the following definitions apply:

Conductor means the railway employee charged with the management of a train and is also the direct supervisor of the train's crew.

Crew means any person serving on board a train in good faith in any capacity required for the normal operation and service of the trip including the conductor and engineer.

Depart and *Departure* mean the point at which the train doors are closed, and the train leaves the last station or stop prior to crossing the U.S. border on either an inbound or outbound trip.

DHS-approved travel document means a travel document approved by the U.S. Department of Homeland Security for travel in or out of the United States, such as a passport or other Western Hemisphere Travel Initiative (WHTI) approved document.

Emergency means an urgent situation due to a mechanical, medical, or security problem, natural or manmade disasters, evacuations due to chemical, biological, or radiological events, or the transport of emergency responders to such incidents.

Engineer means the individual(s) in charge of and responsible for the mechanical operation of a train.

Passenger means any person being transported on a train, including stowaways, who does not meet the definition of crew.

Station means a railroad facility where trains regularly stop to load or unload passengers or goods.

Stop means a railroad facility where trains can load or unload passengers or goods between stations or a railroad facility where the train stops only on a signal, known as a flag stop.

Train means any conveyance being used to provide railroad transportation for commercial or private purposes, including freight conveyances and passenger conveyances.

Traveler means any individual, including passengers and crew, who will cross the U.S. border while on board a train that will arrive in the United States from a foreign location or depart the United States for a foreign location, including a train that will cross the U.S. border while in transit.

United States means the continental United States and includes Alaska.

§ 123.101 Advance notice of arrival or departure for all trains with a traveler on board.

(a) *General requirements.* A rail carrier must electronically transmit to CBP an advance notice of arrival or departure providing the manifest information listed in paragraph (c) of this section for any train with a traveler on board arriving in the United States from a foreign location or departing the United States for a foreign location, including any train that crosses the U.S. border while in transit, unless the U.S. military exemption under § 123.105 applies. The electronic transmissions under this section must be made in accordance with § 123.104. The rail carrier may authorize another party to submit the notice of arrival or departure on the rail carrier's behalf. However, the rail carrier is responsible at all times for the transmission, accuracy, timeliness, and completeness of the transmitted information.

(b) *Deadline for transmission.* A rail carrier must electronically transmit the notice of arrival for an inbound train or the notice of departure for an outbound train providing the information listed in paragraph (c) of this section no later than 24 hours prior to the train's arrival at a U.S. border crossing location.

(c) *Train and trip data required.* The rail carrier must transmit the following information constituting the notice of arrival or departure:

(1) Rail carrier's code (as provided by CBP);

(2) Trip number;

(3) Train number;

(4) Car numbers in order, if more than one car;

(5) Place of origination (or code as provided by CBP);

(6) Estimated local time and date that the train will leave from the origination station or stop;

(7) Place of U.S. border crossing (or code as provided by CBP);

(8) Estimated local time and date of arrival at the U.S. border crossing location;

(9) Place of final destination (or code as provided by CBP);

(10) Estimated local time and date of arrival at the final destination;

(11) Complete itinerary, including all scheduled stops;

(12) Information for a 24-hour emergency point of contact consisting of full name and phone number for the rail carrier (must be an individual who is knowledgeable about the particular trip); and

(13) Rail carrier's name and address.

(d) *Changes to the advance notice of arrival or departure—*

(1) *Requirement to transmit changes.* If any of the information enumerated in paragraph (c) of this section changes after transmission to CBP and prior to the train crossing the U.S. border, the rail carrier must transmit the new or revised information to CBP. The new or revised information must be transmitted prior to the train leaving the station or stop at which the rail carrier received the new or revised information or, if the information was received between stations or stops, no later than when the train leaves the next station or stop after receiving the information. If the rail carrier receives new or revised information after departure but prior to the train crossing the U.S. border, then the rail carrier must transmit such updated information to CBP prior to crossing the U.S. border.

(2) *Changes to border crossing time.* If there is a change of 30 minutes or more to the estimated time of arrival at the U.S. border crossing location, the rail carrier must, in addition to transmitting the updated estimated time of arrival as required by paragraph (d)(1) of this section, contact CBP at the border crossing location to confirm that CBP resources will be available to inspect the train. The carrier must contact CBP prior to departure or, if the change arises after departure, prior to arrival at the U.S. border crossing location.

§ 123.102 Advance electronic information required for all travelers arriving in the United States on board a train.

(a) *General requirements.* A rail carrier must electronically transmit to CBP the advance information listed in paragraph (c) of this section for all travelers on board a train arriving in the United States from a foreign location, including any train that crosses the U.S. border while in transit, unless the U.S. military exemption under § 123.105 applies. The electronic transmissions under this section must be made in accordance with § 123.104. The rail carrier may authorize another party to transmit the required information on the rail carrier's behalf. However, the rail carrier is responsible at all times for the transmission, accuracy, timeliness, and completeness of the transmitted information.

(b) *Deadline for transmission.* A rail carrier must transmit the information listed in paragraph (c) of this section no later than 60 minutes prior to departure.

(c) *Traveler data required.* The rail carrier must transmit the following information for each traveler on board the train:

(1) Full name (last, first, and, if available, middle);

(2) Date of birth;

(3) Sex;

(4) Country of citizenship;

(5) Country of residence;

(6) DHS-approved travel document type, if a DHS-approved travel document is required;

(7) DHS-approved travel document number, if a DHS-approved travel document is required;

(8) DHS-approved travel document country of issuance, if a DHS-approved travel document is required;

(9) DHS-approved travel document expiration date, if applicable, if a DHS-approved travel document is required;

(10) Traveler's status on board the train (*i.e.,* conductor, engineer, passenger, crew);

(11) Complete itinerary of traveler, including origination and designation station or stop;

(12) Address while in the United States (number and street, city, state, and zip code), except this information is not required for travelers who are in transit to a location outside the United States;

(13) Alien registration number, if applicable;

(14) Traveler's passenger name record locator, if available;

(15) Known traveler number, if applicable;

(16) Redress number, if applicable;

(17) Baggage tag information, if applicable;

(18) Seat location, including car and seat number, if available;

(19) Contact phone number, including country code. The carrier is required to request a phone number with country code from the traveler, and if the traveler provides one, the carrier must transmit it to CBP.; and

(20) Email address. The carrier is required to request an email address from the traveler, and if the traveler provides one, the carrier must transmit it to CBP.

(d) *CBP response message and requirements.* CBP will conduct vetting of the transmitted traveler information and will transmit a response message to the rail carrier. The response message will state either that CBP accepted the transmission or that the rail carrier must contact CBP prior to departure.

(e) *Changes to traveler data—*

(1) *Requirement to transmit changes.* Each time any of the information listed in paragraph (c) of this section changes after transmission to CBP and prior to the train crossing the U.S. border, including if travelers get on or off the train prior to crossing the U.S. border, the rail carrier must electronically transmit the new or revised information. The rail carrier must transmit the new or revised information no later than when the train leaves the station or stop during which the rail carrier received the new or revised information. If the rail carrier receives new or revised information between stations or stops, the rail carrier must electronically transmit the new or revised information prior to departing the next station or stop. If the rail carrier receives the new or revised information after departure but prior to the train crossing the U.S. border, then the rail carrier must electronically transmit the new or revised information to CBP prior to crossing the U.S. border.

(2) *New response message required.* Upon receipt of the new or revised information required by paragraph (e)(1) of this section, CBP will vet the updated information and will transmit a response message to the rail carrier. The response message will state either that CBP has accepted the transmission or that the rail carrier must contact CBP prior to departure, or prior to the train crossing the U.S. border if the new or revised information was received by the rail carrier after departure.

(f) *Rail carrier responsibility for comparing information collected with travel documents.* The rail carrier collecting the information listed in paragraph (c) of this section is responsible for comparing the travel documents presented by the traveler with the travel document information it is transmitting to CBP to ensure that such information matches the information contained on the travel documents, the documents appear to be valid for travel purposes, and the traveler is the person to whom the travel documents were issued.

§ 123.103 Advance electronic information required for all travelers departing from the United States on board a train.

(a) *General requirement.* A rail carrier must electronically transmit to CBP the advance information listed in paragraph (c) of this section for all travelers on board a train departing from the United States for any location outside the United States, including any train that crosses the U.S. border while in transit, unless the U.S. military exemption under § 123.105 applies. The electronic transmissions under this section must be made in accordance with § 123.104. The rail carrier may authorize another party to submit the required information on the rail carrier's behalf. However, the rail carrier is responsible at all times for the transmission, accuracy, timeliness, and completeness of the transmitted information.

(b) *Deadline for transmission.* A rail carrier must transmit the information listed in paragraph (c) of this section no later than 60 minutes prior to departure.

(c) *Traveler data required.* The rail carrier must transmit the following information for each traveler on board the train:

(1) Full name (last, first, and, if available, middle);

(2) Date of birth;

(3) Sex;

(4) Country of citizenship;

(5) Country of residence;

(6) DHS-approved travel document type, if a DHS-approved travel document is required;

(7) DHS-approved travel document number, if a DHS-approved travel document is required;

(8) DHS-approved travel document country of issuance, if a DHS-approved travel document is required;

(9) DHS-approved travel document expiration date, if applicable, if a DHS-approved travel document is required;

(10) Traveler's status on board the train (*i.e.,* conductor, engineer, crew, passenger);

(11) Complete itinerary of traveler, including origination and destination station or stop;

(12) Address while in the United States (number and street, city, state, and zip code), except this information is not required for travelers who are in transit to a location outside the United States;

(13) Alien registration number, if applicable;

(14) Traveler's passenger name record locator, if available;

(15) Known traveler number, if applicable;

(16) Redress number, if applicable;

(17) Baggage tag information, if applicable;

(18) Seat location, including car and seat number, if available;

(19) Contact phone number, including country code. The carrier is required to request a phone number with country code from the traveler, and if the traveler provides one, the carrier must transmit it to CBP; and

(20) Email address. The carrier is required to request an email address from the traveler, and if the traveler provides one, the carrier must transmit it to CBP.

(d) *CBP response message and requirements.* CBP will conduct vetting of the transmitted traveler information and will transmit a response message to the rail carrier. The response message will state either that CBP has accepted the transmission or that the rail carrier must contact CBP prior to departure.

(e) *Changes to traveler data—*

(1) *Requirement to transmit changes.* Each time any of the information listed in paragraph (c) of this section changes after transmission to CBP and prior to the train crossing the U.S. border, including if travelers get on or off the train prior to crossing the U.S. border, the rail carrier must electronically transmit the new or revised information. The rail carrier must transmit the new or revised information no later than when the train leaves the station or stop during which the rail carrier received the new or revised information. If the rail carrier receives new or revised information between stations or stops, the rail carrier must electronically transmit the new or revised information prior to departing the next station or stop. If the rail carrier receives new or revised information after departure, but prior to the train crossing the U.S. border, then the rail carrier must transmit the updated information to CBP prior to crossing the U.S. border.

(2) *New response message required.* Upon receipt of the new or revised information required by paragraph (e)(1) of this section, CBP will vet the updated information and will transmit a response message to the rail carrier. The response message will state either that CBP has accepted the transmission or that the rail carrier must contact CBP prior to departure or prior to the train crossing the U.S. border if the new or revised information was received by the rail carrier after departure.

(f) *Rail carrier responsibility for comparing information collected with travel documents.* The rail carrier collecting the information listed in paragraph (c) of this section is responsible for comparing the travel documents presented by the traveler with the travel document information it is transmitting to CBP in order to ensure that such information matches the information contained on the travel documents, the documents appear to be valid for travel purposes, and the traveler is the person to whom the travel documents were issued.

§ 123.104 Transmission to CBP.

A rail carrier must transmit the required advance electronic information pursuant to this subpart in accordance with either paragraph (a) or (b) of this section, except when an unforeseen circumstance allows for submission under paragraph (c), as follows:

(a) *Certified electronic transmission system option.* A rail carrier, upon obtaining CBP certification for an electronic transmission system in accordance with paragraph (a)(1) of this section, may make transmissions by means of the certified electronic transmission system configured to transmit data to CBP and receive from CBP appropriate messages.

(1) Before making any required advance electronic transmissions under paragraph (a) of this section, a rail carrier must subject its electronic transmission system to CBP for testing and CBP must certify that the rail carrier's system is capable of communicating with the CBP system for effective transmissions of data and receipt of appropriate messages.

(2) Such electronic transmission system may be configured to send and receive data either through interactive individual submissions, interactive batch submissions, or non-interactive batch submissions. If certified to do so, the carrier may use both an interactive batch transmission and interactive individual transmissions when transmitting information.

(3) If a rail carrier uses an interactive transmission method, the rail carrier must transmit to CBP a message no later than 30 minutes after departure listing all travelers who boarded the train. The message must identify the travelers by a unique identifier assigned by the rail carrier or by specific passenger data (*e.g.,* full name).

(b) *Approved CBP electronic data interchange system option.* A rail carrier may make transmissions by any CBP-approved electronic data interchange system.

(c) *Alternatives under unforeseen circumstances.* On a limited case-by-case basis and upon request by a rail carrier, CBP may permit a rail carrier to submit the required information telephonically or through another approved alternative procedure when unforeseen circumstances preclude transmission of the information electronically under paragraph (a) or (b) of this section. Under such circumstances, CBP will manually enter the information provided by the rail carrier, vet the information, and send a response message to the carrier. CBP's response message may be received electronically, telephonically, or through another alternative procedure in such cases.

§ 123.105 U.S. military exemption.

No information is required under this subpart for active-duty U.S. military personnel traveling on orders as travelers on board a U.S. Department of War-chartered train.

§ 123.106 Penalties.

(a) *Civil penalties.* Violations of the advance notice of arrival or departure or advance traveler information requirements provided for in this part may result in certain civil penalties, as provided in section 436 of the Tariff Act of 1930, as amended (19 U.S.C. 1436), in addition to other penalties applicable under other provisions of law. Furthermore, any conveyance used in connection with any such violation is subject to seizure and forfeiture.

(b) *Criminal penalties.* Any person in charge of a train who intentionally fails to electronically transmit a required advance notice of arrival or departure or advance electronic traveler information, in accordance with this subpart, will be, upon conviction, subject to additional criminal penalties, as prescribed in section 436 of the Tariff Act of 1930, as amended (19 U.S.C. 1436). If the train has, or is discovered to have had, on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, such individual is subject to additional criminal penalties as prescribed in section 436 of the Tariff Act of 1930, as amended (19 U.S.C. 1436).

(c) *Emergencies.* In cases of non-compliance with this subpart due to an emergency, CBP will take into consideration the circumstances of the emergency and whether, but for the emergency, the carrier would have been capable of making the required transmissions.

§ 123.107 Severability.

Any provision of this subpart held to be invalid or unenforceable by a court

of competent jurisdiction as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this subpart and shall not affect the remainder thereof.

Markwayne Mullin,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2026–20884 Filed 10–9–26; 8:45 am]

BILLING CODE 9111–14–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2027–2; Order No. 9760]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is acknowledging a recent Postal Service filing requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 28, 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

On October 5, 2026, the Postal Service filed a petition pursuant to 39 CFR 3050.11 and Order No. 9377 [1] requesting that the Commission initiate a rulemaking proceeding to consider a proposed change to analytical principles relating to periodic reports.[2] The Petition identifies the proposed analytical change filed in this docket in a proposal accompanying the Petition.

II. Background

The Postal Service Reform Act of 2022 [3] modified and expanded the Postal Service's ability to enter into interagency agreements (IAAs) to provide property and services to, or on behalf of, other government agencies. Specifically, 39 U.S.C. 3703 for the first time authorizes the Postal Service to enter into agreements with agencies of any state government, local government, or tribal government to provide property or nonpostal services to the public on behalf of such agencies for non-commercial purposes. At the same time, with respect to the Postal Service's pre-existing authority under 39 U.S.C. 411 to provide property and services to other Federal agencies, the PSRA specifies that ''[t]he Postal Service may establish a program to provide property and nonpostal services to other Government [*i.e.,* federal] agencies within the meaning of section 411,[4] but only if such program provides a net contribution to the Postal Service, defined as reimbursement that covers at least 100 percent of the costs attributable . . . .'' 39 U.S.C. 3704.

Under the PSRA, the Postal Service must submit a report to the Commission after the close of each fiscal year that:

> [A]nalyzes costs, revenues, rates, and quality of service for each agreement or substantially similar set of agreements for the provision of property or nonpostal services under section 3703 or the program as a whole under section 3704, and any other nonpostal service authorized under [Chapter 37 of Title 39 of the United States Code], using such methodologies as the Commission may prescribe, and in sufficient detail to demonstrate compliance with the requirements of [Chapter 37 of Title 39 of the United States Code].

39 U.S.C. 3705(a)(1). Upon receiving the Postal Service's report and providing an opportunity for public comment, the Commission must make a written determination of compliance. 39 U.S.C. 3705(e).

In its FY 2022 *Annual Compliance Determination* (ACD), the Commission directed the Postal Service to develop a proposed methodology (or methodologies) for calculating and attributing costs and revenue to IAAs authorized under 39 U.S.C. 3703 and 3704, and to initiate a rulemaking proceeding to establish such methodology (or methodologies) in accordance with 39 CFR 3050.11.[5] As directed, the Postal Service initiated Docket No. RM2023–7 on May 26, 2023, proposing a categorical approach to calculating and attributing costs and revenue to similar types, or groupings, of IAAs.[6]

On August 31, 2023, the Commission conditionally approved the Postal Service's proposed methodology, subject to seven conditions.[7] As relevant here, the first condition provided that, whenever the Postal Service enters into an IAA that is outside the scope of the IAA categories approved in Docket No. RM2023–7, the Postal Service should file a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider a proposal to change an analytical principle underlying the Postal Service's periodic reports.[8] The current approved IAA categories are Retail Services; Fulfillment; Addressing

[1] Docket No. RM2023–7, Order on Motion for Reconsideration and Clarification of Order No. 6659, December 1, 2025 (Order No. 9377).

[2] Petition of the United States Postal Service to Initiate a Proceeding to Change Analytical Principles, October 5, 2026 (Petition). The proposed change is attached to the Petition (Proposal).

[3] Postal Service Reform Act of 2022 (PSRA), Public Law 117–108, 136 Stat. 1127 (2022).

[4] Prior to the enactment of the PSRA, the Postal Service's authority for these agreements was governed by 39 U.S.C. 411, which authorizes the Postal Service to ''furnish property and services'' to ''Executive agencies within the meaning of [5 U.S.C. 105] and the Government Publishing Office . . . .'' 39 U.S.C. 411. Section 105 of Title 5 of the United States Code specifies that an '' 'Executive agency' means an Executive department, a Government corporation, and an independent establishment'' of the U.S. Government, as those terms are defined in 5 U.S.C. chapter 1. 5 U.S.C. 105.

[5] Docket No. ACR2022, *Annual Compliance Determination,* March 29, 2023, at 102 (FY 2022 ACD).

[6] Docket No. RM2023–7, Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Two), May 26, 2023.

[7] Docket No. RM2023–7, Order on Analytical Principles Used in Periodic Reporting (Proposal Two), Directing the Postal Service's Participation in Further Proceedings, and Providing Notice of Filing Attachment Under Seal, August 31, 2023 (Order No. 6659).

[8] Order No. 6659 at 14. The Commission notes that the Postal Service subsequently sought clarification that Condition 1 applies only after a new IAA goes into effect, which the Commission confirmed in Order No. 9377. *See* Order No. 9377 at 7, 41. The Postal Service also sought reconsideration of three of the other seven conditions from Order No. 6659, but those issues are not relevant to this proceeding. The Commission ultimately denied the Postal Service's motion for reconsideration as to those issues, which the Postal Service appealed to the United States Court of Appeals for the District of Columbia Circuit. That appeal is currently pending. *See* Order No. 9377; Petition for Review, *U.S. Postal Serv.* v. *Postal Regul. Comm'n,* No. 25–1289 (D.C. Cir. filed Dec. 26, 2025, ECF No. 2152063).

and Geospatial Technology Services; Short-Term Rental/Conference and Training Center Services; Lease Agreements; and Contracting Services.[9]

III. Proposal

The Postal Service explains that in December of 2025 (FY 2026 Quarter 1) it entered into an agreement with the United States Census Bureau (''Census'') to participate in a pilot study wherein mail carriers would assist in providing ''enumeration support'' for the 2026 Census Test Run. Proposal at 2. ''In-field enumeration'' involves Census employees or other designees attempting to contact residents who did not respond to the mailed Census form. *Id.* Activities conducted by mail carriers ''mainly included a review of the Census provided addresses that ha[d] not responded to the Census form that [were] on their route[,]'' ''provid[ing] vacancy status of . . . residence[s],'' ''educat[ing] potential respondents on completing the survey,'' and ''administer[ing] the survey in person if needed.'' *Id.* Both city and rural carriers participated in the pilot, after receiving training from Census. *Id.* Carriers ''used the knowledge of their routes to resolve enumeration cases that were assigned to known vacant addresses[,]'' and ''[t]he remaining enumeration cases [were] then . . . attempted along the carrier's line of travel.'' *Id.* Carriers used their Mobile Delivery Devices (MDDs) to record their time spent on Census activities. *Id.*

Because the Postal Service asserts that the Census IAA does not fall neatly within any of the existing IAA categories, the Postal Service proposes a new IAA category to be called ''Side-Along Services,'' to which the Census IAA and any subsequent similar IAAs would be assigned. *Id.* at 2–3. Noting that the 2026 Census Test Run was a pilot, the Postal Service asserts that ''[t]he proposed inclusion of this category does not guarantee such an agreement would exist in the future but would provide the appropriate reporting structure for this type of agreement.'' *Id.* at 3.

The Postal Service ''proposes a simple cost structure for [the Side-Along Services] category.'' *Id.* It states that ''[s]ince total Census activity time was recorded by each carrier, the total hours can be converted to costs by multiplying each craft type's respective productive hourly wage rate and piggyback factor.'' *Id.* The Postal Service concedes that ''[i]n the future, each agreement would need to be evaluated for additional cost characteristics,'' but states that ''that process would not deviate from current evaluations that occur with new and unique IAAs.'' *Id.* The Postal Service provides, under seal, a sample cost structure using FY 2025 rates and factors with preliminary hourly data. *Id.*

The Postal Service asserts that if its proposal is approved by late November, it will be able to use the new ''Side-Along Services'' category to organize and present final (as opposed to preliminary) cost and revenue information in the FY 2026 *Annual Compliance Report. Id.*

IV. Notice and Comment

Pursuant to 39 CFR 3050.11(d)(1), the Commission establishes Docket No. RM2027–2 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's website at *https://www.prc.gov.* Interested persons may submit comments on the Petition and the Postal Service's Proposal by October 28, 2026. Pursuant to 39 U.S.C. 505, Christopher Mohr is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2027–2 for consideration of the matters raised by the Petition of the United States Postal Service to Initiate a Proceeding to Change Analytical Principles, filed October 5, 2026.

2. Comments by interested persons in this proceeding are due October 28, 2026.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Christopher Mohr to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. This Order, or abstract thereof, will be published in the **Federal Register**.

By the Commission.

Danielle LeFlore,

Legal Assistant.

[FR Doc. 2026–20865 Filed 10–9–26; 8:45 am]

BILLING CODE 7710–FW–P

[9] *See* Order No. 6659; Docket No. RM2026–4, Order on Analytical Principles Used for Periodic Reports Concerning Updating Interagency Agreement Reporting for Hybrid Agreements, June 18, 2026 (Order No. 9617).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket Nos. 21–346 and 15–80; ET Docket No. 04–35; Report No. 3236; FR ID 372261]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: Petition for Reconsideration (Petition) has been filed in the Commission's proceeding by Thomas Goode on behalf of the Alliance for Telecommunications Industry Solutions.

DATES: Oppositions to the Petition must be filed on or before October 29, 2026. Replies to oppositions to the Petition must be filed on or before November 9, 2026.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeanne Stockman, Attorney Advisor, Public Safety and Homeland Security Bureau at (202) 418–7830 or *Jeanne.Stockman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3236, released September 23, 2026. The full text of the Petition can be accessed online via the Commission's Electronic Comment Filing System at: *https://apps.fcc.gov/ecfs/* and downloaded at *https://www.fcc.gov/ecfs/document/26110061418/1.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications (PS Docket Nos. 21–346 and 15–80; ET Docket No. 04–35).

Number of Petitions Filed: 1.

Federal Communications Commission.

Aleta Bowers,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2026–20895 Filed 10–9–26; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 261007–0005]

RIN 0648–BO48

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Framework Adjustment 7 to the Atlantic Spiny Dogfish Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes measures included in Framework Adjustment 7 to the Spiny Dogfish Fishery Management Plan (FMP), as recommended by the Mid-Atlantic and New England Fishery Management Councils. Framework 7 proposes fishing year 2026 and projected 2027 specifications, which would establish allowable harvest levels for the spiny dogfish fishery to prevent overfishing while enabling optimum yield based on the best scientific information available. Framework 7 also proposes changes to the Atlantic spiny dogfish accountability measures intended to provide the commercial fishery with greater flexibility by no longer requiring full payback of annual catch limit (ACL) overages when the Atlantic spiny dogfish stock is considered healthy.

DATES: Comments must be received by November 12, 2026.

ADDRESSES: A plain language summary of this proposed rule is available at *https://www.regulations.gov/docket/NOAA-NMFS-2026-1321.* You may submit comments on this document, identified by NOAA–NMFS–2026–1321, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit *https://www.regulations.gov* and type NOAA–NMFS–2026–1321 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), 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).

Copies of the Environmental Assessment (EA) and other supporting documents for this action are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the internet at *http://www.mafmc.org/supporting-documents.*

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Policy Analyst, *Laura.Deighan@noaa.gov* or (978) 281–9184.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic and New England Fishery Management Councils (the Councils) jointly develop recommended management measures for spiny dogfish, with the Mid-Atlantic Council acting as the administrative lead. Additionally, the Atlantic States Marine Fisheries Commission manages the Atlantic spiny dogfish fishery in State waters from Maine to North Carolina through an interstate fishery management plan. The Councils, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), develop recommendations regarding fisheries in Federal waters, and both Councils must agree on any final recommendations to modify the Federal FMP. The Councils provide their recommendations to NMFS. Under the provisions of the Magnuson-Stevens Act, on behalf of the Secretary of Commerce, the Greater Atlantic Regional Fisheries Office's Regional Administrator reviews the Councils' proposed measures for consistency with the FMP, plan amendments, the Magnuson-Stevens Act, and other applicable law. The Regional Administrator is required to publish proposed regulations, consistent with the Council's recommendations, with such technical changes as may be necessary for clarity and an explanation of those changes for public comment (section 304(b)(1)(A) of the Magnuson-Stevens Act). After public comment, the Regional Administrator may publish revisions to the proposed regulations along with an explanation of any differences between the proposed and final regulations (section 304(b)(3) of the Magnuson-Stevens Act; 50 CFR 648.239(a)(3)(ii)).

At the Mid-Atlantic Council's October 2025 meeting and the New England Council's December 2025 meeting, the Councils recommended 2026 and projected 2027 Atlantic spiny dogfish catch limits. The Federal FMP requires the specification of an acceptable biological catch (ABC), ACL, annual catch target (ACT), total allowable landings (TAL), and a coastwide commercial quota. These limits and other related management measures may be set for up to 5 fishing years at a time, with each fishing year running from May 1 through April 30. This action proposes Atlantic spiny dogfish specifications for fishing year 2026 and projected specifications for fishing year 2027, as recommended by both Councils. The Commission voted to implement complementary specifications for State waters on February 3, 2026, during its winter meeting.

The NMFS Northeast Fisheries Science Center completed an Atlantic spiny dogfish management track assessment in September 2023, which included catch and survey data through 2022. The management track assessment found that the Atlantic spiny dogfish stock is not currently overfished or experiencing overfishing and remains above its biomass target. In 2025, the Science Center provided updated projections that incorporate new Atlantic spiny dogfish catch information through 2024. It also provided a data update with new survey data through 2024, which have not been incorporated into the assessment and projections model. The 2025 data update showed negative trends in multiple indicators including the female biomass indices, female spawning stock biomass, and mean length of mature females. In September 2025, the Mid-Atlantic Council's Scientific and Statistical Committee (SSC) reviewed the 2025 data update and the 2026–2027 Atlantic spiny dogfish stock projections and noted increasing uncertainty in the projections due to the age of the data used in the projection model (*i.e.,* terminal year 2022).

Typically, the Mid-Atlantic Council's risk policy recommends setting the ABC with no greater than a 46-percent chance of overfishing for stocks just above the biomass target, such as Atlantic spiny dogfish. However, the industry has raised significant and ongoing concerns about the continued viability of the fishery with commercial quotas below approximately 12 million

pounds (lb; 5,444 metric tons (mt)). As a result, in recent years, the ABC has been set equal to the overfishing limit (OFL), through NMFS emergency action in 2024 (89 FR 44924, May 22, 2024), and by the Council suspending its risk policy when developing specifications for 2025 (90 FR 20128, May 12, 2025). At the request of the Council, for 2026 and 2027 the SSC provided ABCs based on the Council's risk policy and ABCs equal to the OFLs (*i.e.,* a 50-percent chance of overfishing). The SSC also provided a constant 2026–2027 ABC equal to that of the 2025 ABC and OFL as a more precautionary alternative because of its concerns about the increased uncertainty in the projections. The Councils recommended 2026 and projected 2027 ABCs equal to that of 2025 (*i.e.,* 16.81 million lb; 7,626 mt), but below these years' OFLs, to balance the SSC's concerns regarding uncertainty and industry's concerns regarding the ongoing economic viability of the fishery.

At the Mid-Atlantic Council's October and December meetings and the New England Council's December meeting, the Councils also recommended changes to the Federal Atlantic spiny dogfish accountability measures. Section 303 of the Magnuson-Stevens Act requires FMPs to ''establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.'' The National Standard 1 Guidelines at § 600.310 outline accountability measure requirements and guidance.

The current Atlantic spiny dogfish accountability measures at § 648.233 include: a coastwide closure when the commercial quota is reached; an annual, single-year evaluation of total catch to determine whether the ACL is exceeded; and a full ACL overage repayment as soon as possible in a subsequent year. While the repayment provision has not been triggered frequently in recent years, an ACL overage occurred in fishing year 2023, and, as a result, the fishing year 2024 ACL and commercial quota were reduced by 1.08 million lb (491 mt; 89 FR 79452; September 30, 2024). Given the industry's concerns about the recent quotas' impacts on the sustainability of the Atlantic spiny dogfish industry, the Councils recommended changes to the accountability measures to reduce the frequency and magnitude of overage paybacks. NMFS concurs with the Councils' recommendations pending review of public comments. The proposed changes outlined below are intended to minimize year-to-year fishery disruptions to the industry while maintaining a sustainable Atlantic spiny dogfish stock.

Proposed Measures

Proposed 2026 and Projected 2027 Atlantic Spiny Dogfish Specifications

This action proposes the Mid-Atlantic and New England Councils' recommended 2026 and projected 2027 Atlantic spiny dogfish catch specifications, which are consistent with the ABCs provided by the SSC and the best available science. The proposed 2026 and projected 2027 catch limits are based on a status quo ABC equal to that of 2025 (*i.e.,* 16.81 million lb; 7,626 mt). The specifications include deductions for estimates of other sources of catch (*i.e.,* Canadian landings, domestic discards, and domestic recreational landings). Atlantic spiny dogfish discards vary from year to year, which can create uncertainty when determining the appropriate amount to set aside within the specifications. Both Councils ultimately recommended using the average ratio of discards to catch (43.8 percent) for the most recent three fishing years (2022–2024) applied to the proposed ABC. The resulting recommended coast-wide commercial quota would be 9.2 million lb (4,172 mt), which is a 1.5-percent decrease from 2025, primarily due to an increase in the estimated discards. A comparison of the implemented 2025, proposed 2026, and projected 2027 specifications is summarized below in table 1.

TABLE 1—COMPARISON OF IMPLEMENTED 2025, PROPOSED 2026, AND PROJECTED 2027 ATLANTIC SPINY DOGFISH FISHERY SPECIFICATIONS

	2025		2026–2027 (proposed)		Percent change
	Million lb	Metric tons	Million lb	Metric tons	
OFL	16.81	7,626	17.82	8,084	+6
ABC	16.81	7,626	16.81	7,626	0
Canadian Landings	0.01	4	0.01	4	0
Domestic ABC	16.8	7,622	16.8	7,622	0
ACL = ACT	16.8	7,622	16.8	7,622	0
Domestic Discards	7.22	3,275	7.36	3,338	+1.9
TAL	9.58	4,347	9.44	4,284	−1.4
Domestic Recreational Landings	0.24	111	0.25	112	+0.9
Commercial Quota	9.34	4,236	9.2	4,172	−1.5

Proposed Accountability Measures

This action also proposes changes to the Atlantic spiny dogfish accountability measures. Under the proposed changes, ACL overages would be calculated based on the 3-year average catch and 3-year average ACL. This approach is provided for in the National Standard 1 Guidelines at § 600.310(g)(5) and is intended to provide greater stability in the commercial quota when accounting for overages. Atlantic spiny dogfish catch, particularly discards, can vary from year to year. Calculating overage paybacks based on a multiyear average smooths out this variability, where ACL overages in one year may be balanced out by underages in others. When the 3-year average catch exceeds the 3-year average ACL, the Councils recommend paybacks would: (1) not be required when the stock is at or above its target; (2) be scaled linearly when the stock is between 75 and 100 percent of its target (regardless of the source of the overage); and (3) be required in full when the stock is at or below 75 percent of its target. Full paybacks would always be required when the stock is in a rebuilding plan, consistent with the National Standard 1 Guidelines (50 CFR 600.310(g)(3)). This approach is intended to provide the commercial fishery with greater flexibility by no longer requiring full payback of ACL overages when the Atlantic spiny dogfish stock is considered healthy, therefore maintaining higher coastwide

commercial quotas while promoting the long-term sustainability of the stock and the fishery. This action does not propose changes to the existing in-season accountability measure that requires a coastwide Federal closure when the commercial quota is reached.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. NMFS is issuing this rule pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, which provide specific authority for implementing this action. Section 304(b) of the Magnuson-Stevens Act authorizes NMFS to implement rules and regulations deemed necessary by the Councils, and here the Councils deemed the modifications to § 648.233 necessary to implement Framework 7. In a previous action under section 304(b), the regulations at § 648.232 authorize NMFS to implement the Atlantic Spiny Dogfish specifications under section 305(d).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Senior Lead Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

An evaluation of the potential socioeconomic impacts of the proposed measures was conducted in conjunction with the Atlantic Spiny Dogfish Framework Adjustment 7 EA.

The proposed action has the potential to impact entities that hold Federal spiny dogfish permits. Vessels may hold multiple fishing permits, and some entities own multiple vessels and/or permits. According to the Northeast Fisheries Science Center commercial ownership database, there were 1,791 spiny dogfish permits held by 1,329 entities in 2024. Of those, 1,319 qualified as small businesses (combined 2024 annual receipts not in excess of $11 million), and 10 were classified as large businesses. Recent total spiny dogfish ex-vessel revenues have averaged approximately $2.2 million annually (2022–2024), and 68 federally permitted vessels participated meaningfully in the fishery (landings over 10,000 lb; 4.5 mt) in 2022–2024.

The proposed 2026 and projected 2027 specifications would set the commercial quota approximately 140,000 lb (63.5 mt) lower than the current quota. Applying the 2022–2024 average inflation-adjusted ex-vessel price of about $0.23 per pound suggests a potential aggregate revenue reduction of approximately $31,700 per year. Averaged across the approximately 68 federally permitted vessels that landed at least 10,000 lb (4.5 mt) annually during 2022–2024, this would be an approximately $470 per vessel per year reduction over the short term. Actual effects would vary among vessels and would likely be smaller if the quota remains non-constraining, as recent fishery performance suggests. Over the long term, maintaining a sustainable stock supports continued fishing opportunity and future revenue, resulting in positive long-term economic impacts. Therefore, this change is not expected to have a significant economic impact on regulated entities.

The proposed changes to the accountability measures would reduce the influence of single-year variability in catch estimates and reduce future quota reductions when the stock is healthy and an overage is not expected to meaningfully affect the stock status. The proposed measures would retain full payback requirements when biomass is at or below 75 percent of the target or when the stock is under a rebuilding plan, which supports long-term stock sustainability and future fishing opportunity. The proposed changes are not expected to motivate fishery participants to change behavior in ways that would cause frequent quota overages because NMFS is required to close the commercial fishery when the quota is reached.

The proposed changes are not expected to impose new direct compliance costs on regulated entities. Overall, the short-term reductions in revenue are expected to be offset by the long-term positive impacts from maintaining a sustainable stock and the additional flexibility provided by the revised accountability measures. Therefore, the proposed changes are expected to have slightly positive economic impacts on regulated entities. There is no information indicating that the action would impact small businesses differently than large businesses or unduly inhibit the ability of small entities to compete. Therefore, this action is not expected to have a significant adverse impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 7, 2026.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.233, revise paragraphs (b) and (c) to read as follows:

§ 648.233 Spiny dogfish Accountability Measures (AMs).

* * * * *

(b) *ACL overage evaluation.* The average of the most recent 3 years of total catch (including both landings and dead discards) compared to the average of the ACLs from the same 3 years, in pounds, will be evaluated to determine whether there was an ACL overage.

(c) *Overage repayment.* If the average catch exceeds the average ACL (see paragraph (b) of this section), the amount of payback required shall be determined based on the following procedure, using the most recent projected biomass (B) and biomass at maximum sustainable yield (B_{MSY}) from the years used to calculate the 3-year average. If such a projection is not available for the 3-year timeframe, the nearest preceding B and B_{MSY} projections shall be used.

(1) *If the stock is not under a rebuilding plan and B is at or above 100 percent of B_{MSY}.* No payback is required.

(2) *If the stock is not under a rebuilding plan and B is between 75 and 100 percent of B_{MSY}.* The percent of the overage required to be paid back scales linearly from 100 percent when B is 75 percent of B_{MSY} to 0 percent when B is equal to 100 percent of B_{MSY}. The amount of the overage to be paid back is equal to the overage (as determined in paragraph (b) of this section) multiplied by the difference between the most recent projected B_{MSY} and B (as described in paragraph (c) of this section), divided by one-quarter B_{MSY}

$((B_{MSY} - B)/(0.25\ B_{MSY}))$. The payback shall be deducted as soon as possible from a subsequent single fishing year ACL.

(3) *If the stock is not under a rebuilding plan and B is at or below 75 percent of B_{MSY} or the stock is under a rebuilding plan.* The exact amount of the overage (as determined in paragraph (b) of this section) shall be deducted as soon as possible from a subsequent single fishing year ACL.

[FR Doc. 2026–20863 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 91, No. 196
Tuesday, October 13, 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 COMMERCE

International Trade Administration

[A–552–816]

Welded Stainless Steel Pressure Pipe From the Socialist Republic of Vietnam: Preliminary Results of and Intent To Rescind, in Part, Antidumping Duty Administrative Review; 2024–2025

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that sales of welded stainless steel pressure pipe (stainless pressure pipe) from the Socialist Republic of Vietnam (Vietnam) were made at less than normal value (NV) during the period of review (POR) July 1, 2024, through June 30, 2025. Additionally, Commerce intends to preliminarily rescind the review, in part, with respect to seven companies. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable October 13, 2026.

FOR FURTHER INFORMATION CONTACT: Luke Caruso, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2081.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 2025, based on a timely request for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty (AD) order on stainless pressure pipe from Vietnam[1] covering the following eight exporters of subject merchandise: (1) Sonha International Corporation (Sonha International); (2) Sonha SSP Vietnam Sole Member Co. Limited (Sonha SSP); (3) Mejonson Industrial Vietnam Co., Ltd. (Mejonson); (4) Vinlong Stainless Steel (Vietnam) Co., Ltd. (Vinlong); (5) Vinasteel Production Joint Stock Company (Vinasteel); (6) Quang Thuong Vietnam Stainless Steel Company Limited (Quang Thuong); (7) Công ty TNHH Thép không gỉ Quảng Thượng Việt Nam (Cong Ty); (8) and the Vietnam-wide Entity.[2] On January 15, 2026,[3] Felker Brothers Corporation and Primus Pipe & Tube, Inc. (collectively, the petitioners) withdrew their review requests for all exporters except for Mejonson, Vinasteel, and the Vietnam-wide entity.[4] On March 19, 2026, Commerce selected the Vietnam-wide entity as the sole mandatory respondent in this review.[5]

On June 4, 2026, we extended the preliminary results of this review by 113 days, until September 30, 2026.[6] On September 24, we further extended the preliminary results of this review by seven days, until no later than October 7, 2026.[7]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[8] A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/frnotices.*

Scope of the Order

The merchandise covered by the scope of the *Order* is stainless pressure pipe from Vietnam. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Preliminary Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested a review withdraws its request within 90 days of the date of publication of notice of initiation.[9] As noted above, the petitioners withdrew their review requests and no other party requested an administrative review of Sonha International; Sonha SSP; Vinlong; Quang Thuong; and Cong Ty. Therefore, we are rescinding this administrative review with respect to these companies, pursuant to 19 CFR 351.213(d)(1).

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of an AD order where it concludes that there were no suspended entries of subject merchandise during the POR.[10] Normally, upon completion of an administrative review, the suspended entries are liquidated at the AD assessment rate for the review period.[11] Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the calculated AD assessment rate for the review period.[12] According to the CBP data, there were no suspended entries of subject merchandise for either Mejonson or Vinasteel.[13] In the absence of any suspended entries of subject merchandise from either Mejonson or Vinasteel, we are preliminarily rescinding this administrative review with respect to both Mejonson and Vinasteel, in accordance with 19 CFR 351.213(d)(3).

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). Pursuant to section 776(a) and (b) of the Act, Commerce has preliminarily assigned a weighted average dumping margin to the Vietnam-wide entity based upon total facts otherwise available with adverse inferences. For a full description of the methodology underlying the preliminary results of this review, *see* the Preliminary Decision Memorandum.

The Vietnam-Wide Entity

Commerce's policy regarding conditional review of the Vietnam-wide entity applies to this administrative review.[14] Under this policy, the Vietnam-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. The petitioners[15] requested a review of the Vietnam-wide entity in the instant review; therefore, the Vietnam-wide entity is under review.

Preliminary Results of Review

Commerce preliminarily determines that the following estimated weighted-average dumping margin exist for the period July 1, 2024, through June 30, 2025:

Exporter	Weighted-average dumping margin (percent)
Vietnam-wide Entity	90.80

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with its preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary results in the **Federal Register**, in accordance with 19

[1] *See Welded Stainless Pressure Pipe from Malaysia, Thailand, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 79 FR 42289 (July 21, 2014) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 90 FR 41043 (August 22, 2025).

[3] *See* Petitioners' Letter, ''Partial Withdrawal of Request for Administrative Review,'' dated January 15, 2026.

[4] Due to extenuating circumstances in the instant review, *i.e.,* interested parties were not given sufficient time to review the *Preliminary Results* of the prior segment of this proceeding and thereby inform their withdrawal of review requests with respect to the firms that had been requested in both segments of the instant proceeding, Commerce determined to accept the petitioners' untimely filed withdrawal of review request; *see also* Commerce's memorandum, ''Acceptance of Late Filing Due to Extenuating Circumstances'', dated March 19, 2026.

[5] *See* Memorandum, ''Respondent Identification Memorandum,'' dated March 19, 2026.

[6] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Administrative Review,'' dated June 04, 2026.

[7] *See* Memorandum, ''Second Extension of Deadline for Preliminary Results of Antidumping Administrative Review,'' dated September 24, 2026.

[8] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Welded Stainless Steel Pressure Pipe from the Socialist Republic of Vietnam; 2024–2025,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[9] Due to extenuating circumstances in the instant review, *i.e.,* interested parties were not given sufficient time to review the *Preliminary Results* of the prior segment of this proceeding and thereby inform their withdrawal of review requests with respect to the firms that had been requested in both segments of the instant proceeding, Commerce determined to accept the petitioners' untimely filed withdrawal of review request; *see also* Commerce's memorandum, ''Acceptance of Late Filing Due to Extenuating Circumstances'', dated March 19, 2026.

[10] *See, e.g., Certain Carbon and Alloy Steel Cut-to Length Plate from the Federal Republic of Germany: Recission of Antidumping Administrative Review; 2020–2021,* 88 FR 4154 (January 24, 2023).

[11] *See* 19 CFR 351.212(b)(1).

[12] *See, e.g., Shanghai Sunbeauty Trading Co.* v. *United States,* 380 F.Supp.3d 1328, 1337 (CIT 2019), at 12 (referring to section 751(a) of the Act, the U.S. Court of International Trade held that ''{w}hile the statute does not explicitly require that an entry be suspended as a prerequisite for establishing entitlement to a review, it does explicitly state the determined rate will be used as the liquidation rate for the reviewed entries. This result can only obtain if the liquidation of entries has been suspended''; *see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 36102 (July 8, 2021), and accompanying Issues and Decision Memorandum at Comment 4; and *Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Notice of Rescission of Antidumping Duty Administrative Review,* 77 FR 65532 (October 29, 2012) (noting that ''for an administrative review to be conducted, there must be a reviewable, suspended entry to be liquidated at the newly calculated assessment rate'').

[13] *See* Memorandum, ''Release of Customs Data from U.S. Customs and Border Protection,'' dated September 22, 2025.

[14] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[15] *See* Petitioners' Letter, ''Request for Administrative Review'', dated July 31, 2024.

CFR 351.224(b). However, because Commerce preliminarily applied a weighted-average dumping margin based on total adverse facts available (AFA) to the individually examined entity in this administrative review, in accordance with section 776 of the Act, and assigned an AFA rate equal to the highest margin alleged in the underlying petition, as listed in the *Investigation Initiation,*[16] there are no calculations to disclose.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after the date of the publication of this notice.[17] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[18] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[19]

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public executive summary for each issue raised in their briefs.[20] Further, we request that interested parties limit their public, executive summary of each issue to no more than 450 words, not including citations. We intend to use the public, executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public, executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[21]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants, and whether any participant is a foreign national; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce will inform parties of the scheduled date for the hearing.[22]

Application of Facts Available With an Adverse Inference

If Commerce continues to base the Vietnam-wide entity's weighted-average dumping margin upon total facts otherwise available, with adverse inferences, in the final results of this review, then Commerce will instruct CBP to assess antidumping duties at the rate determined in the final results of review for the Vietnam-wide entity.

However, if the Vietnam-wide entity's final weighted-average dumping margin is not based on total facts otherwise available, with adverse inferences, Commerce intends to calculate the entity rate by dividing the total amount of dumping for reviewed sales to U.S. customers by the total quantity of sales by the Vietnam-wide entity. Commerce will calculate an estimated *ad valorem* entity-wide assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, it will instruct CBP to apply the per-unit assessment rate.[23]

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

For the *Final Results,* if we continue to rescind this review with respect to the companies listed above for which the review is being preliminary rescinded, then Commerce will instruct CBP to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit rate for estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue rescission instructions to CBP no earlier than 35 days after the date of publication of the *Final Results* in the **Federal Register**.

The final results of this 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.

If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) for the companies listed above, which have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Vietnamese and non-Vietnamese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Vietnamese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the existing rate for the Vietnam-wide entity of 90.80 percent; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporter that supplied that non-Vietnamese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's

[16] *See Welded Stainless Pressure Pipe from Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 78 FR 35253, 35257 (June 12, 2013) (Investigation Initiation).

[17] *See* 19 CFR 351.309.

[18] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (APO and Service Procedures).

[19] *See* 19 CFR 351.309(c)(2) and (d)(2).

[20] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[21] *See APO and Service Procedures.*

[22] *See* 19 CFR 351.310(d).

[23] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: October 6, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Preliminary Partial Rescission of Administrative Review
V. Discussion of the Methodology
VI. Recommendation

[FR Doc. 2026–20816 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904; Binational Panel Review: Notice of Panel Decision

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of panel decision.

SUMMARY: On October 5, 2026, the Binational Panel issued its Decision on the Second Redetermination on Remand in the matter of Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination (Secretariat File Number: USA–CDA–2017–1904–02). The Binational Panel affirmed the U.S. Department of Commerce's Second Redetermination on Remand.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 482–2311.

SUPPLEMENTARY INFORMATION: Chapter 19 of Article 1904 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to provide judicial review of the trade remedy determination being challenged and then issue a binding Panel Decision. There are established *Rules of Procedure for Article 1904 Binational Panel Reviews,* which were adopted by the three governments for panels requested pursuant to Article 1904(2) of NAFTA. The notice of this Binational Panel's Decision is being published pursuant to Rule 70. For the complete Rules, please see *https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/nafta-alena-tlcan/rules-regles-reglas/article-article-articulo_1904.aspx?lang=eng.*

Dated: October 8, 2026.

Vidya Desai,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2026–20857 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XG039]

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

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

ACTION: Notice of public meeting.

SUMMARY: The Scientific and Statistical Committee (SSC) of the Mid-Atlantic Fishery Management Council (Council) will hold a meeting.

DATES: The meeting will be held on Tuesday, November 3, 2026 from 9 a.m. to 12 p.m. E.T. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: This meeting will take place over webinar using the Webex platform with a telephone-only connection option. Webinar connection instructions and briefing materials will be available at: *https://www.mafmc.org/ssc.*

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

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

SUPPLEMENTARY INFORMATION: During this meeting, the SSC will make multi-year acceptable biological catch (ABC) recommendations for Longfin Squid. The SSC will make ABC recommendations for the 2027–2029 fishing years using information from the recently completed research track and management track stock assessment reviews. The SSC may take up any other business as necessary.

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

Special Accommodations

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

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

Dated: October 8, 2026.

Rey Israel Marquez,

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

[FR Doc. 2026–20864 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No: 260930–0006]

XRIN 0648–XA107

Deep Seabed Mining: Notice of Receipt of Application for Deep Seabed Mining Exploration License and Announcement of Public Comment Period and Virtual Public Hearing

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of receipt of application for deep seabed mining exploration license; request for comments; notice of virtual public hearing.

SUMMARY: NOAA has received an application for a license to conduct seabed mining exploration activities that is fully compliant with the applicable information requirements of the Deep Seabed Hard Mineral Resources Act (DSHMRA or the Act) and the Act's implementing regulations. As part of the application review process, NOAA will hold one virtual public hearing on Eco Minerals, Inc.'s (Eco) application and will accept written comments on the application submitted electronically via the instructions below.

DATES: Comments on the application must be received by December 14, 2026. The virtual public hearing is scheduled

for November 16, 2026, from 3 p.m. to 5 p.m. Eastern Time (ET). Instructions for attending the virtual public hearing are provided below.

ADDRESSES: The Eco application is electronically available at *https://www.regulations.gov/docket/NOAA-NOS-2026-2608.*

You may send comments, identified by docket number, by either of the following means:

Written Comments

Submit all public written comments on Eco's Application via the Federal *regulations.gov* e-Portal at *https://www.regulations.gov/docket/NOAA-NOS-2026-2608* or go to *https://www.regulations.gov* and enter ''NOAA–NOS–2026–2608'' in the search bar.

Comments must be submitted by the date and electronic method described below to ensure that the comments are received, documented, and considered by NOAA. 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. Comments that are not related to the application or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered. To ensure full consideration by NOAA, comments must be submitted in English. Comments that are not submitted in English may not be posted to the public dockets on regulations.gov, or considered by NOAA. All relevant 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) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Virtual Public Hearings

You may submit oral comments for Eco's Application during the November 16, 2026 meeting.

NOAA will conduct a virtual public hearing via Adobe Connect. Each person who wants to attend the virtual public hearing must electronically register by November 12, 2026, 5 p.m. ET. Attendance at the virtual public hearing will be limited to 1,000 individuals. Any person who registers and wants to speak at a virtual public hearing should indicate that they want to speak during registration. To register for either hearing, use the following link: *https://noaabroadcast.adobeconnect.com/ef1lgeja8pd6/event/event_info.html.* Each registered participant will receive an Adobe Connect link for the virtual public hearing.

Once the virtual public hearing starts, NOAA will describe the virtual public hearing logistics. NOAA will then start the public comment part of the virtual public hearing and will call on speakers on a first come/first served basis through the raised hand function of Adobe Connect. NOAA will then unmute the person speaking. Each speaker will have three minutes to speak on the Eco application. If a speaker does not respond when they are called on, NOAA will move to the next speaker. At the three-minute mark for each speaker, NOAA will mute that speaker. Speakers cannot allot their time to another speaker. Once all speakers have spoken, or at the scheduled end of the virtual public hearing, whichever is earlier, NOAA will end the virtual public hearing. NOAA retains discretion to extend the virtual public hearing if appropriate and feasible. NOAA will record each hearing and will include transcripts of the hearing on the public dockets for the Eco application on the *regulations.gov* website at *https://www.regulations.gov/docket/NOAA-NOS-2026-2608.* The names provided by each speaker will also be published as part of the transcripts.

The virtual public hearing does not replace the process for submission of written comments. NOAA will not respond during the hearing to oral comments or questions. To ensure full consideration by NOAA, oral comments must be in English. Comments that are not in English may not be transcribed or considered by NOAA.

FOR FURTHER INFORMATION CONTACT: Bryan Cole, 301–233–2998, *bryan.cole@noaa.gov.*

SUPPLEMENTARY INFORMATION: On December 5, 2025, NOAA received an amended application from Eco for a license to conduct seabed mining exploration activities within the seabed area beyond national jurisdiction within the Pacific Ocean in areas in the Clarion-Clipperton Zone and an area between Guam and Wake Island. NOAA has determined that the application is fully compliant with the applicable information requirements of the Act and its implementing regulations. Under DSHMRA, NOAA shall publish notice of all license applications and, subject to applicable public disclosure limitations, interested persons are afforded the opportunity to examine the relevant application materials and to submit written and oral comments to NOAA. NOAA has determined that the Eco application is the relevant material for examination during the notice of application. 30 U.S.C. 1426(a)(1). This application is electronically available at the location listed in the **ADDRESSES** section. Please note that the statements made in the application do not necessarily reflect the views of NOAA or the views of the U.S. Government.

Authority: 30 U.S.C. 1426(a)(1).

Neil A. Jacobs,

Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 2026–20830 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XG104]

Marine Mammals; File No. 29892

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

ACTION: Notice; withdrawal of application.

SUMMARY: Notice is hereby given that Edward Charles, Open Planet Studios, 27A Regent Street, Clifton, Bristol, UK BS8 4HG, has withdrawn their application for a permit to conduct commercial and educational photography on marine mammals.

ADDRESSES: The application and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Markin, Ph.D., or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On August 21, 2026, notice was published in the **Federal Register** (91 FR 54312) that a request for a permit to conduct filming of marine mammals had been submitted by the above-named applicant. The applicant has withdrawn the application from further consideration.

Dated: October 8, 2026.

Larissa Plants,

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

[FR Doc. 2026–20872 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XG111]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region (GARFO), NMFS, has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. The EFP would allow federally permitted fishing vessels to fish outside fishery regulations in support of exempted fishing activities. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before October 28, 2026.

ADDRESSES: You may submit written comments by email: *nmfs.gar.efp@noaa.gov.* Include in the subject line ''surfclam EFP economic assessment.'' All comments received are a part of the public record and may be posted for public viewing without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''anonymous'' as the signature if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Supervisory Fishery Policy Analyst, *ryan.silva@noaa.gov,* 978–281–9326.

SUPPLEMENTARY INFORMATION: The applicant submitted a complete application for an EFP to conduct commercial fishing activities that the regulations would otherwise restrict. This EFP would exempt the participating vessels from the following Federal regulations:

TABLE 1—REQUESTED EXEMPTIONS

CFR citation	Regulation	Need for exemption
50 CFR 648.370(h)	Habitat Management Areas (HMA)—prohibition on using bottom-tending mobile gear.	To fish with hydraulic clam dredges in the project area.
50 CFR 648.14(j)(2)(iii)	Prohibition against offloading unshucked surfclams or ocean quahogs from vessels not capable of carrying cages.	Participating vessels are not capable of carrying cages and ports do not have the infrastructure to safely offload into cages.
50 CFR 648.14(j)(3)(vi)	Prohibition against landing or possessing, after offloading, any cage holding surfclams or ocean quahogs without a cage tag required by § 648.77.	Participating vessels will use alternate/smaller sized containers and alternate tags and will not be tagging as required in § 648.77.
50 CFR 648.77(a)	Cage tag requirements	The tags will not be in increments of 60 ft^3 (32 bushels); the landing containers will be tagged in 16-bushel increments.

TABLE 2—PROJECT SUMMARY

Applicant	Red's Best, LLC.
Project title	Economic Impact Assessment of the Great South Channel Habitat Management Area Closure on Small-Vessel Massachusetts Surfclam Fishermen: A Comparative Yield and Revenue Study.
Project start	Requested as soon as possible.
Project end	3/31/2029, with annual EFP renewal.
Project objectives	1. Generate an economic dataset comparing small-vessel surfclam fishing productivity inside and outside of the Great South Channel (GSC) HMA. 2. Assess the spatial distribution and density of surfclams in the GSC HMA research exemption areas. 3. Assess the benefits of smaller surfclam catch volume units.
Project location	Statistical areas 521, 526.
Number of vessels	1–4.
Number of trips	200.
Trip duration (days)	1.
Total number of days	200.
Gear type(s)	Hydraulic clam dredge.
Number of tows or sets	30.
Duration of tows or sets	15–30 minutes.

Project Narrative

The subject EFP application is proposed in the broader context of ongoing discussions regarding access by the surfclam fishery to historical fishing grounds in the GSC HMA, which was curtailed through the Council's Omnibus Habitat Amendment 2. The surfclam industry has since sought to regain access to this area, which was partially accommodated in 2020 through the Clam Dredge Framework that established three exemption areas within the GSC HMA where surfclam fishing is allowed. In addition, the Rose and Crown and Davis Bank East were informally designated as research exemption areas, and considered candidate areas where bottom tending mobile gear could be used in support of GSC HMA research priorities. The Council is currently assessing the effectiveness of the exemption area program, and may consider further changes to the GSC HMA in 2027.

The EFP applicant is proposing to assess the economic viability of the surfclam resource in the GSC HMA research exemption areas Rose and Crown and Davis Bank East, and contrast this with the surfclam resource

in surrounding waters outside of the HMA that are currently open to the surfclam fishery. A secondary objective is to generate a standardized spatial dataset on surfclam distribution patterns, size structure, and catch per unit effort (CPUE) within the Rose and Crown and Davis Bank East research exemption areas. The applicant states that data generated by this EFP would provide the empirical baseline needed to assess the socioeconomic impacts of the GSC HMA. Specifically, this information could contribute directly to the Council's exemption area review by filling data gaps concerning small-vessel operational viability and surfclam distribution, in support of future consideration for exemption area changes.

The applicant is requesting that 1–4 vessels be authorized to take up to 200 trips inside the Rose and Crown and Davis Bank East (test areas), to be compared with approximately 200 trips outside the HMA (control area) over the course of the 2.5-year study. If approved, the EFP would be re-issued on an annual basis, pending progress on project objectives. The same vessels, operators, and gear would fish approximately equal effort in each area. The applicant states that 400 total trips would provide a sufficient number of data points to establish commercial viability thresholds across seasonal, depth, and vessel-capacity strata. Participating vessels would land up to the equivalent of 16 cages of surfclams per trip. Control fishing would occur within Massachusetts state waters east and southeast of Cape Cod, and proximal Federal waters outside of the HMA, and test area fishing would occur within the GSC HMA Rose and Crown and Davis Bank East exemption areas. Vessels would not fish in control and test areas on the same trip.

Bushels per hour of active towing and swept area (the productivity rate metric), and pounds of shucked meat per bushel of live surfclams landed (the yield-quality metric), are the two primary metrics collected under this EFP that would be used to compare economic productivity of the control and test areas. For each tow, vessel operators and/or sea technicians would record:

- Tow fishing start and end time (to the minute);
- Tow speed over ground;
- Start and end coordinates;
- Bushels of surfclams estimated at time of sorting;
- Number of cages filled and cage tag numbers (or alternate volume unit and tag numbers);
- Sediment type as observed in dredge bag contents (sand, gravel, shell hash, mud, cobble);
- Any notable changes in bottom composition or structure across tows; and
- Species identity and estimated weight of all non-target species (bycatch).

For each trip landing under the EFP, the following will be recorded:

- Total bushels of live surfclams landed;
- Percentage of clams live vs. broken or damaged at time of offloading;
- Ex-vessel price per bushel (market price on date of landing);
- Gross ex-vessel revenue;
- Pounds of shucked meat produced per bushel of live weight;
- Dredge specifications (blade width, bar spacing); and
- Total hours of active towing.

To assess the spatial distribution and density of surfclams in the GSC HMA Rose and Crown and Davis Bank East research exemption areas, the applicant is proposing to conduct approximately 35, 15-minute standardized tows during test area fishing trips at pre-determined station locations that follow a fixed grid design. At least one standardized tow would be occupied per exempted trip until all stations are sampled. Vessel operators would have discretion to perform the tow within 1 nautical mile of the station location to accommodate obstacles or un-towable bottom. The operator would note when the tow locations deviate from the sampling plan, and why.

Tow location, duration, total catch in bushels, and a one-bushel surfclam subsample would be recorded for each tow to characterize surfclam distribution patterns across the test areas. Vessels would use their commercial dredge to conduct standardized tows. Each surfclam in the sub-sample would be measured to the nearest 5 millimeters. The sub-sample would either be measured at sea, or separated and measured shoreside. The applicant notes that this dataset would not replace a formal fishery-independent survey, but would provide valuable information on the distribution of the surfclam resource in the test areas.

At the conclusion of each season and upon EFP expiration, the following analysis would be performed:

- *Productivity comparison:* Mean bushels per hour of active towing and swept area in control area trips vs. test area trips, with confidence intervals;
- *Meat yield comparison:* Mean pounds of shucked meat per bushel for control vs. test area landings;
- *Revenue-per-trip comparison:* Mean gross ex-vessel revenue per trip in control vs. test areas, controlling for trip duration and market price variation;
- Summary of CPUE and catch composition from commercial tows by sub-area and depth stratum within the GSC HMA test areas;
- Spatial distribution and density of surfclams by size class caught during standardized tows;
- *Annualized fleet-level economic impact:* Using the observed productivity differential and publicly available data on the number of small-vessel Massachusetts surfclam permit holders, estimate the aggregate annual economic loss to the fleet attributable to the GSC HMA restrictions; and
- *Cost-benefit framing:* Present the annualized economic cost of the closure against the available scientific literature on habitat recovery rates and the habitat protection benefit provided by excluding the small-vessel fleet.

The applicant and partner vessels would adhere to the following reporting schedule:

- Trip-level data sheets and Vessel Trip Reports;
- Vessel Monitoring System trip declaration using the GSC HMA EFP project code for every EFP trip;
- Weekly dealer reports;
- Interim progress report with preliminary economic analysis submitted to GARFO every 90 days after commencement of EFP fishing; and
- Final economic impact report submitted to GARFO within 30 days of EFP expiration, summarizing productivity data, meat yield data, revenue comparisons, fleet-level economic impact estimates, spatial CPUE characterization, and recommendations regarding small-vessel access in the GSC HMA.

The final report will be made available to New England and Mid-Atlantic Fishery Management Councils, and GARFO, for review and use in future Council deliberations regarding the GSC HMA.

The applicant has also requested authorization to use alternatives to the industry-standard 32-bushel cages and cage tags. The exemption would follow the EFP issued to the Cape Cod Commercial Fisherman's Alliance (EFP #25056), which is developing alternative volume landing units more suitable to smaller surfclam vessels. Participating vessels could use two alternative landing containers: a standard-size fish vat (internal measurements: 44 inch x 39 inch x 27 inch; 1.12 meter (m) x 0.99 m x 0.69 m) capable of holding 16 bushels (0.85 m^3); and a standard-size stackable fish tote

(internal measurements: 25 inch x 15.8 inch x 10.2 inch; 0.64 m x 0.40 m x 0.26 m) capable of holding 1.5 bushels (0.08 m^3). One alternative denomination of a 16-bushel tag would be used, either on a fish vat or on a pallet of ten 1.5-bushel totes. The applicant would work with GARFO and the National Band and Tag Company to convert standard cage tags into the alternative tag denomination.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: October 8, 2026.

Shannon Bettridge,

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

[FR Doc. 2026–20874 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF625]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Oregon Department of Transportation's Yaquina Bay Dolphin Replacement Project in Newport, Oregon

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

ACTION: Notice; issuance of a renewal incidental harassment authorization.

SUMMARY: In accordance with regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued a renewal incidental harassment authorization (IHA) to the Oregon Department of Transportation (ODOT) for authorization to take marine mammals incidental to construction activities for the Yaquina Bay Dolphin Replacement Project in Newport, Oregon.

DATES: This renewal IHA is valid from November 1, 2026, through October 31, 2027.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed below.

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

SUPPLEMENTARY INFORMATION:

MMPA Background and Determinations

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Among the exceptions is section 101(a)(5)(D) of the MMPA (16 U.S.C. 1361 *et seq.*) which directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and the public has an opportunity to comment on the proposed IHA.

Specifically, NMFS will issue an IHA if it finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least [practicable] adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation''). NMFS must also prescribe requirements pertaining to the monitoring and reporting of such takings. The definitions of key terms, such as ''take,'' ''harassment,'' and ''negligible impact,'' can be found in the MMPA and the NMFS' implementing regulations (16 U.S.C. 1362; 50 CFR 216.103).

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial IHA (90 FR 34441, July 22, 2025), NMFS described the circumstances under which we would consider issuing a renewal for this activity and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned, or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

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

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

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

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *https://www.fisheries.noaa.gov/*

national/marine-mammal-protection/incidentalharassment-authorization-renewals.

History of Request

On July 21, 2026, ODOT contacted NMFS requesting a renewal of their original IHA, in order to complete the work that was originally planned but would not be able to during the construction season originally planned. On September 3, 2026, a notice of NMFS' proposal to issue a renewal IHA to ODOT for take of marine mammals incidental to the Yaquina Bay Dolphin Replacement Project in Newport, Oregon was published in the **Federal Register** (91 FR 56636). In that notice, NMFS indicated the estimated numbers, type, and methods of incidental take proposed for each species or stock, as well as the mitigation, monitoring, and reporting measures that would be required should the IHA be issued. The **Federal Register** notice also included analysis to support NMFS' preliminary conclusions and determinations that the IHA, if issued, would satisfy the requirements of section 101(a)(5)(D) of the MMPA for issuance of the IHA. The **Federal Register** notice included web links to a draft IHA for review, as well as other supporting documents.

No comments were received during the public comment period. There are no changes to the specified activity, the species taken, the proposed numbers, type, or methods of take, or the mitigation, monitoring, or reporting measures in the proposed IHA notice. No new information that would change any of the preliminary analyses, conclusions, or determinations in the proposed IHA notice has become available since that notice was published, and therefore, the preliminary analyses, conclusions, and determinations included in the proposed IHA are considered final.

National Environmental Policy Act

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

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

Endangered Species Act

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

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

Authorization

Accordingly, consistent with the requirements of section 101(a)(5)(D) of the MMPA, NMFS has issued a renewal IHA to ODOT for authorization to take marine mammals incidental to construction activities for the Yaquina Bay Dolphin Replacement Project in Newport, Oregon.

Dated: October 7, 2026.

Kimberly Damon-Randall,

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

[FR Doc. 2026–20868 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XG118]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region (GARFO), NMFS, has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all the required information and warrants further consideration. The EFP would allow federally permitted fishing vessels to fish outside fishery regulations in support of exempted fishing activities proposed by the NOAA Northeast Fisheries Science Center (NEFSC). Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before October 28, 2026.

ADDRESSES: You may submit written comments by email: *nmfs.gar.efp@noaa.gov.* Include in the subject line ''NEFSC On-demand EFP.'' All comments received are a part of the public record and may be posted for public viewing without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''anonymous'' as the signature if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Christine Ford, Fishery Management Specialist, *Christine.Ford@noaa.gov,* (978) 281–9185.

SUPPLEMENTARY INFORMATION: The NOAA NEFSC submitted a complete application for an EFP to conduct commercial fishing activities that the regulations would otherwise restrict, to continue trials of on-demand fishing gear that use one or no surface buoys, and to test the ability of gear marking systems to consistently locate gear. This EFP would exempt the participating vessels from the following Federal regulations:

TABLE 1—REQUESTED EXEMPTIONS

CFR citation	Regulation	Need for exemption
50 CFR 697.21(b)	Gear marking requirements	For trial of trap/pot gear with no more than one surface marking on trawls of more than three traps, and trial of trap/pot gear with no surface marking on trawls of three or fewer traps.
50 CFR 648.84(b)	Gear marking requirements	For trial of gillnet gear with no more than one surface marking.
50 CFR 648.264(a)(5)	Gear marking requirements	For trial of red crab trap/pot gear with no more than one surface marking on trawls.

TABLE 2—PROJECT SUMMARY

Project title	Development and trials of on-demand fishing systems in fixed gear fisheries.
Project start	01/01/2027.
Project end	12/31/2027.
Project objectives	This research is designed to help fishermen test alternatives to traditional vertical buoy lines and physical gear markers in fixed gear fisheries.
Project location	Gulf of Maine, Georges Bank, Southern New England, and Mid-Atlantic including, but not limited to Statistical Areas: 511, 512, 513, 514, 515, 521, 522, 525, 526, 537, 538, 539, 561, 562, 621, and 626.
Number of vessels	Trap/pot: Up to 90, including up to 5 using grappling; Gillnet: Up to 10.
Number of trips	Trap/pot: Up to 9,500 trips (90 vessels making an average of 1.5 trips/week); Gillnet: Up to 1,000 trips (10 vessels making an average of 2 trips/week).
Trip duration (days)	Variable based on fishery, target species, and fishing location, but within the range of standard commercial fishing trips and consistent with FMP regulations.
Gear type(s)	Lobster traps, deep-sea red crab pots, fish pots, and anchored-fixed gillnets.
Number of tows or sets	Trap/pot: Effort capped at 900 modified trap trawls; Gillnet: Effort capped at 100 modified gillnet strings. Per vessel effort will vary by season, fishing operation, and the number of active participants, but will not exceed 20 modified trawls and/or strings. In Atlantic Large Whale Take Reduction Plan (ALWTRP) Restricted Areas, effort will be limited to fully on-demand lobster trawls, fished with no persistent vertical lines. Vessels will be allowed to modify up to 20 trawls each, with a cap of 600 total trawls actively fished across the Restricted Areas.
Duration of tows or sets	Trap/pot: Variable but expected to be 14 days or less; will not exceed FMP soak limits; Gillnet: typical commercial soak times.

Project Narrative

This project is a continuation of DA25–051 to trial on-demand (also known as ropeless) fishing systems aimed at reducing the entanglement risk to protected species, mainly the North Atlantic Right Whale, in trap/pot and gillnet fisheries. DA25–051 authorized on-demand gear trials on up to 180 total trap/pot vessels and up to 20 total gillnet vessels to replace up to 20 of their existing trawls/strings (up to 2,000 total trawls/strings) with modified trawls/strings, including in the ALWTRP Restricted Areas. DA25–051 expires on December 31, 2026.

This EFP would allow up to 90 total trap/pot vessels and up to 10 gillnet vessels to replace up to 20 of their existing trawls/strings (up to 1,000 total trawls/strings) with modified trawls/strings, including in the ALWTRP Restricted Areas. Modified gear would replace one or both traditional end lines with acoustic on-demand systems and other alternatives to persistent buoy lines (including, but not limited to, spooled systems, buoy and stowed-rope systems, lift-bag systems, and grappling).

The research focus for 2027 includes:

- New acoustic releases, stowed rope designs, inflatable systems, and emerging technologies will be evaluated as they become available. Investigators will work with manufacturers and fishermen to test and refine gears and gather data to inform regulators. New innovative gears will be tested using hybrid, one end ropeless, configurations in areas open to commercial fishing.
- New and existing on-demand gear performance will be evaluated in varied environmental conditions among varied vessel and gear configurations to inform safety decisions and refine reliability and operability. Emerging systems designed for deeper waters (>75 fathoms (137.2 meters)) will be evaluated in terms of reliability and operationally feasible.
- Data analysis will focus on durability, performance, user experience, and additional criteria that could be used to later approve innovative gear technologies.
- Dedicated research trips will be employed to evaluate alternative (digital) gear location marking accuracy and compare gear marking methods (manual versus automatic).
- Experimental fishing in Restricted Areas will incorporate novel on-demand systems and new fishing partners to further assess the feasibility and efficiency of fishing fully on-demand trawls. Trials will be conducted with a focus on safety (protected species and fishermen) and equity (fishermen and manufacturers).
- NEFSC will coordinate with Maine's Department of Marine Resources and Massachusetts' Department of Marine Fisheries on-demand research programs.
- Communication efforts will continue to the broader fishing community.

To ensure that on-demand fishing and gear marking technologies are adequately tested across the breadth of regional commercial fishing conditions, NEFSC requests the flexibility to test on-demand gear across the geographic range of the Federal American lobster and Jonah crab fishery, including testing fully on-demand gear (no persistent vertical lines) in ALWTRP Restricted Areas. It also requests the opportunity to trial on-demand gillnet and other trap/pot gear across the Gulf of Maine, Georges Bank, Southern New England, and the Mid-Atlantic. To cover a greater area and target areas where data is needed, NEFSC has requested flexibility

to have greater than 100 participants during the permit period (with only 100 fishing at one time). It would provide requested modifications to the active participants, general locations, and technologies to be tested one month in advance. Priority would be given to participants who are seasonally excluded from fishing in certain areas and/or in offshore fisheries with limited entanglement mitigation options.

This permit would only exempt vessels from the specified Federal regulations in Federal waters. It would not exempt the vessels from any requirements imposed by any State, the Endangered Species Act, the Marine Mammal Protection Act, or any other applicable laws. The applicant would be responsible for obtaining all required State authorizations. Other than gear markings, all trap/pot trawls and gillnet strings would be consistent with the regulations of the management area where the vessel is fishing and would be fished in accordance with the participating vessels' standard operations (number and length of trips, soak times, trap limits, *etc.*).

The use of on-demand lobster trap gear in the ALWTRP Restricted Areas is limited to gear without any persistent vertical lines. The EFP would allow vessels to modify up to 20 trawls each, but would cap effort to 600 total trawls in the ALWTRP Restricted Areas. If necessary, due to a high level of interest and limited capacity, the NEFSC may require a demonstrated history of fishing within ALWTRP Restricted Areas as a condition for participation in on-demand trials in those areas.

In recognition of industry's interest in grappling as a low-cost alternative to acoustic on-demand systems, this project would allow up to 5 trap/pot vessels to retrieve up to 20 trawls via grappling; this would be a subset of the 90 total trap/pot vessels and the 900 modified trap/pot trawls effort cap. This would enable NEFSC to collect data on the viability of grappling at a commercial scale. Although no grappling trials have occurred to date, four vessels/operators have expressed interest in participating in the study. No grappling would be allowed in the ALWTRP Restricted Areas.

In phase one of participation, staff from NEFSC and the gear manufacturers would provide training to ensure that the system is working as intended and that all participants have sufficient experience with the gear before borrowing from the gear cache library. In phase two, participating vessels would rig an on-demand system to one end of a standard trawl or string and fish it as a hybrid (with one traditional surface marking) for at least 10 hauls per system. In phase three, participants would fish the gear as part of normal fishing operations, including fishing fully on-demand gear and fully on-demand trap trawls in the ALTWRP Restricted Areas. In some cases, a scientific observer may be on board, and/or GoPro Systems (or equivalent) may record gear retrievals. NEFSC would provide standardized data collection sheets to all participants, but individually identifiable data will only be made public with the express permission of the vessel owner.

NEFSC also plans to include targeted geolocation studies in areas with limited trawling and/or dredging to test new location-marking systems on the seafloor and automated location-marking when gear is set and retrieved. This EFP would support efforts to improve gear-marking and gear-conflict avoidance technologies, including testing sub-surface gear location vs. surface location where the gear is deployed, and other gear marking technologies. This EFP would also continue to test the EarthRanger and rmwHub platforms that display gear locations from various gear-marking technologies. NEFSC would demonstrate and encourage adoption of these technologies with non-participant vessels.

NEFSC proposes the following best practices and risk reduction measures for all vessels:

- All vessels would report all right whale sightings to NMFS via *ne.rw.survey@noaa.gov* or (866–755–6622) or the U.S. Coast Guard (Channel 16) and record sightings on data sheets;
- All vessels would retrieve on-demand vertical lines as quickly as possible to minimize time in the water column;
- All vessels would provide mandatory, weekly gear loss reports;
- All vessels would operate within a 10-knot (5.14 meters per second) speed limit when transiting ALWTRP Restricted Areas or when whales are observed;
- For fully on-demand gear without traditional surface markings, participants would use cloud-based data aggregators to share gear locations and orientation details, which would be available to Federal, State, and corresponding enforcement personnel, as well as other fishermen in proximity to the gear;
- For fully on-demand gear without traditional surface markings, on-demand vertical lines would be marked with unique orange marks above the regional markings, in addition to ALWTRP regulations (per agreement with the NMFS Atlantic Large Whale Take Reduction Team Coordinator);
- When fishing in ALWTRP Restricted Areas, vessels would check real-time right whale sightings information (such as Right Whale Sightings Advisories and Whale ALERT) before setting any gear and avoid areas of high right whale abundance, and all vessels would be recommended to follow this process when setting gear outside the ALWTRP Restricted Areas;
- Enforcement will be provided with and trained on digital gear marking systems prior to the start of trials, so they can locate research gear;
- The NEFSC would continue to provide monthly updates on any gear conflicts to GARFO's Sustainable Fisheries Division.

Vessels fishing fully on-demand lobster trap trawls in seasonal Restricted Areas will be required to follow additional practices:

- All participants will be trained by NEFSC on-demand gear experts and gear manufacturers and achieve a sufficient level of experience with the gear based on NEFSC's standard three-phase training protocol (described above) prior to Restricted Area fishing;
- Participants will carry a NEFSC scientist on a subset of trips to overs trial performance and collect additional data;
- An NEFSC-issued research flag will be flown by each vessel;
- No floating groundline will be used on research trawls, including where otherwise legally allowed between the first trap and anchor or on-demand unit;
- Project vessels will operate within a 10-knot vessel speed limit in the Restricted Areas;
- If any large whale species comes within 500 yards of a participating vessel during hauling, fishing will immediately cease, by either removal or resetting, and be reinitiated only after it was reasonable to assume the whale(s) has left the area;
- Participants will be provided with information on species identification as well as protocols to report live, dead, or entangled sightings of all large whale species. All whale sightings will be recorded on data sheets.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the

scope of the exempted fishing activity would be prohibited.

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

Dated: October 8, 2026.

Shannon Bettridge,

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

[FR Doc. 2026–20876 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XG116]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region (GARFO), NMFS, has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. The EFP would allow federally permitted fishing vessels to fish outside fishery regulations in support of exempted fishing activities proposed by the Massachusetts Division of Marine Fisheries (MA DMF). Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before October 28, 2026.

ADDRESSES: You may submit written comments by email: *nmfs.gar.efp@noaa.gov.* Include in the subject line ''MA DMF On-Demand EFP.'' All comments received are a part of the public record and may be posted for public viewing without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''anonymous'' as the signature if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Christine Ford, Fishery Management Specialist, *Christine.Ford@noaa.gov,* (978) 281–9185.

SUPPLEMENTARY INFORMATION: The MA DMF submitted a complete application for an EFP to conduct trials of on-demand fishing gear that use no surface buoys and to test the ability of gear marking systems to consistently locate gear. This EFP would exempt the participating vessels from the following Federal regulations:

TABLE 1—REQUESTED EXEMPTIONS

CFR citation	Regulation	Need for exemption
50 CFR 697.21(b)(2)	Gear marking requirements	For trial of trap/pot gear with no surface markings (fully ropeless) on trawls of more than three traps.

TABLE 2—PROJECT SUMMARY

Project title	Testing on-demand fishing technologies that help minimize the risk of large whale entanglements in lobster trap fishing gear in Massachusetts coastal waters.
Project start	01//01/2027.
Project end	05/15/2027.
Project objectives	Provide access and support for Massachusetts lobster trap fishers to fish during the closed season in the restricted areas. Mitigate the economic impact of seasonal fishing closures while continuing to reduce the risk of entanglement to endangered North Atlantic right whales. Collect data to help address technological and logistical issues associated with the implementation of on-demand gear fishing.
Project location	Massachusetts Restricted Area; South Islands Restricted Area; Outer Cape Cod Lobster Management Area.
Number of vessels	Up to 50.
Number of trips	Up to 700.
Trip duration (days)	1 day.
Total number of days	Up to 700.
Gear type(s)	Trap/pot.
Number of tows or sets	Up to 20/trip; up to 14,000 total.
Duration of tows or sets	Up to 7 days.

Project Narrative

This EFP would allow federally permitted vessels to test on-demand gear in seasonal Restricted Areas that do not allow the use of persistent vertical lines under the Atlantic Large Whale Take Reduction Plan (ALWTRP). This project would allow up to 50 lobster trap vessels to replace up to 20 of their existing trawls with modified trawls in the ALWTRP Restricted Areas. Modified gear would replace both traditional end lines with one or two on-demand units; trawls would have no persistent vertical lines (fully ropeless). Participants would use privately owned on-demand gear purchased with their own funds or purchased through reimbursements provided by an on-demand grant program operated by MA DMF. Participants would only use the following on-demand systems: Sub Sea Sonics, Guardian, and EdgeTech. MA DMF will record each participant's brand of approved on-demand gear, and consult with them to confirm they know how to use the gear and marking system, either via training from the manufacturer, from participation in another EFP, or through training by MA DMF.

The goals of this project are to provide Federal lobster permit holders in Massachusetts with access to seasonal Restricted Areas, to test the efficacy of methods that alert other fishers to the presence of gear on the bottom, and to provide policy makers with information about the operational benefits and constraints of fishing without vertical lines. The project objectives are to:

• Provide participants with additional fishing opportunities through access to seasonal Restricted Areas;
• Collect data on the deployment and retrieval of on-demand gear, usage of gear location marking systems, and any occurrences of gear conflicts or gear deployment failures;
• Provide support and training for participating fishers on the use of on-demand technologies;
• Trial gear location marking systems that promote interoperability for fishers and reduce the potential for gear conflict;
• Collect timing data on hauling efficiency of on-demand versus traditional fishing gear; and
• Provide feedback to on-demand manufacturers to increase performance under commercial fishery conditions.

This permit would only exempt vessels from the specified Federal regulations in Federal waters. It would not exempt the vessels from any requirements imposed by any state, the Endangered Species Act, the Marine Mammal Protection Act, or any other applicable laws. The applicant would be responsible for obtaining all required state authorizations. Other than gear markings, all trap/pot trawls would be consistent with the regulations of the management area where the vessel is fishing and would be fished in accordance with the participating vessels' standard operations (number and length of trips, soak times, trap limits, *etc.*).

Participants would be required to virtually mark the location of each end of their trawls using the gear-marking technology associated with the on-demand system they were fishing. This may include gear marking applications designed by the respective manufacturers to mark gear when set using GPS-based locations and visually remove the mark from applications when the gear is moved or retrieved. Set and haul information would be integrated into the ER Buoy gear location cloud-based database so that participants would have access to all set on-demand gear within 5 miles (8.05 kilometers). MA DMF would also have access to all on-demand set locations through the RMW Hub enforcement and manager platform.

MA DMF would provide standardized data collection sheets to all participants. Data deemed confidential, including but not limited to on-demand specific deployment locations and catch information, may be collected but will not be made public.

MA DMF proposes the following best practices and risk reduction measures:

• All vessels would report all right whale sightings to NMFS via *ne.rw.survey@noaa.gov* or NOAA (866–755–6622) or the U.S. Coast Guard (Channel 16) and record sightings on data sheets;
• All vessels would retrieve on-demand vertical lines as quickly as possible to minimize time in the water column;
• If any large whale species came within 500 yards (457.2 meters) of a participating vessel during hauling, fishing would immediately cease, by either removal or resetting, and be reinitiated only after it was reasonable to assume the whale(s) had left the area;
• All vessels would provide mandatory, weekly gear loss reports; MA DMF would provide monthly gear conflict/loss reports to GARFO;
• All vessels would operate within a 10-knot (18.52-km) speed limit when transiting Restricted Areas or when whales are observed;
• RMW hub, the ER Buoy app, or an equivalent application will be utilized for identifying any on-demand gear currently set within the work areas;
• Stowed hauling lines in on-demand units will contain a unique colored marking consisting of 12″ of yellow twine above each regional ALWTRP marking;
• A unique flag will be flown by each vessel within ALWTRP vertical line closure areas for enforcement recognition;
• All participants would carry a MA DMF scientist on a subset of trips to collect additional data and oversee trial performance;
• No floating groundline would be used on research trawls, including where otherwise legally allowed between the first trap and anchor or on-demand unit; and
• Law enforcement agencies will be notified of project participants and activities in advance of the project start date.

Under the previous EFP (#25048), 2 vessels participated, completing 15 total trips. Both vessels used Sub Sea Sonics on-demand gear, with differing success. Some release failures occurred due to a dead battery, tablet or release unit malfunctions. Retrieval success ranged from 100 percent at <70 fathoms down to approximately 50 percent at greater depths. Both vessels worked with the manufacturer to resolve issues. While some issues persist, they are being addressed by the manufacturer. All on-demand units were retrieved. No gear conflicts were reported by the participants; both participants expressed interest in continuing to trial on-demand gear.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: October 8, 2026.

Shannon Bettridge,

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

[FR Doc. 2026–20877 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XG093]

Gulf Fishery Management Council; Public Meeting

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

ACTION: Notice of a hybrid meeting.

SUMMARY: The Gulf Fishery Management Council (Council) will convene a 3-day meeting to consider actions affecting fisheries in the Gulf of America exclusive economic zone (EEZ).

DATES: The meeting will be held Tuesday, October 27, through Thursday, October 29, 2026, from 8:30 a.m. to 5:30 p.m., (CDT), each day.

ADDRESSES: The meeting will be held at the Tremont House Hotel, 2300 Ships Mechanic Row, Galveston, TX 77550; telephone: (409) 763–0300. Members of the public who wish to listen virtually may access login information at *www.gulfcouncil.org*.

Council address: Gulf Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Tuesday, October 27, 2026; 8:30 a.m.–5:30 p.m., CDT

The meeting will begin in Full Council with a review and adoption of the proposed Council Committee

assignments for October 2026 through August 2027, as well as the current Council Committee assignments. NMFS will provide a brief overview of the Executive Order: Restoring American Saltwater Angling and Recreation.

The *Reef Fish* Committee will then receive updates on *Reef Fish* Landings and review and discuss final action items for *Reef Fish* Amendment 55/*Snapper Grouper* Amendment 44: *Mutton Snapper* and *Yellowtail Snapper* Management Measures, modifications to *Red Snapper* Private Recreational Post-Season Accountability Measures, and draft options for management flexibility for the Federal For-hire component of the *Red Snapper* fishery.

Following lunch, the *Reef Fish* Committee will review the September 2026 Scientific and Statistical Committee (SSC) meeting summary and recommendations; consider Draft for *Reef Fish* Amendment 59A: Permit Requirements in Individual Fishing Quota (IFQ) Programs; receive a presentation on *Greater Amberjack* Count; review draft *Reef Fish* 65—Regional Management of Recreational *Greater Amberjack;* and discuss Exempted Fishing Permits, if any.

Wednesday, October 28, 2026; 8:30 a.m.–5:30 p.m., CDT

The meeting will begin with a litigation update, followed by the *Shrimp* Committee's review of draft membership list for the Review Panel for the S*hrimp* Permit Pool, Draft *Shrimp* Amendment 20—Status Determination Criteria for the *Penaeid Shrimp,* and recommendations from the *Shrimp* Advisory Panel (AP). The committee will discuss the 2024 *Shrimp* Effort in Relation to Threshold for Juvenile *Red Snapper,* Status Update on Working Group to Address Interactions and Bycatch of Protected Resources in *Shrimp* Trawl and any remaining items from the *Shrimp* Advisory AP meeting summary.

The Data Collection Committee will review and discuss the results of the Marine Recreational Information Program-Fishing Effort Survey Pilot Study, SSC Recommendations, and next steps. The committee will also receive an overview of the Mississippi and Alabama Creel Surveys and related SSC recommendations.

The Law Enforcement Committee will provide a summary report from the October Law Enforcement Technical Committee.

Following lunch, the Council will reconvene in Full Council for the Call to Order, announcements and introductions, adoption of the agenda, and approval of minutes. The Council will receive public testimony beginning at 1:40 p.m.–4:30 p.m., CDT for public comment on Final Action Items—*Reef Fish* Amendment 55/*Snapper Grouper* Amendment 44: *Mutton Snapper* and *Yellowtail Snapper* Management Measures and Modifications to *Red Snapper* Private Recreational Post-Season Accountability Measures, Exempted Fishing Permits; and any Open Testimony on other Fishery Issues or Concerns.

The Council will then receive committee reports from the Law Enforcement and Data Collection Committees.

Thursday, October 29, 2026; 8:30 a.m.–5:30 p.m., CDT

Meeting will return to Committee Sessions starting with the Sustainable Fisheries Committee will give an overview of the Southeast Fisheries Observer Program, followed by a presentation on Regulatory Streamlining and SSC Recommendations, SSC Report from September 2026 meeting, including Spawning Habitat and Early-Life Linkages to Fisheries (SHELF) Egg Project and Social Sciences Gulf Species Questionnaire.

The Migratory Species Committee will provide presentations on *Shark* Depredation and updates on Highly Migratory Species documents.

Following lunch, the Council will return to Full Council and receive committee reports from *Reef Fish, Shrimp,* Sustainable Fisheries and Migratory Species Committees.

The Council will then receive updates from supporting agencies, including the South Atlantic Council Liaison, Texas Law Enforcement, NOAA Office of Law Enforcement (OLE), Gulf States Marine Fisheries Commission, U.S. Coast Guard, U.S. Fish and Wildlife Service, and the Department of State.

Finally, the Council will receive an update on documents transmitted for rulemaking, discuss Council planning and primary activities, and consider any other business including an update from NMFS on Advancing Agency-Level Reforms to Restore American Seafood Competitiveness.

—Meeting Adjourns

This meeting will be conducted in a hybrid format, with both in-person and virtual participation options available. Members of the public may register to listen to the meeting via webinar by visiting *www.gulfcouncil.org* and selecting the Council meeting from the calendar.

The timing and order of agenda items are subject to change to accommodate the needs of the Council. The most current agenda and meeting materials will be posted on the Council's website as they become available.

Although non-emergency issues not included in this notice may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action. Formal action will be limited to those issues specifically identified in this notice and any issues arising after publication that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids or accommodations should be directed to Kathy Pereira at (813) 348–1630 at least 15 days prior to the meeting.

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

Dated: October 8, 2026.

Rey Israel Marquez,

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

[FR Doc. 2026–20862 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF854]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the City and Borough of Juneau's Seawalk Extension Project, Juneau, Alaska

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

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

SUMMARY: NMFS has received a request from the City and Borough of Juneau (CBJ) for authorization to take marine mammals incidental to the Seawalk Extension Project in Juneau, Alaska (AK). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting

comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than November 12, 2026.

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

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

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

SUPPLEMENTARY INFORMATION:

Background

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

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

National Environmental Policy Act

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

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

Summary of Request

On March 3, 2026, NMFS received a request from CBJ for an IHA to take marine mammals incidental to a seawalk extension project in Juneau, AK. Following NMFS' review of the application, CBJ submitted additional information on May 29, July 8, July 21, and August 3, 2026. A revised application was submitted on September 10, 2026, which NMFS deemed adequate and complete on September 14, 2026. CBJ's request is for take of five species of marine mammals by Level B harassment, and for a subset of two species, Level A harassment. Neither CBJ nor NMFS expect serious injury or mortality to result from the proposed project and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

CBJ proposes to extend the existing seawalk from the Franklin Dock to the AJ Dock to provide safe and continuous pedestrian access between cruise vessels moored at the AJ Dock and downtown Juneau. The project includes removal of an existing dock and mooring dolphins and unused timber piles; installation and removal of temporary template piles; and installation of a new seawalk, cruise ship mooring dolphin, and an access catwalk. Activities that have the potential to cause incidental take by Level A harassment and Level B harassment of marine mammals include vibratory pile driving (including installation and removal), impact pile driving, and down-the hole (DTH) drilling. Herein, unless otherwise specified, the term ''pile driving'' refers to impact pile installation and vibratory installation and removal.

Dates and Duration

The proposed IHA would be valid for the statutory maximum of 1 year from the date of effectiveness. It will become effective upon written notification from the applicant to NMFS, but not beginning later than 1 year from the date of issuance or extending beyond 2 years from the date of issuance. The specified activities are currently scheduled to begin in April 2027 and would occur on approximately 238 days over a 12-month period. However, project delays may occur due to a number of factors, including project funding, permitting requirements, availability of equipment and/or materials, weather-related delays, equipment maintenance and/or repair, transit to and from ports to survey locations, and other contingencies. Work is expected to be conducted for up to 12-hours on any given day.

Specific Geographic Region

The proposed project would occur on the eastern shore of Gastineau Channel, adjacent to downtown Juneau, AK (see figure 1). The Juneau waterfront is heavily influenced by industrialization, characterized by a blend of heavy marine industrial activities and significant tourism infrastructure. The waterfront supports commercial seafood processing, fishing, and, historically, major mining operations. Marine mammals within the area are

consistently subjected to commercial and recreational vessel traffic, most notably large cruise ships.

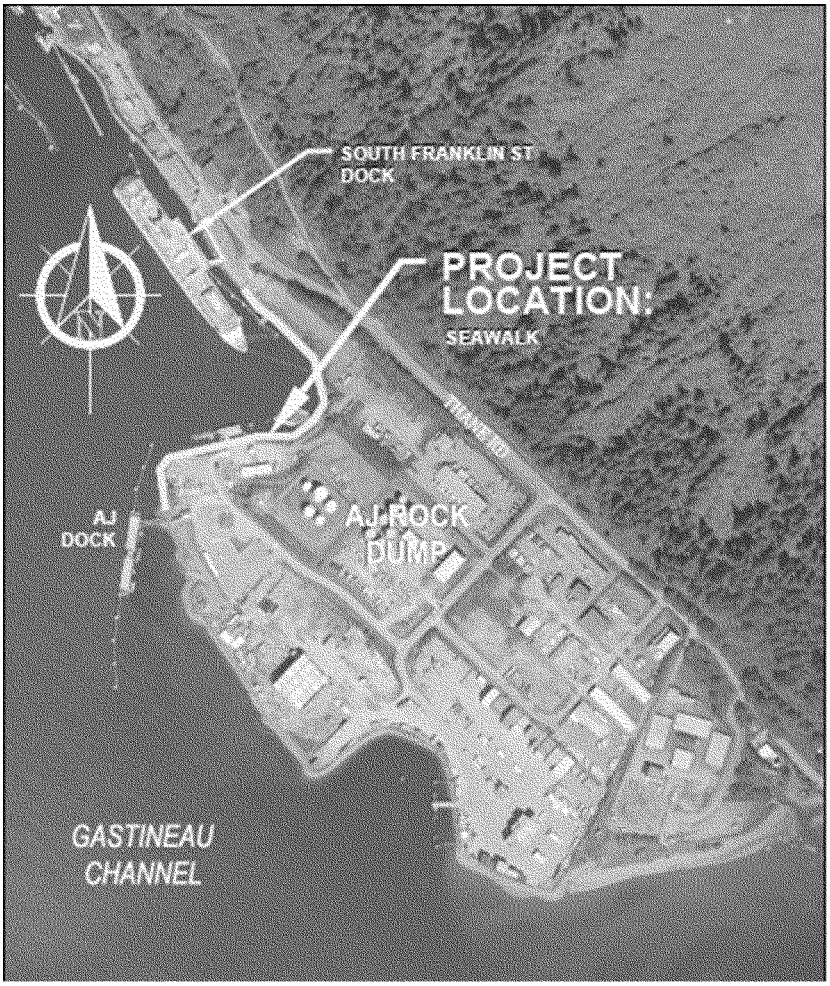


Figure 1 – Map of Project Location

Detailed Description of the Specified Activity

CBJ proposes to extend the existing seawalk from the Franklin Dock to the AJ Dock and install a cruise ship mooring dolphin with access catwalks. Construction includes removal of existing pile-supported docks, floats, and mooring dolphins and miscellaneous abandoned timber piles; installation and removal of temporary template construction piles; and installation of piles to support the new seawalk, cruise ship mooring dolphin, and access catwalks.

Removal of Existing Docks and Piles

Prior to construction of the new seawalk and cruise ship mooring dolphin CBJ would demolish the existing National Guard Dock and Moorage Float and National Guard Approach Dock and remove the supporting timber piles; remove two mooring dolphins supported by 24-inch and 36-inch steel pipe piles; and remove miscellaneous abandoned timber piles. All piles would be removed using a vibratory hammer if they cannot be removed via direct pull methods. See table 1 for summary of pile installation and removal details.

Seawalk Construction

The seawalk would be constructed using two-, three-, and four-pile bents, comprised of approximately 230 24-inch steel pipe piles. The piles would be initially installed with vibratory methods and then proofed for proper penetration and load capacity with an impact hammer. Three 24-inch steel pipe piles would similarly be installed using both vibratory and impact methods in support of a catwalk. A cruise ship mooring dolphin, supported by five 42-inch steel pipe piles, would be installed using both vibratory and impact methods. Mooring dolphin piles that do not achieve the required embedment to resist loads will require the installation of 10-inch rock sockets with DTH drilling. Approximately 160 template piles would be installed and removed using vibratory methods in support of construction of seawalk piles and mooring dolphin. CBJ anticipates the use of two template piles per bent along the seawalk and four template piles in support of each mooring dolphin pile. See table 1 for pile installation and removal details.

TABLE 1—CBJ SEAWALK EXTENSION PROJECT SUMMARY OF PILE INSTALLATION AND REMOVAL

Project component	Pile size/type	Installation/removal method	Number of piles	Average piles per day	Maximum piles per day	Estimated number of days [a]
Pile Removal						
National Guard Dock and Moorage Float.	10- to 16-inch timber piles.	Vibratory Removal	40	10	12	[b] 7
National Guard Approach Dock.	10- to 16-inch timber piles.	Vibratory Removal	4	2	4	2
Miscellaneous timber piles.	10- to 16-inch timber piles.	Vibratory removal	20	2	10	[b] 14
Mooring dolphin	24-inch steel pipe pile	Vibratory removal	12	3	12	4
Mooring dolphin	36-inch steel pipe pile	Vibratory removal	4	1	4	4
Temporary Pile Installation and Removal						
Template piles	24-inch steel pipe pile	Vibratory Installation and Removal.	320 (160 installed, 160 removed)	4	12	80
New Pile Installation						
Seawalk support piles ..	24-inch steel pipe piles	Vibratory and impact ...	230	2	7	115
Catwalk support piles ...	24-inch steel pipe piles	Vibratory and impact ...	3	2	3	2
Mooring dolphin	42-inch steel pipe piles	Vibratory and impact ...	5	1	3	5
Mooring dolphin	10-inch rock socket	DTH drilling	5	1	2	5
Total	.....	.....	.....	.....	.....	238

[a] Average number of piles per day used to determine estimated number of pile driving days.
[b] Estimated number of days were calculated by dividing the total number of piles by the average number of piles per day. For the National Guard Dock and Moorage Float and the miscellaneous timber piles, 4 days and 3 days were added to this number, respectively, to account for the possibility that some of the deteriorated piles might break during extraction, requiring more time for removal.

Existing armor rock slope protection may require temporary removal to facilitate pile installation, which would be conducted using a clamshell bucket or excavator. The armor rock would be replaced around the piles following installation. Excavation and fill activities are not expected to result in take of marine mammals.

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

Description of Marine Mammals in the Area of Specified Activities

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

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

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

TABLE 2—SPECIES [1] WITH ESTIMATED TAKE FROM THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Family Balaenopteridae (rorquals):						
Humpback Whale	*Megaptera novaeangliae*	Hawai'i	-, -, N	11,278 (0.56, 7,265, 2020).	127	27.09
Family Delphinidae:						
Killer Whale	*Orcinus orca*	Eastern North Pacific Alaska Resident.	-, -, N	1,920 (N/A, 1,920, 2019) [5].	19	1.3
Killer Whale	*Orcinus orca*	Eastern North Pacific Gulf of Alaska, Aleutian Islands and Bering Sea Transient.	-, -, N	587 (N/A, 587, 2012) [5]	5.9	0.8
Killer Whale	*Orcinus orca*	Eastern North Pacific Northern Resident.	-, -, N	302 (N/A, 302, 2018) [5]	2.2	0.2
Killer Whale	*Orcinus orca*	West Coast Transient	-, -, N	349 (N/A, 349, 2018) [5]	3.5	0.4
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	Northern Southeast Alaska Inland Waters.	-, -, N	1,619 (0.26, 1,250, 2019)	13	5.6
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller Sea Lion	*Eumetopias jubatus*	Western	E, D, Y	49,837 (N/A, 49,837, 2022) [6].	299	267
Steller Sea Lion	*Eumetopias jubatus*	Eastern	-, -, N	36,308 (N/A, 36,308, 2022) [6].	2,178	93.2
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Lynn Canal/Stephens Passage	-, -, N	13,388 (N/A, 11,883, 2016).	214	50

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

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

[3] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region*. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

[5] Stock abundance is based upon counts of individuals identified from photo-ID catalogs.

[6] Stock abundance is best estimate of counts, which have not been corrected for animals at sea during abundance surveys. Estimates are provided for the United States only.

As indicated above, all five species (with nine managed stocks) in table 2 temporally and spatially co-occur with the specified activity to the degree that take is likely to occur. While minke whales (*Balaena acutorostrata*), Dall's porpoise (*Phocoenoides dalli*), and Pacific white-sided dolphins (*Lagenorhynchus obliquidens*) have been documented in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further.

Only about 2 percent of the humpback whales in the project area are expected to be from the Mexico-North Pacific stock (Wade, 2021). Given the low occurrence of humpback whales in the area, the likelihood of take of the Mexico-North Pacific stock is extremely low (see Estimated Take of Marine Mammals section below) and, therefore, take of this stock is neither expected nor proposed.

Large portions of southeast Alaska have been identified as humpback whale biologically important areas (BIAs) for seasonal feeding due to the species' dependence on foraging resources in the region. The BIAs are active from April through October to overlap with the highest densities of humpback whales and their prey (Wild *et al.,* 2023). The narrow Gastineau Channel, where CBJ proposes to conduct construction, is positioned between the Juneau BIA to the north and the Frederick Sound & Stephens Passage BIA to the south and is not located with an area considered to be of importance for humpback whale foraging.

In addition, the northern sea otter (*Enhydra lutris kenyoni*) may be found in Juneau, AK. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995, Wartzok and Ketten, 1999, Au and Hastings, 2008). To reflect this, Southall *et al.* (2007; 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from composite audiograms, previous analyses in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019). In October 2024, NMFS published its 2024 Updated Technical Guidance, which includes updated thresholds and weighting functions to inform auditory injury estimates and

replaces the 2018 Technical Guidance referenced above. This 2024 Updated Technical Guidance represents the best available science. Marine mammal hearing groups and their associated hearing ranges are provided in table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2024]

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

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

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

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

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

There are a variety of types and degrees of effects on marine mammals, prey species, and habitats that could result from the project. Below is a brief description of the sound sources the projects would generate, the general impacts of these activities, and an analysis of the anticipated impacts on marine mammals from the projects, with consideration of the proposed mitigation measures.

Description of Sound Sources

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

DTH systems use a combination of percussive and drilling mechanisms, with the hammer acting directly on the rock to advance a hole into the rock and also advance the pile into that hole. The hammer drills through the bedrock using a rotating function like a normal drill, in concert with a hammering mechanism operated by a pneumatic (or sometimes hydraulic) component integrated into the DTH hammer to increase speed of progress through the substrate (*i.e.,* it is similar to a ''hammer drill'' hand tool). Therefore, DTH systems include both impulsive and continuous components. For this project, CBJ would utilize DTH drilling to install 10-inch rock sockets.

Potential Effects of Underwater Sound on Marine Mammals

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

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly, as we do not expect that the use of impact/vibratory hammers is reasonably likely to result in such effects (see below for further discussion).

Potential physiological effects from sound sources, particularly impulsive sound, can range from behavioral disturbance or tactile perception to physical discomfort, slight injury to the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006, Southall *et al.,* 2007, Zimmer and Tyack, 2007, Tal *et al.,* 2015). However, the project activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007, 2019). Exposure to anthropogenic noise can result in auditory threshold shifts and behavioral responses (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). It

can also lead to non-observable physiological responses, such as increased stress hormone levels. Additional noise in a marine mammal's habitat can mask acoustic cues used in daily functions, such as communication and predator and prey detection.

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

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

Hearing Threshold Shifts

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the audibility threshold at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018, 2024). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018, 2024), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), the likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, the time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how the animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Temporary Threshold Shift

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

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

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

The amount and onset of TTS depend on the exposure frequency. Sounds below the region of best sensitivity for a species or hearing group are less hazardous than those near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.,* 2019a, 2019c). Note that in general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean

species (Finneran, 2015). In addition, TTS can accumulate across multiple exposures, but the resulting TTS would be lower than that from a single, continuous exposure with the same SEL (Mooney *et al.,* 2009, Finneran *et al.,* 2010, Kastelein *et al.,* 2014, 2015). This means that TTS predictions based on the total, SEL_{24}, will overestimate the amount of TTS from intermittent exposures, such as sonars and impulsive sources. (Nachtigall *et al.,* 2018) describe measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga whale, and false killer whale (*Pseudorca crassidens*)) when a warning sound preceded a relatively loud sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that enable conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures, as well as placement of inner ear structures (Ketten *et al.,* 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2024). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species.

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

Auditory Injury and Permanent Threshold Shift

NMFS (2024) defines AUD INJ as damage to the inner ear that can result in tissue destruction, such as loss of cochlear neuron synapses or auditory neuropathy (Houser, 2021, Finneran, 2024). AUD INJ may or may not result in PTS. PTS is defined as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2024). PTS generally affects only a limited frequency range, and animals with PTS have some level of hearing loss at the relevant frequencies; typically, animals with PTS or other AUD INJ are not functionally deaf (Au and Hastings, 2008, Finneran, 2016). Available data from humans and other terrestrial mammals indicate that a 40-dB threshold shift approximates the onset of PTS (see Ward *et al.,* 1958, 1959, Ward, 1960, Kryter *et al.,* 1966, Miller, 1974, Ahroon *et al.,* 1996, Henderson *et al.,* 2008). However, a variety of terrestrial and marine mammal studies (see Ward *et al.,* 1958, 1959, Ward, 1960, Miller *et al.,* 1963, Kryter *et al.,* 1966, Southall *et al.,* 2007, Kastelein *et al.,* 2013) indicate that threshold shifts of up to 40 to 50 dB (measured a few minutes after exposure) may be induced without resulting in PTS. PTS levels for marine mammals are estimates; with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), no empirical data measure PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing AUD INJ are not typically pursued or authorized (NMFS, 2024). NMFS has set the PTS onset as an initial threshold shift of 40 dB.

However, after sound exposure ceases or between successive sound exposures, the potential for recovery from hearing loss exists. Thus, because a threshold shift is measured a few minutes after noise exposure does not mean that those initial shifts are persistent (*i.e.,* no recovery). When initial threshold shifts fully recover back to baseline hearing levels, these are considered TTS. PTS indicates there is no full recovery back to baseline hearing levels; however, it does not mean there is no recovery. Rather, PTS indicates incomplete recovery of hearing. Recovery depends on the initial threshold shift amount, the frequency at which the shift occurred, the temporal pattern of exposure (*e.g.,* exposure duration; continuous vs. intermittent exposure), and the physiological mechanisms underlying the shift (*e.g.,* mechanical vs. metabolic). Since recovery is complicated, our current AUD INJ onset criteria do not account for the potential for recovery.

Behavioral Effects

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

Behavioral responses to sound are highly variable and context-specific, and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995, Wartzok *et al.,* 2004, Southall *et al.,* 2007, 2019, Weilgart, 2007, Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In

general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) and Gomez *et al.* (2016) for reviews of studies involving marine mammal behavioral responses to sound.

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

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

Avoidance and Displacement

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

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001, Nowacek *et al.,* 2004, Madsen *et al.,* 2006, Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on, or estimates of, the energetic requirements of the affected individuals, the relationship between prey availability, foraging effort, and success, and the animal's life history stage.

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

Avoidance is the displacement of an individual from an area or migration path due to the presence of a sound or other stressors and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994, Goold, 1996, Stone *et al.,* 2000, Morton and Symonds, 2002, Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in the abundance or distribution patterns of the affected species in the affected region if habituation to the sound does not occur (*e.g.,* Blackwell *et al.,* 2004, Bejder *et al.,* 2006, Teilmann *et al.,* 2006).

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

Behavioral disturbance can also affect marine mammals in more subtle ways. Increased vigilance may incur costs from the diversion of attention (*i.e.,* when a response requires heightened vigilance, it may come at the expense of reduced attention to other critical behaviors, such as foraging or resting). These effects have generally not been demonstrated in marine mammals, but studies of fishes and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997, Fritz *et al.,* 2002, Purser and Radford, 2011).

In addition, chronic disturbance can cause population declines through reductions in fitness (*e.g.,* declines in body condition) and subsequent reductions in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992, Daan *et al.,* 1996, Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not result in sleep deprivation or stress.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions

resulting from reactions to stressors, such as sound exposure, is more likely to be significant if it lasts more than 1 diel cycle or recurs on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive (*i.e.,* meaningful) behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts multiple days does not necessarily mean that individual animals are exposed to activity-related stressors for multiple days, or, further, exposed in a manner that results in sustained, multi-day, substantive behavioral responses.

Physiological Stress Responses

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

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress, including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in pituitary hormone secretion have been implicated in reproductive failure, altered metabolism, reduced immune competence, and behavioral disturbances (*e.g.,* Moberg, 1987, Blecha, 2000). Increases in glucocorticoid levels are also associated with stress (Romano *et al.,* 2004).

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

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996, Hood *et al.,* 1998, Jessop *et al.,* 2003, Krausman *et al.,* 2004, Lankford *et al.,* 2005, Ayres *et al.,* 2012, Yang *et al.,* 2021). Stress responses to exposure to anthropogenic sounds or other stressors, and their effects on marine mammals, have also been reviewed (Fair and Becker, 2000, Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. In addition, Lemos *et al.* (2022) observed a correlation between higher levels of fecal glucocorticoid metabolite concentrations (indicative of a stress response) and vessel traffic in gray whales. Yang *et al.* (2021) studied behavioral and physiological responses in captive bottlenose dolphins exposed to playbacks of ''pile-driving-like'' impulsive sounds, finding significant changes in cortisol and other physiological indicators, but only minor behavioral changes. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors, and that some of these responses may be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (National Research Council, 2005); however, distress is unlikely to result from these projects based on observations of marine mammals during previous, similar construction projects in southeast Alaska.

Vocalizations and Auditory Masking

Since many marine mammals rely on sound to find prey, moderate social interactions, and facilitate mating (Tyack, 2008), noise from anthropogenic sound sources can interfere with these functions, but only if the noise spectrum overlaps with the hearing sensitivity of the receiving marine mammal (Southall *et al.,* 2007, Clark *et al.,* 2009, Hatch *et al.,* 2012). Chronic exposure to excessive, though not high-intensity, noise could cause masking at specific frequencies for marine mammals that rely on sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises, such as from human sources, interfere with an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995, Erbe *et al.,* 2016).

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

Masking occurs in the frequency band that the animals use and is more likely to occur in the presence of broadband, relatively continuous noise sources such as vibratory pile removal or installation. The energy distribution of pile-driving sound spans a broad frequency spectrum and is expected to fall within the audible range of marine mammals present in the project areas. Since noises generated from the proposed construction activities are mostly concentrated at low frequencies (<2 kHz), these activities likely have less effect on mid-frequency echolocation sounds produced by odontocetes (toothed whales). However, lower-frequency noises are more likely to

affect the detection of communication calls and other potentially important natural sounds, such as surf and prey noise. Low-frequency noise may also affect communication signals when they occur near the noise band, thereby reducing the communication space of animals (*e.g.,* Clark *et al.,* 2009) and increasing stress levels (*e.g.,* Holt *et al.,* 2009). Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, in addition to individual levels. Masking affects both senders and receivers of signals, and at higher levels and for longer durations could have long-term chronic effects on marine mammal species and populations. However, the noise generated by the CBJ's proposed activities would occur only intermittently across 238 days in a relatively small area focused around the proposed construction sites. Thus, while the CBJ's proposed activities may mask some acoustic signals relevant to the daily behavior of marine mammals, the short-term duration and limited areas affected make it very unlikely that the fitness of individual marine mammals would be affected.

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur across any of these modes and may result from a need to compete with increased background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000, Fristrup *et al.,* 2003) or vocalizations (Foote *et al.,* 2004), respectively, while North Atlantic right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). Fin whales (*Balaenoptera physalus*) have also been documented to lower the bandwidth, peak frequency, and center frequency of their vocalizations in the presence of increased background noise from large vessels (Castellote *et al.,* 2012). Other alterations to communication signals have also been observed. For example, gray whales, in response to playback experiments that exposed them to vessel noise, have been observed to increase their vocalization rate and produce louder signals during periods of increased outboard engine noise (Dahlheim and Castellote, 2016). Alternatively, in some cases, animals may cease sound production during the production of aversive signals (Bowles *et al.,* 1994, Wisniewska *et al.,* 2018).

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

Airborne Acoustic Effects

Pinnipeds occurring near the project site could be exposed to airborne sounds associated with construction activities, depending on their distance from these activities, which could cause behavioral harassment. Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near either project site, within the range of noise levels elevated above the airborne acoustic harassment criteria. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

We recognize that pinnipeds in the water may be exposed to airborne sound that could result in behavioral harassment when they lift their heads above the water or when they haul out. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as a reduction in vocalizations, or to flush from haulouts, temporarily abandon the area, and/or move further from the source. However, these animals previously would have been ''taken'' because of exposure to underwater sound above the behavioral harassment thresholds, which are, in all cases, larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, authorization of additional incidental take resulting from airborne sound for pinnipeds was not requested by CBJ, and NMFS has determined is not warranted; airborne sound is not discussed further here.

Potential Effects on Marine Mammal Habitat

CBJ's specified activities could have localized, temporary impacts on marine mammal habitat, including prey, due to increased in-water noise levels and water quality degradation. Increased noise levels may affect the acoustic habitat and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). Elevated levels of underwater noise would ensonify the project areas where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during the proposed construction activities; however, any displacement due to noise is expected to be temporary and not to result in long-term effects on individuals or populations. A temporary reduction in water quality is expected due to disruption of sediment and increased turbidity, but long-term effects to marine mammals and their prey is not expected (see Water Quality section below).

The total area impacted by CBJ's proposed activities is relatively small compared to the available habitat within southeast Alaska. While marine mammals may forage in Gastineau Channel near the project area, the waters ensonified do not contain unique or particularly important habitat relative to other waters in southeast Alaska. Moreover, the Juneau waterfront area where the project would occur is industrialized.

The proposed project would occur within the same footprint as existing marine infrastructure. The nearshore and intertidal habitats where the proposed projects would occur are in industrialized areas with relatively high marine vessel traffic. Temporary, intermittent, and short-term habitat alteration may result from increased noise levels during the proposed construction activities, including temporary displacement of prey species. Although installation of new piles represents a permanent alteration to the marine habitat, the alteration is minor and limited in space and would not affect the survival of marine mammals or their prey.

Water Quality

Temporary and localized reduction in water quality would occur as a result of in-water construction activities. Most of this effect would occur during the removal and installation of piles, when bottom sediments are disturbed, and may temporarily increase suspended sediment in the project area. During pile extraction, sediment attached to the pile moves vertically through the water column causing a sediment plume. However, since currents are so strong in the area, following the completion of sediment-disturbing activities, suspended sediment in the water column should dissipate and quickly return to background levels across all construction scenarios.

Turbidity in the water column can reduce dissolved oxygen levels and irritate the gills of prey fish in the proposed project areas. Studies of the effects of turbid water on fish (marine mammal prey) suggest that concentrations of suspended sediment can reach thousands of milligrams per liter before an acute toxic reaction is expected (Burton, 1993). However, turbidity plumes associated with the projects would be temporary and localized, and fish in the proposed project areas would be able to move away from and avoid the areas where plumes may occur.

Overall, the water quality in the immediate area that is likely impacted by the proposed construction activities for both projects is relatively small compared to the available marine mammal habitat within and surrounding Juneau, and the effects would be temporary. Therefore, it is expected that water quality impacts on prey species due to turbidity, and therefore on marine mammals, would be minimal and temporary.

Potential Effects on Prey

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

Avoidance by potential prey (*i.e.,* fish) of the immediate areas due to increased noise is possible. The duration of avoidance of this area after construction stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by fish would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

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

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

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

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

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

The greatest potential acoustic impact on marine mammal prey during construction would occur during impact pile driving. Vibratory pile removal/installation may elicit behavioral responses in fishes, such as temporary avoidance of the area, but is unlikely to cause injuries to fishes or have persistent effects on local fish populations. In-water construction

activities would only occur during daylight hours, allowing fish to forage and transit the project area in the evening. Construction would also have minimal permanent and temporary impacts on benthic invertebrate species, a marine mammal prey source.

Potential Effects on Foraging Habitat

The proposed project activities are not expected to result in any habitat-related effects that could cause significant or long-term negative consequences for individual marine mammals or their populations, since removal and installation of in-water piles would be temporary and intermittent. The area affected by these activities is relatively small compared to the available habitat just outside the project areas, and neither project would affect any areas of particular importance. Any behavioral avoidance by fish in the disturbed areas would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for the CBJ's activities to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant. Therefore, the impacts of the project activities are not likely to adversely affect marine mammal foraging habitat in the proposed project area.

In summary, given the relatively small areas being affected, as well as the temporary and mostly transitory nature of the proposed construction activities, any adverse effects from CBJ's activities on prey habitat or prey populations are expected to be primarily minor and temporary although some fish injury or mortality may occur (*e.g.,* Hastings and Popper, 2005). The most likely impact on fishes at the project sites would be temporary avoidance of the area. Any behavioral avoidance by fish in the disturbed areas would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that the impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts on marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

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

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

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* vibratory and impact pile driving and DTH drilling) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for AUD INJ (Level A harassment) to result for two species of marine mammals (Steller sea lions and harbor seals). The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

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

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

Acoustic Criteria

NMFS recommends the use of acoustic criteria that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur AUD INJ of some degree (equated to Level A harassment). Below, we describe the thresholds used by CBJ and NMFS for this analysis.

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

CBJ's proposed activities include the use of continuous (vibratory pile driving and DTH drilling) and impulsive (impact pile driving and DTH drilling) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 µPa are applicable.

Level A harassment—NMFS' Updated Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 3.0) (Updated Technical Guidance, 2024)

identifies dual criteria to assess AUD INJ (Level A harassment) to five different underwater marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive) (see table 4). CBJ's activities include the use of impulsive (impact pile driving and DTH drilling) and non-impulsive (vibratory pile driving and DTH drilling) sources.

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

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF AUDITORY INJURY

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

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

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

Ensonified Area

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

The sound field in the project area is the existing background noise plus additional construction noise from the project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* vibratory and impact pile driving and DTH drilling).

The project includes vibratory pile installation and removal, impact pile installation, and DTH drilling. Source levels for these activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and activity are presented in table 5. Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

TABLE 5—PROXY SOUND SOURCE LEVELS

Pile size and type	Source level (at 10 m)			Reference
	Peak (dB re 1 µPa)	RMS (dB re 1 µPa)	SEL (dB re 1 µPa2 sec)	
Vibratory				
10- to 16-inch timber pile	N/A	162	N/A	Caltrans (2020).
24-inch steel pipe pile	N/A	163	N/A	U.S. Navy (2012, 2013), Miner (2020).*
36-inch steel pipe pile	N/A	166	N/A	U.S. Navy (2012, 2013), Sexton (2007), Laughlin (2011, 2017), Miner (2020) *
42-inch steel pipe piles	N/A	170	N/A	Reyff and Heyvaert (2019).*
Impact				
24-inch steel pipe piles	203	190	177	Caltrans (2015).
42-inch steel pipe piles	208	195	180	Caltrans (2020)—Russian River Geyersville, CA; Terminal Replacement, Antioch, CA, Illingworth & Rodkin (2017)-Philadelphia, PA; Austin *et al.,* (2016).*
DTH				
10-inch rock socket	172	167	146	Guan and Miner (2020), Reyff and Heyvaert (2019), and Reyff (2020) as cited in NMFS (2022).

* Methodology followed U.S. Navy (2015) and included available data from Puget Sound, Washington, and Southern Alaska.

DTH systems have both continuous, non-impulsive, and impulsive components. When evaluating Level B harassment, NMFS recommends treating DTH as a continuous source and applying RMS SPL thresholds of 120 dB re 1 µPa, and when evaluating Level A harassment, NMFS recommends treating DTH as an impulsive source (NMFS, 2022).

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from space. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B \times \text{Log10}\ (R_1/R_2)$$

Where:

TL = transmission loss in dB
B = transmission loss coefficient
R_1 = the distance of the modeled SPL from the driven pile, and
R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source depends on various factors, most notably the water bathymetry and the presence or absence of reflective or absorptive conditions, including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of 15 is often used in coastal waters, such as those found in the CBJ Seawalk project area. In these environments, sound waves repeatedly reflect off the surface and bottom, reflecting an expected propagation environment between spherical and cylindrical spreading-loss conditions. Therefore, the default coefficient of 15 is used to calculate distances to the Level A harassment and Level B harassment isopleths.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the 2024 Updated Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers a practical, alternative way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources, such as vibratory and impact pile driving and DTH drilling, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur AUD INJ. Inputs used in the optional User Spreadsheet tool (table 6), and the resulting estimated isopleths (table 7), are reported below.

TABLE 6—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS FOR PILE DRIVING AND DTH DRILLING

Project component	Pile size/type	Hammer	Piles per day [a]	Duration (minutes) [b]	Strikes per pile	Strikes per second
Pile Removal						
National Guard Dock and Moorage Float.	10- to 16-inch timber piles	Vibratory	12	30	N/A	N/A
National Guard Approach Dock	10- to 16-inch timber piles	Vibratory	4	60	N/A	N/A
Miscellaneous timber piles	10- to 16-inch timber piles	Vibratory	10	30	N/A	N/A
Mooring dolphin	24-inch steel pipe piles	Vibratory	12	45	N/A	N/A
Mooring dolphin	36-inch steel pipe piles	Vibratory	4	60	N/A	N/A
Temporary Piles						
Template piles	24-inch steel pipe piles	Vibratory	12	45	N/A	N/A
New Pile Installation						
Seawalk support	24-inch steel pipe piles	Vibratory	7	100	N/A	N/A
		Impact	7	N/A	2,000	N/A
Catwalk support	24-inch steel pipe piles	Vibratory	3	120	N/A	N/A
		Impact	3	N/A	1,200	N/A
Mooring dolphin	42-inch steel pipe pile	Vibratory	3	180	N/A	N/A
		Impact	3	N/A	3,000	N/A
Mooring dolphin	10-inch rock socket	DTH drilling	2	120	N/A	15

[a] CBJ used the maximum number of piles that could be installed or removed per day (see table 1).
[b] CBJ used the average amount of time expected per pile for installation or removal per day.

TABLE 7—CALCULATED DISTANCES TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS FOR PILE DRIVING AND DTH DRILLING

Project component	Pile size/type	Hammer	Level A harassment zones (m) [a]					Level B harassment zone (m)
			LF	HF	VHF	PW	OW	
Pile Removal								
National Guard Dock and Moorage Float.	10- to 16-inch timber piles.	Vibratory	36	14	29	46	15	[b] 6,310

TABLE 7—CALCULATED DISTANCES TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS FOR PILE DRIVING AND DTH DRILLING—Continued

Project component	Pile size/type	Hammer	Level A harassment zones (m) [a]					Level B harassment zone (m)
			LF	HF	VHF	PW	OW	
National Guard Approach Dock.	10- to 16-inch timber piles.	Vibratory	27	10	22	35	12	[b] 6,310
Miscellaneous timber piles.	10- to 16-inch timber piles.	Vibratory	31	12	26	40	14	[b] 6,310
Mooring dolphin	24-inch steel pipe piles	Vibratory	54	21	44	70	24	[b] 7,356
Mooring dolphin	36-inch steel pipe piles	Vibratory	50	19	41	64	22	[b] 11,659
Temporary Piles								
Template piles	24-inch steel pipe piles	Vibratory	54	21	44	70	24	[b] 7,356
New Pile Installation								
Seawalk support	24-inch steel pipe piles	Vibratory	65	25	53	83	28	[b] 7,356
		Impact	2,301	294	[b] 3,561	2,044	762	1,000
Catwalk support	24-inch steel pipe piles	Vibratory	41	16	34	53	18	[b] 7,356
		Impact	930	119	1,440	827	308	1,000
Mooring dolphin	42-inch steel pipe piles	Vibratory	159	61	130	205	69	[b] 21,544
		Impact	2,716	347	[b] 4,204	2,413	900	2,154
Mooring dolphin	10-inch rock socket	DTH drilling	122	16	189	109	41	[b] 13,594

[a] Level A harassment isopleths are conservative because the maximum number of piles per day were used to calculate the isopleths.
[b] These isopleths are truncated by land at approximately 3,550 m during high tide. During low tide, these isopleths are truncated by land at approximately 2,230 m.

As described above, NMFS uses dual metric criteria for impulsive sounds (impact pile driving) when determining onset of AUD INJ (Level A harassment), using either the PK SPL or weighted cumulative sound exposure level (SEL_{24}) and recommends using the larger isopleth. In table 7 above, all Level A harassment isopleths are based on the SEL_{24} metric. The PK SPL Level A harassment isopleths were less than 10 m for all hearing groups for all impact pile driving scenarios except for VHF cetaceans. The PK SPL Level A harassment isopleths for VHF cetaceans were 12 m for the impact installation of the seawalk and catwalk support piles and 25 m for the impact installation of the mooring dolphin 42-inch steel pipe piles. For DTH installation of the 10-inch rock socket, the PK SPL Level A harassment isopleth based on the peak threshold was considered N/A for all hearing groups because the peak source level is less than the threshold for that marine mammal hearing group.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

Density estimates are not readily available for the project area; therefore, CBJ reviewed marine mammal monitoring reports for construction conducted in the same area, citizen science reports from *inaturalist.com* and *happywhale.com,* and anecdotal evidence. More information regarding occurrence data and sources cited can be found in section 6 of CBJ's application.

Humpback whale—Humpback whales are relatively common in southeast Alaska, especially during the summer, but they are seen in Gastineau Channel relatively rarely, with only occasional sightings (PND Engineers, 2026). One humpback whale was seen in March during monitoring for the Downtown Waterfront Improvements Project (Uchytil *et al.,* 2020). During monitoring for other projects in Gastineau Channel, no humpback whales were seen (Michrowski and Easterly, 2025, Uchytil and Michrowski, 2021, Michrowski *et a*l., 2021), although these projects were all conducted during fall and winter months when humpback whales are less likely to be in the area. Because anecdotal reports and citizen science suggest that humpback whales pass through the project area intermittently (PND Engineers, 2026), particularly in summer months, CBJ conservatively assumes that three individual whales will occur per month, and NMFS concurs.

Killer whale—Killer whales are occasionally seen transiting through Gastineau Channel. During 58 days of marine mammal monitoring for the Downtown Juneau Waterfront Improvements Project, a group of 4 killer whales was observed (Uchytil *et al.,* 2020). Reports indicate occasional sightings of killer whales in Gastineau Channel, with a group of at least seven animals seen near downtown Juneau in January 2020 and May 2021 (*happywhale.com*). CBJ therefore conservatively assumes one group of seven killer whales could occur per month during construction, and NMFS concurs with this approach.

Harbor porpoise—Harbor porpoise are relatively uncommon in Gastineau Channel. Additionally, harbor porpoises can be very cryptic, making reports of harbor porpoises in Gastineau Channel relatively scarce. During marine mammal monitoring for the Downtown Juneau Waterfront Improvements Project, a group of four harbor porpoises were observed (Uchytil *et al.,* 2020). In February 2024, a pair of harbor porpoises were spotted near the Juneau-Douglas Bridge (Woodford, 2024). CBJ conservatively estimates that one group of four harbor porpoises will occur in CBJ's construction area per month, and NMFS concurs with this approach.

Steller sea lion—During 58 days of monitoring for the Downtown Waterfront Improvement project, eight Steller sea lions were observed on 1 day (Uchytil *et al.,* 2020), and one Steller sea lion was observed during the Wayside Park Float and Dredging project in December of 2024 (Michrowski and Easterly, 2025). The Douglas Island Pink and Chum, Inc. salmon hatchery is located along the Gastineau Channel, approximately 5.5 kilometers (km) northwest of CBJ's project area. Hatchery staff report that during the months of July through September, they see one to two Steller sea lion per day (PND Engineers, 2026). Given the proximity of the CBJ project area to the hatchery (which attracts Steller sea lions) and likelihood that Steller sea lions would pass through CBJ's project area, CBJ assumes that two Steller sea

lions per day would be present in CBJ's project area, and NMFS concurs.

Harbor seal—Harbor seals are one of the most frequently sighted marine mammals in the project area. Over the course of 58 days of monitoring for the Downtown Juneau Waterfront Improvements Project in 2020, harbor seals were present in the project area on most days, and the monitoring report suggests that a resident group of around 10–12 harbor seals uses Gastineau Channel in the winter (Uchytil *et al.,* 2020). In total, there were 164 observations of harbor seals within the Level B harassment isopleth throughout the course of monitoring. Over 2 days of monitoring for the Harris Harbor Pile Driving project in February 2021, a total of 26 harbor seals were observed, and observers estimated that approximately three to five resident harbor seals comprised the bulk of the recorded sightings (Michrowski *et al.,* 2021). CBJ conducted pre-construction monitoring of a 130 m shutdown zone for the Downtown Juneau Waterfront Improvements Projects, and an average of 18 harbor seals were observed per day (PND Engineers, 2019). CBJ therefore assumes 18 harbor seals per day in the project area, and NMFS concurs with this approach.

Take Estimation

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

In general, the formula for determining the number of takes that may occur incidental to CBJ's proposed project is:

Total take by harassment = occurrence estimate (in days) × pile activity days (238 days)

For species where occurrence was estimated as a number of individuals per month, CBJ assumed 30 days per month and converted the monthly occurrence to daily occurrence by dividing the monthly occurrence by 30. When the calculated number had a decimal, the number was rounded down when below 0.5 and up when greater than or equal to 0.5. See table 8 for estimated takes.

TABLE 8—ESTIMATED MONTHLY AND DAILY MARINE MAMMAL OCCURRENCE DURING CBJ'S PROPOSED PROJECT

Species	Monthly occurrence	Daily occurrence
Humpback whale	3	0.1
Killer whale	7	0.23
Harbor porpoise	4	0.13
Steller sea lion ..	N/A	2
Harbor seal	N/A	18

To determine the number of takes that may occur by Level A harassment, NMFS considered sound sources, calculated distance to thresholds assuming the maximum number of piles per day would be installed, and species detectability and behavior. For vibratory pile installation and removal, it is unlikely that Level A harassment would occur due to relatively lower source levels and that threshold were either not exceeded or calculated distances to thresholds were small. Therefore, all takes calculated incidental to these activities were attributed to Level B harassment.

Similarly, NMFS does not expect nor does it propose take by Level A harassment for killer whales for any activity. The calculated distances to Level A harassment thresholds for killer whales is relatively short (see table *7*) and represents extended durations. Because an animal is unlikely to remain in such close proximity to the piles for that time, AUD INJ is unlikely to occur. Further, killer whales are a highly visible species such that PSOs are likely to detect them and implement mitigation to avoid take by Level A harassment. Some of the Level A harassment isopleths for humpback whales due to impact pile driving are relatively large (approximately 2.3 km for impact installation of the seawalk support piles and 2.7 km for impact installation of 42-inch steel pipe piles (see table 7). CBJ proposes to shut down impact pile driving for humpback whales at 2,000 m for these piles. We expect humpback whales to be highly visible for protected species observers (PSOs) to implement shutdown, and we do not expect that humpback whales would remain in the area between the furthest extent of the Level A harassment isopleth and the shutdown zone long enough to incur AUD INJ. For other piles and DTH drilling, the calculated distances to the Level A harassment threshold are less than 2 km. Therefore, no Level A harassment of humpback whales is anticipated and none is proposed to be authorized.

The best available science demonstrates that harbor porpoises are behaviorally sensitive species and exhibit strong reactions to impulsive noise such as impact pile driving. For example, displacement of harbor porpoises has been observed during impact pile driving associated with the construction at multiple offshore wind projects (Tougaard *et al.,* 2009, Bailey *et al.,* 2010, Dähne *et al.,* 2013, Lucke *et al.,* 2012, Haelters *et al.,* 2015, Brandt *et al.,* 2018). These studies document long-distance (*i.e.,* several kilometers) displacement; however, the duration of displacement has been documented to generally be temporary. The piles involved in coastal construction projects are smaller than those in these studies; however, other data support predicted avoidance responses wherein porpoise move away from a man-made sound source; thereby reducing accumulated noise energy. For example, Kok *et al.* (2018) found that two captive harbor porpoises spatially avoided a noisy pool when exposed to intermittent or continuous sound stimuli. In summary, harbor porpoises are likely to avoid coastal construction-related sound sources associated with the project to the degree that AUD INJ is unlikely. For these reasons, NMFS is not proposing to authorize Level A harassment of harbor porpoise.

Take by Level A harassment is proposed for authorization for Steller sea lions and harbor seals primarily because Level A harassment isopleths are relatively large for impact pile driving and DTH drilling (up to approximately 2.4 km for phocids and 900 m for otariids for impact pile driving of the 42-inch steel pipe pile), visibility of these species is such that we would not expect PSOs to observe them at such a large distance, and it is possible these species could remain in the area between the furthest extent of the Level A harassment zone and the shutdown zone to incur AUD INJ.

To determine the number of takes by Level A harassment for Steller sea lions and harbor seals, CBJ first considered the number of days that Level A harassment might occur and considered this to be days of impact pile driving and DTH drilling where the Level A harassment zone is larger than the shutdown zone. CBJ estimates the number of days in which harbor seals might incur Level A harassment to be 127 days (5 days for impact installation of 42-inch steel pipe piles, 2 days of impact installation of 24-inch steel catwalk piles, 115 days of impact installation of 24-inch seawalk support piles, and 5 days of DTH drilling) and for Steller sea lions, CBJ estimates 120 days (5 days for impact installation of 42-inch pipe piles and 115 days of

impact installation of the 24-inch steel seawalk support piles). Steller sea lions are not expected to incur Level A harassment on days of DTH drilling because the Level A harassment isopleth for Steller sea lions during DTH drilling is only 41 m, and we expect PSOs to institute shutdown before this species would enter the Level A harassment isopleth. The Level A harassment isopleth for harbor seals during DTH drilling, on the other hand, is 109 m. The shutdown zone for phocids has been set to 25 m for practicability concerns (see Proposed Mitigation section below), and therefore we expect that harbor seals could incur Level A harassment. CBJ then estimated the number of takes by Level A harassment by multiplying the daily occurrence estimate by 120 days for Steller sea lions and 127 days for harbor seals.

To estimate the number of takes by Level B harassment, CBJ used the following equation:

Takes by Level B harassment = Total take by harassment-Takes by Level A harassment

NMFS acknowledges that the number of estimated exposures above higher threshold criteria using the methodology (*e.g.,* sound exposures exceeding Level A harassment criteria), also encompasses the potential for less impactful effects (*e.g.,* Level B harassment). An individual exposure exceeding a Level A harassment criterion may not result in actual AUD INJ, yet the individual may have experienced Level B harassment. This outcome is accounted for in our authorization of potential higher-level takes and in our analysis.

Where multiple stocks of a single species may be present, NMFS considered the best available science to determine the percentage of takes by stock. Both the Hawai'i and Mexico-North Pacific stocks of humpback whale occur in the project area. However, only about 2 percent of the humpback whales in the area are expected to be from the Mexico-North Pacific stock, as described in Wade (2021). Because the total calculated takes of humpback whales in the area are 24, the calculated number of humpback whales from the Mexico-North Pacific stock would be less than 0.5 whales. Therefore, we do not expect humpback whales from the Mexico-North Pacific Stock to be taken by harassment incidental to the specified activities.

In the Juneau area, about 1.4 percent of Steller sea lions are expected to be from the Western stock (NOAA Fisheries, 2020), and the remainder are expected to be from the Eastern stock. Therefore, to determine the number of takes that may occur to Steller sea lions from the Western stock, the total number of takes by Level A harassment (240) and Level B harassment (236) were multiplied by 1.4 percent and rounded to the nearest whole number. The remainder of takes by Level A and Level B harassment were attributed to the Eastern stock of Steller sea lions (see table 9).

Sufficient data does not exist to predict the likelihood of each stock of killer whale in the project area. Therefore, NMFS assumes that the proposed takes could be attributed to any of the stocks in the area.

TABLE 9—NUMBER OF TAKES, BY LEVEL A AND LEVEL B HARASSMENT, PROPOSED FOR AUTHORIZATION

Species	Stock	Stock abundance	Estimated takes by Level A harassment	Estimated takes by Level B harassment	Total instances of take	Percent of Stock [a]
Humpback whale	Hawai'i	11,278	0	24	24	0.2
Killer whale	Eastern North Pacific Alaska Resident.	1,920	0	55	55	2.9
	Eastern North Pacific Gulf of Alaska, Aleutian Island, and Bering Sea Transient.	587				9.4
	Eastern North Pacific Northern Resident.	302				18.2
	West Coast Transient	349				15.8
Harbor porpoise	Northern Southeast Alaska Inland Water.	1,619	0	31	31	1.9
Steller sea lion	Western	49,837	3	3	6	<0.1
	Eastern	36,308	237	233	470	1.3
Harbor seal	Lynn Canal/Stephens Passage	13,388	2,286	1,998	4,284	[b] 32

[a] The values presented here are based on calculations assuming all takes were from a different individual. However, repeated takes of the same individual are more likely to occur for species remaining within the area to forage or those that display increase site fidelity (*e.g.,* harbor seals). Therefore, the actual percentage of the population taken is likely less than that provided here.

[b] Harbor seals in Gastineau Channel display site fidelity, and there is a group of resident harbor seals within Gastineau Channel (see *Marine Mammal Occurrence* section above). Therefore, repeated takes of an individual are likely, and the actual percentage of the population is likely less than what is provided here.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

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

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the

nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

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

The mitigation requirements described below were proposed by CBJ in its adequate and complete application or are the result of subsequent coordination between NMFS and CBJ. CBJ has agreed that all of the mitigation measures are practicable. NMFS has fully reviewed the specified activities and the mitigation measures to determine if the mitigation measures would result in the least practicable adverse impact on marine mammals and their habitat, as required by the MMPA, and has determined the proposed measures are appropriate. NMFS describes these below as proposed mitigation requirements and has included them in the proposed IHA which is available for review at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Establishment of Clearance and Shutdown Zones

CBJ proposed, and NMFS would require, the establishment of clearance and shutdown zones identified in table 10 for all pile driving and DTH activities. The purpose of ''clearance'' of a particular zone is to prevent potential instances of auditory injury and more severe behavioral disturbance the maximum extent practicable by delaying the commencement of pile driving or DTH drilling if marine mammals are detected within certain pre-defined distances from the pile being installed. The purpose of a shutdown is to prevent a specific acute impact, such as auditory injury or severe behavioral disturbance, by halting the activity if a marine mammal is to approach or enter the Level A harassment isopleth. Additionally, to avoid unauthorized takes, CBJ would delay an activity or shut down in the event that a species for which take is not authorized or for which take has been reached is observed within or entering any designated harassment zone. If pile driving or DTH activities are delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the clearance and shutdown zones indicated in table 10 or 15 minutes have passed without re-detection of the animal.

In-water construction activities that do not include the specified activities but require heavy equipment will also shut down if a marine mammal approaches within 10 m to avoid direct interaction.

In general, the clearance and shutdown zones represent the calculated Level A harassment distance rounded up for ease of implementation. However, a maximum shutdown zone of 2,000 m for low frequency cetaceans and 300 m for very high frequency cetaceans and otariids will be maintained due to detectability and/or practicability. In addition, CBJ is proposing a maximum 25 m clearance and shutdown zone be maintained for harbor seals. Data collected by CBJ in 2019 during pre-construction monitoring for the Downtown Juneau Waterfront Improvement Project indicates that extended mitigation zones would not be practicable as harbor seals are frequently observed in close proximity (within 130 m) to the project site such that the specified activities would not be able to commence or continue to the degree that the project could be completed within reasonable time frames (PND Engineers, 2019). For that project, harbor seal presence close to the pile driving location resulted in CBJ requesting a modified IHA to reduce original harbor seal shutdown zone sizes from 130 m to 25 m (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-juneau-waterfront-improvement-project-juneau-alaska*), and they have applied that experience to this project. NMFS has determined that clearance and shutdown zones beyond 25m for harbor seals is not practicable and could result in delays such that noise-generating activities associated with the project would be unnecessarily extended.

TABLE 10—PROPOSED SHUTDOWN/CLEARANCE ZONES FROM SOURCE (m)

Pile size/type	LF	HF	VHF	PW	OW
Vibratory					
10- to 16-inch timber piles	40	15	30	25	15
24-inch steel pipe piles	65	25	55	25	30
36-inch steel pipe piles	50	20	45	25	25
42-inch steel pipe piles	160	65	130	25	70
Impact					
Seawalk support piles (24-inch steel pipe piles)	2,000	295	300	25	300
Catwalk support piles (24-inch steel pipe piles)	930	120	300	25	300
42-inch steel pipe piles	2,000	350	300	25	300
DTH Drilling					
10-inch rock socket	125	20	190	25	45

Pre- and Post-Activity Monitoring

Monitoring would take place from 30 minutes prior to initiation of pile driving and DTH drilling (pre-start clearance monitoring) through 30 minutes post-completion of pile driving and DTH drilling. In addition, monitoring for 30 minutes would take place whenever a break in the specified activity (*i.e.,* impact or vibratory pile driving or DTH drilling) of 30 minutes or longer occurs. Pre-start clearance monitoring would be conducted during periods of visibility sufficient for protected species observers (PSOs) to

determine that the clearance zones indicated in table 10 are clear of marine mammals. Pile driving and DTH drilling may commence following 30 minutes of observation when the determination is made that the clearance zones are clear of marine mammals.

Soft Start

CBJ would use soft start procedures for impact pile driving to provide additional protection to marine mammals by issuing a warning and/or giving them a chance to leave the area before the hammer operates at full capacity. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30 second waiting period, then two subsequent reduced-energy strike sets. This soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of this activity for a period of 30 minutes or longer within a day.

Bubble Curtains

CBJ has not proposed to use a bubble curtain during impact pile driving due to limited effectiveness of the bubble curtains due to the strong tides in the area and economic impracticability. In general, bubble curtains reduce noise levels near the source, minimizing exposure level. However, for this project, most of the piles are located within the intertidal zone, and for a significant number of piles the upper limits of the bubble curtain would be above the water surface preventing the bubble curtains from being effective. In addition, requiring the use of a bubble curtain would reduce the number of piles that could be installed in a day due to the time it takes to install and move the device. Therefore, the duration over which the project would occur would be extending, increasing project costs and exposing marine mammals to underwater sound over longer time periods. For these reasons, CBJ has determined that the use of a bubble curtain is not practicable, and NMFS agrees.

NMFS conducted an independent evaluation of the proposed measures and has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, areas of similar significance, and on the availability of such species or stock for subsistence uses. Specific proposed mitigation measures can be found in the draft IHA found at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Proposed Monitoring and Reporting

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

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

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

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

CBJ would abide by all monitoring and reporting measures contained within the IHA, if issued, and their Protected Species Mitigation and Monitoring Plan (see NMFS' website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*).

Visual Monitoring

A minimum of one NMFS-approved PSO would be assigned to each active pile driving and DTH drilling location, and at least two NMFS-approved PSOs would be on duty during all pile driving and DTH drilling activities. PSOs would be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods. At least one PSO would have prior experience performing the duties of a PSO during an activity pursuant to a NMFS issued Incidental Take Authorization (ITA) or Letter of Concurrence (LOC). Other PSOs may substitute other relevant experience (including relevant Alaska Native traditional knowledge), education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization. Where a team of three or more PSOs is required a lead observer or monitoring coordinator would be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued ITA or LOC.

Reporting

CBJ would submit a draft report on all construction activities and marine mammal monitoring results to NMFS within 90 days of the completion of monitoring, or 60 days prior to the requested issuance of any subsequent IHAs or similar activity at the same location, whichever comes first. CBJ will provide a final report to NMFS within 30 days following resolution of NMFS' comments on the draft report. The information required to be collected and reported to NMFS is included in the draft IHA available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In summary, the report would include, but not be limited to, information regarding activities that occurred, marine mammal sighting data,

and whether mitigative actions were taken or could not be taken. CBJ would also be required to submit reports on any observed injured or dead marine mammals. If the death or injury was clearly caused by a specified activity, the CBJ would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. CBJ would not resume its activities until notified by NMFS.

Specific proposed monitoring and reporting measures can be found in the draft IHA found at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Negligible Impact Analysis and Determination

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

To avoid repetition, the discussion of our analysis applies to all species listed in table 9 given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Specifically, the specified activities may result in take, in the form of Level A harassment and/or Level B harassment, from underwater sounds generated from pile driving and DTH drilling. Potential takes could occur if individuals of these species are present in zones ensonified above the thresholds for Level A harassment and/or Level B harassment identified above when these activities are underway. CBJ would implement mitigation measures designed to reduce the potential for and severity of harassment that effect the least practicable adverse impact on the affected marine mammal species and stocks during the specified activities. Given the nature of the proposed activities, NMFS does not anticipate serious injury or mortality due to CBJ's specified activities, even in the absence of required mitigation.

For all species and stocks, take is expected to occur within a limited, confined area (adjacent to the project site) of the species' range, including Southeast Alaska. The intensity and duration of take by Level A harassment and/or Level B harassment would be minimized through the proposed mitigation measures described herein. Furthermore, the number of takes proposed for authorization is small compared to the relative stock's abundance, even assuming that every take for any particular species could wholly occur to individuals of an individual stock.

NMFS is proposing to authorize take, by Level A harassment, for two marine mammal species (Steller sea lions and harbor seals) incidental to the specified activities. As described in the Potential Effects to Marine Mammals and Their Habitat section, the impacts could be a small degree of AUD INJ which may or may not manifest as PTS. Should PTS occur, at most, NMFS anticipates it would be of a small degree; therefore, NMFS anticipates a sound would have to be only slightly louder for it to be heard by an individual that may incur PTS from the project. Further, PTS would only occur within the frequency range of the source (*i.e.,* impact pile driving, DTH drilling) which does not cover any species' complete hearing range. For most species, the frequency range of the noise produced by the specified activities is outside their primary hearing range.

Additionally, as noted previously, some subset of individuals who are behaviorally harassed during the activities could also simultaneously incur some small degree of TTS for a short duration. However, because of the anticipated small degree of possible overlap of sound exposure, duration, and hearing frequency with species occurrence, any TTS is expected to be limited.

Behavioral responses of marine mammals to pile removal and installation activities in the project area, if any, are expected to be mild, short-term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues that they are disturbed by activities, or they may become alert, avoid the area, leave the area, or display other mild responses that are not observable, such as changes in vocalization patterns. Additionally, many of the species present in the region would be present only temporarily, based on seasonal patterns or during active transit between other habitats. Most likely, during the specified activities, individuals are expected to move away from the sound source until the source ceases. An avoidance response is most likely to occur if an animal is in close proximity to a source, most notably impact pile driving and DTH drilling. At distance, the severity of any behavioral response is likely to be diminished from all of the specified activities. It is possible that avoidance or other behavioral responses do not occur for some species, especially for non-impulsive sources such as vibratory pile removal and driving, given marine mammals in the Juneau area are consistently exposed to anthropogenic noise sources like vessel traffic. Regardless, NMFS conservatively assumes animals disturbed by project sounds would be expected to avoid the area and use nearby higher-quality habitats. Further, pinnipeds in the area would be able to haul out to avoid underwater noise exposure.

Although the majority of marine mammal species would be temporarily passing through the project area, there is likely a small group of resident harbor seals in Gastineau Channel, as described in previous monitoring reports (Uchytil *et al.,* 2020, Michrowski *et al.,* 2021). These animals may be taken repeatedly during construction. However, because these animals are habituated to the industrialized waters around Juneau, it is unlikely that repeated takes would occur either in numbers or clumped across sequential days in a manner likely to impact foraging success and energetic or other behaviors such that

reproduction or survival of any individuals is likely to be impacted.

For humpback whales, the inland waters of Southeast Alaska are a seasonal feeding BIA from May through September (Wild *et al.,* 2023). However, the Gastineau Channel, where CBJ proposes to conduct their construction, is not included within this feeding BIA. Thus, neither the proposed activities nor the ensonified areas from CBJ's proposed activities would have overlap with this foraging habitat, and we do not expect CBJ's proposed activities to have any effect on humpback whale's ability to forage.

The potential and severity of harassment is minimized by implementing the proposed mitigation measures. During all pile removal and installation activities, CBJ would delay commencement of or shutdown activities if a marine mammal is observed within designates zones to minimize instance and severity of behavioral harassment and injury. These zones would be monitored by NMFS-approved PSOs. Further, prior to impact pile driving, CBJ will implement a soft-start of the equipment prior to operating at maximum energy. Given sufficient notice through soft start, marine mammals are expected to move away from a sound source to avoid the loudest noise exposure, thereby reducing the intensity of any behavioral reactions or injury that may occur.

Any impact on marine mammal habitat, including prey, from CBJ's proposed activities would primarily have temporary effects primarily resulting in increased turbidity and avoidance of the immediate vicinity around the project site by prey. Some injury or mortality of fish prey may occur if exposed to sufficiently high SPLs; however, these more severe impacts are expected to be minimal, if any at all. Addition of the new seawalk and cruise ship mooring dolphin would result in permanent impacts; however, these and the expected temporary impacts are not expected to adversely affect the degree to which marine mammals can efficiently forage.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Any Level A harassment (AUD INJ) is anticipated to be slight AUD INJ, including slight PTS of a few dB within the lower frequencies associated with pile driving and not encompassing a species' full hearing range;
- The anticipated incidents of Level B harassment would result in, at worst, temporary modifications in behavior or a small degree of TTS that would resume to baseline at the cessation of activities or as animals move away from the source;
- The project area is located in a highly industrialized and commercial area; therefore, species taken are likely acclimated to anthropogenic activities and behavioral reactions are expected to be temporary and of low severity;
- Take would occur within a very small area affected by the specified activity relative to the overall habitat ranges of all species, and it does not include any rookeries, ESA-designated critical habitat, or BIAs;
- Effects on species that serve as prey for marine mammals from the activities are primarily expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue adverse impacts on their populations; and
- The proposed mitigation measures, such as soft-starts for impact pile driving and implementation of clearance and shutdown zones, are expected to reduce the effects of the specified activity to the least practicable adverse impact level.

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

Small Numbers

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

The amount of take NMFS proposes to authorize is below one-third of the estimated stock abundances for all stocks (table 9). Calculations are assuming that all takes were from a different individual. However, as described in the *Marine Mammal Occurrence* section, there is a group of resident harbor seals in Gastineau Channel. It is, therefore, likely, that repeated takes of harbor seals would occur, and that the percentage of the Lynn Canal/Stephens Passage stock of harbor seals is likely less than the calculated 32 percent.

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

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Alaska Natives have traditionally harvested subsistence resources, including sea lions and harbor seals, in Southeast Alaska. Surveys of harbor seal and sea lion subsistence harvest in Alaska began in 1992, and since 2001, there has been a discernible decrease in households harvesting harbor seals. In the period from 1992 to 2001, the counts of households harvesting harbor seals ranged from 246 to 310 households each year, but since 2001 the counts of harvesters ranged from 138 to 205 households (Wolfe *et al.,* 2013). In 2012 (the last reported survey year), the count of harvesters was the second lowest it

had ever been at 140 households (Wolfe *et al.,* 2013). Throughout all the years of subsistence surveys, hunting effort for sea lions has remained at a low level, with only 4 households reporting to hunt sea lions in 2012 (Wolfe *et al.,* 2013). In 2012, the community of Juneau harvested 23 harbor seals and no sea lions (Wolfe *et al.,* 2013).

The Alaska Department of Fish and Game has designated the area around Juneau, including ensonified waters from the project, a non-subsistence area, defined as an area where dependence upon subsistence (customary and traditional uses of fish and wildlife) is not a principal characteristic of the economy, culture, and way of life (AS 16.05.258(c)). Regardless, the impact of the project on marine mammals is expected to be primarily limited to mild behavioral reactions (*e.g.,* avoidance during pile activities, increased swim speeds, or cessation of vocalizations) such that it would not affect their availability for subsistence use.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from CBJ's proposed activities.

Endangered Species Act

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

NMFS Office of Protected Resources (OPR) is proposing to authorize take of the western stock of Steller sea lions, which are listed under the ESA. OPR has requested initiation of section 7 consultation with AKRO for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to CBJ allowing for the incidental take of marine mammals incidental to the Seawalk Extension Project in Juneau, AK, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

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

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

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

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

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

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

Dated: October 7, 2026.

Kimberly Damon-Randall,

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

[FR Doc. 2026–20789 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Natural Resource Damage Assessment Restoration Project Information Sheet

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 20, 2026, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Natural Resource Damage Assessment Restoration Project Information Sheet.

OMB Control Number: 0648–0497.

Form Number(s): None.

Type of Request: Regular submission [extension of a current information collection].

Number of Respondents: 100.

Average Hours per Response: Reports: 20 minutes and updates to reports:10 minutes.

Total Annual Burden Hours: 107 hours.

Needs and Uses: This is a request for renewal of an approved information collection. The purpose of this information collection is to assist state

and federal Natural Resource Trustees (Trustees) in more efficiently carrying out the restoration planning phase of Natural Resource Damage Assessments (NRDA), in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370d and other federal and local statutes and regulations as applicable. The Office of Habitat Conservation (OHC) at the National Oceanic and Atmospheric Administration (NOAA) manages this information collection and provides the information to the Trustees. The NRDA Restoration Project Information Sheet is designed to facilitate the collection of information on existing, planned, or proposed restoration projects. This information will be used by the Natural Resource Trustees to develop potential restoration alternatives for natural resource injuries and service losses requiring restoration, during the restoration planning phase of the NRDA process. This information is provided by the public on a voluntary basis. The information provided benefits the public by informing the NRDA restoration process. However, there are no individual benefits that depend on the submission of information. Individuals can update the information as needed, but there is no required update frequency.

Affected Public: State, Local, or Tribal government; Federal government.

Frequency: Annually and on occasion.

Respondent's Obligation: Voluntary.

Legal Authority: National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370d.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0497.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–20871 Filed 10–9–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant Exclusive Patent License to Zyltech Engineering, LLC; Houston, TX

AGENCY: Department of the Army, DoD.

ACTION: Notice of Intent.

SUMMARY: The Department of the Army hereby gives notice of its intent to grant to Zyltech Engineering LLC, a company having its principal place of business at 283 Lockhaven Drive, Suite 122, Houston, TX 77073, an exclusive license.

DATES: Written objections must be filed not later than 15 days following publication of this announcement.

ADDRESSES: Send written objections to DEVCOM Army Research Laboratory, Acquisition Management and Technology Transfer Branch, FCDD–RLB–FA/AnnMarie Martin, 6468 Integrity Court, B4402 Room 115, Aberdeen Proving Ground, MD 21005 or email to *ORTA@arl.army.mil.*

FOR FURTHER INFORMATION CONTACT: AnnMarie Martin, (520) 945–2155, E-Mail: *ORTA@arl.army.mil.*

SUPPLEMENTARY INFORMATION: The Department of the Army plans to grant a partially exclusive license to Zyltech Engineering, LLC for the licensed fields of use as it relates to the manufacture, use and sales of the covered dual material and/or multi-material filaments for 3D printing purposes, including the following materials:

—Styrenic polymers and copolymers, related blends and composites: this mainly covers ABS and ASA.
—Polycarbonate and its derivatives, related blends and composites.
—Nylon and its derivatives, related blends and composites.
—Thermoplastic elastomer, including TPE, TPU, PEBA and related elastomeric thermoplastics.

relative to the following;

—''Process for creating a filament'', ARL 15–22CIP, US Patent No. 10,968,539, Issue Date: 04/06/2021. US Patent Application No. 15/630,175, Filing Date: 06/22/2017.
—''Process for creating a polymer filament suitable for use in three-dimensional printing'', ARL 15–22, US Patent No. 11,001,945, Issue Date: 05/11/2021. US Patent Application No. 15/081,048, Filing Date: 03/25/2016.
—''High strength 3D-printed polymer structures and methods of formation'', ARL 19–32, US Patent No. 11,566,349, Issue Date: 01/31/2022. US Patent Application No. 16/990,164, Filing Date: 08/11/2020.
—''Multi-material polymer filament for three-dimensional printing'', ARL 15–CIP2, US Publication No. 2022/0033998, Publication Date: 02/03/2022. US Patent Application No. 16/814,353, Filing Date: 03/10/2020.
—''Method of additive manufacturing and dual material elastomeric filament'', ARL 24–13, US Publication No. 2025/028952, Publication Date: 09/11/2025. US Patent Application No. 19/072,806, Filing Date: 03/06/2025.

The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the U.S. Army Combat Capabilities Development Command Army Research Laboratory receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). Competing applications completed and received by the U.S. Army Combat Capabilities Development Command Army Research Laboratory within fifteen (15) days from the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2026–20785 Filed 10–9–26; 8:45 am]

BILLING CODE 3711–CC–P

DEPARTMENT OF ENERGY

Senior Executive Service Performance Review Board

AGENCY: Department of Energy.

ACTION: Designation of performance review board chair.

SUMMARY: This notice provides the Performance Review Board Chair designee for the Department of Energy. This listing supersedes all previously published lists of Performance Review Board Chair.

DATES: This appointment is effective as of October 7, 2026.

Terri E. Lee (Primary)

Statutory Authority: 5 U.S.C. 4314(c)(4).

Signing Authority

This document of the Department of Energy was signed on October 7, 2026, by Farhana Hossain, Director of the Office of Corporate Executive Management within the Office of the Chief Human Capital Officer, 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 October 8, 2026.

Treena V. Garrett,

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

[FR Doc. 2026–20851 Filed 10–9–26; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service Performance Review Board

AGENCY: Department of Energy.

ACTION: Designation of performance review board standing register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

DATES: This appointment is effective as of October 7, 2026.

Al-Daouk, Ahmad M.
Beasley, Lara E.
Bell, Melody C.
Brinson, Todd M.
Daley, Fana G.
deBeauclair, Geoffrey G.
Kremer, Kevin P.
LaRose, Angelina C.
McAnulty, Michael J.
McFearin, Christopher E.
Michetti, Vicki D.
Montoya, Michael M.
Nunes, Ashley
Wolff, James A.
Olds, Theodore E.

Statutory Authority: 5 U.S.C. 4314(c)(4).

Signing Authority

This document of the Department of Energy was signed on October 7, 2026, by Farhana Hossain, Director of the Office of Corporate Executive Management within the Office of the Chief Human Capital Officer, 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 October 8, 2026.

Treena V. Garrett,

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

[FR Doc. 2026–20850 Filed 10–9–26; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI26–5–000]

Badger Mountain Hydro, LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI26–5–000.

c. *Date Filed:* July 31, 2026.

d. *Applicant:* Badger Mountain Hydro, LLC.

e. *Name of Project:* Badger Mountain Pumped Storage Project.

f. *Location:* The proposed Badger Mountain Pumped Storage Project would be located near the town of East Wenatchee, in Douglas County, Washington.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Badger Mountain Hydro, LLC; 201 S Main St., Ste. 2100, Salt Lake City, UT 84111; telephone: (208) 246–9925; email: *mshapiro@rplusenergies.com;* Agent Contact: Matthew Shapiro, rPlus Energies, LLC, 201 S Main St., Ste. 2100, Salt Lake City, UT 84111; telephone: (208) 246–9925; email: *mshapiro@rplusenergies.com.*

i. *FERC Contact:* Maryam Akhavan, (202) 502–6110, or *Maryam.Akhavan@ferc.gov.*

j. *Deadline for filing comments, protests, and motions to intervene is:* November 6, 2026, by 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number DI26–5–000. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Project:* The proposed project will be a closed-loop pumped storage project with initial fill and make up water coming from treated wastewater obtained from Douglas County Sewer District No. 1's Wastewater Treatment Plant. The proposed project would consist of: (1) a 15 to 75-foot-high, 8,000-foot-long earthen embankment forming a 78-acre upper reservoir with a storage capacity of 3,090 acre-feet; (2) a 40-foot-high, 650-foot-long earthen dam forming a lower reservoir with a storage capacity of 3,380 acre-feet, with a potential 15-foot-high, 900-foot-long secondary earthen embankment on the eastern end; (3) underground tunnels connecting the upper and lower reservoirs consisting of: (a) a 17-foot diameter, 200-foot-high vertical shaft; (b) a 17-foot diameter, 5,600-foot-long concrete/steel-lined headrace tunnel; and (c) a 17-foot diameter, 200-foot-long tailrace tunnel; (4) a powerhouse located in a vertical 220-foot-high, 100-foot-diameter shaft located next to the lower reservoir containing two 250 megawatt (MW) reversible pump-turbines for a total

installed capacity of 500 MW, with a surface building above the shaft composed of concrete and steel, with tentative dimensions of 120-foot-long, 90-foot-wide, and 40-foot-high; (5) a 0.25-mile-long transmission line interconnecting with several transmission lines; and (6) appurtenant facilities. The estimated average annual generation of the project would be 832,200 megawatt-hours.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* 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.

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, and .214. 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'', ''PROTESTS'', and ''MOTIONS 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; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) 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. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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: October 7, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–20883 Filed 10–9–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2458–273; Project No. 2572–141]

Great Lakes Hydro America, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Penobscot Mills and Ripogenus Hydroelectric Projects, Schedule for Environmental Review, and Request for Comments

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare a draft and final environmental impact statement (EIS) to evaluate potential environmental impacts of the continued operation and maintenance of the proposed Penobscot Mills Hydroelectric Project (Penobscot Mills Project; FERC No. 2458) and the Ripogenus Hydroelectric Project (Ripogenus Project; FERC No. 2572) (herein, the projects). The Penobscot Mills Project is located on the West Branch of the Penobscot River (West Branch) and Millinocket Stream in Piscataquis and Penobscot Counties, Maine. The Ripogenus Project is located on the West Branch in Piscataquis and Penobscot Counties, Maine.[1] The Commission will use the EIS in its decision-making process in accordance with the National Environmental Policy Act (NEPA). The schedule for preparing the EIS is discussed in the *Schedule for Environmental Review* section of this notice.

As part of the NEPA review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result whenever it considers the issuance of a license. This gathering of public input is referred to as ''scoping.'' On August 10, 2021, Commission staff issued Scoping Document 1 requesting comments on environmental issues and study needs for the proposed projects, initiating the scoping process for the projects. Commission staff, in collaboration with the applicant (Great Lakes Hydro America, LLC; GLHA), conducted a virtual environmental site visit that was open to the public on September 9, 2021, and held two virtual public scoping meetings on September 9 and 10, 2021.[2] A court reporter recorded oral comments made during the scoping meetings. On November 22, 2021, Commission staff issued a revised scoping document (Scoping Document 2) based on the comments received during the scoping comment period, which ended October 9, 2021. Scoping Document 2 described the project, project alternatives, and staff's view, at the time, of anticipated environmental effects that would be addressed in the EIS.

In accordance with the Commission's regulations, on June 29, 2026, Commission staff issued notices that the projects were ready for environmental analysis and soliciting comments, recommendations, preliminary terms and conditions, and preliminary prescriptions (REA Notices). The comment period for the REA Notices

[1] For tracking purposes under the National Environmental Policy Act, the unique identification number for documents relating to this environmental review is EISX–019–20–000–1786716585.

[2] Due to concerns with large gatherings related to COVID–19, Commission staff did not hold in-person public scoping meetings or an in-person environmental site review in September 2021. Staff conducted an in-person site visit that was open to the public on May 5, 2023.

closed on August 28, 2026. Based on the information in the record, including comments filed during scoping and in response to the REA Notices, staff has determined that licensing the projects may constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff will prepare a draft and final EIS for the proposed Penobscot Mills and Ripogenus projects, which will address the concerns raised during prior comment periods and comments received in response to this notice.

By this notice, the Commission requests any additional comments on the scope of issues to address in the EIS, including comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. If you previously submitted comments and recommendations to the Commission, you do not need to file those comments and recommendations again. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC by 5:00 p.m. Eastern Time on November 6, 2026.

Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676, or at *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the projects' docket numbers (P–2458–273 and/or P–2572–141, as appropriate) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed project dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595, or *OPP@ferc.gov.*

Summary of the Penobscot Mills and Ripogenus Projects

On September 30, 2024, GLHA filed applications for new major licenses to continue to operate and maintain the existing 67.9-megawatt (MW) Penobscot Mills Project and the existing 37.5–MW Ripogenus Project. Neither project occupies federal land.

Existing Project Facilities

Penobscot Mills Project

The Penobscot Mills Project consists of: (1) four hydropower developments (North Twin, Millinocket, Dolby, and East Millinocket; located between river mile 15 and river mile 2 on the West Branch) that include (a) water retaining features (*e.g.,* dam/spillway, flashboards/rubber dam, and dikes), (b) water conduits/canals and penstocks, (c) intake structures equipped with trash racks, (d) four powerhouses, and (e) transmission equipment (*e.g.,* transmission lines); (2) a pool-and-weir fish passage facility at the North Twin Development; and (3) one storage development (Millinocket Lake Storage Development; located on Millinocket Stream). The Penobscot Mills Project generates an average of 324,346 megawatt-hours of energy annually.[3]

The North Twin Development impoundment is at the upstream end of the Penobscot Mills Project and receives flow from the Ripogenus Project (described below). Releases from the North Twin Development pass through three other developments (*i.e.,* Millinocket, Dolby, and East Millinocket). The Millinocket Lake Storage Development includes a pumping station through which water can be pumped to Ambajejus Lake (within the North Twin Development impoundment). Water not pumped to Ambajejus Lake is discharged to Millinocket Stream, which enters the West Branch at Shad Pond, downstream of the Millinocket Development, then passes through the Dolby and East Millinocket Developments. The project also includes two battery energy sites that operate as a single battery energy storage system to enhance system reliability.

Ripogenus Project

The Ripogenus Project is located about 21 river miles upstream of the Penobscot Mills Project on the West Branch, and consists of: (1) the Ripogenus impoundment, which (a) is about 20.8 miles long, (b) has a surface area of about 29,270 acres at a normal full pond elevation of 941.59 feet National Geodetic Vertical Datum of 1929 (NGVD 29), and (c) has a usable storage of about 688,705 acre-feet, with a maximum drawdown of 44 feet (to elevation 897.59 feet NGVD 29); and (2) Umbazooksus Lake, which has a surface area of 1,600 acres. Ripogenus dam is 795 feet long and includes two concrete spillway sections, an intake section, a gated sluice section, and an earthen section. The Ripogenus Project generates an average of 221,341 megawatt-hours of energy annually.[4]

Water flows from the Ripogenus impoundment through a single intake structure, which directs water through a tunnel and penstocks to the powerhouse (McKay Station). The powerhouse contains three turbine-generating units, with a total rated capacity of 37.5 MW. Power generated at the project is transmitted to the electric grid via three transformers and a 29.4-mile-long transmission line. An additional 0.75-mile-long transmission line extends from the McKay Substation to Ripogenus dam. The project has one battery energy storage site to enhance system reliability.

Project Operation

Penobscot Mills Project

The five developments of the Penobscot Mills Project are operated as an integrated system, along with upstream storage projects, including the Ripogenus Project, to manage

[3] Average annual generation is estimated from 2014 through 2023.

[4] *Id.*

downstream water levels and flows. GLHA operates the North Twin Development as a store-and-release facility, and uses storage in the Millinocket Lake Storage Development impoundment, as necessary, to maintain impoundment levels at the North Twin Development. The two storage developments (North Twin and Millinocket Lake Storage) are located upstream of the run-of-release developments (Millinocket, Dolby, and East Millinocket). GLHA releases a minimum flow of 60 cubic feet per second (cfs) from the Millinocket Lake Storage impoundment to Millinocket Stream from May 1 through October 15, and 60 cfs or inflow, whichever is less, from October 16 through April 30. A continuous minimum flow of 3,000 cfs is released from August 22 through October 15 to the West Branch downstream of the North Twin Development when impoundment elevation exceeds 488.42 feet NGVD29, otherwise sufficient flow is released to meet a 2,000-cfs minimum flow requirement downstream of Shad Pond.

Ripogenus Project

The Ripogenus Project is operated as a store-and-release development, with an annual seasonal drawdown that allows for management of water levels and flows downstream of the project. GLHA releases a seasonal minimum flow of 100 cfs into the dewatered section of the West Branch downstream of Ripogenus dam from July 1 through September 30, and 12 cfs leakage the remainder of the year, as well as seasonally variable flows through the McKay Station generating units to protect aquatic habitat and to provide whitewater boating opportunities in the West Branch. GLHA also releases 400 cfs from McKay Station to the West Branch during outages of the generating units and diverts 35 to 65 cfs (depending on flow conditions in the West Branch) to the Holbrook side channel, seasonally, to enhance aquatic habitat. The project provides storage capacity to reduce downstream flooding and provide releases during droughts.

Applicant's Proposed Measures

Penobscot Mills Project

GLHA proposes to continue to operate: (1) the North Twin Development for generation and seasonal storage, with target impoundment elevations of 490.42 feet NGVD 29 from May 1 through August 21 and 488.42 feet NGVD 29 from August 22 through October 15, and provide flows necessary to meet the 3,000/2,000-cfs flow requirement in the West Branch downstream of Shad Pond; (2) the Millinocket Lake Storage Development to (a) maintain impoundment elevation between 470 feet and 480 feet NGVD 29, and (b) provide a minimum flow of 60 cfs, or inflow (seasonally), to Millinocket Stream; and (3) the Millinocket, Dolby, and East Millinocket Developments as run-of-release facilities. GLHA also proposes to: (1) continue to operate and maintain the upstream pool-and-weir fish passage structure at North Twin dam; (2) post lake level (for North Twin and Millinocket Lake Storage) and streamflow information on Brookfield Renewable, N.A.'s SafeWaters website; [5] (3) maintain the 200-foot conservation buffer and 100-foot vegetation buffer around the Millinocket Lake Storage, North Twin, Millinocket, and Dolby Development impoundments; and (4) maintain Umbazooksus Lake as wetland and wildlife habitat. Lastly, GLHA proposes to: (1) release a year-round 200-cfs minimum flow from Stone dam at the Millinocket Development; (2) provide upstream and downstream American eel passage, conduct upstream American eel studies, and develop a fishway operation and maintenance plan; (3) provide seasonal whitewater boating flows of 600 cfs in Millinocket Stream; and (4) develop an updated wildlife management area plan, a recreation plan, a shoreline management plan, and a historic properties management plan.

Ripogenus Project

GLHA proposes to continue operating the Ripogenus Project as a store-and-release facility. GLHA would continue to: (1) release flows ranging from 12 to 100 cfs from Ripogenus dam to the bypassed reach; (2) provide a station outage flow of 400 cfs downstream of McKay Station; (3) continue to operate and maintain the Holbrook side channel as habitat for Atlantic salmon and brook trout; (4) maintain the 200-foot conservation buffer and 100-foot vegetation buffer around the Ripogenus impoundment; and (5) maintain Umbazooksus Lake as wetland and wildlife habitat. GLHA also proposes to: (1) provide a year-round minimum flow of 1,700 cfs downstream of McKay Station for aquatic habitat; (2) provide seasonally-adjusted flows for whitewater boating; (3) fund the installation, operation, and maintenance of a U.S. Geological Survey flow gage downstream of McKay Station (near Big Eddy); (4) post impoundment level and flow information on Brookfield Renewable, N.A.'s SafeWaters website; and (5) develop a recreation plan, shoreline management plan, common loon management plan, and historic properties management plan.

The purpose of the projects is to continue to provide a source of hydroelectric power for Maine and the Northeast Region. Therefore, under the provisions of the Federal Power Act (FPA), the Commission must decide whether to issue licenses to GLHA for the projects, and what conditions should be placed on any licenses issued.

The NEPA Process and the EIS

The draft and final EIS issued by the Commission will discuss impacts that could occur because of the proposed projects under the following relevant general resource areas:

- geology and soil resources;
- water and aquatic resources;
- terrestrial resources;
- federally threatened and endangered species;
- recreation, land use, and aesthetics;
- cultural resources;
- socioeconomic resources; and
- developmental resources.

Some of the potential effects include: (1) erosion and sedimentation; (2) the timing and magnitude of operational flows in the West Branch (including McKay Station outage flows) and Millinocket Stream on water quality and aquatic resources, including associated effects on (a) littoral and riparian habitat, (b) resident fish, as well as aquatic insects and other macroinvertebrates, (c) freshwater mussels, (d) migration of American eel and the federally listed Atlantic salmon in the Penobscot River Basin; (3) impoundment drawdowns and associated effects on (a) littoral habitat and associated aquatic communities (*e.g.,* rainbow smelt), (b) landlocked salmon access to tributaries for spawning, (c) wetland habitats, and (d) recreation and aesthetics; (4) availability of upstream habitat and downstream passage survival of American eel; (5) disturbance of suitable habitat for special-status wildlife species, including federally listed species; (6) spread of non-native, invasive species on native species; (7) whitewater boating flows in the West Branch (Upper Gorge and downstream from Stone dam) and Millinocket Stream and associated effects on other resources (*e.g.,* aquatic habitat and species, angling); (8) recreation facility maintenance and access to the project lakes and free-flowing reaches of the West Branch and Millinocket Stream for

[5] Brookfield Renewable, N.A. is the parent company of GLHA. Lake level and streamflow information is available on Brookfield Renewable, N.A.'s SafeWaters website at: *https://www.safewaters.com/list/maine/penobscot.*

recreation and other uses; and (9) cultural resources.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help staff focus its analysis on the issues that may have a significant effect on the human environment.

The draft and final EIS will present Commission staff's independent analysis of the issues. On August 10, 2021, Commission staff issued a notice of GLHA's intent to file relicense applications for the projects, which also invited agencies wishing to cooperate in the preparation of the environmental document. No agencies filed requests for cooperating status. A draft EIS will be issued for public comment and circulated for review by all interested parties. Staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. The draft and final EIS will be available in electronic format in the public record through eLibrary.[6] If eSubscribed, you will receive an instant email notification when the environmental document is issued.

Alternatives Under Consideration

As part of our review in the EIS, the Commission will consider a range of reasonable alternatives for each project that are technically and economically feasible and meet the purpose and need for the proposed actions. Alternatives that do not meet these requirements will be summarized and dismissed from further consideration in the EIS document. In addition to the proposed action, staff will consider a no-action alternative. We are also considering an alternative to the proposed actions that potentially meets the above criteria: GLHA's proposed action for each project with staff modifications, including any mandatory conditions (*i.e.,* the staff alternative with mandatory conditions).

With this notice, we ask commenters to identify other potential reasonable alternatives for consideration. The alternatives considered may be expanded based on the comments received, provided they meet the criteria described above.

Schedule for Environmental Review

This Notice of Intent identifies Commission staff's planned schedule for completion of the final EIS for the projects, which is based on an issuance of a draft EIS in July 2027, opening a 45-day public comment period. All comments filed will be reviewed by staff and considered in the Commission's final decision on the proceedings.

Issuance of Notice of Availability of the final EIS March 31, 2028

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies and interested stakeholders are kept informed of the project's progress.

Permits and Authorizations

The table below lists the anticipated permits and authorizations for the projects required under federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to the projects.

Agency	Permit or authorization
FERC	Non-Federal Hydropower License.
National Marine Fisheries Service	Authority to Prescribe Fishways under Section 18 of the FPA Consultation under Section 7 of the Endangered Species Act.
U.S. Fish and Wildlife Service	Consultation under Section 7 of the Endangered Species Act.
Maine State Historic Preservation Office.	Consultation under Section 106 of the National Historic Preservation Act.
Maine Department of Environmental Protection.	Clean Water Act Section 401 Water Quality Certification.

Additional Information

Additional information about the projects is available on the FERC website at *www.ferc.gov,* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the Docket No. P–2458 or P–2572, as appropriate, in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov,* or (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

Any questions regarding this notice may be directed to Kristine Sillett, the FERC relicensing coordinator for the Penobscot Mills and Ripogenus Projects, at (202) 502–6575, or *kristine.sillett@ferc.gov.*

(Authority: 18 CFR 2.1)

Dated: October 7, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–20882 Filed 10–9–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2535–129]

Dominion Energy South Carolina, Inc.; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2535–129.

c. *Date Filed:* October 27, 2023.

d. *Applicant:* Dominion Energy South Carolina, Inc. (Dominion Energy).

e. *Name of Project:* Stevens Creek Hydroelectric Project (Stevens Creek Project).

f. *Location:* At the confluence of Stevens Creek and the Savannah River in Edgefield and McCormick Counties, South Carolina, and Columbia County, Georgia. The project occupies approximately 104 acres of federal land administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ms. Amy Bresnahan, Dominion Energy South Carolina, Inc., 220 Operation Way, Mail

[6] For instructions on connecting to eLibrary, refer to the *Additional Information* section of this notice.

Code A221, Cayce, SC 29033; telephone at (803) 217–9965; email at *Amy.Bresnahan@dominionenergy.com.*

i. *FERC Contact:* Jeanne Edwards, Project Coordinator, South Branch, Division of Hydropower Licensing, telephone at (202) 502–6181; email at *jeanne.edwards@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* by 5:00 p.m. Eastern Time on December 6, 2026; reply comments are due by 5:00 p.m. Eastern Time on January 20, 2027.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 10,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* 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, please send a paper copy via the U.S. Postal Service to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2535–129.

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 on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is ready for environmental analysis.

l. *Project Description:* The project consists of: (1) a 2,400-acre reservoir with a storage capacity of 23,699-acre-feet at a full pond elevation of 187.5 feet National Geodetic Vertical Datum 1929 (NGVD 29); (2) a dam consisting of, from the southwestern (Georgia) shore to the northeastern (South Carolina) shore, (a) a 388-foot-long powerhouse intake, integral with the dam, protected by trashracks with 3.75-inch clear bar spacing, (b) a 102.5-foot-long non-overflow section with a top elevation of 198.54 feet NGVD 29, (c) an 85-foot-wide, 165.5-foot-long inoperable concrete gravity navigation lock, with a lock chamber that is 30-feet-wide, 150-feet-long, and has a 29-foot-lift, located between the powerhouse intake and spillway section, (d) a 1,000-foot-long, 5-foot-high flashboard section from the lock to the center of the spillway with a top elevation of 188.5 feet with the flashboards installed, (e) a 1,000 foot-long, 4-foot-high flashboard section from the center of the spillway to the South Carolina abutment with a top elevation of 187.5 feet with the flashboards installed, and (f) a 97-foot-long non-overflow section; (3) a 388-foot-long, 52-foot-wide, 57-foot-high three-story brick powerhouse, integral with the dam, containing eight vertical Francis generating units, each rated at 3,125 horsepower, a total generating capacity of 17.28 megawatts, and a total hydraulic capacity of 8,300 cubic feet per second; (4) generator leads from the powerhouse to a switchyard located approximately 100 feet from the powerhouse; and (5) ancillary equipment.

The project recreation facilities include: (1) the Stevens Creek recreation site with a parking lot with space for six trailer vehicles, a concrete boat launch, three picnic tables, and a restroom; (2) Fury's Ferry recreation site with a concrete boat ramp, two picnic tables, and gravel parking lot for either five trailer vehicles or 11 standard vehicles; (3) Chota Drive recreation site, with bank fishing, non-motorized boat launch access, and gravel parking lot for two vehicles; and (4) Betty's Branch/Riverside Park with a concrete boat ramp, a courtesy dock, a fishing pier, a canoe/kayak launch, two picnic tables, and a parking lot with four accessible spots, and with the adjacent Riverside Park with additional parking and facilities for baseball, softball, tennis, picnicking, and water-related activities.

Dominion Energy proposes to: (1) continue operating the project as a re-regulating project, mitigating the downstream effects of wide-ranging discharges from the upstream U.S. Army Corps of Engineers (Corps) J. Strom Thurmond Hydroelectric Project and maintain normal elevation fluctuations between 183.0 feet NGVD and 187.5 feet NGVD, using available storage; (2) continue updating the project operating plan every 5 years in coordination with the Corps; (3) install dissolved oxygen and temperature sensors at existing U.S. Geological Survey gages; (4) provide upstream American eel passage, conduct American eel siting studies, and develop an adaptive management fish passage plan; (5) continue to conduct annual shoreline surveys and annual funding for fish loss from entrainment; (6) develop an erosion control plan; (7) update the recreation management plan to include the removal of the Chota Drive recreation site from the project; and (8) implement a water quality adaptive management plan and draft historic properties management plan filed with the license application.

m. A copy of the application can be viewed on the Commission's website *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document (P–2535). For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. 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.*

o. The applicant must file the following by 5:00 p.m. Eastern Time on December 6, 2026: (1) a copy of the water quality certification for the state of South Carolina; [1] (2) a copy of the

[1] Because the dam spillway discharge spans the Savannah River and extends into South Carolina

Continued

request for certification, including proof of the date on which the certifying agency received the request; [2] or (3) evidence of a waiver of water quality certification.

p. Final amendments to the application must be filed with the Commission by 5:00 p.m. Eastern Time on November 6, 2026.

(Authority: 18 CFR 2.1)

Dated: October 7, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–20881 Filed 10–9–26; 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: EG27–3–000.
Applicants: Kyan Solar, LLC.
Description: Kyan Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/7/26.
Accession Number: 20261007–5006.
Comment Date: 5 p.m. ET 10/28/26.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL27–3–000.
Applicants: Monongahela Power Company v. *PJM Interconnection, L.L.C.*
Description: Complaint of Monongahela Power Company v. PJM Interconnection, L.L.C.
Filed Date: 10/6/26.
Accession Number: 20261006–5055.
Comment Date: 5 p.m. ET 10/26/26.

Take notice that the Commission received the following Electric Rate filings:

Docket Numbers: ER13–908–006.
Applicants: Alabama Power Company.
Description: Compliance filing: Compliance Filing-Correct Southern Companies' Attach K eTariff Record Metadata to be effective 1/1/2015.
Filed Date: 10/7/26.
Accession Number: 20261007–5053.
Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER26–3364–001.
Applicants: Pierpont Energy Prepay 9, LLC.
Description: Tariff Amendment: PEP 9 Response to Deficiency Letter and Tariff Amendment to be effective 12/5/2026.
Filed Date: 10/6/26.
Accession Number: 20261006–5164.
Comment Date: 5 p.m. ET 10/27/26.

Docket Numbers: ER26–3365–001.
Applicants: Pierpont Energy Prepay 10, LLC.
Description: Tariff Amendment: PEP 10 Response to Deficiency Letter and Tariff Amendment to be effective 12/5/2026.
Filed Date: 10/6/26.
Accession Number: 20261006–5168.
Comment Date: 5 p.m. ET 10/27/26.

Docket Numbers: R26–3554–001.
Applicants: Exsocert LLC.
Description: Tariff Amendment: Response to October 7, 2026 Deficiency Letter to be effective 8/19/2026.
Filed Date: 10/7/26.
Accession Number: 20261007–5047.
Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER26–3625–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: Amended Filing—Revisions for SPP Generating Facilities Modeling Requirements to be effective 10/26/2026.
Filed Date: 10/7/26.
Accession Number: 20261007–5143.
Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER26–3696–001.
Applicants: Anchor Point Plains, LLC.
Description: Tariff Amendment: Amendment to 1 to be effective 11/2/2026.
Filed Date: 10/7/26.
Accession Number: 20261007–5087.
Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–57–000.
Applicants: Ohio Power Company.
Description: 205(d) Rate Filing: AEPSC submits Facilities Agmt w/ Buckeye—SA No. 1336 to be effective 1/1/2027.
Filed Date: 10/7/26.
Accession Number: 20261007–5018.
Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–58–000.
Applicants: Dominion Energy South Carolina, Inc.
Description: 205(d) Rate Filing: SCRTP to SERTP Filing to be effective 1/1/2027.
Filed Date: 10/7/26.
Accession Number: 20261007–5021.
Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–58–001.
Applicants: Dominion Energy South Carolina, Inc.
Description: Tariff Amendment: Attachment K—K–7 Amendment to be effective 1/1/2027.
Filed Date: 10/7/26.
Accession Number: 20261007–5075.
Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–58–001.
Applicants: Dominion Energy South Carolina, Inc.
Description: Filing Withdrawal: Withdraw Entire Proceeding Attachment K–7 to be effective N/A.
Filed Date: 10/7/26.
Accession Number: 20261007–5116.
Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–59–000.
Applicants: Louisville Gas and Electric Company.
Description: 205(d) Rate Filing: SERTP Enrollment of the South Carolina Regional Transmission Planning Process to be effective 1/1/2027.
Filed Date: 10/7/26.
Accession Number: 20261007–5023.
Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–60–000.
Applicants: Louisville Gas and Electric Company.
Description: 205(d) Rate Filing: SERTP Revision of SERTP Enrollment Exhibits to Reflect Recent Mergers to be effective 12/31/9998.
Filed Date: 10/7/26.
Accession Number: 20261007–5026.
Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–61–000.
Applicants: Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: Revisions to Clarify Outage Documentation References to be effective 12/7/2026.
Filed Date: 10/7/26.
Accession Number: 20261007–5029.
Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–62–000.
Applicants: Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.
Description: 205(d) Rate Filing: Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii): DEC–DEP SERTP Enrollment SC Regional Transmission Planning Process Sponsors to be effective 1/1/2027.
Filed Date: 10/7/26.
Accession Number: 20261007–5054.
Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–63–000.
Applicants: Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.
Description: 205(d) Rate Filing: Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii): SERTP Revision of SERTP Enrollment Exhibits

waters, Dominion Energy must also obtain a water quality certification or waiver from South Carolina. *See* Order of Reconsideration, *City of Augusta,* 109 FERC ¶ 61,210 (2004); *Cent. Vt. Pub. Serv. Corp.,* 85 FERC ¶ 61410 (1998).

[2] On September 2, 2025, Dominion Energy applied to the Georgia Department of Natural Resources (Georgia DNR) for a water quality certification, which Georgia DNR received on September 3, 2025. On December 10, 2025, Georgia DNR issued a water quality certification for the Stevens Creek Project. *See* Dominion Energy's September 24, 2026 filing at 4.

to Reflect Recent Mergers to be effective 12/31/9998.

Filed Date: 10/7/26.

Accession Number: 20261007–5055.

Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–64–000.

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): SERTP Enrollment of SCRTP Sponsors Filing to be effective 1/1/2027.

Filed Date: 10/7/26.

Accession Number: 20261007–5066.

Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–65–000.

Applicants: Midcontinent Independent System Operator, Inc., Michigan Electric Transmission Company, LLC.

Description: 205(d) Rate Filing: Michigan Electric Transmission Company, LLC submits tariff filing per 35.13(a)(2)(iii): 2026–10–07_SA 4878 METC–DTE Electric E&P (J3471) to be effective 10/6/2026.

Filed Date: 10/7/26.

Accession Number: 20261007–5067.

Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–66–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of Service Agreement No. 7063; Queue No. AE2–236 to be effective 12/7/2026.

Filed Date: 10/7/26.

Accession Number: 20261007–5069.

Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–67–000.

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): Revision of SERTP Enrollment Exhibit to Reflect Recent Mergers to be effective 12/31/9998.

Filed Date: 10/7/26.

Accession Number: 20261007–5082.

Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–68–000.

Applicants: Atlantic Renewable Projects II LLC.

Description: Tariff Amendment: Notice of Cancellation of FERC Electric MBR Tariff to be effective 10/8/2026.

Filed Date: 10/7/26.

Accession Number: 20261007–5085.

Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–69–000.

Applicants: Klamath Generation LLC.

Description: Tariff Amendment: Notice of Cancellation of FERC Electric MBR Tariff to be effective 10/8/2026.

Filed Date: 10/7/26.

Accession Number: 20261007–5086.

Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–70–000.

Applicants: Dominion Energy South Carolina, Inc.

Description: 205(d) Rate Filing: Attachment K–7 to be effective 12/31/9998.

Filed Date: 10/7/26.

Accession Number: 20261007–5120.

Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–71–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of IISA, SA No. 6211; AE1–155 to be effective 3/25/2022.

Filed Date: 10/7/26.

Accession Number: 20261007–5122.

Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–72–000.

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: Eutaw Solar LGIA Filing to be effective 9/24/2026.

Filed Date: 10/7/26.

Accession Number: 20261007–5123.

Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–73–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2026–10–07_SA 4875 Entergy MS-Wildwood Energy GIA (S1116) to be effective 10/1/2026.

Filed Date: 10/7/26.

Accession Number: 20261007–5132.

Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–74–000.

Applicants: Arizona Public Service Company.

Description: 205(d) Rate Filing: Service Agreement No. 450, E&P Agreement w/APS to be effective 9/21/2026.

Filed Date: 10/7/26.

Accession Number: 20261007–5134.

Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–75–000.

Applicants: Arizona Public Service Company.

Description: 205(d) Rate Filing: Service Agreement No. 451, E&P Agreement w/APS to be effective 9/21/2026.

Filed Date: 10/7/26.

Accession Number: 20261007–5138.

Comment Date: 5 p.m. ET 10/28/26.

Docket Numbers: ER27–76–000.

Applicants: Arizona Public Service Company.

Description: 205(d) Rate Filing: Service Agreement No. 452, E&P Agreement w/APS to be effective 9/17/2026.

Filed Date: 10/7/26.

Accession Number: 20261007–5147.

Comment Date: 5 p.m. ET 10/28/26.

Take notice that the Commission received the following Electric Securities filings:

Docket Numbers: ES26–78–000.

Applicants: Mississippi Power Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Mississippi Power Company.

Filed Date: 9/29/26.

Accession Number: 20260929–5208.

Comment Date: 5 p.m. ET 10/20/26.

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: October 7, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–20852 Filed 10–9–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD26–6–000]

Commission Information Collection Activities (FERC–725B); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–725B (1902–0248), Mandatory Reliability Standards, Critical Infrastructure Protection (CIP)—Update to CIP–015. This update changes the CIP–015–1 standard to CIP–015–2 which reflects the changes implemented through Order RD26–6–000 issued on August 10, 2026.

DATES: Comments on the collections of information are due December 14, 2026.

ADDRESSES: Please submit comments via email to *DataClearance@FERC.gov.* You must specify Docket No. (RD26–6–000) in your email. If you are unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

- *Mail via U.S. Postal Service only, addressed to:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
- *Hand (including courier) delivery to:* Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Docket: To view comments and issuances in this docket, please visit *https://elibrary.ferc.gov/eLibrary/search.*

FOR FURTHER INFORMATION CONTACT: Kayla Williams may be reached by email at *DataClearance@FERC.gov,* or by telephone at (202) 502–6468.

SUPPLEMENTARY INFORMATION:

Title: FERC–725B (Mandatory Reliability Standards, Critical Infrastructure Protection (CIP)).

OMB Control No.: 1902–0248.

Type of Request: Update to the currently approved information collection requirements within Reliability Standard CIP–015–2.

Abstract: On June 18, 2026, the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), filed a petition with the Commission seeking approval of proposed Critical Infrastructure Protection (CIP) Reliability Standard CIP–015–2 (Cyber Security — Internal Network Security Monitoring). NERC also requested approval of the associated implementation plan, violation risk factors, and violation severity levels, and the retirement of the currently effective Reliability Standard CIP–015–1. NERC states that proposed Reliability Standard CIP–015–2 improves upon the currently approved Reliability Standard CIP–015–1 by establishing requirements that extend internal network security monitoring (INSM) to include electronic access control or monitoring systems (EACMS) and physical access control systems (PACS) outside of the electronic security perimeter. NERC explains the proposed revisions prevent a potential gap in the coverage of the standard that could allow an attacker to use compromised EACMS and PACS outside the electronic security perimeter to access the operational technology environment inside the electronic security perimeter. NERC contends that proposed Reliability Standard CIP–015–2 addresses the Commission's directive in Order No. 907, and as clarified in Order No. 907–A, to extend INSM beyond the electronic security perimeter to all systems in an entity's CIP-networked environment.[1]

NERC's filing was published in the **Federal Register**, 91 FR 38413 (June 25, 2026), with interventions and protests due on or before July 20, 2026. Timely motions to intervene were filed by Ameren Illinois Company, Ameren Transmission Company of Illinois, and Union Electric Company. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2025), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

Type of Respondents: Distribution Provider, Generator Operator, Generator Owner, Reliability Coordinator, Transmission Operator, and Transmission Owner.

Estimate of Annual Burden:[2] The Commission estimates the annual public reporting burden for the information collection as:

FERC–725B—(MANDATORY RELIABILITY STANDARDS FOR CRITICAL INFRASTRUCTURE PROTECTION [CIP] RELIABILITY STANDARDS) UPDATE TO CIP–015–2

	Number and type of respondent[3]	Annual number of responses per respondent	Total number of responses	Average burden per response (hours)[4] & cost per response	Total annual burden (hours) & total annual cost[5] ($)	Average cost per respondent
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
CIP–015–2	360	6	2,160	14 hrs.; $1,897.14	30,240 hrs.; $4,097,822.40	$11,382.84
Total Burden of CIP–015–2			2,160		30,240 hrs.; $4,097,822.40	

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use

[1] *Critical Infrastructure Protection Reliability Standard CIP–015–1—Cyber Security—Internal Network Security Monitoring,* Order No. 907, 191 FERC ¶ 61,224, *order on clarification,* Order No. 907–A, 192 FERC ¶ 61,171 (2025).

[2] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[3] The NERC Compliance Registry, as of August 2026, identifies approximately 1,706 unique U.S. entities that are subject to mandatory compliance with CIP Reliability Standards. Of this total, we estimate that 360 entities will face an increased paperwork burden under Reliability Standard CIP–015–2.

[4] The estimates for cost per hour are $135.51/hour (averaged based on the following occupations):

- Legal Occupations (90th percentile) (Occupation Code: 23–0000): $256.49/hour
- Electrical Engineer (mean) (Occupation Code: 17–2071): $92.32/hour
- Office and Administrative Support (90th percentile) (Occupation Code: 43–0000): $57.73/hour

The estimated hourly cost (salary plus benefits) is a combination of the following categories from the Bureau of Labor Statistics (BLS) website, June 12, 2026, links to reference, Occupational Employment and Wage Statistics and *http://www.bls.gov/oes/current/naics2_22.htm.*

of automated collection techniques or other forms of information technology.

Dated: October 7, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–20880 Filed 10–9–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP27–19–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 4(d) Rate Filing: 10.6.26 Negotiated Rates—Citadel Energy Marketing LLC R–7705–39 to be effective 11/1/2026.
Filed Date: 10/6/26.
Accession Number: 20261006–5112.
Comment Date: 5 p.m. ET 10/19/26.

Docket Numbers: RP27–20–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 4(d) Rate Filing: 10.6.26 Negotiated Rates—Shell Energy North America (US), L.P. R–2170–27 to be effective 11/1/2026.
Filed Date: 10/6/26.
Accession Number: 20261006–5119.
Comment Date: 5 p.m. ET 10/19/26.

Docket Numbers: RP27–21–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: 4(d) Rate Filing: Negotiated Rates—Narragansett to NRG 821448 eff 10–1–26 to be effective 10/1/2026.
Filed Date: 10/6/26.
Accession Number: 20261006–5125.
Comment Date: 5 p.m. ET 10/19/26.

Docket Numbers: RP27–22–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 4(d) Rate Filing: 10.7.26 Negotiated Rates—BP Energy Company R–1410–29 to be effective 11/1/2026.
Filed Date: 10/7/26.
Accession Number: 20261007–5024.
Comment Date: 5 p.m. ET 10/19/26.

Docket Numbers: RP27–23–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 4(d) Rate Filing: 10.7.26 Negotiated Rates—BP Energy Company R–1410–30 to be effective 11/1/2026.
Filed Date: 10/7/26.
Accession Number: 20261007–5025.
Comment Date: 5 p.m. ET 10/19/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP26–1325–001.
Applicants: Adelphia Gateway, LLC.
Description: Compliance filing: Adelphia Gateway Supplemental Filing in Compliance with Order No. 587–AB to be effective N/A.
Filed Date: 10/6/26.
Accession Number: 20261006–5152.
Comment Date: 5 pm ET 10/19/26.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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: October 7, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–20853 Filed 10–9–26; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0112]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0112). The notices of proposed renewal for these information collections were previously published in the **Federal Register** on August 6, 2026, allowing for a 60-day comment period. No comments were received.

DATES: Comments must be submitted on or before November 12, 2026.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Robert Meiers, Regulatory Attorney, MB–3013, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7 a.m. and 5 p.m.

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 these information collections by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Robert Meiers, Regulatory Attorney, *Romeiers@fdic.gov,* MB–3013, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. *Title:* Real Estate Lending Standards.

OMB Number: 3064–0112.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0112]

Information collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Average time per response (HH:MM)	Annual burden (Hours)
1. Real Estate Lending Standards, 12 CFR 365 (Mandatory).	Recordkeeping ..... (Annual)	2,647	1	20:00	52,940
Total Annual Burden (Hours)	.....	.....	.....	.....	52,940

Source: FDIC.

General Description of Collection: Section 1828(o) of the Federal Deposit Insurance Act requires each federal banking agency to adopt uniform regulations prescribing real estate lending standards. Part 365 of the FDIC Rules and Regulations, which implements section 1828(o), requires institutions to have real estate lending policies that include (a) limits and standards consistent with safe and sound banking practices; (b) prudent underwriting standards, including loan-to-value ratio (LTV) limits that are clear and measurable; (c) loan administration policies; (d) documentation, approval and reporting requirements; and (e) a requirement for annual review and approval by the board of directors. The rule also establishes supervisory LTV limits and other underwriting considerations in the form of guidelines. There is no change in the substance or methodology of this information collection. The estimated annual burden has decreased by 8,780 hours, from 61,720 hours to 52,940 hours, due to a reduction in the number of respondents.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 8, 2026.

Jennifer M. Jones,

Deputy Executive Secretary.

[FR Doc. 2026–20875 Filed 10–9–26; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2026–N–13]

Privacy Act of 1974; System of Records

AGENCY: Federal Housing Finance Agency.

ACTION: Rescindment of a System of Records Notice.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, and Office of Management and Budget (OMB) Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' the Federal Housing Finance Agency (FHFA or Agency) proposes to rescind an existing System of Records Notice (SORN). The SORN being rescinded, ''Parking Program Records, FHFA–12,'' was originally published on June 8, 2011, and amended on October 8, 2015. This system of records contains information used to administer the Agency's parking program. In order to streamline FHFA's program administration and ensure consistent management of similar categories of records, the Agency is consolidating its parking program records with its transit subsidy records. Both systems of records will be maintained under the SORN FHFA–11, which is being simultaneously revised and retitled ''Transit Subsidy and Parking Program Records, FHFA–11.''

DATES: FHFA is publishing this rescission notice on the same day as the modified SORN FHFA–11, which will cover the records previously maintained under FHFA–12. This proposed action will be effective without further notice on October 13, 2026, unless otherwise revised pursuant to comments received. Comments must be received on our before November 12, 2026. FHFA will publish a new notice if the effective date is delayed in order for the Agency to review the comments or if changes are made based on comments received.

ADDRESSES: Submit comments to FHFA, identified by ''No. 2026–N–13,'' using any one of the following methods:

- *Agency website: https://www.fhfa.gov/regulation/federal-register?comments=open.*
- *Email: RegComments@fhfa.gov.* Please include ''Comments/No. 2026–N–13'' in the subject line of the message.
- *Hand Delivered/Courier:* The hand delivery address is: Clinton Jones, General Counsel, Attention: Comments/No. 2026–N–13, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The package should be delivered to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m., EST.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Clinton Jones, General Counsel, Attention: Comments/No. 2026–N–13, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. *Please note that all mail sent to FHFA via the U.S. Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.*

See **SUPPLEMENTARY INFORMATION** for additional information on submission and posting of comments.

FOR FURTHER INFORMATION CONTACT: Brent Burris, Senior Agency Official for Privacy, or LaRima Coleman, Assistant General Counsel, at *privacy@fhfa.gov,* (202) 649–3803 (not a toll-free number), or Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask

to be connected to the contact number above.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA seeks public comments on the rescindment of the SORN identified in this notice and will take all comments into consideration. Comments, including any personally identifiable information such as name and contact information, will be posted on the FHFA public website at *https://www.fhfa.gov,* except as described below. Commenters should submit only information that the commenter wishes to make available publicly. FHFA will not redact personally identifiable information once it is submitted. Commenters who do not wish to be identified by their comments may submit their comments anonymously. FHFA may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. FHFA may, in its discretion, redact or refrain from posting all or any portion of any comment that contains content that is obscene, vulgar, profane, or threatens harm. All comments, including those that are redacted or not posted, will be retained in their original form in FHFA's internal file and will be considered as required by all applicable laws. Commenters who would like FHFA to consider any portion of their comment exempt from disclosure on the basis that it contains trade secrets, or financial, confidential or proprietary data or information, should follow the procedures in section IV.D. of FHFA's *Policy on Communications with Outside Parties in Connection with FHFA Rulemakings, see https://www.fhfa.gov/sites/default/files/documents/Ex-Parte-Communications-Public-Policy_3-5-19.pdf.* FHFA cannot guarantee that such data or information will remain confidential if disclosure is sought pursuant to an applicable statute or regulation. *See* 12 CFR 1202.8, 12 CFR 1214.2, and FHFA's *FOIA Reference Guide* at *https://www.fhfa.gov/about/foia-reference-guide* for additional information.

II. Rescinded System of Records

FHFA is rescinding the SORN titled, ''Parking Program Records, FHFA–12,'' which was published at 76 FR 33286 on June 8, 2011, and amended at 80 FR 60900 on October 8, 2015. The parking program records currently maintained under FHFA–12 will be consolidated into and covered by the proposed SORN, ''Transit Subsidy and Parking Program Records, FHFA–11,'' which is being revised concurrently to explicitly incorporate these records. Combining these records under a single, updated SORN eliminates unnecessary duplication, improves clarity for the public, and reflects the operational alignment of the two programs. Rescinding FHFA–12 will have no adverse impact on individuals, as the information will continue to be protected and maintained under the revised ''Transit Subsidy and Parking Program Records, FHFA–11.''

For the reasons explained immediately above, the following system of records is rescinded:

SYSTEM NAME AND NUMBER:

Parking Program Records, FHFA–12.

HISTORY:

The system of records was published in full in the **Federal Register** at 76 FR 33286 (June 8, 2011), amended at 80 FR 60900 (Oct. 8, 2015).

Clinton Jones,

General Counsel, Federal Housing Finance Agency.

[FR Doc. 2026–20826 Filed 10–9–26; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2026–N–14]

Privacy Act of 1974; System of Records

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of a Modified System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, (Privacy Act), the Federal Housing Finance Agency (FHFA or Agency) is proposing to modify an existing system of records currently titled, ''Transit Subsidy Program Records, FHFA–11.'' This system of records will consolidate and incorporate the records previously maintained in the ''Parking Program Records, FHFA–12'' system of records, 76 FR 33294 (June 8, 2011). Effective upon publication of this notice, FHFA will maintain all transit benefit and parking program records within the revised FHFA–11 system of records to streamline recordkeeping, eliminate duplicative systems, and reflect current program operations. As part of this consolidation, FHFA–12 is being formally rescinded and all relevant information maintained within that system is integrated into the updated FHFA–11 SORN. FHFA–11 contains documentation, to the extent not covered by any other system, pertaining to employees who apply for and receive parking and transit subsidy program benefits for use in parking at or commuting to their official duty station whether by commercial or public transit systems, or by bicycle. The records are used to administer the FHFA transit subsidy and parking program to determine eligibility; process applications; verify enrollment; track benefits and manage employee participation; facilitate and track reservations for government vehicles; and facilitate coordination with transit authorities, benefit administers, and the payroll office. The proposed modifications include revising the: (1) title of the system; (2) system security classification; (3) system location; (4) system manager; (5) legal authorities for maintenance of the system; (6) purpose of the system; (7) categories of individuals covered by the system; and (8) categories of records maintained in the system. Changes also include the revision and addition of routine uses; removal of the Disclosure to Consumer Reporting Agencies section; and updating the policies and practices for storage of records, the policies and practices for the retrieval of records, the policies and practices for the retention and disposal of records, and the administrative, technical, and physical safeguards. Revisions also include minor updates for clarity and consistency.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this modified system of records will go into effect without further notice on October 13, 2026, unless otherwise revised pursuant to comments received. New routine uses will go into effect on November 12, 2026. Comments must be received on or before November 12, 2026. FHFA will publish a new notice if the effective date is delayed for the Agency to review the comments or if changes are made based on comments received.

ADDRESSES: Submit comments to FHFA, identified by ''No. 2026–N–14,'' using any one of the following methods:

- *Agency website: https://www.fhfa.gov/regulation/federal-register?comments=open.*
- *Email: RegComments@fhfa.gov.* Please include ''Comments/No. 2026–N–14'' in the subject line of the message.
- *Hand Delivered/Courier:* The hand delivery address is: Clinton Jones, General Counsel, Attention: Comments/

No. 2026–N–14, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The package should be delivered to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m., EST.

• *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Clinton Jones, General Counsel, Attention: Comments/No. 2026–N–14, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. *Please note that all mail sent to FHFA via the U.S. Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.*

See **SUPPLEMENTARY INFORMATION** for additional information on submission and posting of comments.

FOR FURTHER INFORMATION CONTACT: Senior Agency Official for Privacy, *privacy@fhfa.gov* or (202) 649–3803 (not a toll-free number), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to the contact number above.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA seeks public comments on the revisions to the SORN identified in this notice and will take all comments into consideration. The Agency will post all public comments, including any personally identifiable information such as name and contact information, on the FHFA public website at *https://www.fhfa.gov,* except as described below. Commenters should submit only information that the commenter wishes to make available publicly. FHFA will not redact personally identifiable information once it is submitted. Commenters who do not wish to be identified by their comments may submit their comments anonymously. FHFA may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. FHFA may, in its discretion, redact or refrain from posting all or any portion of any comment that contains content that is obscene, vulgar, profane, or threatens harm. All comments, including those that are redacted or not posted, will be retained in their original form in FHFA's internal file and considered as required by all applicable laws. Commenters who would like FHFA to consider any portion of their comment exempt from disclosure on the basis that it contains trade secrets, or financial, confidential or proprietary data or information, should follow the procedures in section IV.D. of FHFA's *Policy on Communications with Outside Parties in Connection with FHFA Rulemakings, see https://www.fhfa.gov/sites/default/files/documents/Ex-Parte-Communications-Public-Policy_3-5-19.pdf.* FHFA cannot guarantee that such data or information will remain confidential if disclosure is sought pursuant to an applicable statute or regulation. See 12 CFR 1202.8, 12 CFR 1214.2, and FHFA's *FOIA Reference Guide* at *https://www.fhfa.gov/about/foia-reference-guide* for additional information.

II. Introduction

This notice informs the public of FHFA's proposed revisions to an existing system of records. This notice satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when there is an addition or change to an agency's system of records.

As required by the Privacy Act, 5 U.S.C. 552a(r), and pursuant to section 7 of Office of Management and Budget (OMB) Circular No. A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,* prior to publication of this notice, FHFA submitted a report describing the system of records covered by this notice to the OMB, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.

III. Revised System of Records

The revised system of records notice is set out in its entirety and described in detail below. The proposed modification to the ''Transit Subsidy Program Records, FHFA–11'' makes the following substantive and non-substantive changes:

(1) Changes the title of the system from ''Transit Subsidy Program Records, FHFA–11'' to ''Transit Subsidy and Parking Program Records, FHFA–11'' to reflect the full scope of the records contained in the system;

(2) Modifies the system's security classification consistent with OMB guidance;

(3) Revises the Agency's official address and adds references to FHFA-authorized service providers and contractor networks in the system location;

(4) Revises the contact information for the designated system manager;

(5) Revises the authorities for maintenance of the system by citing more specific authorities and removing the description of each cited authority;

(6) Clarifies that the purpose of the system includes collecting and maintaining records related to the parking program and vehicle reservation program and provides details on how the records collected support the administration and management of the program;

(7) Revises the categories of individuals covered by the system to include FHFA employees who request parking permits for parking at FHFA and the Midtown Center location, employees who carpool with parking permit holders, and visitors requesting parking at FHFA headquarters;

(8) Revises the categories of records maintained in the system to remove home address, title, grade, office, work address, commuting schedule, and transit system used and to add SmarTrip card number, user ID, parking garage location, parking date, and the names of visitors and their escorts, and to add the make, year, and license number of vehicles and the names of individuals authorized to carpool with a parking permit holder;

(9) Revises existing routine use (2), which provides for disclosure ''[t]o a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, rules and regulations litigation, or settlement negotiations or in connection with criminal proceedings, when FHFA is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary'' by dividing that routine use into new routine use (7), which provides for disclosure ''[t]o a court, magistrate, or administrative tribunal, including disclosures to opposing counsel or witnesses, shared in the course of discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena from a court of competent jurisdiction if the requested information is relevant and necessary to the pending judicial or administrative proceeding'' and new routine use (10), which provides for disclosure ''[t]o outside counsel contracted by FHFA, DOJ (including United States Attorney Offices), or other Federal agencies conducting litigation or in proceedings

before any court, or adjudicative or administrative body, when it is relevant and necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation: (a) FHFA; (b) Any employee of FHFA in his/her official capacity; (c) Any employee of FHFA in his/her individual capacity where DOJ or FHFA has agreed to represent the employee; or (d) The United States or any agency thereof that is a party to the litigation or has an interest in such litigation, and FHFA determines that the records are both relevant and necessary to the litigation'';

(10) Revises existing routine use (4), which provides for disclosure ''[t]o appropriate federal, state, local authorities, and other entities when (a) It is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm,'' by dividing that routine use into new routine use (1), which provides for disclosure ''[t]o appropriate agencies, entities, and persons when—(a) FHFA suspects or has confirmed that there has been a breach of the system of records; (b) FHFA has determined that as a result of a suspected or confirmed breach there is a risk of harm to individuals, FHFA (including its information systems, programs, and operations), the Federal Government, or national security; and (c) The disclosure is made to agencies, entities, and persons as reasonably necessary to assist with FHFA's efforts to: (i) Respond to a suspected or confirmed breach; or (ii) Prevent, minimize, or remedy harm caused by such breach,'' and new routine use (2), which provides for disclosure ''[t]o a Federal agency or Federal entity, when FHFA determines information from the system of records is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach; or (b) Preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or to national security, resulting from a suspected or confirmed breach'';

(11) Revises existing routine use (7), which provides for disclosure ''[t]o appropriate federal agencies and other public authorities for use in records management inspections'' into new routine use (11), which provides for disclosure ''[t]o the National Archives and Records Administration or other Federal agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906'';

(12) Revises existing routine use (9), which provides for disclosure ''[t]o contractor personnel, grantees, volunteers, interns, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government'' into new routine use (5), which provides for disclosure ''[t]o any contractor, agent, or other authorized individual performing work on a contract, service, cooperative agreement, job, or other activity on behalf of FHFA who has a need to access the information in the performance of their official duties or activities'';

(13) Adds new routine use (4), which provides for disclosure ''[t]o any individual during the course of any inquiry or investigation conducted by FHFA, or in connection with civil litigation, if FHFA has reason to believe the individual to whom the record is disclosed may have further information about the matters related thereto, and the records appears to be relevant and necessary at the time to the subject matter of the inquiry'';

(14) Adds new routine use (8), which provides for disclosure ''[t]o the Office of Management and Budget, the Department of Justice (DOJ), Department of Labor, Office of Personnel Management, Equal Employment Opportunity Commission, U.S. Office of Special Counsel, Department of Homeland Security, or other Federal agencies, to obtain advice regarding statutory, regulatory, policy, and other requirements related to the purpose for which FHFA collected the records'';

(15) Adds new routine use (9), which provides for disclosure ''[t]o appropriate third parties contracted by FHFA to facilitate mediation or other dispute resolution procedures or programs, where the record is relevant to the dispute and the dispute is related to the purpose for which the record was collected'';

(16) Adds new routine use (12), which provides for disclosure ''[t]o an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is relevant and necessary to such audit or oversight functions'';

(17) Adds new routine use (17), which provides for disclosure ''[t]o the U.S. Department of the Treasury when disclosure of the information is relevant to review payment and award eligibility through the Do Not Pay Working System for the purposes of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state (meaning a state of the United States, the District of Columbia, a territory or possession of the United States, or a federally recognized Indian tribe) in a state-administered, federally funded program in accordance with Executive Order 14249'';

(18) Adds new routine use (18), which provides for disclosure ''[t]o the Internal Revenue Service and appropriate state and local taxing authorities if the employee is subject to tax by that authority and to the extent necessary for that entity to carry out its legally authorized functions, whether or not tax is withheld'';

(19) Adds new routine use (19), which provides for disclosure ''[t]o the U.S. Department of the Treasury, Federal debt collection centers, other appropriate Federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to FHFA or the Federal government. Disclosure will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status, and history of the debt'';

(20) Adds new routine use (20), which provides for disclosure ''[t]o government and commercial vendors that provide parking-related services and systems involving FHFA employees and visitors as relevant and necessary to facilitate the administration of FHFA's parking and transit subsidy programs'';

(21) Removes the ''Disclosure to Consumer Reporting Agencies'' category to ensure alignment with OMB guidance;

(22) Updates the ''Policies and Practices for Storage of Records'' section with FHFA's modernized practices, including use of Federal Records Centers;

(23) Revises the ''Policies and Practices for Retrieval of Records'' section to add ''permit parking number'' as an identifier;

(24) Updates the ''Policies and Practices for Retention and Disposal of Records'' section to add the Agency's

retention practices related to legal holds and business usage;

(25) Revises the ''Administrative, Technical, and Physical Safeguards'' category to replace ''access codes'' with ''role-based access controls'' to reflect current practice; and

(26) Makes minor corrections and other administrative updates to the remaining sections of the notice in accordance with OMB Circular A–108 and related OMB guidance.

SYSTEM NAME AND NUMBER:

Transit Subsidy and Parking Program Records, FHFA–11.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219, and any alternate work site used by employees of FHFA, including contractors assisting agency employees, FHFA-authorized service providers, and FHFA-authorized contractor networks located within the Continental United States.

SYSTEM MANAGER(S):

Logistics Manager, *Transportation@fhfa.gov,* Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7905; 12 U.S.C. 4513(a)(2)(B); E.O. 13150, 65 FR 24613.

PURPOSE(S) OF THE SYSTEM:

The records are used to administer the FHFA transit subsidy and parking program, including determining eligibility; processing applications; verifying enrollment; tracking benefits; managing employee participation; and facilitating coordination with transit authorities, benefit administers, and the payroll office. The system is also used to facilitate and track reservations for government vehicles.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers: (1) employees who apply for parking permits at an FHFA office location; (2) employees who apply for transit subsidy program benefits for commuting to and from their official duty station whether by commercial or public transit systems, or by bicycle; (3) employees who request temporary parking; (4) employees who carpool with parking permit holders; (5) visitors who request parking at FHFA's headquarters location; (6) employees who request daily parking at the Federal National Mortgage Association's (Fannie Mae's) Midtown Center location in Washington, DC; and (7) employees and contractors who reserve government vehicles.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system include completed FHFA transit subsidy benefit application forms, annual parking applications, temporary or visitor parking requests, vehicle reservation information, and related information. The records include, but are not limited to, an individual's name; SmarTrip card number; user identification (ID) number; work phone number and email address; vehicle make, year, and license number; parking garage location; and parking date(s). The system also includes the names of individuals authorized to carpool with a parking permit holder, as well as the names of visitors who require parking at FHFA's headquarters location, the names of the FHFA employee who requested parking on the visitor's behalf, the names of the visitor's escorts at the site, and the purpose of the visits.

RECORD SOURCE CATEGORIES:

The information is provided either directly by FHFA employees or from internal FHFA information systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records and information contained therein may specifically be disclosed outside of FHFA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows, to the extent such disclosures are compatible with the purposes for which the information was collected:

(1) To appropriate agencies, entities, and persons when—

(a) FHFA suspects or has confirmed that there has been a breach of the system of records;

(b) FHFA has determined that as a result of a suspected or confirmed breach there is a risk of harm to individuals, FHFA (including its information systems, programs, and operations), the Federal Government, or national security; and

(c) The disclosure is made to agencies, entities, and persons as reasonably necessary to assist with FHFA's efforts to:

(i) Respond to a suspected or confirmed breach; or

(ii) Prevent, minimize, or remedy harm caused by such breach.

(2) To a Federal agency or Federal entity, when FHFA determines information from the system of records is reasonably necessary to assist the recipient agency or entity in:

(a) Responding to a suspected or confirmed breach; or

(b) Preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or to national security, resulting from a suspected or confirmed breach.

(3) When there is an indication of a violation or potential violation of law (whether civil, criminal, or regulatory in nature or whether arising by general statute or particular program statute or by regulation, rule, or order issued pursuant thereto), the relevant records in the system of records may be referred, as a routine use, to the appropriate agency (*e.g.,* federal, state, local, tribal, foreign or a financial regulatory organization) charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing a statute, rule, regulation or order issued pursuant thereto.

(4) To any individual during the course of any inquiry or investigation conducted by FHFA, or in connection with civil litigation, if FHFA has reason to believe the individual to whom the record is disclosed may have further information about the matters related thereto, and the records appears to be relevant and necessary at the time to the subject matter of the inquiry.

(5) To any contractor, agent, or other authorized individual performing work on a contract, service, cooperative agreement, job, or other activity on behalf of FHFA who has a need to access the information in the performance of their official duties or activities.

(6) To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

(7) To a court, magistrate, or administrative tribunal, including disclosures to opposing counsel or witnesses, shared in the course of discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena from a court of competent jurisdiction if the requested information is relevant and necessary to the pending judicial or administrative proceeding.

(8) To the Office of Management and Budget, the Department of Justice (DOJ), Department of Labor, Office of Personnel Management, Equal

Employment Opportunity Commission, U.S. Office of Special Counsel, Department of Homeland Security, or other Federal agencies, to obtain advice regarding statutory, regulatory, policy, and other requirements related to the purpose for which FHFA collected the records.

(9) To appropriate third parties contracted by FHFA to facilitate mediation or other dispute resolution procedures or programs, where the record is relevant to the dispute and the dispute is related to the purpose for which the record was collected.

(10) To outside counsel contracted by FHFA, DOJ (including United States Attorney Offices), or other Federal agencies conducting litigation or in proceedings before any court, or adjudicative or administrative body, when it is relevant and necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(a) FHFA;

(b) Any employee of FHFA in his/her official capacity;

(c) Any employee of FHFA in his/her individual capacity where DOJ or FHFA has agreed to represent the employee; or

(d) The United States or any agency thereof that is a party to the litigation or has an interest in such litigation, and FHFA determines that the records are both relevant and necessary to the litigation.

(11) To the National Archives and Records Administration or other Federal agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(12) To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is relevant and necessary to such audit or oversight functions.

(13) To appropriate Federal, state, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit.

(14) To appropriate Federal, state, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties.

(15) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

(16) To the Washington Metropolitan Transit Authority or other transportation authority to provide transit subsidy benefit related services and systems involving FHFA employees.

(17) To the U.S. Department of the Treasury when disclosure of the information is relevant to review payment and award eligibility through the Do Not Pay Working System for the purposes of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state (meaning a state of the United States, the District of Columbia, a territory or possession of the United States, or a federally recognized Indian tribe) in a state-administered, federally funded program in accordance with Executive Order 14249.

(18) To the Internal Revenue Service and appropriate state and local taxing authorities if the employee is subject to tax by that authority and to the extent necessary for that entity to carry out its legally authorized functions, whether or not tax is withheld.

(19) To the U.S. Department of the Treasury, Federal debt collection centers, other appropriate Federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to FHFA or the Federal government. Disclosure will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status, and history of the debt.

(20) To government and commercial vendors that provide parking-related services and systems involving FHFA employees and visitors as relevant and necessary to facilitate the administration of FHFA's parking and transit subsidy programs.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic format. Electronic records are stored on FHFA's secured network, the networks of FHFA-authorized cloud service providers, and/or FHFA authorized contractor networks located within the Continental United States. All records for the system that are stored in paper format or on magnetic disk or tape have been moved off-site to Federal Records Centers.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed and retrieved by employee name, employee identification number, or parking permit number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are retained and managed in accordance with FHFA's Comprehensive Records Schedule and the National Archives and Records Administration's General Records Schedule. Records are destroyed or deleted according to the retention schedule associated with the relevant records schedule, but longer retention is authorized for business use and any applicable legal holds. Paper and microform records ready for disposal are destroyed by shredding or maceration. Records in electronic media are electronically erased using accepted techniques.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic records are safeguarded in a secured environment and protected by controlled access procedures through the use of role-based access controls and other information technology security measures. Buildings where records and computerized systems are stored have security cameras and 24-hour security guard service. Access to records is restricted to only FHFA staff (and FHFA contractors assisting such staff) in the performance of official duties related to the purposes for which the system of records is maintained.

RECORD ACCESS PROCEDURES:

Individuals seeking access to and/or amendment of records about themselves contained in this system of records should follow the ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

Individuals seeking access to and/or amendment of records about themselves contained in this system of records should follow the ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification of any records about themselves contained in this system of records should address their inquiry to the Privacy Act Officer via email to *privacy@fhfa.gov,* by mail to the Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219, or in accordance with the procedures set forth in 12 CFR part 1204. *Please note that all mail sent to FHFA via the U.S. Postal Service is*

routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The system of records notice was last published in the **Federal Register** at 76 FR 33286 on June 8, 2011, and 80 FR 60900 on October 8, 2015.

Clinton Jones,

General Counsel, Federal Housing Finance Agency.

[FR Doc. 2026–20827 Filed 10–9–26; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL LABOR RELATIONS AUTHORITY

Approved Initiation of a Voluntary Mediation Program

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Labor Relations Authority (Authority) has approved the initiation of a voluntary mediation program administered by the Federal Mediation and Conciliation Service (FMCS) to assist parties with the resolution of negotiability disputes under section 7117(c) of the Federal Service Labor-Management Relations Statute.

FOR FURTHER INFORMATION CONTACT: Thomas Tso, Solicitor, at *solmail@flra.gov* or at (771) 444–5778.

SUPPLEMENTARY INFORMATION: The Authority has approved the initiation of a voluntary mediation program administered by the FMCS to assist parties with the resolution of negotiability disputes under section 7117(c) of the Federal Service Labor-Management Relations Statute (the Statute). 5 U.S.C. 7117(c). The purpose of the mediation program is to facilitate the efficient and effective resolution of these disputes.

Section 7105 of the Statute authorizes the Authority to ''resolve issues relating to the duty to bargain in good faith under section 7117(c)'' of the Statute. *Id.* 7105(a)(2)(E). Under section 7117(c), a union may file a petition for review when: (1) an agency has alleged that a union's bargaining proposal is outside the statutory duty to bargain; or (2) an agency head has disapproved, as allegedly contrary to law, a contract that the agency and a union have agreed to, or the Federal Service Impasses Panel has imposed. *Id.* 7117(c).

Section 2424.31 of the Authority's regulations provides that, to resolve a negotiability dispute arising from such a petition for review, the Authority ''may, in its discretion:'' (a) direct the parties to provide specific documentary evidence; (b) direct the parties to provide answers to factual questions; (c) refer the matter to a hearing; or (d) take any other appropriate action. 5 CFR 2424.31. The Authority's decision to approve the mediation program is an action under § 2424.31(d) and does not contradict any existing regulations.

The mediation services offered by the FMCS will be a confidential and voluntary option for parties with negotiability disputes before the Authority. After a union files a petition with the Authority, the parties may jointly request mediation of their dispute, or the Authority may refer the matter to FMCS. Either party may decline to engage in mediation or withdraw their consent to participate in mediation at any time.

Upon referring a negotiability dispute to the FMCS, the Authority will inform the parties that it is placing the case in abeyance and will defer further processing of the case at that time. If the parties settle their entire dispute, then the FMCS will request that the parties notify the Authority in writing in order to enable the Authority to dismiss the negotiability appeal. If the parties do not settle their entire dispute, then the FMCS will notify the Authority. The Authority will then resume processing of the negotiability dispute.

By order of the Authority.

Issued: October 7, 2026.

Rebecca J. Osborne

Deputy Solicitor, Federal Labor Relations Authority.

[FR Doc. 2026–20820 Filed 10–9–26; 8:45 am]

BILLING CODE 7627–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 12, 2026.

A. Federal Reserve Bank of San Francisco (Keith Dudley, Vice President) 101 Market Street, San Francisco, California 94105–1579. Comments can also be sent electronically to *SF.Supervision.Comments.Applications@sf.frb.org:*

1. *WaFd, Inc., Seattle, Washington;* to acquire EverBank Financial Corp, and thereby indirectly acquire EverBank, National Association, both of Jacksonville, Florida.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026–20887 Filed 10–9–26; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank

or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 28, 2026.

A. Federal Reserve Bank of New York (Keith Goodwin, Head of Bank Applications) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *Gullace Generation Family Trust, Christopher Matthew Gullace as trustee, both of Delray Beach, Florida;* to acquire voting shares of Greater Rochester Bancorp Inc., and thereby indirectly acquire voting shares of Genesee Regional Bank, both of Rochester, New York.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026–20886 Filed 10–9–26; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–D–2581]

Postapproval Manufacturing Changes to Biosimilar and Interchangeable Biosimilar Products: Questions and Answers; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Postapproval Manufacturing Changes to Biosimilar and Interchangeable Biosimilar Products: Questions and Answers.'' This guidance provides answers to commonly asked questions from applicants and other interested parties regarding postapproval manufacturing changes made to biosimilar and interchangeable biosimilar products licensed under the Public Health Service Act (PHS Act). This guidance finalizes the draft guidance of the same title issued on July 23, 2024.

DATES: The announcement of the guidance is published in the **Federal Register** October 13, 2026.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–D–2581 for ''Postapproval Manufacturing Changes to Biosimilar and Interchangeable Biosimilar Products: Questions and Answers.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access

the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Ashley Boam, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm 4192, Silver, Spring, MD 20993–0002, 301–796–6341, *cder-quality-policy@fda.hhs.gov;* or Phillip Kurs, Center for Biologics Evaluation and Research, Food and Drug Administration, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Postapproval Manufacturing Changes to Biosimilar and Interchangeable Biosimilar Products: Questions and Answers.'' This guidance provides answers to commonly asked questions from applicants and other interested parties regarding postapproval manufacturing changes (referred to as ''manufacturing changes'' throughout this notice) made to biosimilar and interchangeable biosimilar products licensed under section 351(k) of the PHS Act (42 U.S.C. 262(k)). FDA is publishing this guidance to fulfill the commitment made in the 2022 reauthorization of the Biosimilar User Fee Act (BsUFA III, Title IV—Fees Relating to Biosimilar Biological Products, Pub. L. 117–180) for fiscal years 2023 through 2027. This guidance is intended to inform applicants of the nature and type of information, for different reporting categories, that applicants should provide to support manufacturing changes to licensed biosimilar and licensed interchangeable biosimilar products. The recommendations in this guidance are intended to be consistent with the principles outlined in the International Council for Harmonisation (ICH) guidance for industry entitled ''Q5E Comparability of Biotechnological/Biological Products Subject to Changes in Their Manufacturing Process'' (June 2005) (ICH Q5E), available at *https://www.fda.gov/media/71489/download.*

In the **Federal Register** of September 20, 2021 (86 FR 52154), FDA published the notice of availability of a guidance for industry entitled ''Questions and Answers on Biosimilar Development and the BPCI Act'' (''Q&A biosimilar development guidance''), available at *https://www.fda.gov/media/119258/download* (revised March 10, 2026; see 91 FR 11555). The intent of that guidance is to provide answers to commonly asked questions from applicants and other interested parties to, among other things, facilitate the development of proposed biosimilar and proposed interchangeable biosimilar products under the Biologics Price Competition and Innovation Act of 2009. Postapproval manufacturing changes to biosimilar products is the subject of Q&A I.20 in the Q&A biosimilar development guidance. FDA did not provide recommendations for interchangeable biosimilar products in Q&A I.20 because FDA had limited experience regarding manufacturing changes for licensed interchangeable biosimilar products when that guidance originally issued. FDA has since determined that the principles that apply to manufacturing changes for biosimilar products are relevant to interchangeable biosimilar products. Recognizing that this discussion merits more exploration than a single Q&A item can facilitate, FDA has developed this guidance, which elaborates on the topic of manufacturing changes made to both licensed biosimilar and licensed interchangeable biosimilar products.

FDA may withdraw a Q&A that was previously in a guidance if FDA determines that the issue described in the Q&A is addressed in another guidance. The finalization of this guidance reflects FDA's current thinking on the topic of postapproval manufacturing changes to biosimilar and interchangeable biosimilar products and supersedes the recommendations provided in Q&A I.20 in the Q&A biosimilar development guidance. Therefore, at this time, FDA is also withdrawing Q&A I.20 from the Q&A biosimilar development guidance. Since this guidance is being issued as a standalone guidance, it does not retain the same numbering as the Q&A biosimilar development guidance.

This guidance finalizes the draft guidance entitled ''Postapproval Manufacturing Changes to Biosimilar and Interchangeable Biosimilar Products: Questions and Answers'' issued on July, 23, 2024 (89 FR 59740). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include: (1) further aligning recommendations in the guidance with the principles in ICH Q5E; (2) clarifying recommendations for leveraging comparative analytical assessment data from an original 351(k) biologics license application (351(k) BLA); and (3) clarifying edits to Q&A 4 on the nature and type of information that FDA recommends to support approval of a supplement for a dosage form or a strength that has not previously been licensed under the 351(k) BLA. Additional editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Postapproval Manufacturing Changes to Biosimilar and Interchangeable Biosimilar Products: Questions and Answers.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

FDA considered the applicability of Executive Order 14192, per OMB guidance in M–25–20, and finds this action to be neither an E.O. 14192 regulatory action nor an E.O. 14192 deregulatory action.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR 201.56 and 201.57 relating to the content and format requirements for labeling of drug and biological products have have been approved under OMB control number 0910–0572. The collections of information in 21 CFR parts 210 and 211 relating to current good manufacturing practice requirements have been approved under OMB control

number 0910–0139. The collections of information in section 351(k) of the PHS Act relating to biosimilar and interchangeable biosimilar product applications have been approved under OMB control number 0910–0718. The collections of information in section 351(a) of the PHS Act and 21 CFR part 601 relating to biologics license applications (BLA) have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–20817 Filed 10–9–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Healthy Start Evaluation and Quality Improvement, OMB No. 0915–0338—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 November 12, 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) 443–9094.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Healthy Start Evaluation and Quality Improvement.

OMB No. 0915–0338—Revision

Abstract: The National Healthy Start Program, authorized by 42 U.S.C. 254c–8 (§ 330H of the Public Health Service Act), seeks to improve maternal and infant health outcomes and reduce infant mortality and other adverse perinatal outcomes. Established in 1991 as a demonstration project with 15 grantees, the program has expanded to 114 grantees serving communities in 37 states, the District of Columbia, and Puerto Rico. Healthy Start operates in communities experiencing disproportionately high rates of infant mortality and adverse birth outcomes and provides outreach, case management, care coordination, health education, and other supportive services to women, infants, children up to 18 months of age, fathers, and families. Healthy Start programs tailor services to meet the unique needs of their communities. Serving as comprehensive care hubs, they provide outreach, one-on-one case management, care coordination, clinical services (*e.g.,* behavioral health care, midwifery care), and individual and group-based health and parenting education. Programs work across health care and social service systems to help pregnant women and families access prenatal and postpartum care, mental health therapy, substance use treatment, nutrition and breastfeeding support, transportation, and other essential resources that contribute to healthier pregnancies and improved infant and maternal health outcomes.

Over the past few years, HRSA has sought to implement a uniform set of data elements for monitoring and conducting an evaluation to assess grantees' progress towards these program goals. Under the previously approved OMB collection, the data collection instruments for the program's reporting requirements include four participant-level screening tools: (1) Demographic, (2) Background Information, (3) Prenatal, and (4) Parent/Child forms. The primary purpose of this information collection request is to reinstate the four data collection forms included in the information collection that expired on September 30, 2026. HRSA is proposing a limited number of minor revisions to the forms for the purposes described below.

HRSA also anticipates seeking OMB approval for additional revisions to the information collection in advance of the 2029–2034 Healthy Start grant cycle. Consistent with recommendations from the U.S. Government Accountability Office (GAO), HRSA plans to revise certain Healthy Start measures to better align with measures used by other Maternal and Child Health Bureau programs, including the Title V Maternal and Child Health Services Block Grant and the Maternal, Infant, and Early Childhood Home Visiting Program. GAO also recommended that changes to Healthy Start measures and related data collection materials be completed prior to the start of a new grant cycle. To inform the future revisions, HRSA plans to solicit input from internal and external interested parties beginning in late 2026 as part of the process for updating the data collection forms for the 2029–2034 grant cycle. HRSA has also compiled comments received in response to the 60-day notice for consideration in developing the future information collection request.

In this reinstatement with change, HRSA plans to retain the participant-level tools as approved by OMB in 2020 and updated in 2024, with minor changes to: (1) clarify instructions, (2) update select response options to improve accuracy in reporting, and (3) add fields to capture the month of infant birth and/or death. These revisions are intended to improve the quality and usability of the data collection instruments and enhance the accuracy of tracking infant birth and death outcomes. The revised instructions were developed in response to grantee feedback and are expected to reduce confusion and improve consistency in form completion.

The 60-day notice described four categories of proposed changes to the data collection instruments. Following publication of that notice, HRSA further reviewed the proposed revisions and determined that certain changes should be deferred. Specifically, HRSA is no longer proposing changes to separate response options to reflect current program priorities and has narrowed the proposed updates to select response

options to those needed to improve reporting accuracy. Consistent with the GAO recommendation to limit changes to data collection measures during a grant cycle, HRSA determined that more substantive revisions would be more appropriately considered as part of the planned update to the information collection for the 2029–2034 Healthy Start grant cycle. The 60-day notice also identified reducing respondent burden as one purpose of the proposed revisions. Because the revisions proposed in this notice are limited in scope and are not expected to result in a meaningful reduction in respondent burden, HRSA has removed that description from the stated purposes of the revisions.

A 60-day notice published in the **Federal Register** on July 10, 2026, vol. 91, No. 131; pp. 42,737–42,739 (91 FR 42737). HRSA received six comments: four from current Healthy Start grantees, one from a company that provides data system services to Healthy Start grantees, and one from a national coalition that works to advance policies and practices supporting breastfeeding and human milk feeding in the United States. The following summarizes the key themes raised by commenters and the responses that HRSA provided directly to the commenters prior to the publication of this 30-day notice:

• *Data collection forms and reporting guidance:* Five commenters, including the four Healthy Start grantees and the data system representative, recommended changes to specific items in the proposed data collection forms and related guidance. Recommendations included clarifying instructions in the reporting system implementation guide; providing greater flexibility in administering data collection forms to Group-Based Education participants; incorporating skip logic where appropriate; considering alternatives to certain sensitive questions (*e.g.,* using participation in the Supplemental Nutrition Assistance Program as a proxy for financial information rather than household income); and relocating certain questions to forms where the information may be more likely to be collected before a participant is lost to follow-up. Commenters also suggested adding administrative elements, such as an indicator for participants lost to follow-up, and developing a mechanism to document the history of participant screenings and updates. Such a mechanism could help identify when information was last verified, track changes over time, and support interpretation of longitudinal data. HRSA expressed appreciation for these recommendations and noted plans to consider them with internal and external interested parties beginning in late fall/winter 2026 as part of the process for updating the data collection forms for the 2029–2034 grant cycle.

• *Estimated burden and data collection processes:* One grantee recommended reassessing the estimated burden to more fully account for the workload associated with the information collection. The commenter noted that participant records may require updates after the initial screening and that staff time is also required for quality assurance, data management, and preparation for reporting. The commenter also recommended the use of automated collection techniques to reduce burden and improve system functionality. HRSA acknowledged these recommendations and expressed plans to reassess burden estimates beginning in late fall/winter 2026 as part of the process for updating the data collection forms for the 2029–2034 grant cycle. This assessment will consider the time associated with form administration, participant record updates, data management, and reporting activities.

• *Federal data coordination on lactation and infant feeding:* A national breastfeeding coalition recommended strengthening Healthy Start data on lactation, infant feeding, and postpartum support and improving alignment of relevant Healthy Start data elements with Centers for Disease Control and Prevention (CDC) maternal mortality review data. Specific recommendations included collecting more structured information on lactation and infant feeding at key postpartum intervals, lactation-related clinical conditions and other maternal health circumstances, and postpartum support and referral pathways. The coalition also recommended coordinating with CDC to align relevant definitions and data elements across programs, where appropriate, to improve data utility and comparability while minimizing unnecessary respondent burden. HRSA expressed appreciation for these recommendations and noted plans to consider them with internal and external interested parties beginning in late fall/winter 2026 as part of the process for updating the data collection forms for the 2029–2034 grant cycle.

Need and Proposed Use of the Information: The purpose of the revised data collection instruments will be to assess grantee and participant-level progress towards meeting Healthy Start program performance measures and other key indicators central to the program's mission. Findings from monitoring and evaluation efforts will provide actionable evidence to support continuous program improvement and inform decision-making. The data will also enhance understanding of participant characteristics, behaviors, and health outcomes, enabling assessment of how these factors, in combination with Healthy Start interventions, influence program outcomes.

Likely Respondents: For the Demographic, Background Information, Prenatal, and Parent/Child participant-level forms respondents include preconceptive, pregnant, and postpartum women, as well as fathers/partners. Additionally, a small number of forms may be completed by non-enrolled guardians (*e.g.,* foster parents, grandparents) of children in the program.

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
Demographic Form	76,975	1	76,975	0.17	13,086

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Background Form	44,600	1	44,600	0.42	18,732
Prenatal Form	31,500	1	31,500	0.25	7,875
Parent/Child Form	39,100	1	39,100	0.42	16,422
Total	192,175		192,175		56,115

Note: Total Burden Hours are rounded up to the nearest whole number.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2026–20867 Filed 10–9–26; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcing Solicitation of Written Comments To Inform the Physical Activity Guidelines for Americans, 2nd Edition Supplement: 2027 Steps and Muscle-Strengthening Guidance

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) announces the solicitation of public comments to inform the development of the *Physical Activity Guidelines for Americans,* 2nd edition Supplement: 2027 Steps and Muscle-Strengthening Guidance (2027 Steps and Muscle-Strengthening Guidance).

DATES: Written comments will be accepted through 11:59 p.m. E.T. on November 12, 2026.

ADDRESSES: Written comments will be accepted via *regulations.gov* on docket HHS–OASH–2026–0463.

FOR FURTHER INFORMATION CONTACT: Alison Vaux-Bjerke, Office of Disease Prevention and Health Promotion (ODPHP), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS); 1101 Wootton Parkway, Suite 420; Rockville, MD 20852; Email: *PhysicalActivityGuidelines@hhs.gov.*

SUPPLEMENTARY INFORMATION: The *Physical Activity Guidelines for Americans* (Guidelines) provides science-based recommendations on how physical activity can help promote health and reduce the risk of chronic disease. The Guidelines serves as the benchmark and primary, authoritative voice of the federal government for providing science-based guidance on physical activity, fitness, and health in the United States. The U.S. Department of Health and Human Services (HHS) released the first edition in 2008 and the second edition in 2018. The Guidelines and related reports are available at *https://odphp.health.gov/our-work/nutrition-physical-activity/physical-activity-guidelines/current-guidelines.* HHS is conducting this request for public comments under §§ 1703–1704 of the PHS Act.

HHS is working on supplementing the *Physical Activity Guidelines for Americans,* 2nd edition by adding new, science-based step count and muscle-strengthening activity guidance. Written comments from the public are invited that highlight existing high-quality, evidence-based reports, programs, or campaigns related to steps and/or muscle-strengthening physical activity and related positive health outcomes that can inform development of the 2027 Steps and Muscle-Strengthening Guidance.

Written Public Comments: Written comments on these two topics are encouraged from the public and will be accepted through 11:59 p.m. E.T. on November 12, 2026. Written public comments can be submitted via *regulations.gov* on docket number HHS–OASH–2026–0463. The Department does not make decisions on specific policy recommendations based on the number of comments for or against a topic, but on the scientific justification for the recommendation.

Individuals and organizations may submit more than one comment. Each comment should include the appropriate supporting documentation for scientific justification (*e.g.,* verifiable data sets, links to case studies, published research papers). If providing literature or other resources, HHS suggests including complete citations or abstracts and electronic links to full articles or reports, rather than attachments.

All comments must be received by 11:59 p.m. E.T. on November 12, 2026. Comments will be reviewed by the team of federal experts supporting the Physical Activity Guidelines work.

Katrina L. Piercy,

Deputy Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 2026–20833 Filed 10–9–26; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

2025–2026 IACC Summary of Advances

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Interagency Autism Coordinating Committee (IACC) is preparing its Summary of Advances, a statutorily mandated report that highlights the most consequential autism research of the past year. The Committee is seeking suggested research articles to highlight for this report. On behalf of the IACC, the National Institute of Mental Health (NIMH) Office of Autism Research Coordination (OARC) is collecting research article suggestions from members of the public.

DATES: Responses to this notice are voluntary and the public comment period will be open from October 9, 2026, through October 23, 2026.

ADDRESSES: All comments must be submitted electronically via the web-based form at: *https://forms.cloud.microsoft/g/zvrk5fMKsw.*

FOR FURTHER INFORMATION CONTACT: Specific questions about this Request for Public Comment should be directed to: Ms. Rebecca Martin by phone at 301–435–0886 or email at *iaccpublicinquiries@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The IACC *http://www.iacc.hhs.gov/* is a federal advisory committee composed of federal and public members that provides advice to the Secretary of Health and Human Services on autism. The

Committee is authorized under the Autism CARES Act of 2024, Public Law 118–180. The IACC is preparing its Summary of Advances, a statutorily mandated report that highlights the most consequential autism research of the past year. This edition will cover research published in 2025 and 2026. The Committee invites researchers, clinicians, autistic people, families, organizations, and other members of the public to suggest studies for its consideration.

Submission Information: The Committee seeks suggestions of which research articles to highlight for this report. Respondents may suggest up to five studies published between January 1, 2025, and the response deadline, in any of the following topic areas:

1. Foundational Science
   - Genetic and environmental factors
   - Biology of the brain and body
2. Population Understanding & Surveillance
   - Prevalence and population characterization
   - Prevalence data specific to profound autism and developmental regression
3. Identification & Early Trajectory
   - Early screening, diagnosis, and identification of co-occurring conditions
   - Developmental regression
4. Translation to Practice
   - Treatment
   - Interventions, including school- and community-based interventions
5. Services and Supports
   - Efficacy
   - Access

Nominated articles must be peer-reviewed and represent significant advances in autism research. The following types of articles are typically not included, although the IACC can discuss and decide whether the insights gained warrant inclusion:

- Editorials & opinion pieces
- Preliminary studies and/or studies of small sample size
- Literature reviews, systematic reviews
- Expert recommendations & reports from panels/taskforces/ organizations/agencies
- Articles not solely/primarily focused on autism

Respondents may also briefly identify important gaps in current autism research (optional). Responses will be reviewed by the Committee alongside nominations from Committee members. Suggestions are advisory; the Committee will make final selections.

Instructions: All comments must be submitted through the web form at https://forms.cloud.microsoft/g/zvrk5fMKsw. Individuals submitting comments will receive an onscreen confirmation acknowledging receipt of the comment, but commenters will not receive individualized responses or feedback from the IACC or OARC except in the cases of requests for technical assistance with the survey, etc.

A valid email address is required for submission, and only one submission per email address will be accepted. If duplicate submissions are received (*i.e.,* form letters or email campaigns), only one example of such a submission will be included in the final set of materials provided to the committee.

Comments are subject to redaction in accordance with federal policies and the IACC's public comment guidelines and privacy policy. To view the IACC's public comment guidelines and privacy policy, visit: *https://iacc.hhs.gov/meetings/public-comments/guidelines/.* All comments or summaries of comments received will be made publicly available on the IACC website *https://www.iacc.hhs.gov* within 90 days of the closing deadline for this notice. Email addresses associated with comments will not be included as part of the public disclosure. After the closing deadline, responses cannot be edited or withdrawn. No basis for claims against the U.S. Government shall arise as a result of a response to this request for information or from the Government's use of such information.

Beth Tignor,

Designated Federal Officer, IACC, Office of the Director, National Institutes of Health.

[FR Doc. 2026–20825 Filed 10–9–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute Environmental Health Sciences.

The meeting will be partially open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodation, must notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

The meeting will be closed to the public 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: Board of Scientific Counselors, National Institute Environmental Health Sciences (ESBSC).

Date: November 1–3, 2026.

Closed: November 1, 2026, 7:00 p.m. to 9:00 p.m.

Agenda: BSC Discussions.

Address: NIEHS/National Institutes of Health, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Meeting Format: Virtual and In-Person.

Open: November 2, 2026, 8:00 a.m. to 10:40 a.m.

Agenda: Scientific Presentations.

Address: NIEHS/National Institutes of Health, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive.

Meeting Format: Virtual and In-Person.

Closed: November 2, 2026, 10:40 a.m. to 12:30 p.m..

Agenda: To review and evaluate with Investigators and Working Lunch.

Address: NIEHS/National Institutes of Health, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Meeting Format: Virtual and In-Person.

Open: November 2, 2026, 12:30 p.m. to 2:10 p.m.

Agenda: Scientific Presentations.

Address: NIEHS/National Institutes of Health, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Meeting Format: Virtual and In-Person.

Closed: November 2, 2026, 2:10 p.m. to 2:40 p.m.

Agenda: To review and evaluate sessions with Investigators.

Address: NIEHS/National Institutes of Health, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Meeting Format: Virtual and In-Person.

Open: November 2, 2026, 2:40 p.m. to 4:35 p.m.

Agenda: Poster Session.

Address: NIEHS/National Institutes of Health, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Meeting Format: Virtual and In-Person.

Closed: November 2, 2026, 4:35 p.m. to 6:15 p.m.

Agenda: To review and evaluate session with Investigators.

Address: NIEHS/National Institutes of Health, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Meeting Format: Virtual and In-Person.

Closed: November 3, 2026, 8:30 a.m. to 10:00 a.m.

Agenda: BSC Discussions.

Address: NIEHS/National Institutes of Health, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Meeting Format: Virtual and In-Person.

Contact Person: Darryl C. Zeldin, M.D., Scientific Director, National Institute of Environmental Health Sciences, NIH, DHHS, 111 T.W. Alexander Drive, Bldg. 101, Room A214, Research Triangle Park, NC 27709, (984) 287–3641, *zeldin@niehs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 7, 2026.

Rosalind M. Niamke,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–20824 Filed 10–9–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2025–0393]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0095

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0095, Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before November 12, 2026.

ADDRESSES: Comments to the Coast Guard should be submitted at *https://www.regulations.gov.* Search for docket number [USCG–2025–0393]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–PM), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone (571) 607–4058, or email *hqs-dg-m-cg-61-pii@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, USCG–2025–0393, and must be received by November 12, 2026.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice as being available in the docket, and public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0095.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (91 FR 29975, May 21, 2026) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions.

OMB Control Number: 1625–0095.

Summary: The information is used by the Coast Guard to ensure that an oil or hazardous material requirement alternative or exemption provides an equivalent level of safety and protection from pollution.

Need: Under 33 U.S. Code 1321 and Executive Order 12777 the Coast Guard is authorized to prescribe regulations to prevent the discharge of oil and hazardous substances from vessels and facilities and to contain such discharges. Coast Guard regulations in 33 CFR parts 154–156 are intended to: (1) prevent or mitigate the results of an accidental release of bulk liquid hazardous materials being transferred at waterfront facilities; (2) ensure that facilities and vessels that use vapor control systems are in compliance with the safety standards developed by the Coast Guard; (3) provide equipment and operational requirements for facilities and vessels that transfer oil or hazardous materials in bulk to or from vessels with a 250 or more barrel capacity; and (4) provide procedures for vessel or facility operators who request exemption or partial exemption from the requirements of the pollution prevention regulations.

Forms: None.

Respondents: Owners and operators of bulk oil and hazardous materials facilities and vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 1,800 hours to 1,760 hours a year, due to a decrease in the estimated annual number of responses.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.)

Dated: August 18, 2026.

Bradley E. White,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2026–20866 Filed 10–9–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7103–N–09; OMB Control No.: 2528–0325]

60-Day Notice of Proposed Information Collection: Training and Technical Assistance (TTA) Surveys

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comments from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 14, 2026.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *www.regulations.gov.* Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Kenneth Rogers, Senior Technical Assistance Analyst, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410. Comments may also be submitted via email to *PDRPublicComments@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth Rogers, Senior Technical Assistance Analyst, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, email *Kenneth.W.Rogers@hud.gov* or telephone (202) 402–4396. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available supporting documents for the proposed collection may be obtained from Mr. Rogers.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Training and Technical Assistance (TTA) Surveys.

OMB Approval Number: 2528–0325.

Type of Request: Extension of currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The surveys in this collection of information are necessary to systematically gather user feedback and outcomes data to evaluate and improve HUD's deployment and management of its Training and Technical Assistance (TTA) resources. This type of outcomes data has been consistently requested by both the Office of Management and Budget (OMB) and Congressional Appropriations Committee staff. Technical assistance and training outcomes measurement and evaluation is authorized under Sec. 501 of Title V of the HUD Act of 1970. The surveys are voluntary on the part of respondents.

Respondents: TA Recipients and TA Providers.

Estimated Number of Respondents: 13,558 yearly (estimated).

Frequency of Response: 1.1 (some recipients may receive multiple surveys from participating in multiple engagements).

Average Hours per Response: 10–15 minutes.

Estimated Total Annual Burden Hours: 2,837 (13,558 surveys × 10–15 minutes).

Estimated Total Annual Cost: The only cost for respondents is that of their time. The total estimated cost to HUD in FY 2023 is $92,575.23.

Legal Authority: The survey is conducted under Sec. 501 of Title V of the HUD Act of 1970.

Information collection	Number of respondents [1]	Frequency of response	Responses Per Annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
TA Survey for TA Provider	1,140	[2] 1.1	1,254	0.25	313.5	[3] $51.00	$15,988.50
TA Survey for Recipient	1,140	[4] 1.1	1,254	0.25	313.5	[5] 35.78	11,217.03
Survey for In-Person Training	3,500	[6] 1.3	4,550	0.2	910	[7] 29.57	26,908.70
Survey for Online Training	5,000	[8] 1.3	6,500	0.2	1,300	[9] 29.57	38,441.00
Totals	10,780		13,558		2,837		92,555.23

[1] Number of respondents is based on the frequency of TA and training engagements and the number of participants in recent years.
[2] HUD anticipates that some TA providers will provide multiple TA engagements and be asked to complete two surveys.
[3] Hourly rate from GS–13–01 Schedule for ''Rest of the U.S.'' as of January 2026.
[4] HUD anticipates that some TA recipients will receive multiple TA engagements and be asked to complete two surveys.
[5] Hourly rate from GS–11–01 Schedule for ''Rest of the U.S.'' as of January 2026.
[6] HUD anticipates that roughly 30% of in person trainees will complete multiple trainings and be asked to complete more than one survey.
[7] Hourly rate from GS–09–01 Schedule for ''Rest of the U.S.'' as of January 2026.
[8] HUD anticipates that roughly 30% of online trainees will complete multiple trainings and be asked to complete more than one survey.
[9] Hourly rate from GS–09–01 Schedule for ''Rest of the U.S.'' as of January 2026.

Respondent's Obligation: Participation is voluntary.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

44 U.S.C. 3507.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy Development and Research

[FR Doc. 2026–20823 Filed 10–9–26; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6604–N–02]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under Section 221(g)(4) of the Act during the 6-month period beginning July 1, 2026, is 4½ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 2026, is 5 percent.

FOR FURTHER INFORMATION CONTACT: Eden Teklebrhane, Department of Housing and Urban Development, 451 7th Street SW, Room 5146, Washington, DC 20410–8000; telephone (202) 402–2746 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 2026, is 5 percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 5 percent for the 6-month period beginning July 1, 2026. This interest rate will be the rate borne by debentures

issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the next 6 months of 2026.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	on or after	prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 2980.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1. 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.
4½	July 1, 2003	Jan. 1, 2004.
5⅛	Jan. 1, 2004	July 1, 2004.
5½	July 1, 2004	Jan. 1, 2005.
4⅞	Jan. 1, 2005	July 1, 2005.
4½	July 1, 2005	Jan. 1, 2006.
4⅞	Jan. 1, 2006	July 1, 2006.
5⅜	July 1, 2006	Jan. 1, 2007.
4¾	Jan. 1, 2007	July 1, 2007.
5	July 1, 2007	Jan. 1, 2008.
4½	Jan. 1, 2008	July 1, 2008.
4⅝	July 1, 2008	Jan. 1, 2009.
4⅛	Jan. 1, 2009	July 1, 2009.
4⅛	July 1, 2009	Jan. 1, 2010.
4¼	Jan. 1, 2010	July 1, 2010.
4⅛	July 1, 2010	Jan. 1, 2011.
3⅞	Jan. 1, 2011	July 1, 2011.
4⅛	July 1, 2011	Jan. 1, 2012.
2⅞	Jan. 1, 2012	July 1, 2012.
2¾	July 1, 2012	Jan. 1, 2013.
2½	Jan. 1, 2013	July 1, 2013.
2⅞	July 1, 2013	Jan. 1, 2014.
3⅝	Jan. 1, 2014	July 1, 2014.
3¼	July 1, 2014	Jan. 1, 2015.
3	Jan. 1, 2015	July 1, 2015.
2⅞	July 1, 2015	Jan. 1, 2016.
2⅞	Jan. 1, 2016	July 1, 2016.
2½	July 1, 2016	Jan. 1, 2017.
2¾	Jan. 1, 2017	July 1, 2017.
2⅞	July 1, 2017	Jan. 1, 2018.
2¾	Jan. 1, 2018	July 1, 2018.
3⅛	July 1, 2018	Jan. 1, 2019.
3⅜	Jan 1, 2019	July 1, 2019.
2¾	July 1, 2019	Jan 1, 2020.
2¼	Jan 1, 2020	July 1, 2020.
1¼	July 1, 2020	Jan. 1, 2021.
1⅜	Jan 1, 2021	July 1, 2021.
2¼	July 1, 2021	Jan 1, 2022.
1⅞	Jan 1, 2022	July 1, 2022.
3¼	July 1, 2022	Jan 1, 2023.
4¼	Jan 1, 2023	July 1, 2023.
3⅞	July 1, 2023	Jan 1, 2024.
4½	Jan 1, 2024	July 1, 2024.
4¾	July 1, 2024	Jan 1, 2025.
4⅝	Jan 1, 2025	July 1, 2025.
4⅝	July 1, 2025	Jan 1, 2026.
4¾	Jan 1, 2026	July 1, 2026.
5	July 1, 2026	Jan 1, 2027.

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended Section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under Section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Similarly, Section 520(a) of the National Housing Act (12 U.S.C. 1735d) provides for the payment of an insurance claim in cash on a mortgage or loan insured under any section of the National Housing Act before or after the enactment of the Housing and Urban Development Act of 1965. The amount of such payment shall be equivalent to the face amount of the debentures that would otherwise be issued, plus an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Secretary. The implementing HUD regulations for multifamily insured mortgages at 24 CFR 207.259(e)(1) and (e)(6), when read together, provide that debenture interest on a multifamily insurance claim that is paid in cash is paid from the date of the loan default at the debenture rate in effect at the time of commitment or endorsement (or initial endorsement if there are two or more endorsements) of the loan, whichever is higher.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month period beginning July 1, 2026, is 4½ percent. The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).)

Joseph M. Gormley,

President of the Government National Mortgage Association Performing the delegable duties of the Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2026–20822 Filed 10–9–26; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[Docket No. USGS–2026–0364; OMB Control Number 1028–0070; GX26LR000F60100]

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Consolidated Consumers' Report

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 and its implementing regulations, the U.S. Geological Survey (USGS) proposes

to renew an information collection without change.

DATES: Interested persons are invited to submit comments. To be considered, we must receive your comments on or before November 12, 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–2026–0364.
- *U.S. Mail:* USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192.

FOR FURTHER INFORMATION CONTACT: Shonta E. Osborne by email at *sosborne@usgs.gov,* or by telephone at 703–648–7960. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the Information Collection Request (ICR) at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA, as part of our continuing effort to reduce paperwork and respondent burdens, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provides the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period on this information collection was published on August 03, 2026 (91 FR 48923). We did not receive any public comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues:

(1) is the collection necessary to the proper functions of the USGS minerals information mission; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how the USGS might enhance the quality, utility, and clarity of the information to be collected; and (5) how the USGS might minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other 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: Respondents to this form supply the USGS with domestic consumption data for 12 metals and ferroalloys, some of which are considered strategic and critical, to assist in determining Defense National Stockpile goals. These data and derived information will be published as chapters in USGS Minerals Yearbooks, monthly USGS Mineral Industry Surveys, annual USGS Mineral Commodity Summaries, and special publications for use by Government agencies, industry education programs, and the general public.

Title of Collection: Consolidated Consumers' Report.

OMB Control Number: 1028–0070.

Form Numbers: USGS Form 9–4117–MA.

Type of Review: Renewal with extension of a currently approved information collection.

Respondents/Affected Public: Businesses or other for-profit institutions: U.S. nonfuel minerals consumers.

Total Estimated Number of Annual Respondents: 251.

Total Estimated Number of Annual Responses: 1,373.

Estimated Completion Time per Response: 45 minutes.

Total Estimated Number of Annual Burden Hours: 1,030.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Non-hour Burden Cost: There are no ''non-hour cost'' burdens associated with this ICR.

An agency may not conduct or sponsor, nor is a person required to respond to a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the PRA, the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), and the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*).

Elisa Alonso,

Acting Deputy Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2026–20829 Filed 10–9–26; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2026–0925]

Notice of Availability of the Proposed Notice of Sale for the Cook Inlet Outer Continental Shelf Oil and Gas One Big Beautiful Bill Act Lease Sale 2

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability for the proposed notice of sale.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of the Proposed Notice of Sale (NOS) for the Cook Inlet Outer Continental Shelf (OCS) Oil and Gas One Big Beautiful Bill Act (OBBBA) Lease Sale 2 (Lease Sale BBC2). BOEM is publishing this notice pursuant to its regulatory authority under 30 CFR part 556. Pursuant to Section 19 of the OCS Lands Act, the Secretary of the Interior provides the Governors of affected States and the executive of any affected local government with the opportunity to review and comment on the Proposed NOS. The Proposed NOS describes the proposed size, timing, and location of the sale, including lease stipulations, terms and conditions, minimum bids, royalty rates, and rental rates, which are required by Section 50102 of the OBBBA for this sale.

DATES: Comments received from the Governor and the executive of any affected local government on the size, timing, and location of this sale must be submitted to BOEM no later than December 14, 2026. BOEM will publish the Final NOS in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 3, 2027.

ADDRESSES: The Proposed NOS for Lease Sale BBC2 and Proposed NOS Package containing information essential to potential bidders may be obtained from the Leasing Section, Alaska Region, Bureau of Ocean Energy Management, 3801 Centerpoint Drive, Suite 500, Anchorage, AK 99503; telephone: 907–334–5200. The Proposed NOS and Proposed NOS Package are available for downloading or viewing on

BOEM's website at *http://www.boem.gov/ak-bbc2/.*

FOR FURTHER INFORMATION CONTACT: Joel Immaraj, Alaska Regional Supervisor, Office of Leasing and Plans, 907–334–5238, *joel.immaraj@boem.gov* or Ben Burnett, Division Manager, Leasing Policy and Management Division, Office of Strategic Resources, 703–787–1782, *benjamin.burnett@boem.gov.*

SUPPLEMENTARY INFORMATION:

Authority: This sale will be held pursuant to the requirements of the OBBBA. This Notice of Availability of the Proposed NOS is published pursuant to 43 U.S.C. 1331 *et seq.* (Outer Continental Shelf Lands Act, as amended) and 30 CFR 556.304. Secretary's Order 3451 established the Marine Minerals Administration (MMA) and incorporated the authorities and function of the former BOEM and the Bureau of Safety and Environmental Enforcement (BSEE) into the MMA. Accordingly, this notice is issued under the continuing authority of the former BOEM as now delegated to the MMA.

Michael D. Olsen,

Acting Director, Marine Minerals Administration.

[FR Doc. 2026–20892 Filed 10–9–26; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF JUSTICE

[OMB 1140–0104]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Reinstatement A Previously Approved Collection Without Change; Title—Application for Alternate Means of Identification of Firearm(s) (Marking Variance)—ATF Form 3311.4

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives; Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), will be submitting the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: ATF encourages comments on this information collection. You may submit written comments until midnight on December 14, 2026.

ADDRESSES: Submit written comments and recommendations for this information collection, especially on the estimated public burden or associated response time, to Dawn Smith, Firearms Industry Programs Branch, by email to *fipb-informationcollection@atf.gov,* or by mail to 244 Needy Road; Martinsburg, WV 25405. Identify comments by the OMB control number 1140–0104. You may view the proposed information collection instrument online at *https://www.atf.gov/rules-and-regulations/federal-register-actions/forms-and-information-collection.*

FOR FURTHER INFORMATION CONTACT: If you have questions or need a copy of the proposed information collection instrument with instructions or additional information, contact Dawn Smith, FIPB, either by mail at 244 Needy Road, by email at *fipb-informationcollection@atf.gov,* or by telephone at 202–648–0860. If you require additional information on DOJ's ICR process for this renewal request, contact Darwin Arceo, Department Clearance Officer; United States Department of Justice; Justice Management Division, Enterprise Portfolio Management; Two Constitution Square, 145 N Street NE; 4W–218; Washington, DC.

SUPPLEMENTARY INFORMATION: We encourage written comments and suggestions from the public and affected agencies concerning the proposed information collection. Your comments should address one or more of the following four points:

—Evaluate whether the proposed information collection is necessary to properly perform ATF's functions, including whether the information will have practical utility;

—Evaluate the agency's estimate of the proposed information collection's burden for accuracy, including validity of the methodology and assumptions used;

—Evaluate whether the quality, utility, and clarity of the information being collected can be enhanced, and if so, how; and

—Minimize the information collection's burden on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting people to submit electronic responses.

Overview of This Information Collection

Abstract: ATF Form 3311.4 provides a uniform means for industry members with a valid Federal importer or manufacturer license, to request firearms marking variance.

Type of information collection: Reinstatement a previously approved collection without change.

Title of the form/collection: Application for Alternate Means of Identification of Firearms(s) (Marking Variance).

Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number: ATF Form 3311.4. *Component:* Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Affected public who will be asked or required to respond, as well as the obligation to respond: Affected public: federal government, private sector for-profit institutions. *Obligation to respond:* mandatory per 18 U.S.C. 923(i), 26 U.S.C. 5842, and 27 CFR 478.92 and 479.102.

Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are an estimated 2,064 respondents associated with this collection per year, and it will take each respondent an average of approximately 30 minutes to complete their responses.

Estimate of the total annual burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 1,032 total hours, which is equal to 2,064 (total respondents) * 1 (# of responses per respondent) * .5 (30 minutes).

Estimate of the total annual other cost burden associated with the collection, if applicable: The cost burden per response for submitting ATF Form 3311.4 by mail is $0.66 (rate for postage). The cost burden for this portion of the collection is $1,300 (2,064 × $0.66).

However, if respondents choose to submit ATF Form 3311.4 by email or fax the cost will be reduced.

ESTIMATED TOTAL HOURLY BURDEN

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
ATF 3311.4	2,064	1	2,064	.5 (30 min)	1,032

Revisions to This Information Collection

As part of this ICR renewal, ATF is making no revisions to this information collection, OMB 1140–0104.

Dated: October 8, 2026.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2026–20836 Filed 10–9–26; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0016]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Reinstatement a Previously Approved Collection Without Change; Title—Application for Registration of Firearms Acquired by Certain Governmental Entities—ATF Form 10 (5320.10)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives; Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), will be submitting the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: ATF encourages comments on this information collection. You may submit written comments until midnight on December 14, 2026.

ADDRESSES: Submit written comments and recommendations for this information collection, especially on the estimated public burden or associated response time, to Meghan Tisserand, National Firearms Act Division, by email to *NFA-ICR-comments@atf.gov,* or by mail to 244 Needy Rd; Martinsburg, WV 25401. Identify comments by the OMB control number 1140–0016. You may view the proposed information collection instrument online at *https://www.atf.gov/rules-and-regulations/federal-register-actions/forms-and-information-collection.*

FOR FURTHER INFORMATION CONTACT: If you have questions or need a copy of the proposed information collection instrument with instructions or additional information, contact Meghan Tisserand, NFA Division, either by mail at 244 Needy Rd; Martinsburg, WV 25401, by email at *NFA-ICR-comments@atf.gov,* or by telephone at 304–616–4500. If you require additional information on DOJ's ICR process for this renewal request, contact Darwin Arceo, Department Clearance Officer; United States Department of Justice; Justice Management Division, Enterprise Portfolio Management; Two Constitution Square, 145 N Street NE; 4W–218; Washington, DC.

SUPPLEMENTARY INFORMATION: We encourage written comments and suggestions from the public and affected agencies concerning the proposed information collection. Your comments should address one or more of the following four points:

—Evaluate whether the proposed information collection is necessary to properly perform ATF's functions, including whether the information will have practical utility;

—Evaluate the agency's estimate of the proposed information collection's burden for accuracy, including validity of the methodology and assumptions used;

—Evaluate whether the quality, utility, and clarity of the information being collected can be enhanced, and if so, how; and

—Minimize the information collection's burden on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting people to submit electronic responses.

Overview of This Information Collection

Abstract: State and local government agencies will use the Application for Registration of Firearms Acquired by Certain Governmental Entities—ATF Form 10 (5320.10) to register an otherwise unregisterable National Firearms Act (NFA). The NFA requires the registration of certain firearms under Federal Law. The Form 10 registration allows State and local agencies to comply with the NFA, and retain and use firearms that would otherwise have to be destroyed.

Type of information collection: Reinstatement of a previously approved collection without change.

Title of the form/collection: Application for Registration of Firearms Acquired by Certain Governmental Entities.

Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number: ATF Form 10 (5320.10). *Component:* Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Affected public who will be asked or required to respond, as well as the obligation to respond: Affected public: state, local, and tribal governments. *Obligation to respond:* required to obtain or retain a benefit.

Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are an estimated 862 respondents associated with this collection per year, and it will take each respondent an average of approximately 30 minutes to complete their responses.

Estimate of the total annual burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 431 total hours, which is equal to 862 (total respondents) * 1 (# of responses per respondent) * .5 (30 minutes).

Estimate of the total annual other cost burden associated with the collection, if applicable: $0.

ESTIMATED TOTAL HOURLY BURDEN

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
ATF Form 10 (5320.10)	431	1	862	.5 (30 min)	431

Revisions to This Information Collection

As part of this ICR renewal, ATF is making no revisions to this information collection, OMB 1140–0016.

Dated: October 8, 2026.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2026–20837 Filed 10–9–26; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB 1140–0039]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Extending a Previously Approved Collection Without Change; Title—Federal Firearms Licensee Firearms Inventory/ Firearms in Transit Theft/Loss Report—ATF Form 3310.11/3310.11A

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives; Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), will be submitting the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: ATF encourages comments on this information collection. You may submit written comments until midnight on December 14, 2026.

ADDRESSES: Submit written comments and recommendations for this information collection, especially on the estimated public burden or associated response time, to Carrie Robertson, National Tracing Center Division Office, by email to *FIPB@atf.gov,* or by mail to 244 Needy Rd., Martinsburg, WV 25405. Identify comments by the OMB control number 1140–0039. You may view the proposed information collection instrument online at *https://www.atf.gov/rules-and-regulations/federal-register-actions/forms-and-information-collection.*

FOR FURTHER INFORMATION CONTACT: If you have questions or need a copy of the proposed information collection instrument with instructions or additional information, contact Carrie Robertson, NTCD, either by mail at 244 Needy Rd., Martinsburg, WV 25405, by email at *FIPB@atf.gov,* or by telephone at 304–260–1695. If you require additional information on DOJ's ICR process for this renewal request, contact Darwin Arceo, Department Clearance Officer; United States Department of Justice; Justice Management Division, Enterprise Portfolio Management; Two Constitution Square, 145 N Street, NE; 4W–218; Washington, DC.

SUPPLEMENTARY INFORMATION: We encourage written comments and suggestions from the public and affected agencies concerning the proposed information collection. Your comments should address one or more of the following four points:

—Evaluate whether the proposed information collection is necessary to properly perform ATF's functions, including whether the information will have practical utility;

—Evaluate the agency's estimate of the proposed information collection's burden for accuracy, including validity of the methodology and assumptions used;

—Evaluate whether the quality, utility, and clarity of the information being collected can be enhanced, and if so, how; and

—Minimize the information collection's burden on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting people to submit electronic responses.

Overview of This Information Collection

Abstract: Thefts or losses of firearms from the inventory of a Federal Firearms Licensee and from the collection of a licensed collector must be reported to the Attorney General and the appropriate local authorities within 48 hours of discovery.

Type of information collection: extending a previously approved collection without change.

Title of the form/collection: Federal Firearms Licensee Firearms Inventory/ Firearms in Transit Theft/Loss Report.

Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number: ATF Form 3310.11/ 3310.11A. *Component:* Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Affected public who will be asked or required to respond, as well as the obligation to respond: Affected public: business or other for-profit, federal government. *Obligation to respond:* mandatory per 18 U.S.C. . 923(g)(6).

Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are an estimated 4,000 respondents associated with this collection per year, and it will take each respondent an average of approximately 24 minutes to complete their responses.

Estimate of the total annual burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 1,600 total hours, which is equal to 4,000 (total respondents) * 1 (# of responses per respondent) * .4 (24 minutes).

Estimate of the total annual other cost burden associated with the collection, if applicable: There is no startup cost to the respondent. Respondents can electronically submit their responses or mail them to the National Tracing Center. The cost of postage is now $.63 cents. Therefore, the total cost is $2,520, which is equal to 4,000 (# of respondents) × $.63 cents (mailing cost per respondent).

ESTIMATED TOTAL HOURLY BURDEN

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
ATF Form 3310.11/3310.11A	4,000	1	4,000	.4 (24min)	1,600

Revisions to This Information Collection

As part of this ICR renewal, ATF is making no revisions to this information collection, OMB 1140–0039.

Dated: October 8, 2026.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2026–20835 Filed 10–9–26; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB 1140–0012]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Reinstatement a Previously Approved Collection Without Change; Title—Notice of Firearms Manufactured or Imported—ATF Form 2 (5320.2)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives; Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), will be submitting the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: ATF encourages comments on this information collection. You may submit written comments until midnight on December 14, 2026.

ADDRESSES: Submit written comments and recommendations for this information collection, especially on the estimated public burden or associated response time, to National Firearms Act Division, Meghan Tisserand, by email to *NFA-ICR-comments@atf.gov,* or by mail to 244 Needy Rd.; Martinsburg, WV 25401. Identify comments by the OMB control number 1140–0012. You may view the proposed information collection instrument online at *https://www.atf.gov/rules-and-regulations/federal-register-actions/forms-and-information-collection.*

FOR FURTHER INFORMATION CONTACT: If you have questions or need a copy of the proposed information collection instrument with instructions or additional information, contact Meghan Tisserand, NFA, either by mail at 244 Needy Rd.; Martinsburg, WV 25401, by email at *NFA-ICR-comments@atf.gov,* or by telephone at 304–616–4500. If you require additional information on DOJ's ICR process for this renewal request, contact Darwin Arceo, Department Clearance Officer; United States Department of Justice; Justice Management Division, Enterprise Portfolio Managment; Two Constitution Square, 145 N Street NE; 4W–218; Washington, DC.

SUPPLEMENTARY INFORMATION: We encourage written comments and suggestions from the public and affected agencies concerning the proposed information collection. Your comments should address one or more of the following four points:

—Evaluate whether the proposed information collection is necessary to properly perform ATF's functions, including whether the information will have practical utility;

—Evaluate the agency's estimate of the proposed information collection's burden for accuracy, including validity of the methodology and assumptions used;

—Evaluate whether the quality, utility, and clarity of the information being collected can be enhanced, and if so, how; and

—Minimize the information collection's burden on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting people to submit electronic responses.

Overview of This Information Collection

Abstract: The Notice of Firearms Manufactured or Imported—ATF Form 2 (5320.2) is required of (1) a person who is qualified to manufacture National Firearms Act (NFA) firearms, or (2) a person who is qualified to import NFA firearms to register manufactured or imported NFA firearm(s).

Type of information collection: extending a previously approved collection without change.

Title of the form/collection: Notice of Firearms Manufactured or Imported.

Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number: ATF Form 2 (5320.2). *Component:* Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Affected public who will be asked or required to respond, as well as the obligation to respond: Affected public: business or other for-profit, federal government, state, local or tribal government. *Obligation to respond:* mandatory per 26 U.S.C. 5822.

Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are an estimated 4,212 respondents associated with this collection every 3.415 times annually, and it will take each respondent an average of approximately 30 minutes to complete their responses.

Estimate of the total annual burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 7,192 total hours, which is equal to 4,212 (total respondents) * 3.415 (# of responses per respondent) * .5 (30 minutes).

Estimate of the total annual other cost burden associated with the collection, if applicable: Most of the completed forms for this IC are either submitted by mail (including by facsimile transmission) or electronically through the eForms system. As such, we estimate the total mailing cost for this IC to be $.60 (postage and envelope) per submission. Therefore, the total mailing costs for this IC is $8,630, which is calculated as follows: 14,384 (total respondents) * $.60 (postage costs per respondents).

ESTIMATED TOTAL HOURLY BURDEN

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
ATF Form 2 (5320.2)	4,212	1	14,384	.5 (30 min)	7,192

Revisions to This Information Collection

As part of this ICR renewal, ATF is making no revisions to this information collection, OMB 1140–0012.

Dated: October 8, 2026.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2026–20842 Filed 10–9–26; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB 1140–0013]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Extending a Previously Approved Collection Without Change: Title—Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer—ATF Form 3 (5320.3)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives; Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), will be submitting the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: ATF encourages comments on this information collection. You may submit written comments until midnight on December 14, 2026.

ADDRESSES: Submit written comments and recommendations for this information collection, especially on the estimated public burden or associated response time, to National Firearms Act Division, Meghan Tisserand, by email to *NFA-ICR-comments@atf.gov,* or by mail to 244 Needy Rd., Martinsburg, WV 25401. Identify comments by the OMB control number 1140–0013. You may view the proposed information collection instrument online at *https://www.atf.gov/rules-and-regulations/federal-register-actions/forms-and-information-collection.*

FOR FURTHER INFORMATION CONTACT: If you have questions or need a copy of the proposed information collection instrument with instructions or additional information, contact Meghan Tisserand, NFA, either by mail at 244 Needy Rd., Martinsburg, WV 25401, by email at *NFA-ICR-comments@atf.gov,* or by telephone at 304–616–4500. If you require additional information on DOJ's ICR process for this renewal request, contact Darwin Arceo, Department Clearance Officer; United States Department of Justice; Justice Management Division, Enterprise Portfolio Management; Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

SUPPLEMENTARY INFORMATION: We encourage written comments and suggestions from the public and affected agencies concerning the proposed information collection. Your comments should address one or more of the following four points:

—Evaluate whether the proposed information collection is necessary to properly perform ATF's functions, including whether the information will have practical utility;

—Evaluate the agency's estimate of the proposed information collection's burden for accuracy, including validity of the methodology and assumptions used;

—Evaluate whether the quality, utility, and clarity of the information being collected can be enhanced, and if so, how; and

—Minimize the information collection's burden on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting people to submit electronic responses.

Overview of This Information Collection

Abstract: ATF Form 3 (5320.3) is filed by Federal firearms licensees who have paid the special (occupational) tax to import, manufacture or deal in NFA firearms to transfer an NFA firearm to a similarly qualified licensee.

Type of information collection: Extending a previously approved collection without change.

Title of the form/collection: Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer.

Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number: ATF Form 3 (5320.3). *Component:* Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Affected public who will be asked or required to respond, as well as the obligation to respond: Affected public: Business or other for-profit, Federal Government. *Obligation to respond:* Mandatory under the provisions of 26 U.S.C. 5812.

Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are an estimated 255,888 respondents will utilize the form annually, and it will take each respondent an average of approximately 30 minutes to complete their responses.

Estimate of the total annual burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 127,944 total hours, which is equal to 255,888 (total respondents) * 1 (# of responses per respondent) * .5 (30 minutes).

Estimate of the total annual other cost burden associated with the collection, if applicable: (Normally 0. But, $3,020 (If used full universe of 255,888 × $.63 = $161,209)).

ESTIMATED TOTAL HOURLY BURDEN

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
ATF Form 3 (5320.3)	255,888	1	255,888	.5 (30 mins)	127,944

Revisions to This Information Collection

As part of this ICR renewal, ATF is making no revisions to this information collection, OMB 1140–0013.

Dated: October 8, 2026.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2026–20838 Filed 10–9–26; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB 1140–0124]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Extending a Previously Approved Collection Without Change; Title—Request for Restricted 922(o) Machine Gun (National Firearms Act)—ATF Form 5320.24

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives; Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), will be submitting the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: ATF encourages comments on this information collection. You may submit written comments until midnight on December 14, 2026.

ADDRESSES: Submit written comments and recommendations for this information collection, especially on the estimated public burden or associated response time, to National Firearms Act Division, Meghan Tisserand, by email to *NFA-ICR-comments@atf.gov,* or by mail to 244 Needy Rd., Martinsburg, WV 25401. Identify comments by the OMB control number 1140–0124. You may view the proposed information collection instrument online at *https://www.atf.gov/rules-and-regulations/federal-register-actions/forms-and-information-collection*

FOR FURTHER INFORMATION CONTACT: If you have questions or need a copy of the proposed information collection instrument with instructions or additional information, contact Meghan Tisserand, NFA, either by mail at 244 Needy Rd., Martinsburg, WV 25401, by email at *NFA-ICR-comments@atf.gov,* or by telephone at 304–616–4500. If you require additional information on DOJ's ICR process for this renewal request, contact Darwin Arceo, Department Clearance Officer; United States Department of Justice; Justice Management Division, Enterprise Portfolio Managment; Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

SUPPLEMENTARY INFORMATION: We encourage written comments and suggestions from the public and affected agencies concerning the proposed information collection. Your comments should address one or more of the following four points:

—Evaluate whether the proposed information collection is necessary to properly perform ATF's functions, including whether the information will have practical utility;

—Evaluate the agency's estimate of the proposed information collection's burden for accuracy, including validity of the methodology and assumptions used;

—Evaluate whether the quality, utility, and clarity of the information being collected can be enhanced, and if so, how; and

—Minimize the information collection's burden on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting people to submit electronic responses.

Overview of This Information Collection

Abstract: The Request for Restricted 922(o) Machine Gun (National Firearms Act) (NFA)—ATF Form 5320.24 must be filed by Federal Firearms Licensees who have paid the special (occupational) tax to import, manufacture, deal in, or transfer an NFA firearm to a similarly qualified licensee. The completed ATF Form 5320.24 will also serve as supporting documentation for the Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer—ATF Form 3 (5320.3) (ATF Form 3), which must be completed by a law enforcement authority requesting demonstration of 922(o) restricted machineguns.

Type of information collection: extending a previously approved collection without change.

Title of the form/collection: Request for Restricted 922(o) Machine Gun (National Firearms Act).

Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number: ATF Form 5320.24. *Component:* Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Affected public who will be asked or required to respond, as well as the obligation to respond: Affected public: Business or other for-profit, Federal Government, State, Local or Tribal Government. *Obligation to respond:* required to obtain/retain a benefit, voluntary.

Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are an estimated 1,850 respondents associated with this collection per year, and it will take each respondent an average of approximately 20 minutes to complete their responses.

Estimate of the total annual burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 616 total hours, which is equal to 1,850 (total respondents) * 1 (# of responses per respondent) * .333333 (20 minutes).

Estimate of the total annual other cost burden associated with the collection, if applicable: There is no public cost burden associated with this collection which has electronic submission capability.

ESTIMATED TOTAL HOURLY BURDEN

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
ATF Form 5320.24	1,850	1	1,850	.333333 (20 mins) ...	616

Revisions to This Information Collection

As part of this ICR renewal, ATF is making no revisions to this information collection, OMB 1140–0124.

Dated: October 8, 2026.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2026–20844 Filed 10–9–26; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0002]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Supplementary Homicide Report (SHR)

AGENCY: FBI, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The FBI, Criminal Justice Information Services (CJIS) Division Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until December 14, 2026

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Matthew B. Fancher, Crime and Law Enforcement Statistics Unit Chief, FBI, CJIS Division, Module D–1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, 304–625–4830.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Federal Bureau of Investigation, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: Under Title 34, United States Code, section 41303, and Title 28, Code of Federal Regulations, section 0.85(f), this collection requests homicide data from respondents for the FBI's Uniform Crime Reporting (UCR) Program to serve as the national clearinghouse for the collection and dissemination of homicide and other crime-related data and to publish these statistics. SHR collects details about all murders and nonnegligent manslaughters (including justifiable homicides) and negligent manslaughters. The details include the reporting agency; month and year; situation; age, sex, race, and ethnicity of the victim(s) and the offenders(s); weapon type used; relationship of the victim(s) to the offender(s); and circumstance(s) surrounding the incident (*e.g.,* argument, robbery, gang related), if known.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* SHR.

3. The agency form number, if any, and the applicable component of the Department. The form number is 1–704. The applicable component within DOJ is the CJIS Division, FBI.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public would be federal, state, local, tribal, and territorial law enforcement agencies (LEAs). The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated number of LEAs submitting SHR data to the UCR Program monthly via the Summary Reporting System is 3,381. Annually, those LEAs submit a total of 40,572 responses (3,381 × 12 months = 40,572 responses). The estimated time it takes for an average respondent to respond is nine minutes.

6. *An estimate of the total annual burden (in hours) associated with the collection:* Annually, the estimated 3,381 LEAs submit an estimated 40,572 responses (3,381 LEAs × 1 annual submission = 40,572 responses). Therefore, the estimated annual public burden is 6,086 hours. ([40,572 annual responses × 9 minutes per response]/60 minutes per hour = 6,086 total annual hours.] According to the U.S. Bureau of Labor Statistics for 2023, the mean hourly wage of law enforcement officers is $36.80.

Therefore, the monetary burden is an estimated $223,964.80 (6086 annual hours × $36.80).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:*

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency (annually)	Total annual responses	Time per response (min)	Total annual burden (hours)
Supplementary Homicide Reports (SHR)	3,381	12	40,572	9	6,086
Unduplicated Totals	3,381		40,572		6,086

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Enterprise Portfolio Management, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: October 8, 2026.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2026–20856 Filed 10–9–26; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB 1140–0017]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Extending a Previously Approved Collection Without Change; Title—Annual Firearms Manufacturing and Exportation Report (AFMER) Under 18 U.S.C. Chapter 44, Firearms—ATF Form 5300.11

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives; Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), will be submitting the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: ATF encourages comments on this information collection. You may submit written comments until midnight on December 14, 2026.

ADDRESSES: Submit written comments and recommendations for this information collection, especially on the estimated public burden or associated response time, to Tracey Robertson, Federal Firearms Licensing Center (FELC), by email to *fflc@atf.gov,* or by mail to 244 Needy Rd., Martinsburg, WV 25405. Identify comments by the OMB control number 1140–0017. You may view the proposed information collection instrument online at *https://www.atf.gov/rules-and-regulations/federal-register-actions/forms-and-information-collection.*

FOR FURTHER INFORMATION CONTACT: If you have questions or need a copy of the proposed information collection instrument with instructions or additional information, contact Tracey Robertson, FELC, either by mail at 244 Needy Rd., Martinsburg, WV 25405, by email at *fflc@atf.gov,* or by telephone at 866–662–2750. If you require additional information on DOJ's ICR process for this renewal request, contact Darwin Arceo, Department Clearance Officer; United States Department of Justice; Justice Management Division, Enterprise Portfolio Management; Two Constitution Square, 145 N Street NE; 4W–218, Washington, DC.

SUPPLEMENTARY INFORMATION: We encourage written comments and suggestions from the public and affected agencies concerning the proposed information collection. Your comments should address one or more of the following four points:

—Evaluate whether the proposed information collection is necessary to properly perform ATF's functions, including whether the information will have practical utility;

—Evaluate the agency's estimate of the proposed information collection's burden for accuracy, including validity of the methodology and assumptions used;

—Evaluate whether the quality, utility, and clarity of the information being collected can be enhanced, and if so, how; and

—Minimize the information collection's burden on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting people to submit electronic responses.

Overview of This Information Collection

Abstract: The information collected is used to compile statistics on the manufacture and exportation of firearms. The furnishing of this information is mandatory under 18 U.S.C. 923(g)(5)(A). This form must be submitted annually for every Type 07 and Type 10 Federal Firearms Licensees (FFLs), even if no firearms were exported or distributed into commerce. The information collection (IC) OMB 1140–0017 is being revised due to material and non-material changes to the form, such as added instructions, definitions, formatting changes (to adjust form length), bolded lines (to fillable boxes), grammatical changes (sentence rephrasing/statement modification), and instruction clarification.

Type of information collection: extending a previously approved collection without change.

Title of the form/collection: Annual Firearms Manufacturing and Exportation Report (AFMER) Under 18 U.S.C. Chapter 44, Firearms.

Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number: ATF Form 5300.11 *Component:* Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Affected public who will be asked or required to respond, as well as the obligation to respond: Affected public: Business or other for-profit *Obligation to respond:* Mandatory and required to obtain or retain a benefit. The statutory requirements are implemented under 18 U.S.C. Chapter 44.

Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are an estimated 19,200 respondents associated with this collection per year, and it will take each respondent an average of approximately 20 minutes to complete their responses.

Estimate of the total annual burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 6,400 total hours, which is equal to 19,200 (total respondents) * 1 (# of responses per respondent) * .33333 (20 minutes).

Estimate of the total annual other cost burden associated with the collection, if applicable: No new cost is associated with this collection. All respondents can electronically submit the AFMER to ATF free of charge, however, it is estimated that half the respondents

submit the form to the Federal Firearms Licensing Center by mail. The annual cost has increased due to a change in the postal rate from $0.55 during the last renewal in 2020, to $0.63 in 2023. Consequently, the new public cost burden will be reported as $6,048.00, which is equal to $0.63 (mailing cost per respondent) * 19,200 (# of respondents) * 50% (percentage of responses submitted by mail).

ESTIMATED TOTAL HOURLY BURDEN

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
ATF Form 5300.11	19,200	1	19,200	.3333 (20 min.)	6,400

Revisions to This Information Collection

As part of this ICR renewal, ATF is making no revisions to this information collection, OMB 1140–0017.

Dated: October 8, 2026.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2026–20845 Filed 10–9–26; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB 1140–0090]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Extending a Previously Approved Collection Without Change; National Firearms Act (NFA)—Special Occupational Taxes (SOT)—ATF Form 5630.7

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives; Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), will be submitting the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: ATF encourages comments on this information collection. You may submit written comments until midnight on December 14, 2026.

ADDRESSES: Submit written comments and recommendations for this information collection, especially on the estimated public burden or associated response time, to National Firearms Act Division, Meghan Tisserand, by email to *NFA-ICR-comments@atf.gov,* or by mail to 244 Needy Rd., Martinsburg, WV 25401. Identify comments by the OMB control number 1140–0090. You may view the proposed information collection instrument online at *https://www.atf.gov/rules-and-regulations/federal-register-actions/forms-and-information-collection.*

FOR FURTHER INFORMATION CONTACT: If you have questions or need a copy of the proposed information collection instrument with instructions or additional information, contact Meghan Tisserand, NFA, either by mail at 244 Needy Rd., Martinsburg, WV 25401, by email at *NFA-ICR-comments@atf.gov,* or by telephone at 304–616–4500. If you require additional information on DOJ's ICR process for this renewal request, contact Darwin Arceo, Department Clearance Officer; United States Department of Justice; Justice Management Division, Enterprise Portfolio Management; Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

SUPPLEMENTARY INFORMATION: We encourage written comments and suggestions from the public and affected agencies concerning the proposed information collection. Your comments should address one or more of the following four points:

—Evaluate whether the proposed information collection is necessary to properly perform ATF's functions, including whether the information will have practical utility;

—Evaluate the agency's estimate of the proposed information collection's burden for accuracy, including validity of the methodology and assumptions used;

—Evaluate whether the quality, utility, and clarity of the information being collected can be enhanced, and if so, how; and

—Minimize the information collection's burden on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting people to submit electronic responses.

Overview of This Information Collection

Abstract: ATF has been collecting Special Occupational Taxes (SOT) under the National Firearms Act (NFA) (Title 26, U.S.C. Chapter 53). Firearms dealers, manufacturers, and importers must pay this tax in order to conduct multiple transfers of specified weapons (such as machine guns) within the tax year. The Information Collection (IC) OMB 1140–0090 is being revised due to the removal of the previously corresponding ATF Forms 5630.5R and 5630.5RC. These forms will no longer be required going forward. ATF Form 5630.7 will be the only form necessary to fulfill the requirement for this IC.

Type of information collection: extending a previously approved collection without change.

Title of the form/collection: National Firearms Act (NFA)—Special Occupational Taxes (SOT).

Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number: ATF Form 5630.7 *Component:* Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Affected public who will be asked or required to respond, as well as the obligation to respond: Affected public: Business or other for-profit entity. The obligation to respond is mandatory per Title 26, U.S.C. 5801, Chapter 53.

Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are an estimated 16,659 respondents associated with this collection per year, and it will take each respondent an average of approximately 15 minutes to complete their responses.

Estimate of the total annual burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 4,164 total hours, which is equal to 16,659 (total respondents) * 1 (# of responses per respondent) * .25 (15 minutes).

Estimate of the total annual other cost burden associated with the collection, if applicable: The estimated cost for all 16,659 respondents to mail the SOT form (ATF Form 5630.7) is $.63 per person. Therefore, the public cost associated with this IC is $10,495.

ESTIMATED TOTAL HOURLY BURDEN

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
ATF Form 5630.7	16,659	1	16,659	.25 (15 min)	4,164

Revisions to This Information Collection

As part of this ICR renewal, ATF is making no revisions to this information collection, OMB 1140–0090.

Dated: October 8, 2026.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2026–20843 Filed 10–9–26; 8:45 am]

BILLING CODE 4410–FY–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2027–5 and K2027–5; MC2027–6 and K2027–6]

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:* October 16, 2026.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Public Proceeding(s)
III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).:* MC2027–5 and K2027–5; *Filing Title:* USPS Request to Add USPS Ground Advantage Contract 15 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 7, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* October 16, 2026.

III. Summary Proceeding(s)

1. *Docket No(s).:* MC2027–6 and K2027–6; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 1108, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 7, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

This Notice will be published in the **Federal Register**.

Danielle LeFlore,

Legal Assistant.

[FR Doc. 2026–20840 Filed 10–9–26; 8:45 am]

BILLING CODE 7710–FW–P

[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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106622; File No. SR–CboeBZX–2026–079]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.17 (Clearly Erroneous Executions)

October 7, 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 September 24, 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend Rule 11.17 (''Clearly Erroneous Executions'') in light of the Commission's approval of Overnight Protected Bands for 23/5 Trading. 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

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') proposes to amend Rule 11.17 (''Clearly Erroneous Executions'') in light of the Commission's approval of Overnight Protected Bands under the LULD Plan for 23/5 Trading.

Background

In conjunction with the industry's plans for the introduction of trading 23 hours a day, 5 days a week (''23/5 Trading''), the Operating Committee of the Plan to Address Extraordinary Market Volatility (''LULD Plan'') filed proposed Amendment 27 to the LULD Plan, which proposed to establish price band protections during overnight trading hours (''Overnight Price Bands'').[5] The Operating Committee proposed that the Overnight Price Bands would initially be temporary static bands 20% above and below two reference points, and that after implementation, the Operating Committee would evaluate the performance of such Overnight Price Bands and propose appropriate changes in a new plan amendment.[6] On August 5, 2026, the Commission approved the proposal.[7]

In light of the Commission's approval of these changes to the LULD Plan, the Exchange now proposes several amendments to Rule 11.17 regarding Clearly Erroneous Executions. In general, the rule describes the process a market participant may use to request cancellation of a transaction that was ''clearly erroneous.'' The current rule's central premise is that if LULD Price Bands under the LULD Plan were available and correct at the time the transaction was executed, the transaction is not eligible for clearly erroneous review. Specifically, Rule 11.17(c)(1) currently provides that ''[i]f the execution time of the transaction(s) under review is during Regular Trading Hours, the transaction will not be reviewable as clearly erroneous'' except in certain limited circumstances, including when (A) the transaction is in an NMS stock that is not subject to the LULD Plan (*e.g.,* rights and warrants), (B) the transaction was executed at a time with LULD Price Bands were unavailable or trading should have been prevented due to a regulatory halt or other halt, or (C) several other limited circumstances.[8] In approving the existing version of the rule, the Commission noted that restricting clearly erroneous review in this way during times when LULD Price Bands were in effect was ''consistent with the Act and will further the goal of providing greater certainty to market participants that trades executed within the Price Bands will stand and not be broken. . . . Thus, the proposal is designed to limit the potential discordance between the LULD mechanism and CEE review process.'' [9]

Currently, LULD Price Bands are available only during Regular Trading Hours, meaning that the restrictions on clearly erroneous review described above apply only during Regular Trading Hours. With the introduction of Overnight Price Bands, the Exchange now proposes to extend the existing restrictions on clearly erroneous review to the period when Overnight Price Bands are in place. This proposed change would be consistent with the Commission's rationale in approving the current version of the rule because it would limit any potential discordance between the LULD mechanism and CEE review in the overnight trading session, providing greater certainty to market participants that trades executed with the Overnight Price Bands will stand and not be broken.

Proposed Changes to Rule 11.17(c)(1)

To implement this change, the Exchange proposes to add several definitions to Rule 11.17(c)(1). First, the Exchange would add that the term ''LULD Protected Hours'' includes Regular Trading Hours and ''Overnight Protected Hours'' defined in Section VIII of the LULD Plan. Second, the Exchange would define ''LULD Price Bands'' or ''Price Bands'' to mean the Price Bands defined in Section V of the LULD Plan (*i.e.,* the Price Bands that apply during Regular Trading Hours) and ''Overnight Price Bands'' as defined in Section VIII of the LULD Plan (*i.e.,* the Price Bands that apply to the Overnight Protected Hours from 9:00 p.m. ET through 4:00 a.m. ET).

The Exchange proposes to amend the current first sentence of Rule 11.17(c)(1) to replace the phrase ''Regular Trading Hours'' with ''LULD Protected Hours,'' to provide that ''[i]f the execution time of the transaction(s) under review is during LULD Protected Hours, the transaction will not be reviewable as clearly erroneous . . . .'' This change would extend the LULD-based

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 105596 (June 1, 2026), 91 FR 33774 (June 4, 2026) (File No. 4–631) (Notice of Filing of 27th Amendment to the National Market System Plan).

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 106042 (August 5, 2026), 91 FR 51515 (August 10, 2026) (File No. 4–631) (Order Granting Approval of the 27th Amendment to the National Market System Plan to Address Extraordinary Market Volatility to Establish Temporary Price Band Protections in Overnight Trading).

[8] *See* Rule 11.17(c)(1)(A), (B), and (C).

[9] *See* Securities Exchange Act Release No. 95658 (September 1, 2022), 87 FR 55060 at 55063 (September 8, 2022) (SR–CboeBZX–2022–037) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Amend BZX Rule 11.17, Clearly Erroneous Executions).

restrictions on clearly erroneous review currently in place during Regular Trading Hours to the Overnight Protected Hours.

The Exchange also proposes to amend Rule 11.17(c)(1)(B)'s reference to ''Percentage Parameter'' to incorporate the Percentage Parameter that applies to Overnight Protected Hours. The amended provision would provide for the applicability of clearly erroneous review if the price of the transaction to buy (sell) that is the subject of the clearly erroneous complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan (with respect to the Price Bands that apply during Regular Trading Hours) or the ''Overnight Percentage Parameter defined in Section VIII of the LULD Plan'' (with respect to Overnight Protected Hours).

In addition to these changes, the Exchange also proposes to make a non-substantive change to Rule 11.17(c)(1)(A), substituting the term ''LULD Plan'' for the current text ''the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the 'Limit Up-Limit Down Plan' or 'LULD Plan,')'' as the ''LULD Plan'' would be defined in the proposed revision to Rule 11.17(c)(1).

Proposed Changes to Rule 11.17(c)(2), (d)(3), and (f)

As noted above, current Rule 11.17(c)(1)(A) permits clearly erroneous review even during Regular Trading Hours when the transaction in question is in an NMS Stock that is not subject to the LULD Plan, *i.e.,* rights and warrants. Such transactions are reviewed for clearly erroneous status using the procedures set out in Rule 11.17(c)(2), including the Numerical Guidelines set out in the table accompanying Rule 11.17(c)(2)(A). The Exchange now proposes to introduce a similar provision regarding transactions in NMS Stocks not subject to the LULD Plan that are executed during the Overnight Protected Hours; such transactions would be subject to the same Numerical Guidelines as transactions occurring in the Early Trading, Pre-Opening, and After Hours Sessions.

The heading of Rule 11.17(c)(2) addresses ''[r]eview of transactions occurring during Early Trading, Pre-Opening, After Hours Session, or eligible for review pursuant to paragraph (c)(1)(A).'' The Exchange proposes to replace the phrase ''eligible for review pursuant to paragraph (c)(1)(A)'' (which, in the current rule, means transactions executed during Regular Trading Hours in NMS Stocks not subject to the LULD Plan) with ''during LULD Protected Hours in NMS Stocks not subject to the LULD Plan.'' This proposed language would cover transactions in NMS Stocks not subject to the LULD Plan in Regular Trading Hours and expand the same treatment to transactions executed in NMS Stocks not subject to the LULD Plan during Overnight Protected Hours. As such, the proposed change is not novel.

The Exchange proposes to make the same change everywhere else such language appears in the rule—namely, in the text of paragraphs (c)(2)(A), (c)(2)(B), (c)(2)(C), (c)(2)(D), (d)(3), and (f).[10] In each case, the Exchange proposes to replace the phrase ''transactions occurring during the Early Trading, Pre-Opening, or After Hours Session or eligible for review pursuant to paragraph (c)(1)(A)'' with ''transactions occurring during the Early Trading, Pre-Opening, or After Hours Session or during LULD Protected Hours in NMS Stocks not subject to the LULD Plan.''

The Exchange also proposes to make corresponding changes to the headings of the table accompanying Rule 11.17(c)(2)(A). The Exchange proposes to change the heading of the second column from ''Regular Trading Hours Numerical Guidelines for transactions eligible for review pursuant to paragraph (c)(1)(A)'' to ''Numerical Guidelines for Transactions Executed During Regular Trading Hours in NMS Stocks Not Subject to the LULD Plan.'' This change would simply replace the shorthand ''eligible for review pursuant to paragraph (c)(1)(A)'' with the fuller description that such transactions are ''executed during Regular Trading Hours in NMS Stocks not subject to the LULD Plan,'' and is not a substantive change.

Similarly, the Exchange proposes to change the heading of the third column from ''Early Trading, Pre-Opening and After Hours Session Numerical Guidelines'' to ''Numerical Guidelines for Transactions Executed During the Early Trading, Pre-Opening and After Hours Session or During Overnight Protected Hours in NMS Stocks Not Subject to the LULD Plan.'' The proposed change addresses the fact that transactions executed during Overnight Protected Hours in NMS Stocks not subject to the LULD Plan are eligible for clearly erroneous review—just as are transactions in NMS Stocks not subject to the LULD Plan executed during Regular Trading Hours—but at the Numerical Guidelines that apply outside of Regular Trading Hours.

Together, these proposed changes would extend the eligibility of clearly erroneous review for transactions in NMS Stocks not subject to the LULD Plan that is currently in place during Regular Trading Hours to the Overnight Protected Hours, and would apply the Commission's recent approval of Overnight Price Bands to the clearly erroneous executions rule.

Implementation

The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals,[11] the substance of which are identical to this proposal. The Exchange proposes that this rule change would become operative at the commencement of 23/5 Trading, which is scheduled to commence industry-wide on December 6, 2026.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[12] Specifically, the proposal is consistent with Section 6(b)(5) of the Act [13] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange believes that the proposed change is consistent with just and equitable principles of trade because it extends the basic premise of the current rule that clearly erroneous review should be generally unavailable any time a transaction is executed within LULD Price Bands at a time the Price Bands were available and correct.

[10] Rule 11.17(c)(2)(A)–(D) specifies general rules for applying clearly erroneous review to transactions where such review is not precluded by paragraph (c)(1). Rule 11.17(d)(3) specifies conditions where the Exchange may use a revised Reference Price for the purpose of clearly erroneous review in certain transactions where such review is not precluded by paragraph (c)(1). Rule 11.17(f) specifies that for transactions where clearly erroneous review is not precluded by paragraph (c)(1), an Officer of the Exchange or senior level employee designee may initiate clearly erroneous review on his or her own motion.

[11] *See, e.g.,* Securities Exchange Act Release No. 106315 (September 9, 2026), 91 FR 58201 (September 14, 2026), SR–NYSEAMER–2026–80 (September 2, 2026) (''NYSE American CEE Filing'').

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

Currently, LULD Price Bands are available only during Regular Trading Hours, meaning that the restrictions on clearly erroneous review described above apply only during Regular Trading Hours. With the introduction of Overnight Price Bands, the Exchange believes that extending such restrictions on clearly erroneous review to the period when Overnight Price Bands are in place would remove impediments to and perfect the mechanism of a free and open market and a national market system by enhancing the transparency and consistency of the rule.

The resulting rule would thus extend the LULD-related limits on clearly erroneous review that are applicable in Regular Trading Hours to the overnight period. The proposed change would also be consistent with the Commission's rationale in approving the current version of the rule because it would limit any potential discordance between the LULD mechanism and CEE review in the overnight trading session, providing greater certainty to market participants that trades executed with the Overnight Price Bands will stand and not be broken.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act[15] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather than impacting competition, the proposed change would simply extend the basic premise of the current rule that clearly erroneous review should be generally unavailable any time a transaction is executed within LULD Price Bands at a time the Price Bands were available and correct. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals, the substance of which are identical to this proposal. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

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.

[14] *See* 87 FR 55060 at 55063, *supra* note 9.

[15] 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest; impose any significant burden on competition; and become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)[17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2026–079 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–2026–079. 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–2026–079 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20797 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 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.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106621; File No. SR–CboeEDGA–2026–031]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.15 (Clearly Erroneous Executions)

October 7, 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 September 24, 2026, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to amend Rule 11.15 (''Clearly Erroneous Executions'') in light of the Commission's approval of Overnight

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

Protected Bands for 23/5 Trading. 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/edga/*), 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

Cboe EDGA Exchange, Inc. (''EDGA'' or the ''Exchange'') proposes to amend Rule 11.15 (''Clearly Erroneous Executions'') in light of the Commission's approval of Overnight Protected Bands under the LULD Plan for 23/5 Trading.

Background

In conjunction with the industry's plans for the introduction of trading 23 hours a day, 5 days a week (''23/5 Trading''), the Operating Committee of the Plan to Address Extraordinary Market Volatility (''LULD Plan'') filed proposed Amendment 27 to the LULD Plan, which proposed to establish price band protections during overnight trading hours (''Overnight Price Bands'').[5] The Operating Committee proposed that the Overnight Price Bands would initially be temporary static bands 20% above and below two reference points, and that after implementation, the Operating Committee would evaluate the performance of such Overnight Price Bands and propose appropriate changes in a new plan amendment.[6] On August 5, 2026, the Commission approved the proposal.[7]

In light of the Commission's approval of these changes to the LULD Plan, the Exchange now proposes several amendments to Rule 11.15 regarding Clearly Erroneous Executions. In general, the rule describes the process a market participant may use to request cancellation of a transaction that was ''clearly erroneous.'' The current rule's central premise is that if LULD Price Bands under the LULD Plan were available and correct at the time the transaction was executed, the transaction is not eligible for clearly erroneous review. Specifically, Rule 11.15(c)(1) currently provides that ''[i]f the execution time of the transaction(s) under review is during Regular Trading Hours, the transaction will not be reviewable as clearly erroneous'' except in certain limited circumstances, including when (A) the transaction is in an NMS stock that is not subject to the LULD Plan (*e.g.,* rights and warrants), (B) the transaction was executed at a time with LULD Price Bands were unavailable or trading should have been prevented due to a regulatory halt or other halt, or (C) several other limited circumstances.[8] In approving the existing version of the rule, the Commission noted that restricting clearly erroneous review in this way during times when LULD Price Bands were in effect was ''consistent with the Act and will further the goal of providing greater certainty to market participants that trades executed within the Price Bands will stand and not be broken. . . . Thus, the proposal is designed to limit the potential discordance between the LULD mechanism and CEE review process.'' [9]

Currently, LULD Price Bands are available only during Regular Trading Hours, meaning that the restrictions on clearly erroneous review described above apply only during Regular Trading Hours. With the introduction of Overnight Price Bands, the Exchange now proposes to extend the existing restrictions on clearly erroneous review to the period when Overnight Price Bands are in place. This proposed change would be consistent with the Commission's rationale in approving the current version of the rule because it would limit any potential discordance between the LULD mechanism and CEE review in the overnight trading session, providing greater certainty to market participants that trades executed with the Overnight Price Bands will stand and not be broken.

Proposed Changes to Rule 11.15(c)(1)

To implement this change, the Exchange proposes to add several definitions to Rule 11.15(c)(1). First, the Exchange would add that the term ''LULD Protected Hours'' includes Regular Trading Hours and ''Overnight Protected Hours'' defined in Section VIII of the LULD Plan. Second, the Exchange would define ''LULD Price Bands'' or ''Price Bands'' to mean the Price Bands defined in Section V of the LULD Plan (*i.e.,* the Price Bands that apply during Regular Trading Hours) and ''Overnight Price Bands'' as defined in Section VIII of the LULD Plan (*i.e.,* the Price Bands that apply to the Overnight Protected Hours from 9:00 p.m. ET through 4:00 a.m. ET).

The Exchange proposes to amend the current first sentence of Rule 11.15(c)(1) to replace the phrase ''Regular Trading Hours'' with ''LULD Protected Hours,'' to provide that ''[i]f the execution time of the transaction(s) under review is during LULD Protected Hours, the transaction will not be reviewable as clearly erroneous . . . .'' This change would extend the LULD-based restrictions on clearly erroneous review currently in place during Regular Trading Hours to the Overnight Protected Hours.

The Exchange also proposes to amend Rule 11.15(c)(1)(B)'s reference to ''Percentage Parameter'' to incorporate the Percentage Parameter that applies to Overnight Protected Hours. The amended provision would provide for the applicability of clearly erroneous review if the price of the transaction to buy (sell) that is the subject of the clearly erroneous complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan (with respect to the Price Bands that apply during Regular Trading Hours) or the ''Overnight Percentage Parameter defined in Section VIII of the LULD Plan'' (with respect to Overnight Protected Hours).

In addition to these changes, the Exchange also proposes to make a non-substantive change to Rule 11.15(c)(1)(A), substituting the term ''LULD Plan'' for the current text ''the

[5] *See* Securities Exchange Act Release No. 105596 (June 1, 2026), 91 FR 33774 (June 4, 2026) (File No. 4–631) (Notice of Filing of 27th Amendment to the National Market System Plan).

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 106042 (August 5, 2026), 91 FR 51515 (August 10, 2026) (File No. 4–631) (Order Granting Approval of the 27th Amendment to the National Market System Plan to Address Extraordinary Market Volatility to Establish Temporary Price Band Protections in Overnight Trading).

[8] *See* Rule 11.15(c)(1)(A), (B), and (C).

[9] *See* Securities Exchange Act Release No. 95658 (September 1, 2022), 87 FR 55060 at 55063 (September 8, 2022) (SR–CboeBZX–2022–037) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Amend BZX Rule 11.17, Clearly Erroneous Executions).

Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the 'Limit Up-Limit Down Plan' or 'LULD Plan,')'' as the ''LULD Plan'' would be defined in the proposed revision to Rule 11.15(c)(1).

Proposed Changes to Rule 11.15(c)(2), (d)(3), and (f)

As noted above, current Rule 11.15(c)(1)(A) permits clearly erroneous review even during Regular Trading Hours when the transaction in question is in an NMS Stock that is not subject to the LULD Plan, *i.e.,* rights and warrants. Such transactions are reviewed for clearly erroneous status using the procedures set out in Rule 11.15(c)(2), including the Numerical Guidelines set out in the table accompanying Rule 11.15(c)(2)(A). The Exchange now proposes to introduce a similar provision regarding transactions in NMS Stocks not subject to the LULD Plan that are executed during the Overnight Protected Hours; such transactions would be subject to the same Numerical Guidelines as transactions occurring in the Early Trading, Pre-Opening, and Post-Closing Sessions.

The heading of Rule 11.15(c)(2) addresses ''[r]eview of transactions occurring during Early Trading, Pre-Opening, Post-Closing Session, or eligible for review pursuant to paragraph (c)(1)(A).'' The Exchange proposes to replace the phrase ''eligible for review pursuant to paragraph (c)(1)(A)'' (which, in the current rule, means transactions executed during Regular Trading Hours in NMS Stocks not subject to the LULD Plan) with ''during LULD Protected Hours in NMS Stocks not subject to the LULD Plan.'' This proposed language would cover transactions in NMS Stocks not subject to the LULD Plan in Regular Trading Hours and expand the same treatment to transactions executed in NMS Stocks not subject to the LULD Plan during Overnight Protected Hours. As such, the proposed change is not novel.

The Exchange proposes to make the same change everywhere else such language appears in the rule—namely, in the text of paragraphs (c)(2)(A), (c)(2)(B), (c)(2)(C), (c)(2)(D), (d)(3), and (f).[10] In each case, the Exchange proposes to replace the phrase ''transactions occurring during the Early Trading, Pre-Opening, or Post-Closing Session or eligible for review pursuant to paragraph (c)(1)(A)'' with ''transactions occurring during the Early Trading, Pre-Opening, or Post-Closing Session or during LULD Protected Hours in NMS Stocks not subject to the LULD Plan.'' The Exchange also notes that it proposes to amend the numbering of current paragraph (c)(2)(3) to properly reflect (c)(2)(C).

The Exchange also proposes to make corresponding changes to the headings of the table accompanying Rule 11.15(c)(2)(A). The Exchange proposes to change the heading of the second column from ''Regular Trading Hours Numerical Guidelines for transactions eligible for review pursuant to paragraph (c)(1)(A)'' to ''Numerical Guidelines for Transactions Executed During Regular Trading Hours in NMS Stocks Not Subject to the LULD Plan.'' This change would simply replace the shorthand ''eligible for review pursuant to paragraph (c)(1)(A)'' with the fuller description that such transactions are ''executed during Regular Trading Hours in NMS Stocks not subject to the LULD Plan,'' and is not a substantive change.

Similarly, the Exchange proposes to change the heading of the third column from ''Early Trading, Pre-Opening and Post-Closing Session Numerical Guidelines'' to ''Numerical Guidelines for Transactions Executed During the Early Trading, Pre-Opening and Post-Closing Session or During Overnight Protected Hours in NMS Stocks Not Subject to the LULD Plan.'' The proposed change addresses the fact that transactions executed during Overnight Protected Hours in NMS Stocks not subject to the LULD Plan are eligible for clearly erroneous review—just as are transactions in NMS Stocks not subject to the LULD Plan executed during Regular Trading Hours—but at the Numerical Guidelines that apply outside of Regular Trading Hours.

Together, these proposed changes would extend the eligibility of clearly erroneous review for transactions in NMS Stocks not subject to the LULD Plan that is currently in place during Regular Trading Hours to the Overnight Protected Hours, and would apply the Commission's recent approval of Overnight Price Bands to the clearly erroneous executions rule.

Implementation

The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals,[11] the substance of which are identical to this proposal. The Exchange proposes that this rule change would become operative at the commencement of 23/5 Trading, which is scheduled to commence industry-wide on December 6, 2026.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[12] Specifically, the proposal is consistent with Section 6(b)(5) of the Act [13] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange believes that the proposed change is consistent with just and equitable principles of trade because it extends the basic premise of the current rule that clearly erroneous review should be generally unavailable any time a transaction is executed within LULD Price Bands at a time the Price Bands were available and correct. Currently, LULD Price Bands are available only during Regular Trading Hours, meaning that the restrictions on clearly erroneous review described above apply only during Regular Trading Hours. With the introduction of Overnight Price Bands, the Exchange believes that extending such restrictions on clearly erroneous review to the period when Overnight Price Bands are in place would remove impediments to and perfect the mechanism of a free and open market and a national market system by enhancing the transparency and consistency of the rule.

The resulting rule would thus extend the LULD-related limits on clearly erroneous review that are applicable in Regular Trading Hours to the overnight period. The proposed change would also be consistent with the Commission's rationale in approving the current version of the rule because it

[10] Rule 11.15(c)(2)(A)–(D) specifies general rules for applying clearly erroneous review to transactions where such review is not precluded by paragraph (c)(1). Rule 11.15(d)(3) specifies conditions where the Exchange may use a revised Reference Price for the purpose of clearly erroneous review in certain transactions where such review is not precluded by paragraph (c)(1). Rule 11.15(f) specifies that for transactions where clearly erroneous review is not precluded by paragraph (c)(1), an Officer of the Exchange or senior level employee designee may initiate clearly erroneous review on his or her own motion.

[11] *See, e.g.,* Securities Exchange Act Release No. 106316 (September 9, 2026), 91 FR 58201 (September 14, 2026), SR–NYSEAMER–2026–80 (September 2, 2026) (''NYSE American CEE Filing'').

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

would limit any potential discordance between the LULD mechanism and CEE review in the overnight trading session, providing greater certainty to market participants that trades executed with the Overnight Price Bands will stand and not be broken.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act[15] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather than impacting competition, the proposed change would simply extend the basic premise of the current rule that clearly erroneous review should be generally unavailable any time a transaction is executed within LULD Price Bands at a time the Price Bands were available and correct. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals, the substance of which are identical to this proposal. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

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 significantly affect the protection of investors or the public interest; impose any significant burden on competition; and become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)[17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGA–2026–031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGA–2026–031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGA–2026–031 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20796 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* 87 FR 55060 at 55063, *supra* note 9.

[15] 15 U.S.C. 78f(b)(8).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 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.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106629; File No. SR–NasdaqTX–2026–049]

Self-Regulatory Organizations; Nasdaq Texas, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5740 Regarding Information Circular Requirements

October 7, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2026, Nasdaq Texas, LLC (''Exchange'') filed with the Securities and Exchange Commission (''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

The Exchange proposes to: (i) amend Rule 5740 to add express cross-references to General 9, Section 10 and Equity 2, Section 20, replace the cross-reference to Rule 4630 with Equity 10, Section 8, and specify Equity 4 for Rule 4120; (ii) delete Rule 5740(a)(1) in its entirety, thereby removing the requirement that the Exchange distribute an information circular to Exchange members (''Members'') prior to the commencement of trading in each UTP Derivative Security (as defined below) that generally includes the same information as contained in the information circular provided by the listing exchange; (iii) amend Rule 5740(a)(2) to require that the written description referenced therein be provided in a form approved by the listing exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser; and (iv) renumber Rules 5740(a)(2) through (5) as Rules 5740(a)(1) through (4), respectively, and make other technical and non-substantive changes.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaqtx/rulefilings,* and at the principal office of the Exchange.

[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 eliminate the requirement that the Exchange distribute an information circular to Members prior to the commencement of trading in each UTP Derivative Security [3] that generally includes the same information as contained in the information circular provided by the listing exchange as provided in Rule 5740(a)(1). The Exchange also proposes to amend the introductory paragraph of Rule 5740 to add express cross-references to General 9, Section 10 (Recommendations to Customers (Suitability)) and Equity 2, Section 20 (Customer Disclosures), replace the cross-reference to Rule 4630 with Equity 10, Section 8, and specify Equity 4 for Rule 4120. The Exchange also proposes to amend Rule 5740(a)(2) to require that the written description referenced therein be provided in a form approved by the listing exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser.[4] Lastly, the Exchange proposes to renumber Rules 5740(a)(2) through (5) as Rules 5740(a)(1) through (4), respectively, and make other technical and non-substantive changes. The proposal is similar to a proposal that Cboe BZX Exchange, Inc. (''Cboe BZX'') filed with the Commission.[5]

Rule 5740 governs the trading of UTP Derivative Securities on the Exchange—securities listed on another national securities exchange that trade on the Exchange pursuant to unlisted trading privileges (''UTP''). Under current Rule 5740(a)(1), the Exchange must distribute an information circular prior to the commencement of trading in each UTP Derivative Security that generally mirrors the information circular issued by the listing exchange, including: (a) the special risks of trading the new derivative securities product; (b) the Exchange rules that will apply to the new derivative securities product, including Rule 2310; [6] (c) information about the dissemination of the value of the underlying assets or indexes; and (d) the applicable trading hours for the UTP Derivative Security and the risks of trading during the period from 8:00 a.m. to 9:30 a.m. and from 4:00 p.m. to 7:00 p.m. due to the lack of calculation or dissemination of the underlying index value, the Intra-Day Indicative Value (as defined in Rule 5705(a)(3)(C)) or a similar value. The Exchange proposes to delete Rule 5740(a)(1) in its entirety.

The information circular requirement is unnecessary because the primary listing exchange's information circular already provides Members with the same disclosures the Exchange would otherwise be required to produce. Members have access to the primary listing exchange's information circular prior to the commencement of UTP trading and may rely upon it for the same purposes.[7] The Exchange's issuance of a separate, duplicative circular therefore serves no independent investor protection function.

The Exchange also proposes to amend the introductory paragraph of Rule 5740 to add express cross-references to General 9, Section 10 (Recommendations to Customers (Suitability)) and Equity 2, Section 20 (Customer Disclosures), replace the cross-reference to Rule 4630 with Equity 10, Section 8, and specify Equity 4 for Rule 4120. Current Rule 5740(a)(1) references both the recommendations to customers/suitability provisions addressed by General 9, Section 10 and the risk of trading outside of Market Hours [8] addressed by Equity 2, Section 20.[9] Because the Exchange proposes to delete Rule 5740(a)(1) in its entirety, the Exchange is adding express cross-references to those rules in the introductory paragraph of Rule 5740 to preserve their visibility in the context of UTP Derivative Securities. These rules already apply to Members by operation of the Exchange's rulebook. The cross-references are intended to make the applicable framework explicit in the context of UTP Derivative Securities. General 9, Section 10, which incorporates FINRA Rule 2111 by reference, independently requires Members to ensure that any recommendation of a UTP Derivative Security is suitable for the customer based on the customer's investment profile, a standing obligation that applies regardless of whether the Exchange has issued a product-specific information circular. Similarly, Equity 2, Section 20 independently requires Members to provide customers with a written disclosure of the risks of trading outside of Market Hours before accepting any order for execution during such sessions, a standing obligation not contingent on the Exchange's issuance of a product-specific information circular.

Because Rule 5740(a)(1) has historically served as the mechanism through which the Exchange satisfies the notification obligation under Rule 5740(a)(2), deletion of Rule 5740(a)(1) necessitates a conforming amendment to Rule 5740(a)(2). The Exchange proposes to amend Rule 5740(a)(2) to require that the written description referenced therein be provided in a form approved by the listing exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. The Exchange will notify Members by information circular that such written description will only be required when mandated by the listing exchange. This amendment is consistent with the broader purpose of the proposed rule change: where the listing exchange's information circular already provides Members with the information necessary to assess a UTP Derivative Security, a duplicative written description obligation serves no

[3] A ''UTP Derivative Security'' is any security that is a ''new derivative securities product'' as defined in Rule 19b–4(e) under the Act. *See* Rule 5740(a).

[4] As further described below, the Exchange will notify Members of the written description requirement under Rule 5740(a)(2) by means of an information circular. Such written description will only be required when required by the listing exchange.

[5] *See* Securities Exchange Act Release No. 105715 (June 17, 2026), 91 FR 37477 (June 23, 2026) (SR–CboeBZX–2026–054).

[6] As discussed later in this filing, Rule 5740(a)(1) presently refers to Rule 2310, which is an obsolete reference to the suitability provisions. The suitability provisions are now set forth in General 9, Section 10, so the Exchange is updating the obsolete rule reference in Rule 5740(a)(1).

[7] Such information circulars are generally available on the primary listing market's website.

[8] The term ''Market Hours'' means the period of time beginning at 9:30 a.m. ET and ending at 4:00 p.m. ET (or such earlier time as may be designated by the Exchange on a day when the Exchange closes early). *See* Equity 1, Section 1(a)(13).

[9] The Exchange notes that the rule currently references Rule 2310, which is an obsolete reference to the provisions addressing recommendations to customers and suitability. The Exchange previously relocated Rule 2310 to General 9, Section 10. *See* Securities Exchange Act Release No. 87468 (November 5, 2019), 84 FR 61091 (November 12, 2019) (SR–BX–2019–039).

independent investor protection function. Members may rely on the listing exchange's information circular in the same manner and to the same effect.

Finally, the Exchange proposes a number of technical and non-substantive changes to Rule 5740. First, the Exchange proposes to renumber existing Rules 5740(a)(2) through (5) as Rules 5740(a)(1) through (4), respectively. Second, the Exchange proposes to update a number of obsolete rule citations. Specifically in the introductory paragraph of Rule 5740 and in proposed Rule 5740(a)(3), the Exchange proposes to update the current cite to Rule 4630 to Equity 10, Section 8.[10] The Exchange also proposes in the introductory paragraph of Rule 5740 and in proposed Rule 5740(a)(2) to update the current cite to Rule 4120 to Equity 4, Rule 4120.[11] The Exchange also proposes to fix a typo in current paragraph (5) of Rule 5740(a) by capitalizing the letter ''t'' therein.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] 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 the proposed deletion of Rule 5740(a)(1) is consistent with the Act because the primary listing exchange's information circular already provides Members with the same disclosures that the Exchange's information circular would contain. The investor protection functions historically served by the information circular requirement are independently addressed through the primary listing exchange's information circular and the Member-level obligations imposed by General 9, Section 10 and Equity 2, Section 20, to which the Exchange proposes to add express cross-references in the introductory paragraph of Rule 5740. The proposed amendment to Rule 5740(a)(2) ensures that where a written description is required, it is provided in a form approved by the listing exchange, thereby aligning the Exchange's requirements with those of the primary listing market. The Exchange will further notify Members by information circular that such written description will only be required when mandated by the listing exchange, ensuring that no duplicative obligation is imposed where the listing exchange has not determined one to be warranted. The renumbering of Rules 5740(a)(2) through (5) and to update the obsolete rule cites and fix a typo as discussed above is ministerial. Additionally, as discussed above, the proposal does not raise any novel issues not previously considered by the Commission.[14] For these reasons, the Exchange believes that the proposed rule change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change eliminates duplicative procedural obligations applicable to the Exchange in its capacity as a UTP trading venue. It does not alter the terms or conditions under which UTP Derivative Securities may be traded on the Exchange, impose any new requirements on Members, or affect the ability of any market participant to access the Exchange's markets. Members will continue to have access to the primary listing exchange's information circular prior to the commencement of UTP trading and may rely upon it for the same purposes as the Exchange's information circular. The proposed amendment to Rule 5740(a)(2) aligns the written description obligation with the primary listing market's requirements and does not impose any burden on Members beyond what the primary listing market itself requires. Accordingly, the Exchange does not believe the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)[16] thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6)[18] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange states that the proposed rule change eliminates duplicative procedural obligations applicable to the Exchange in its capacity as a UTP trading venue because the primary listing exchange's information circular already provides Members with the same disclosures the Exchange would otherwise be required to produce.[21] The Exchange also notes that the proposed rule change does not alter the terms or conditions under which UTP Derivative Securities may be traded on the Exchange. For these reasons, the Commission finds that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the

[10] The Exchange relocated Rule 4630 to Equity 10, Section 8. *See* Securities Exchange Act Release No. 91830 (May 10, 2021), 86 FR 26567 (May 14, 2021) (SR–BX–2021–012).

[11] The Exchange relocated Rule 4120 to Equity 4, Rule 4120. *See* Securities Exchange Act Release No. 91830 (May 10, 2021), 86 FR 26567 (May 14, 2021) (SR–BX–2021–012).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See supra* note 5.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] The Exchange represents that such information circulars are generally available on the primary listing exchange's website. *See supra* note 7.

proposed rule change to be operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NasdaqTX–2026–049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NasdaqTX–2026–049. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NasdaqTX–2026–049 and should be submitted on or before November 3, 2026.

[22] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20804 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106620; File No. SR–CBOE–2026–078]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Certain Rules Regarding the Global Trading Hours ("GTH") and Curb Trading Hours Sessions

October 7, 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 September 25, 2026, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. ("Cboe" or the "Exchange") is filing with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to amend certain rules regarding the Global Trading Hours ("GTH")[3] and Curb Trading Hours sessions.[4] Specifically, the Exchange proposes to (i) adopt two new order instructions, "GTH Only" and "GTH and RTH Only",[5] enabling Users[6] to designate orders as eligible for specific session combinations that are not currently available; (ii) amend Rules 5.7 and 5.31 to provide that the start of the pre-opening order Queuing Period[7] and order entry time for index options eligible for Global Trading Hours begins no earlier than 6:00 p.m. (previous day) and for classes other than index options eligible for Global Trading Hours begins no earlier than 6:00 a.m.; (iii) amend Rule 5.1(e) to provide for the availability of the Curb[8] session on trading days with shortened Regular Trading Hours (*e.g.,* half-day sessions); and (iv) amend Rule 5.54(a)(6) to apply the Designated Primary Market-Makers' ("DPMs")[9] opening quote obligation to each applicable trading session rather than just the Regular Trading Hours ("RTH") session. The Exchange will announce all times it determines pursuant to this filing via a circular, pursuant to Rule 1.5. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (*https://www.sec.gov/rules/sro.shtml*), the Exchange's website (*https://www.cboe.com/us/options/regulation/rule_filings/cone/*), 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

[23] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The terms "Global Trading Hours" and "GTH" mean the trading session consisting of the hours outside of Regular Trading Hours and Curb Trading Hours during which transactions in options may be effected on the Exchange and are set forth in Rule 5.1. *See* Exchange Rule 1.1.

[4] All times referenced herein are Eastern Time, unless otherwise specifically noted.

[5] The terms "Regular Trading Hours" and "RTH" mean the trading session consisting of the regular hours during which transactions in options may be effected on the Exchange and are set forth in Rule 5.1. *See* Exchange Rule 1.1.

[6] The term "User" means any TPH or Sponsored User who is authorized to obtain access to the System pursuant to Rule 5.5. *See* Exchange Rule 1.1.

[7] The term "Queuing Period" means the time period prior to the initiation of an opening rotation during which the System accepts orders and quotes in the Queuing Book for participation in the opening rotation for the applicable trading session. *See* Exchange Rule 5.31.

[8] The terms "Curb Trading Hours" and "Curb" mean the trading session consisting of the hours outside of Regular Trading Hours and Global Trading Hours during which transactions in options may be effected on the Exchange and are set forth in Rule 5.1. *See* Exchange Rule 1.1.

[9] The terms "Designated Primary Market-Maker" and "DPM" mean a TPH organization that is approved by the Exchange to function in appointed securities as a Market-Maker per trading session and is subject to the obligations under Rule 5.54 or as otherwise provided under the Rules. A DPM generally will operate on the Exchange's trading floor ("On-Floor DPM") during the RTH session. However, as provided in Rule 5.53, a DPM can request that the Exchange authorize the DPM to function remotely away from the Exchange's trading floor during RTH ("Off-Floor DPM") on a class-by-class basis. DPM designations that are specified as GTH or Curb are also Off-Floor DPMs. Unless otherwise specified, references to DPM in the Rules include both "On Floor DPM" and "Off-Floor DPM." The Exchange makes determinations concerning whether to grant or withdraw the approval to act as a DPM in accordance with Rule 3.54. The Exchange appoints securities to DPMs in accordance with Rule 5.50. *See* Exchange Rule 1.1.

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules regarding the GTH and Curb sessions in four respects. Each change is a structural, conforming, or clarifying amendment to the existing session framework that responds to customer demand. Additionally, certain changes align the Exchange's rules with features of other U.S. options exchanges.

Background

The Exchange offers three trading sessions, each set forth in Rule 5.1: Regular Trading Hours (''RTH''), Global Trading Hours (''GTH''), and Curb Trading Hours (''Curb''). RTH for equity options generally occurs from 9:30 a.m. to 4:00 p.m. GTH for index options occurs from 8:15 p.m. (previous day) to 9:25 a.m., and, upon the operative date of the ''Previous GTH Filing'',[10] GTH for designated equity options will occur from 7:30 a.m. to 9:25 a.m., Monday through Friday. Curb Trading Hours are from 4:15 p.m. to 5:00 p.m. for index options and 4:00 p.m. to 4:15 p.m. for equity options.[11]

Following the Exchange's adoption of extended trading hours for multiply listed equity options in the Previous GTH Filing and the application of DPM obligations and participation entitlements to the GTH and Curb sessions,[12] the Exchange is proposing further refinements to rules regarding the GTH and Curb sessions to provide additional session eligibility options, earlier order acceptance times, and the availability of Curb sessions on shortened trading days (*e.g.,* half-day trading sessions). Two of these refinements are consistent with features included in the rules of other U.S. options exchanges, including NYSE American LLC (''NYSE American'') and Nasdaq MRX, LLC (''MRX'').

1. New ''GTH Only'' and ''GTH and RTH Only'' Order Instructions

Under Rule 5.6(c), Users currently may designate orders with one of three session instructions: ''All Sessions'' [13] (eligible for all trading sessions, including GTH, RTH, and Curb, for eligible options), ''RTH Only'' (eligible during RTH only), or ''RTH and Curb'' (eligible during RTH and Curb only, for eligible options). Accordingly, if a User wants an order for a GTH-eligible option to be available to trade during GTH, the User must use ''All Sessions,'' which also makes the order eligible for RTH and Curb. There is no existing order instruction that allows a User to designate an order as eligible for only the GTH session or for the GTH and RTH sessions without the Curb session.

The Exchange proposes to add two new order instructions to Rule 5.6(c). First, a ''GTH Only'' order is an order (including a bulk message) a User designates as eligible to trade only during GTH. An unexecuted GTH Only order with a Time-in-Force of Day [14] on the Book [15] at the end of the GTH trading session is cancelled. For example, a GTH Only order for index options with a Time-in-Force of Day entered during the overnight portion of GTH (which begins at 8:15 p.m. the previous calendar day) would be cancelled at the end of the GTH session at 9:25 a.m., because the overnight session is part of the GTH session for the next trading day. An unexecuted GTH Only order with a Time-in-Force of Good-til-Cancelled (''GTC'') [16] or Good-til-Date (''GTD'') [17] on the Book at the end of the GTH trading session enters the GTH Queuing Book [18] and becomes eligible for execution during the GTH opening rotation and GTH trading session on the following trading day (but not during the RTH or Curb trading sessions on the same trading day), subject to a User's instructions. For eligible index options, this would occur at 8:15 p.m. on the same calendar day, as the overnight session is part of the GTH session for the following trading day.

Second, a ''GTH and RTH Only'' order is an order (including a bulk message) a User designates as eligible to trade during both the GTH and RTH trading sessions, but not during the Curb trading session. An unexecuted GTH and RTH Only order with a Time-in-Force of Day on the Book at the end of a GTH trading session remains on the Book and becomes eligible for execution during the RTH opening rotation and RTH trading session on that same trading day, subject to a User's

[10] *See* Securities Exchange Act Nos. 105153 (April 6, 2026) 91 FR 18010 (April 9, 2026) (SR–CBOE–2025–079) (Notice of Filing of Amendment No. 1 to a Proposed Rule Change To Allow for Extended Trading of Multi-Listed Equity Options); 105569 (May 28, 2026) 91 FR 33005 (June 2, 2026) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Allow for Extended Trading of Multi-Listed Equity Options) (together, the ''Previous GTH Filing'').

[11] The Exchange expects to launch GTH and Curb trading sessions for equity options in the third quarter of 2026.

[12] *See* Securities Exchange Act No. 105763 (June 24, 2026) 91 FR 39152 (June 29, 2026) (SR–CBOE–2026–016) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Superseded by Amendment No. 1 and Modified by Amendment No. 2, To Amend its Rules Relating to Designated Primary Market-Maker Appointments in Global Trading Hours and Curb Sessions) (the ''Previous DPM Filing'').

[13] An ''All Sessions'' order (including a bulk message) is an order a User designates as eligible to trade during all trading sessions. An unexecuted All Sessions order on the Book at the end of a GTH trading session enters the RTH Queuing Book and becomes eligible for execution during the RTH opening rotation and trading session on that same trading day, subject to a User's instructions. An unexecuted All Sessions order on the Book at the end of the RTH trading session remains on the Book and becomes eligible for execution during the Curb trading session on that same trading day, subject to a User's instructions. An unexecuted All Sessions order on the Book at the end of the Curb trading session enters the GTH Queuing Book and becomes eligible for execution during the GTH opening rotation and trading session on the next trading day, subject to a User's instructions. All Sessions Day orders on the Book at the conclusion of the Curb trading session will be canceled. A User may not designate an All Sessions order as Direct to PAR. *See* Exchange Rule 5.6(c).

[14] The term ''Day'' means, for an order so designated, an order or quote that, if not executed, expires at the RTH market close for all RTH Only orders and expires at the Curb market close for all All Sessions and RTH and Curb orders. Users may designate bulk messages as Day. *See* Exchange Rule 5.6(d).

[15] The terms ''Book'' and ''Simple Book'' mean the electronic book of simple orders and quotes maintained by the System, which single book is used during all trading sessions. *See* Exchange Rule 1.1.

[16] The terms ''Good-til-Cancelled'' and ''GTC'' mean, for an order so designated, if after entry into the System, the order is not fully executed, the order (or unexecuted portion) remains available for potential display or execution (with the same timestamp) unless cancelled by the entering User, or until the option expires, whichever comes first. Users may not designate bulk messages as GTC. *See* Exchange Rule 5.6(d).

[17] The terms ''Good-til-Date'' and ''GTD'' mean, for an order so designated, if after entry into the System, the order is not fully executed, the order (or unexecuted portion) remains available for potential display or execution (with the same timestamp) until a date and time specified by the entering User unless cancelled by the entering User. Users may not designate bulk messages as GTD. A User may not designate a GTD order as Direct to PAR. *See* Exchange Rule 5.6(d).

[18] The term ''Queuing Book'' means the book into which Users may submit orders and quotes (and onto which GTC and GTD orders remaining on the Book from the previous trading session or trading day, as applicable, are entered) during the Queuing Period for participation in the applicable opening rotation. Orders and quotes on the Queuing Book may not execute until the opening rotation. The Queuing Book for the GTH opening auction process may be referred to as the ''GTH Queuing Book,'' and the Queuing Book for the RTH opening auction process may be referred to as the ''RTH Queuing Book.'' *See* Exchange Rule 5.31.

instructions. An unexecuted GTH and RTH Only order with a Time-in-Force of GTC or GTD on the Book at the end of a GTH trading session remains on the Book and becomes eligible for execution during the RTH opening rotation and RTH trading session on the same trading day, subject to a User's instructions. An unexecuted GTH and RTH Only order with a Time-in-Force of GTC or GTD on the Book at the end of an RTH trading session enters the GTH Queuing Book and becomes eligible for execution during the GTH opening rotation and GTH trading session on the following trading day (but not during the Curb trading session on the same trading day), subject to a User's instructions. All GTH and RTH Only orders with a Time-in-Force of Day on the Book at the conclusion of the RTH trading session will be canceled. For example, a GTH and RTH Only order for an eligible index option with a Time-in-Force of Day entered during the overnight portion of GTH (which begins at 8:15 p.m. the previous calendar day) would remain on the Book at the end of the GTH session at 9:25 a.m., become eligible for execution during the RTH opening rotation and RTH trading session on the same calendar day, and be cancelled at the end of the RTH trading session if unexecuted. For index options, a GTC or GTD order would enter the GTH Queuing Book at 8:15 p.m. on the same calendar day, as the overnight session is part of the GTH session for the following trading day.

These new instructions parallel the existing session-eligibility framework in Rule 5.6(c) and supplement the current set of session designations. Today, a User wishing to limit an order to the GTH session must use ''All Sessions,'' which makes the order eligible for RTH and Curb as well, and then cancel the order prior to RTH if it was not executed during GTH. Similarly, there is no instruction that permits an order to participate in both GTH and RTH while excluding Curb. The new instructions give Users granular control and additional flexibility over session eligibility, which is responsive to customer demand and consistent with NYSE American's provision of GTH-only session support in its extended hours framework.[19]

To conform to the new order instructions, the Exchange also proposes to amend Rule 5.30 (Availability of Orders and Quotes for Electronic Processing) to add the new instructions to the session-specific availability lists. Specifically, the Exchange proposes to amend Rule 5.30(a)(2) to add ''GTH and RTH Only'' to the list of Order Instructions available during RTH, and to amend Rule 5.30(b)(2) to add ''GTH Only'' and ''GTH and RTH Only'' to the list of Order Instructions available during GTH.

2. Pre-Opening Queuing Period Start Time

The Exchange proposes to amend Rule 5.31(b)(1) to provide that the start of the pre-opening order Queuing Period for index options eligible for GTH begins no earlier than 6:00 p.m. (previous day) and for all other classes (*i.e.,* all option classes other than index options eligible for Global Trading Hours) begins no earlier than 6:00 a.m., in each case at a time the Exchange determines. Under current Rule 5.31(b)(1), the Queuing Period begins at 8:00 p.m. (previous day) for All Sessions Classes for index options, at 7:15 a.m. for GTH for All Sessions Classes for equity options, and at 7:30 a.m. for RTH Only Classes. The Queuing Period is the time period prior to the initiation of an opening rotation during which the System accepts orders and quotes in the Queuing Book for participation in the opening rotation for the applicable trading session. Upon the operative date of the Previous GTH Filing, GTH for equity options will commence at 7:30 a.m.; the current 7:15 a.m. Queuing Period start will afford 15 minutes for order and quote entry ahead of the GTH opening rotation.

Moving the start to no earlier than 6:00 p.m. (previous day) for index options and no earlier than 6:00 a.m. for all other classes (*i.e.,* all option classes other than index options eligible for Global Trading Hours) allows the Exchange to lengthen the pre-opening Queuing Period, affording market participants additional time to enter, modify, and cancel orders and quotes for participation in the GTH opening rotation and promoting a smoother, more orderly opening. This change is administrative and ministerial in nature—it adjusts only the time window during which orders and quotes are accepted for the Queuing Book and does not alter trading mechanics, order priority, execution logic, or price formation. Participants are not required to submit orders earlier; the extended window simply provides additional flexibility for those who choose to use it. This change affects only when orders and quotes are accepted for the Queuing Book, not when trading begins; the GTH and RTH opening rotation times remain unchanged. The Exchange's approach provides for a start time determined by Exchange notice rather than a fixed time, affording the Exchange operational flexibility.

For consistency, the Exchange also proposes to amend the opening-auction-update dissemination time in Rule 5.31(c) to begin at such time as the Exchange determines, but no earlier than 6:00 p.m. Eastern Time (previous day) for the GTH trading session for index options and no earlier than 6:00 a.m. Eastern Time for all other classes, so that the Exchange begins disseminating opening auction updates at the start of the Queuing Period (and thus incorporating orders and quotes submitted during the entire Queuing Period in those updates).

The Exchange also proposes to amend Rule 5.7 (Entry of Orders and Quotes) to update the order and quote entry times to conform to the proposed Queuing Period changes in Rule 5.31. Under current Rule 5.7(a), Users may enter orders and quotes from 8:00 p.m. (previous day) until Curb Trading Hours market close for All Sessions Classes and from 7:30 a.m. until Regular Trading Hours market close for RTH Classes. The Exchange proposes to amend Rule 5.7(a) to provide that Users may enter orders and quotes (1) from such time as the Exchange determines (but no earlier than 6:00 p.m. (previous day)) until market close for index options eligible for Global Trading Hours, and (2) from such time as the Exchange determines (but no earlier than 6:00 a.m.) until market close for all other classes (*i.e.,* all option classes other than index options eligible for Global Trading Hours). This change conforms the order and quote entry times in Rule 5.7 to the proposed Queuing Period changes in Rule 5.31 and ensures that Users can begin entering orders and quotes at the same time the System begins accepting orders and quotes into the Queuing Book.

These changes are administrative in nature. The Queuing Period concept already exists for all trading sessions, and the opening-auction-update dissemination process is unchanged in substance. The change raises no novel policy questions—it merely expands an existing administrative preparation window without affecting how orders are prioritized, matched, or executed. The Exchange notes that while NYSE American's extended trading hours framework provides for a fixed 6:00 a.m. order acceptance time rather than a time determined by Exchange notice, the Exchange believes its discretionary approach is appropriate. The rule merely sets a floor (''no earlier than 6:00 p.m. (previous day)'' for index options and ''no earlier than 6:00 a.m.'' for all other classes (*i.e.,* all option classes

[19] *See* NYSE American Rule 901.1NY(b).

other than index options eligible for Global Trading Hours))—it does not mandate the Exchange to begin queuing at those times. The ''no earlier than 6:00 p.m. (previous day)'' floor for index options affects only when orders and quotes are accepted for the Queuing Book, not when trading begins; GTH for index options will continue to open at 8:15 p.m. (previous day). All Exchange determinations regarding the time at which the Queuing Period will begin will be announced pursuant to Rule 1.5, so market participants will have advance notice and transparency regarding the applicable start time. In addition, the Exchange believes providing the Exchange with discretion affords operational flexibility to adjust the start time in response to feedback from market participants and evolving market conditions, which benefits investors by allowing the Exchange to optimize the preparation window based on actual market participant needs.

3. Curb Session on Shortened Regular Trading Hours (Half-Day) Sessions

The Exchange proposes to amend Rule 5.1(e), retitled ''Holidays and Shortened Regular Trading Hours'', to add new subparagraph (e)(3) addressing the treatment of trading sessions on a trading day with shortened Regular Trading Hours (*e.g.,* a half-day session, such as the trading day before Christmas Day).

Current Rule 5.1(e) addresses the holiday session structure for full holidays (domestic and international) but does not expressly address shortened trading days on which RTH close earlier than their regularly scheduled close. New Rule 5.1(e)(3) provides that on a trading day with shortened Regular Trading Hours (*e.g.,* the Exchange is open for a half day of regular trading between 9:30 a.m. through 1:00 p.m.):

(A) the Global Trading Hours session for GTH-eligible options will occur prior to the shortened Regular Trading Hours;

(B) the Regular Trading Hours session will occur during the hours designated by the Exchange for Regular Trading Hours (*e.g.,* 9:30 a.m. through 1:00 p.m., or 1:15 p.m. for options on ETFs, ETNs, Index Portfolio Shares, Index Portfolio Receipts, and Trust Issued Receipts designated to remain open for trading beyond 4:00 p.m. pursuant to subparagraph (b)(1)); and

(C) the Curb Trading Hours session for Curb-eligible options will commence at the end of the shortened Regular Trading Hours session and continue for 15 minutes (*e.g.,* 1:00 p.m. to 1:15 p.m.).

This change fills a gap in the existing session structure and makes explicit that the Curb session remains available on half-day sessions, shifted to follow the shortened RTH close. This approach is identical to the treatment adopted by NYSE American and MRX in their respective extended trading hours filings.[20] The Exchange's adoption of the same approach creates consistency across the industry and provides certainty to market participants regarding the availability of the Curb session on half-day trading days.

4. DPM Opening-Quote Obligation Extended to GTH (Rule 5.54(a)(6))

The Exchange proposes to amend Rule 5.54(a)(6) to expressly include DPMs within the opening-quote obligation applicable during the GTH session. Rule 5.54(a)(6) currently obligates a DPM to ''enter opening quotes for the Regular Trading Hours trading session'' in any series that is not open due to the lack of a quote pursuant to Rule 5.31, within a specified time period (determined by the Exchange on a class-by-class basis) for index options, and one minute for equity options, of the initiation of an opening rotation.

As described in the Previous DPM Filing, the Exchange may appoint DPMs to any trading session, including GTH and Curb. The Exchange inadvertently did not update Rule 5.54(a)(6) to apply the opening quote obligation to all trading sessions, so the Exchange proposes to correct this omission by amending Rule 5.54(a)(6) to state that each DPM must enter opening quotes for each of the Regular Trading Hours and Global Trading Hours trading sessions, as applicable (as one class may have different DPMs in different trading sessions). Because there is continuous trading from RTH to Curb and no opening rotation for Curb, this opening quote obligation does not apply to the Curb session.

This change makes the DPM opening-quote obligation consistent with how DPM obligations otherwise apply across trading sessions. The Exchange notes that Rule 5.52(b) provides that LMMs are not required to comply with the continuous quoting and other Market-Maker obligations set forth in Rule 5.52(a) during the GTH and Curb trading sessions. However, the opening quote obligation set forth in Rule 5.54(a)(6) is a DPM-specific obligation distinct from the LMM obligations in Rule 5.52, and there is no similar exclusion for DPMs. The Exchange notes that the DPM assigned to a particular class in the RTH session may not necessarily be the same DPM assigned to that class in the GTH session. The change will require a DPM appointed to a class for the GTH session to enter opening quotes in that class to help facilitate the GTH opening of any series that is not open due to the lack of a quote, promoting fair and orderly openings in the GTH session.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[21] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[23] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the adoption of the ''GTH Only'' and ''GTH and RTH Only'' order instructions and the conforming amendments to Rules 5.7 and 5.30 remove impediments to and perfect the mechanism of a free and open market and protect investors by giving Users additional granularity and flexibility over session eligibility for their orders in All Sessions classes. Further, the new instructions respond to customer demand and will maintain competitive parity with NYSE American's provision of analogous session-eligibility functionality.[24] The change applies equally to all Users and is not unfairly discriminatory.

Moving the start of the Queuing Period to no earlier than 6:00 p.m. (previous day) for index options and no earlier than 6:00 a.m. for all other

[20] NYSE American proposed Rule 901.1NY(c)(2) provides that on a trading day with a shortened Core Trading Session, the Late Trading Session will commence at the end of the shortened Core Trading Session and continue for 15 minutes (*e.g.,* 1:00 p.m. to 1:15 p.m.). MRX proposed Options 3C, Section 2(c)(2) provides that on a trading day with shortened Regular Trading Hours, the Extended Close will commence at the end of the shortened Regular Trading Hours and continue for 15 minutes.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *Id.*

[24] *Supra* note 20.

classes (*i.e.,* all option classes other than index options eligible for Global Trading Hours) (and conforming the related opening-auction-update time in Rule 5.31(c) and order-entry time in Rule 5.7) protects investors and the public interest and promotes just and equitable principles of trade, as it will permit the Exchange to afford market participants additional time to enter, modify, and cancel orders and quotes ahead of the GTH and RTH opening rotations. The change is administrative and ministerial—it adjusts only a technical parameter (the time window during which orders queue) without altering trading mechanics, order priority, execution logic, or the price discovery process. This change affects only when orders and quotes are accepted for the Queuing Book, not when trading begins; the GTH and RTH opening rotation times remain unchanged. Participants are not required to submit orders during the extended window; the change simply provides additional flexibility for those who choose to use it, with no corresponding investor risk. The change has no impact on how the Queuing Period will work, applies uniformly to all Users, and is not unfairly discriminatory. The Exchange's approach provides for a start time determined by Exchange notice rather than a fixed time, affording the Exchange operational flexibility to adjust the preparation window based on participant feedback and market conditions.

Adding new Rule 5.1(e)(3) to provide for the Curb session on half-day sessions removes impediments to and perfects the mechanism of a free and open market by providing certainty to market participants regarding the availability of the Curb session on shortened trading days by conforming the trading sessions available on shortened trading days with those available on full trading days, and thus providing additional trading time for Curb-eligible classes on these shortened days. Participation in Curb sessions on shortened trading days is voluntary and within the discretion of Users that otherwise participate in Curb sessions. The proposed rule change has no impact on how Curb sessions will operate. The change is substantively the same as rules adopted by NYSE American and MRX in their respective approved or immediately effective extended trading hours filings.[25]

Expressly including DPMs within the GTH opening-quote obligation in Rule 5.54(a)(6) promotes just and equitable principles of trade and fair and orderly markets by requiring a DPM appointed to GTH in an option class to enter opening quotes to facilitate the GTH opening of any series not open for lack of a quote. Because there is continuous trading from RTH to Curb with no opening rotation, this obligation does not apply to Curb. The change applies to all DPMs equally and is not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because it will apply equally to all similarly situated market participants. Specifically, the new ''GTH Only'' and ''GTH and RTH Only'' order instructions are available to all Users on the same terms; the changes to the Queuing Period start time, order entry time, and opening-auction-update dissemination time apply uniformly to all Users entering orders and quotes for the GTH and RTH openings (and entering, modifying, or cancelling orders during an extended Queuing Period is within the discretion of Users—no participant is required to act earlier, and the extended window creates no advantage for any subset of participants); the DPM opening-obligation change applies to all DPMs in each trading session to which they are appointed as a DPM to an options class; and the Curb session and half-day clarification applies uniformly to all market participants trading options in the Curb session (and participation in any such Curb session is within the discretion of Users).

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition. In several instances, the changes align the Exchange's rules with features of NYSE American and MRX (specifically, GTH-only session eligibility and Curb on half-days).[26] While NYSE American provides for a fixed 6:00 a.m. order acceptance time, the Exchange's approach provides for a start time determined by Exchange notice, which does not impose any burden on competition because it merely provides the Exchange with operational flexibility to adjust order acceptance times and affects only when orders and quotes are accepted, not when trading begins. The DPM opening-quote obligation applies only to DPMs on the Exchange and applies the opening quote obligation currently applicable to DPMs during RTH to GTH as well. Market participants on other exchanges are welcome to become Trading Permit Holders and trade at the Exchange if they determine that this proposed rule change has made the Exchange more attractive or favorable.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)[27] of the Act and Rule 19b–4(f)(6)[28] thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)[29] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[30] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[31] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange states that its proposed rule amendments are structural, conforming, and clarifying amendments to the Exchange's existing framework, and their immediate implementation will allow investors to benefit from these

[25] *Supra* note 21.

[26] *See* NYSE American Rule 901.1NY(b); MRX Options 3C, Section 2(c)(2).

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6). 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.

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6)(iii).

enhancements without unnecessary delay. The proposed rule amendments regarding the new time-in-force order instructions and availability of the Curb session on shortened trading days are designed to make the Exchange's rules consistent with the rules of other exchanges,[32] and the proposed rule amendments regarding earlier Queuing Period start times and the DPM opening-quote obligation for GTH sessions are designed to promote fair and orderly markets. For these reasons, and because the proposed rule change raises no novel legal or regulatory issues, the Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.[33]

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 under Section 19(b)(2)(B) [34] 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–CBOE–2026–078 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CBOE–2026–078. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2026–078 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20795 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

[32] *See* NYSE American Rule 901.1NY; MRX Options 3C, Section 2(c)(2).

[33] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78s(b)(2)(B).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106628; File No. SR–CboeEDGX–2026–069]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule To Add IEX Exchange, Inc. (''IEX'') to Fee Code RP

October 7, 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 October 1, 2026, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend its Fees Schedule to add IEX Exchange, Inc. (''IEX'') to fee code RP. 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/edgx/*), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule applicable to its options platform (''EDGX Options''), effective October 1, 2026, to add IEX to fee code RP.[3] 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. Market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Addition of IEX to Fee Code RP

The Exchange assesses fees in connection with orders routed away to various options exchanges. The Fees Schedule currently lists fee codes and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Fee code RP is appended to Customer orders that are routed to and executed at to NYSE American (''AMEX''), BOX Options Exchange (''BOX''), Cboe Exchange, Inc. (''Cboe''), MX2 LLC, (''MX2'') MIAX Options Exchange (''MIAX''), MIAX Sapphire, LLC (''SPHR''), or Nasdaq PHLX LLC (''PHLX'') (excluding orders in SPY options routed to PHLX), and is assessed a charge of $0.25 per contract.

their corresponding transaction fees for certain Customer [4] orders routed to other options exchanges. Currently, under the Fee Codes and Associated Fees section of the Fee Schedule, fee code RP is appended to routed Customer orders to AMEX, BOX, Cboe, MIAX, MX2, SPHR, or PHLX (excluding orders in SPY options routed to PHLX) and assesses a charge of $0.25 per contract.

The Exchange's current approach to routing fees is to set forth in a simple manner certain sub-categories of fees that approximate the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.,* clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, ''Routing Costs''). The Exchange monitors the fees charged as compared to the costs of its routing services and adjusts its routing fees and/or sub-categories to ensure that the Exchange's fees result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area. Other options exchanges assess routing fees in a similar manner.[5]

The Exchange proposes to amend fee code RP to add applicable Customer orders routed to IEX, a national securities exchange. The charge assessed per contract for fee code RP remains the same ($0.25) under the proposed rule change. The proposed change results in an assessment of fees that, given the fees of an away options exchange, is in line with the Exchange's current approach to routing fees—that is, in a manner that approximates the cost of routing Customer orders to other away options exchanges, based on the general cost of transaction fees assessed by the sub-category of away options exchanges for such orders (as well as the Exchange's Routing Costs). The Exchange notes that routing through the Exchange is optional and that market participants will continue to be able to choose where to route applicable Customer orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange believes the proposed change to add IEX to fee code RP is reasonable because the charge assessed per contract for fee code RP remains the same, and the change is designed to assess routing fees for Customer orders routed to IEX in a manner consistent with the Exchange's current approach to routing fees—*i.e.,* in the most appropriate sub-category of fees that approximates the cost of routing to a group of away options exchanges based on the cost of transaction fees assessed by each venue as well as the Exchange's Routing Costs. The Exchange believes the proposed change is equitable and not unfairly discriminatory because all Members' Customer orders in non-penny (and, as applicable, penny) classes routed to IEX will automatically yield fee code RP and uniformly be assessed the corresponding fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change will impose any burden on intramarket competition. The proposed change to add IEX to fee code RP will apply automatically and uniformly to all Members' applicable Customer orders routed to IEX, which will be assessed the same $0.25 per contract charge that applies to other exchanges within fee code RP.

The Exchange does not believe the proposed change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues, including 17 other options exchanges and off-exchange venues. Routing through the Exchange is optional. The proposed change is designed to allow the Exchange to recover its Routing Costs and to assess routing fees in a manner comparable to at least one other options exchange, thereby furthering the Commission's goal in adopting Regulation NMS of fostering competition among orders. Members may readily direct their order flow to competing venues if they deem the Exchange's fees to be excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and paragraph (f) of Rule 19b–4 [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[4] ''Customer'' applies to any order for the account of a Priority Customer.

[5] *See e.g.,* MIAX Options Exchange Fee Schedule, available at *https://www.miaxglobal.com/markets/us-options/miax-options/fees.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

Electronic Comments

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2026–069 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–CboeEDGX–2026–069. 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–CboeEDGX–2026–069 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20803 Filed 10–9–26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106631; File No. SR–NASDAQ–2026–083]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 11, Rule 11890 (Clearly Erroneous Transactions)

October 7, 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 September 25, 2026, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Equity 11, Rule 11890 (Clearly Erroneous Transactions) in light of the Commission's approval of Overnight Protected Bands for 23/5 Trading.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings,* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Equity 11, Rule 11890 (Clearly Erroneous Transactions) in light of the Commission's approval of Overnight Protected Bands under the LULD Plan for 23/5 Trading.

Background

In conjunction with the industry's plans for the introduction of trading 23 hours a day, 5 days a week (''23/5 Trading''), the Operating Committee of the Plan to Address Extraordinary Market Volatility (''LULD Plan'') filed proposed Amendment 27 to the LULD Plan, which proposed to establish price band protections during overnight trading hours (''Overnight Price Bands'').[3] The Operating Committee proposed that the Overnight Price Bands would initially be temporary static bands 20% above and below two reference points, and that after implementation, the Operating Committee would evaluate the performance of such Overnight Price Bands and propose appropriate changes in a new plan amendment.[4] On August 5, 2026, the Commission approved the proposal.[5]

In light of the Commission's approval of these changes to the LULD Plan, the Exchange now proposes several amendments to Rule 11890 regarding Clearly Erroneous Transactions. In general, the rule describes the process a market participant may use to request cancellation of a transaction that was ''clearly erroneous.'' The current rule's central premise is that if LULD Price Bands under the LULD Plan were available and correct at the time the transaction was executed, the transaction is not eligible for clearly erroneous review. Specifically, Rule 11890(a)(2)(C)(1) currently provides that ''[i]f the execution time of the transaction(s) under review is during Regular Market Hours, the transaction will not be reviewable as clearly erroneous'' except in certain limited circumstances, including when (A) the transaction is in an NMS stock that is not subject to the LULD Plan (*e.g.,* rights and warrants), (B) the transaction was executed at a time with LULD Price Bands were unavailable or trading should have been prevented due to a regulatory halt or other halt, or (C) several other limited circumstances.[6] In approving the existing version of the rule, the Commission noted that restricting clearly erroneous review in this way during times when LULD Price Bands were in effect was ''consistent with the Act and will further the goal of providing greater certainty to market participants that trades executed within the Price Bands will stand and not be broken. . . . Thus, the proposal is designed to limit the potential discordance between the LULD mechanism and CEE review process.'' [7]

[11] 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. 105596 (June 1, 2026), 91 FR 33774 (June 4, 2026) (File No. 4–631) (Notice of Filing of 27th Amendment to the National Market System Plan).

[4] *See id.*

[5] *See* Securities Exchange Act Release No. 106042 (August 5, 2026), 91 FR 51515 (August 10, 2026) (File No. 4–631) (Order Granting Approval of the 27th Amendment to the National Market System Plan to Address Extraordinary Market Volatility to Establish Temporary Price Band Protections in Overnight Trading).

[6] *See* Rule 11890(a)(2)(C)(1)(i), (ii), and (iii).

[7] *See* Securities Exchange Act Release No. 95658 (September 1, 2022), 87 FR 55060 at 55063 (September 8, 2022) (SR–CboeBZX–2022–037) (Order Approving a Proposed Rule Change, as

Continued

Currently, LULD Price Bands are available only during Regular Market Hours, meaning that the restrictions on clearly erroneous review described above apply only during Regular Market Hours. With the introduction of Overnight Price Bands, the Exchange now proposes to extend the existing restrictions on clearly erroneous review to the period when Overnight Price Bands are in place. This proposed change would be consistent with the Commission's rationale in approving the current version of the rule because it would limit any potential discordance between the LULD mechanism and CEE review in the overnight trading session, providing greater certainty to market participants that trades executed with the Overnight Price Bands will stand and not be broken.

Proposed Changes to Rule 11890(a)(2)(C)(1)

To implement this change, the Exchange proposes to add several definitions to Rule 11890(a)(2)(C)(1). First, the Exchange would add that the term ''LULD Protected Hours'' includes Regular Market Hours and ''Overnight Protected Hours'' defined in Section VIII of the LULD Plan. Second, the Exchange would define ''LULD Price Bands'' or ''Price Bands'' to mean the Price Bands defined in Section V of the LULD Plan (*i.e.,* the Price Bands that apply during Regular Market Hours) and ''Overnight Price Bands'' as defined in Section VIII of the LULD Plan (*i.e.,* the Price Bands that apply to the Overnight Protected Hours from 9:00 p.m. ET through 4:00 a.m. ET).

The Exchange proposes to amend the current first sentence of Rule 11890(a)(2)(C)(1) to replace the phrase ''Regular Market Hours'' with ''LULD Protected Hours,'' to provide that ''[i]f the execution time of the transaction(s) under review is during LULD Protected Hours, the transaction will not be reviewable as clearly erroneous . . . .'' This change would extend the LULD-based restrictions on clearly erroneous review currently in place during Regular Market Hours to the Overnight Protected Hours.

The Exchange also proposes to amend Rule 11890(a)(2)(C)(1)(ii)'s reference to ''Percentage Parameter'' to incorporate the Percentage Parameter that applies to Overnight Protected Hours. The amended provision would provide for the applicability of clearly erroneous review if the price of the transaction to buy (sell) that is the subject of the clearly erroneous complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan (with respect to the Price Bands that apply during Regular Market Hours) or the ''Overnight Percentage Parameter defined in Section VIII of the LULD Plan'' (with respect to Overnight Protected Hours).

In addition to these changes, the Exchange also proposes to make a non-substantive change to Rule 11890(a)(2)(C)(1)(i), substituting the term ''LULD Plan'' for the current text ''the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the 'Limit Up-Limit Down Plan' or 'LULD Plan,')'' as the ''LULD Plan'' would be defined in the proposed revision to Rule 11890(a)(2)(C)(1).

Proposed Changes to 11890(a)(2)(A)(iii), (a)(2)(C)(2), (a)(2)(D)(3), and (b)(i)

As noted above, current Rule 11890(a)(2)(C)(1) permits clearly erroneous review even during Regular Market Hours when the transaction in question is in an NMS Stock that is not subject to the LULD Plan, *i.e.,* rights and warrants. Such transactions are reviewed for clearly erroneous status using the procedures set out in Rule 11890(a)(2)(C)(2), including the Numerical Guidelines set out in the table accompanying Rule 11890(a)(2)(C)(2)(i). The Exchange now proposes to introduce a similar provision regarding transactions in NMS Stocks not subject to the LULD Plan that are executed during the Overnight Protected Hours; such transactions would be subject to the same Numerical Guidelines as transactions occurring in Pre-Market Hours, Post-Market Hours, and the Night Session.

The heading of Rule 11890(a)(2)(C)(2) addresses ''[r]eview of transactions occurring during Pre-Market Hours or Post-Market Hours or Night Session or eligible for review pursuant to paragraph (c)(1)(i).'' The Exchange proposes to replace the phrase ''eligible for review pursuant to paragraph (c)(1)(i)'' (which, in the current rule, means transactions executed during Regular Market Hours in NMS Stocks not subject to the LULD Plan) with ''during LULD Protected Hours in NMS Stocks not subject to the LULD Plan.'' This proposed language would cover transactions in NMS Stocks not subject to the LULD Plan in Regular Market Hours and expand the same treatment to transactions executed in NMS Stocks not subject to the LULD Plan during Overnight Protected Hours. As such, the proposed change is not novel.

The Exchange proposes to make the same change everywhere else such language appears in the rule—namely, in the text of paragraphs (a)(2)(A)(iii), (a)(2)(C)(2)(i), (a)(2)(C)(2)(ii), (a)(2)(C)(2)(iii), (a)(2)(D)(3), and (b)(i).[8] In each case, the Exchange proposes to replace the phrase ''transactions occurring during Pre-Market Hours or Post-Market Hours or Night Session or eligible for review'' pursuant to subparagraph (C)(1)(i) with ''transactions occurring during Pre-Market Hours or Post-Market Hours or Night Session or during LULD Protected Hours in NMS Stocks not subject to the LULD Plan.''

The Exchange also proposes to make corresponding changes to the headings of the table accompanying Rule 11890(a)(2)(C)(2)(i). The Exchange proposes to change the heading of the second column from ''Regular Market Hours Numerical Guidelines for transactions eligible for review pursuant to subparagraph (C)(1)(i)'' to ''Numerical Guidelines for Transactions Executed During Regular Market Hours in NMS Stocks Not Subject to the LULD Plan.'' This change would simply replace the shorthand ''eligible for review pursuant to subparagraph (C)(1)(i)'' with the fuller description that such transactions are ''executed during Regular Market Hours in NMS Stocks not subject to the LULD Plan,'' and is not a substantive change.

Similarly, the Exchange proposes to change the heading of the third column from ''Pre-Market Hours, Post-Market Hours and Night Session Numerical Guidelines'' to ''Numerical Guidelines for Transactions Executed During Pre-Market Hours, Post-Market Hours and Night Session or During Overnight Protected Hours in NMS Stocks Not Subject to the LULD Plan.'' The proposed change addresses the fact that transactions executed during Overnight Protected Hours in NMS Stocks not subject to the LULD Plan are eligible for clearly erroneous review—just as are transactions in NMS Stocks not subject to the LULD Plan executed during Regular Market Hours—but at the Numerical Guidelines that apply outside of Regular Market Hours. Together, these proposed changes

Modified by Amendment Nos. 1 and 2, to Amend BZX Rule 11.17, Clearly Erroneous Executions).

[8] Paragraphs (a)(2)(A)(iii), (a)(2)(C)(2)(i), (a)(2)(C)(2)(ii), and (a)(2)(C)(2)(iii) specify general rules for applying clearly erroneous review to transactions where such review is not precluded by paragraph (a)(2)(C)(1). Paragraph (a)(2)(D)(3) specifies conditions where the Exchange may use a revised Reference Price for the purpose of clearly erroneous review in certain transactions where such review is not precluded by paragraph (a)(2)(C)(1). Paragraph (b)(i) specifies that for transactions where clearly erroneous review is not precluded by paragraph (a)(2)(C)(1), a senior officer may initiate clearly erroneous review on his or her own motion.

would extend the eligibility of clearly erroneous review for transactions in NMS Stocks not subject to the LULD Plan that is currently in place during Regular Market Hours to the Overnight Protected Hours, and would apply the Commission's recent approval of Overnight Price Bands to the clearly erroneous executions rule.

Implementation

The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals, the substance of which are identical to this proposal. The Exchange proposes that this rule change would become operative at the commencement of 23/5 Trading, which is scheduled to commence industry-wide on December 6, 2026.

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 the proposed change is consistent with just and equitable principles of trade because it extends the basic premise of the current rule that clearly erroneous review should be generally unavailable any time a transaction is executed within LULD Price Bands at a time the Price Bands were available and correct. Currently, LULD Price Bands are available only during Regular Market Hours, meaning that the restrictions on clearly erroneous review described above apply only during Regular Market Hours. With the introduction of Overnight Price Bands, the Exchange believes that extending such restrictions on clearly erroneous review to the period when Overnight Price Bands are in place would remove impediments to and perfect the mechanism of a free and open market and a national market system by enhancing the transparency and consistency of the rule.

The resulting rule would thus extend the LULD-related limits on clearly erroneous review that are applicable in Regular Market Hours to the overnight period. The proposed change would also be consistent with the Commission's rationale in approving the current version of the rule because it would limit any potential discordance between the LULD mechanism and CEE review in the overnight trading session, providing greater certainty to market participants that trades executed with the Overnight Price Bands will stand and not be broken.[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather than impacting competition, the proposed change would simply extend the basic premise of the current rule that clearly erroneous review should be generally unavailable any time a transaction is executed within LULD Price Bands at a time the Price Bands were available and correct. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals, the substance of which are identical to this proposal. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2026–083 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NASDAQ–2026–083. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2026–083 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20806 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* 87 FR 55060 at 55063, *supra* note 7.

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106627; File No. SR–CboeBZX–2026–083]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule To Add IEX Exchange, Inc. (''IEX'') to Fee Code RP

October 7, 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 October 1, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its Fees Schedule to add IEX Exchange, Inc. (''IEX'') to fee code RP. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule applicable to its options platform (''BZX Options''), effective October 1, 2026, to add IEX to fee code RP.[3] 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. Market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Addition of IEX to Fee Code RP

The Exchange assesses fees in connection with orders routed away to various options exchanges. The Fees Schedule currently lists fee codes and their corresponding transaction fees for certain Customer[4] orders routed to other options exchanges. Currently, under the Fee Codes and Associated Fees section of the Fee Schedule, fee code RP is appended to routed Customer orders to AMEX, BOX, Cboe, EDGX, MX2, MIAX, SPHR, or PHLX (excluding orders in SPY options routed to PHLX) and assesses a charge of $0.25 per contract.

The Exchange's current approach to routing fees is to set forth in a simple manner certain sub-categories of fees that approximate the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.,* clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, ''Routing Costs''). The Exchange monitors the fees charged as compared to the costs of its routing services and adjusts its routing fees and/or sub-categories to ensure that the Exchange's fees result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area. Other options exchanges assess routing fees in a similar manner.[5]

The Exchange proposes to amend fee code RP to add applicable Customer orders routed to IEX, a national securities exchange. The charge assessed per contract for fee code RP remains the same ($0.25) under the proposed rule change. The proposed change results in an assessment of fees that, given the fees of an away options exchange, is in line with the Exchange's current approach to routing fees—that is, in a manner that approximates the cost of routing Customer orders to other away options exchanges, based on the general cost of transaction fees assessed by the sub-category of away options exchanges for such orders (as well as the Exchange's Routing Costs). The Exchange notes that routing through the Exchange is optional and that market participants will continue to be able to choose where to route applicable Customer orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and

[3] Fee code RP is appended to Customer orders that are routed to and executed at to NYSE American (''AMEX''), BOX Options Exchange (''BOX''), Cboe Exchange, Inc. (''Cboe''), Cboe EDGX Exchange, Inc. (''EDGX''), MX2 LLC, (''MX2'') MIAX Options Exchange (''MIAX''), MIAX Sapphire, LLC (''SPHR''), or Nasdaq PHLX LLC (''PHLX'') (excluding orders in SPY options routed to PHLX), and is assessed a charge of $0.25 per contract.

[4] ''Customer'' applies to any order for the account of a Priority Customer.

[5] *See e.g.,* MIAX Options Exchange Fee Schedule, available at *https://www.miaxglobal.com/markets/us-options/miax-options/fees.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(4).

other charges among its Members and other persons using its facilities.

The Exchange believes the proposed change to add IEX to fee code RP is reasonable because the charge assessed per contract for fee code RP remains the same, and the change is designed to assess routing fees for Customer orders routed to IEX in a manner consistent with the Exchange's current approach to routing fees—*i.e.,* in the most appropriate sub-category of fees that approximates the cost of routing to a group of away options exchanges based on the cost of transaction fees assessed by each venue as well as the Exchange's Routing Costs. The Exchange believes the proposed change is equitable and not unfairly discriminatory because all Members' Customer orders in non-penny (and, as applicable, penny) classes routed to IEX will automatically yield fee code RP and uniformly be assessed the corresponding fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change will impose any burden on intramarket competition. The proposed change to add IEX to fee code RP will apply automatically and uniformly to all Members' applicable Customer orders routed to IEX, which will be assessed the same $0.25 per contract charge that applies to other exchanges within fee code RP.

The Exchange does not believe the proposed change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues, including 17 other options exchanges and off-exchange venues. Routing through the Exchange is optional. The proposed change is designed to allow the Exchange to recover its Routing Costs and to assess routing fees in a manner comparable to at least one other options exchange, thereby furthering the Commission's goal in adopting Regulation NMS of fostering competition among orders. Members may readily direct their order flow to competing venues if they deem the Exchange's fees to be excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and paragraph (f) of Rule 19b–4 [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2026–083 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2026–083. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the 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–2026–083 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20802 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0236]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Form N–54C

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (SEC or ''Commission'') is submitting to the Office of Management and Budget (OMB) this request for extension of the proposed collection of information.

Certain investment companies can elect to be regulated as business development companies, as defined in section 2(a)(48) of the Investment Company Act of 1940 (''Investment Company Act''), under sections 55 through 65 of the Investment Company Act. Under section 54(a) of the Investment Company Act,[1] any company defined in section 2(a)(48)(A) and (B) of the Investment Company Act may, if it meets certain enumerated eligibility requirements, elect to be subject to the provisions of Sections 55 through 65 of the Investment Company Act by filing with the Commission a notification of election. Under section 54(c) of the Investment Company Act,[2] any business development company may voluntarily withdraw its election under section 54(a) of the Investment Company Act by filing a notice of withdrawal of election with the Commission. The Commission has adopted Form N–54C as the form for the

[1] 15 U.S.C. 80a–53(a).

[2] 15 U.S.C. 80a–53(c).

notification of withdrawal of election to be subject to Sections 55 through 65 of the Investment Company Act. The purpose of Form N–54C is to notify the Commission that the business development company withdraws its election to be subject to Sections 55 through 65 of the Investment Company Act.

The Commission estimates that on average approximately eight business development companies file notifications on Form N–54C each year. Each of those business development companies need only make a single filing of Form N–54C. The Commission further estimates that this information collection imposes a burden of one internal hour, resulting in a total annual internal burden of eight hours. The form involves legal judgments and therefore, the Commission estimates that the internal annual time burden will be based on legal time. Based on the estimated wage rate of $774 per hour, the total estimated internal time costs to business development companies of the hour burden for complying with Form N–54C would be approximately $6,192.[3] Further, based on an estimated external cost burden of $232 per filing, the total estimated annual external cost burden to comply with Form N–54C would be $1,856.[4]

The collection of information under Form N–54C is mandatory. The information provided by the form is not kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

The public may view and comment on this information collection request at: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202607-3235-027* or email comment to *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* within 30 days of the day after publication of this notice, by November 12, 2026.

Dated: October 7, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20819 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

[3] 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.* This estimate is based on the three-year average number of filings submitted to the Commission on Form N–54–C from 2023 through 2025 [(6 filings (2023) + 7 filings (2024) + 12 filings (2025) = 25 filings/3 = 8 filings, as rounded].

[4] This estimate is based on .3 hours of legal time at $774 per hour = $232, as rounded. $232 × 8 filings = $1,856, total annual external burden. *See supra* footnote 3 (discussing wage rates).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106623; File No. SR–CboeBYX–2026–035]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.17 (Clearly Erroneous Executions)

October 7, 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 September 24, 2026, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') proposes to amend Rule 11.17 (''Clearly Erroneous Executions'') in light of the Commission's approval of Overnight Protected Bands for 23/5 Trading. 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/byx/*), 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

Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') proposes to amend Rule 11.17 (''Clearly Erroneous Executions'') in light of the Commission's approval of Overnight Protected Bands under the LULD Plan for 23/5 Trading.

Background

In conjunction with the industry's plans for the introduction of trading 23 hours a day, 5 days a week (''23/5 Trading''), the Operating Committee of the Plan to Address Extraordinary Market Volatility (''LULD Plan'') filed proposed Amendment 27 to the LULD Plan, which proposed to establish price band protections during overnight trading hours (''Overnight Price Bands'').[5] The Operating Committee

[5] *See* Securities Exchange Act Release No. 105596 (June 1, 2026), 91 FR 33774 (June 4, 2026) (File No.

proposed that the Overnight Price Bands would initially be temporary static bands 20% above and below two reference points, and that after implementation, the Operating Committee would evaluate the performance of such Overnight Price Bands and propose appropriate changes in a new plan amendment.[6] On August 5, 2026, the Commission approved the proposal.[7]

In light of the Commission's approval of these changes to the LULD Plan, the Exchange now proposes several amendments to Rule 11.17 regarding Clearly Erroneous Executions. In general, the rule describes the process a market participant may use to request cancellation of a transaction that was ''clearly erroneous.'' The current rule's central premise is that if LULD Price Bands under the LULD Plan were available and correct at the time the transaction was executed, the transaction is not eligible for clearly erroneous review. Specifically, Rule 11.17(c)(1) currently provides that ''[i]f the execution time of the transaction(s) under review is during Regular Trading Hours, the transaction will not be reviewable as clearly erroneous'' except in certain limited circumstances, including when (A) the transaction is in an NMS stock that is not subject to the LULD Plan (*e.g.,* rights and warrants), (B) the transaction was executed at a time with LULD Price Bands were unavailable or trading should have been prevented due to a regulatory halt or other halt, or (C) several other limited circumstances.[8] In approving the existing version of the rule, the Commission noted that restricting clearly erroneous review in this way during times when LULD Price Bands were in effect was ''consistent with the Act and will further the goal of providing greater certainty to market participants that trades executed within the Price Bands will stand and not be broken . . . . Thus, the proposal is designed to limit the potential discordance between the LULD mechanism and CEE review process.'' [9]

Currently, LULD Price Bands are available only during Regular Trading Hours, meaning that the restrictions on clearly erroneous review described above apply only during Regular Trading Hours. With the introduction of Overnight Price Bands, the Exchange now proposes to extend the existing restrictions on clearly erroneous review to the period when Overnight Price Bands are in place. This proposed change would be consistent with the Commission's rationale in approving the current version of the rule because it would limit any potential discordance between the LULD mechanism and CEE review in the overnight trading session, providing greater certainty to market participants that trades executed with the Overnight Price Bands will stand and not be broken.

Proposed Changes to Rule 11.17(c)(1)

To implement this change, the Exchange proposes to add several definitions to Rule 11.17(c)(1). First, the Exchange would add that the term ''LULD Protected Hours'' includes Regular Trading Hours and ''Overnight Protected Hours'' defined in Section VIII of the LULD Plan. Second, the Exchange would define ''LULD Price Bands'' or ''Price Bands'' to mean the Price Bands defined in Section V of the LULD Plan (*i.e.,* the Price Bands that apply during Regular Trading Hours) and ''Overnight Price Bands'' as defined in Section VIII of the LULD Plan (*i.e.,* the Price Bands that apply to the Overnight Protected Hours from 9:00 p.m. ET through 4:00 a.m. ET).

The Exchange proposes to amend the current first sentence of Rule 11.17(c)(1) to replace the phrase ''Regular Trading Hours'' with ''LULD Protected Hours,'' to provide that ''[i]f the execution time of the transaction(s) under review is during LULD Protected Hours, the transaction will not be reviewable as clearly erroneous . . . .'' This change would extend the LULD-based restrictions on clearly erroneous review currently in place during Regular Trading Hours to the Overnight Protected Hours.

The Exchange also proposes to amend Rule 11.17(c)(1)(B)'s reference to ''Percentage Parameter'' to incorporate the Percentage Parameter that applies to Overnight Protected Hours. The amended provision would provide for the applicability of clearly erroneous review if the price of the transaction to buy (sell) that is the subject of the clearly erroneous complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan (with respect to the Price Bands that apply during Regular Trading Hours) or the ''Overnight Percentage Parameter defined in Section VIII of the LULD Plan'' (with respect to Overnight Protected Hours).

In addition to these changes, the Exchange also proposes to make a non-substantive change to Rule 11.17(c)(1)(A), substituting the term ''LULD Plan'' for the current text ''the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the 'Limit Up-Limit Down Plan' or 'LULD Plan,')'' as the ''LULD Plan'' would be defined in the proposed revision to Rule 11.17(c)(1).

Proposed Changes to Rule 11.17(c)(2), (d)(3), and (f)

As noted above, current Rule 11.17(c)(1)(A) permits clearly erroneous review even during Regular Trading Hours when the transaction in question is in an NMS Stock that is not subject to the LULD Plan, *i.e.,* rights and warrants. Such transactions are reviewed for clearly erroneous status using the procedures set out in Rule 11.17(c)(2), including the Numerical Guidelines set out in the table accompanying Rule 11.17(c)(2)(A). The Exchange now proposes to introduce a similar provision regarding transactions in NMS Stocks not subject to the LULD Plan that are executed during the Overnight Protected Hours; such transactions would be subject to the same Numerical Guidelines as transactions occurring in the Early Trading, Pre-Opening, and After Hours Sessions.

The heading of Rule 11.17(c)(2) addresses ''[r]eview of transactions occurring during Early Trading, Pre-Opening, After Hours Session, or eligible for review pursuant to paragraph (c)(1)(A).'' The Exchange proposes to replace the phrase ''eligible for review pursuant to paragraph (c)(1)(A)'' (which, in the current rule, means transactions executed during Regular Trading Hours in NMS Stocks not subject to the LULD Plan) with ''during LULD Protected Hours in NMS Stocks not subject to the LULD Plan.'' This proposed language would cover transactions in NMS Stocks not subject to the LULD Plan in Regular Trading Hours and expand the same treatment to transactions executed in NMS Stocks not subject to the LULD Plan during Overnight Protected Hours. As such, the proposed change is not novel.

The Exchange proposes to make the same change everywhere else such language appears in the rule—namely, in the text of paragraphs (c)(2)(A),

4–631) (Notice of Filing of 27th Amendment to the National Market System Plan).

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 106042 (August 5, 2026), 91 FR 51515 (August 10, 2026) (File No. 4–631) (Order Granting Approval of the 27th Amendment to the National Market System Plan to Address Extraordinary Market Volatility to Establish Temporary Price Band Protections in Overnight Trading).

[8] *See* Rule 11.17(c)(1)(A), (B), and (C).

[9] *See* Securities Exchange Act Release No. 95658 (September 1, 2022), 87 FR 55060 at 55063 (September 8, 2022) (SR–CboeBZX–2022–037) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Amend BZX Rule 11.17, Clearly Erroneous Executions).

(c)(2)(B), (c)(2)(C), (c)(2)(D), (d)(3), and (f).[10] In each case, the Exchange proposes to replace the phrase ''transactions occurring during the Early Trading, Pre-Opening, or After Hours Session or eligible for review pursuant to paragraph (c)(1)(A)'' with ''transactions occurring during the Early Trading, Pre-Opening, or After Hours Session or during LULD Protected Hours in NMS Stocks not subject to the LULD Plan.''

The Exchange also proposes to make corresponding changes to the headings of the table accompanying Rule 11.17(c)(2)(A). The Exchange proposes to change the heading of the second column from ''Regular Trading Hours Numerical Guidelines for transactions eligible for review pursuant to paragraph (c)(1)(A)'' to ''Numerical Guidelines for Transactions Executed During Regular Trading Hours in NMS Stocks Not Subject to the LULD Plan.'' This change would simply replace the shorthand ''eligible for review pursuant to paragraph (c)(1)(A)'' with the fuller description that such transactions are ''executed during Regular Trading Hours in NMS Stocks not subject to the LULD Plan,'' and is not a substantive change.

Similarly, the Exchange proposes to change the heading of the third column from ''Early Trading, Pre-Opening and After Hours Session Numerical Guidelines'' to ''Numerical Guidelines for Transactions Executed During the Early Trading, Pre-Opening and After Hours Session or During Overnight Protected Hours in NMS Stocks Not Subject to the LULD Plan.'' The proposed change addresses the fact that transactions executed during Overnight Protected Hours in NMS Stocks not subject to the LULD Plan are eligible for clearly erroneous review—just as are transactions in NMS Stocks not subject to the LULD Plan executed during Regular Trading Hours—but at the Numerical Guidelines that apply outside of Regular Trading Hours.

Together, these proposed changes would extend the eligibility of clearly erroneous review for transactions in NMS Stocks not subject to the LULD Plan that is currently in place during Regular Trading Hours to the Overnight Protected Hours, and would apply the Commission's recent approval of Overnight Price Bands to the clearly erroneous executions rule.

Implementation

The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals,[11] the substance of which are identical to this proposal. The Exchange proposes that this rule change would become operative at the commencement of 23/5 Trading, which is scheduled to commence industry-wide on December 6, 2026.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[12] Specifically, the proposal is consistent with Section 6(b)(5) of the Act[13] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange believes that the proposed change is consistent with just and equitable principles of trade because it extends the basic premise of the current rule that clearly erroneous review should be generally unavailable any time a transaction is executed within LULD Price Bands at a time the Price Bands were available and correct. Currently, LULD Price Bands are available only during Regular Trading Hours, meaning that the restrictions on clearly erroneous review described above apply only during Regular Trading Hours. With the introduction of Overnight Price Bands, the Exchange believes that extending such restrictions on clearly erroneous review to the period when Overnight Price Bands are in place would remove impediments to and perfect the mechanism of a free and open market and a national market system by enhancing the transparency and consistency of the rule.

The resulting rule would thus extend the LULD-related limits on clearly erroneous review that are applicable in Regular Trading Hours to the overnight period. The proposed change would also be consistent with the Commission's rationale in approving the current version of the rule because it would limit any potential discordance between the LULD mechanism and CEE review in the overnight trading session, providing greater certainty to market participants that trades executed with the Overnight Price Bands will stand and not be broken.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act[15] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather than impacting competition, the proposed change would simply extend the basic premise of the current rule that clearly erroneous review should be generally unavailable any time a transaction is executed within LULD Price Bands at a time the Price Bands were available and correct. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals, the substance of which are identical to this proposal. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

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 significantly affect the protection of investors or the public interest; impose any significant burden on competition; and become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)[17] thereunder. At any time within

[10] Rule 11.17(c)(2)(A)–(D) specifies general rules for applying clearly erroneous review to transactions where such review is not precluded by paragraph (c)(1). Rule 11.17(d)(3) specifies conditions where the Exchange may use a revised Reference Price for the purpose of clearly erroneous review in certain transactions where such review is not precluded by paragraph (c)(1). Rule 11.17(f) specifies that for transactions where clearly erroneous review is not precluded by paragraph (c)(1), an Officer of the Exchange or senior level employee designee may initiate clearly erroneous review on his or her own motion.

[11] *See, e.g.,* Securities Exchange Act Release No. 106315 (September 9, 2026), 91 FR 58201 (September 14, 2026), SR–NYSEAMER–2026–80 (September 2, 2026) (''NYSE American CEE Filing'').

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* 87 FR 55060 at 55063, *supra* note 9.

[15] 15 U.S.C. 78f(b)(8).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 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

60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–CboeBYX–2026–035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBYX–2026–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBYX–2026–035 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20798 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106630; File No. SR–Phlx–2026–60]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rule 3312 (Clearly Erroneous Transactions)

October 7, 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 September 28, 2026, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Equity 4, Rule 3312 (Clearly Erroneous Transactions) in light of the Commission's approval of Overnight Protected Bands for 23/5 Trading.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rulefilings,* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Equity 4, Rule 3312 (Clearly Erroneous Transactions) in light of the Commission's approval of Overnight Protected Bands under the LULD Plan for 23/5 Trading.

Background

In conjunction with the industry's plans for the introduction of trading 23 hours a day, 5 days a week (''23/5 Trading''), the Operating Committee of the Plan to Address Extraordinary Market Volatility (''LULD Plan'') filed proposed Amendment 27 to the LULD Plan, which proposed to establish price band protections during overnight trading hours (''Overnight Price Bands'').[3] The Operating Committee proposed that the Overnight Price Bands would initially be temporary static bands 20% above and below two reference points, and that after implementation, the Operating Committee would evaluate the performance of such Overnight Price Bands and propose appropriate changes in a new plan amendment.[4] On August 5, 2026, the Commission approved the proposal.[5]

In light of the Commission's approval of these changes to the LULD Plan, the Exchange now proposes several amendments to Rule 3312 regarding Clearly Erroneous Transactions. In general, the rule describes the process a market participant may use to request cancellation of a transaction that was ''clearly erroneous.'' The current rule's central premise is that if LULD Price Bands under the LULD Plan were available and correct at the time the transaction was executed, the transaction is not eligible for clearly erroneous review. Specifically, Rule 3312(a)(2)(C)(1) currently provides that ''[i]f the execution time of the transaction(s) under review is during Market Hours, the transaction will not

as designated by the Commission. The Exchange has satisfied this requirement.

[18] 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. 105596 (June 1, 2026), 91 FR 33774 (June 4, 2026) (File No. 4–631) (Notice of Filing of 27th Amendment to the National Market System Plan).

[4] *See id.*

[5] *See* Securities Exchange Act Release No. 106042 (August 5, 2026), 91 FR 51515 (August 10, 2026) (File No. 4–631) (Order Granting Approval of the 27th Amendment to the National Market System Plan to Address Extraordinary Market Volatility to Establish Temporary Price Band Protections in Overnight Trading).

be reviewable as clearly erroneous'' except in certain limited circumstances, including when (A) the transaction is in an NMS stock that is not subject to the LULD Plan (*e.g.,* rights and warrants), (B) the transaction was executed at a time when LULD Price Bands were unavailable or trading should have been prevented due to a regulatory halt or other halt, or (C) several other limited circumstances.[6] In approving the existing version of the rule, the Commission noted that restricting clearly erroneous review in this way during times when LULD Price Bands were in effect was ''consistent with the Act and will further the goal of providing greater certainty to market participants that trades executed within the Price Bands will stand and not be broken. . . . Thus, the proposal is designed to limit the potential discordance between the LULD mechanism and CEE review process.'' [7]

Currently, LULD Price Bands are available only during Market Hours, meaning that the restrictions on clearly erroneous review described above apply only during Market Hours. With the introduction of Overnight Price Bands, the Exchange now proposes to extend the existing restrictions on clearly erroneous review to the period when Overnight Price Bands are in place. This proposed change would be consistent with the Commission's rationale in approving the current version of the rule because it would limit any potential discordance between the LULD mechanism and CEE review in the overnight trading session, providing greater certainty to market participants that trades executed with the Overnight Price Bands will stand and not be broken.

Proposed Changes to Rule 3312(a)(2)(C)(1)

To implement this change, the Exchange proposes to add several definitions to Rule 3312(a)(2)(C)(1). First, the Exchange would add that the term ''LULD Protected Hours'' includes Market Hours and ''Overnight Protected Hours'' defined in Section VIII of the LULD Plan. Second, the Exchange would define ''LULD Price Bands'' or ''Price Bands'' to mean the Price Bands defined in Section V of the LULD Plan (*i.e.,* the Price Bands that apply during Market Hours) and ''Overnight Price Bands'' as defined in Section VIII of the LULD Plan (*i.e.,* the Price Bands that apply to the Overnight Protected Hours from 9:00 p.m. ET through 4:00 a.m. ET).

The Exchange proposes to amend the current first sentence of Rule 3312(a)(2)(C)(1) to replace the phrase ''Market Hours'' with ''LULD Protected Hours,'' to provide that ''[i]f the execution time of the transaction(s) under review is during LULD Protected Hours, the transaction will not be reviewable as clearly erroneous . . . .'' This change would extend the LULD-based restrictions on clearly erroneous review currently in place during Market Hours to the Overnight Protected Hours.

The Exchange also proposes to amend Rule 3312(a)(2)(C)(1)(ii)'s reference to ''Percentage Parameter'' to incorporate the Percentage Parameter that applies to Overnight Protected Hours. The amended provision would provide for the applicability of clearly erroneous review if the price of the transaction to buy (sell) that is the subject of the clearly erroneous complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan (with respect to the Price Bands that apply during Market Hours) or the ''Overnight Percentage Parameter defined in Section VIII of the LULD Plan'' (with respect to Overnight Protected Hours).

In addition to these changes, the Exchange also proposes to make a non-substantive change to Rule 3312(a)(2)(C)(1)(i), substituting the term ''LULD Plan'' for the current text ''the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the 'Limit Up-Limit Down Plan' or 'LULD Plan,')'' as the ''LULD Plan'' would be defined in the proposed revision to Rule 3312(a)(2)(C)(1).

Proposed Changes to 3312(a)(2)(A)(iii), (a)(2)(C)(2), (a)(2)(D)(3), and (b)(i)

As noted above, current Rule 3312(a)(2)(C)(1) permits clearly erroneous review even during Market Hours when the transaction in question is in an NMS Stock that is not subject to the LULD Plan, *i.e.,* rights and warrants. Such transactions are reviewed for clearly erroneous status using the procedures set out in Rule 3312(a)(2)(C)(2), including the Numerical Guidelines set out in the table accompanying Rule 3312(a)(2)(C)(2)(i). The Exchange now proposes to introduce a similar provision regarding transactions in NMS Stocks not subject to the LULD Plan that are executed during the Overnight Protected Hours; such transactions would be subject to the same Numerical Guidelines as transactions occurring in Pre-Market Hours and Post-Market Hours.

The Exchange first proposes to amend the heading of Rule 3312(a)(2)(C)(2) from ''Numerical Guidelines'' to ''Review of transactions occurring during Pre-Market Hours or Post-Market Hours or during LULD Protected Hours in NMS Stocks Not Subject to the LULD Plan.'' Next, the Exchange proposes replace the phrase ''eligible for review pursuant to paragraph (c)(1)(i)'' (which, in the current rule, means transactions executed during Market Hours in NMS Stocks not subject to the LULD Plan) with ''during LULD Protected Hours in NMS Stocks not subject to the LULD Plan.'' This proposed language would cover transactions in NMS Stocks not subject to the LULD Plan in Market Hours and expand the same treatment to transactions executed in NMS Stocks not subject to the LULD Plan during Overnight Protected Hours. As such, the proposed change is not novel. The Exchange proposes to make this change everywhere such language appears in the rule—namely, in the text of paragraphs (a)(2)(A)(iii), (a)(2)(C)(2)(i), (a)(2)(C)(2)(ii), (a)(2)(C)(2)(iii), (a)(2)(D)(3), and (b)(i).[8] In each case, the Exchange proposes to replace the phrase ''transactions occurring during Pre-Market Hours or Post-Market Hours or eligible for review'' pursuant to subparagraph (C)(1)(i) with ''transactions occurring during Pre-Market Hours or Post-Market Hours or during LULD Protected Hours in NMS Stocks not subject to the LULD Plan.''

The Exchange also proposes to make corresponding changes to the headings of the table accompanying Rule 3312(a)(2)(C)(2)(i). The Exchange proposes to change the heading of the second column from ''Market Hours Numerical Guidelines for transactions eligible for review pursuant to subparagraph (C)(1)(i)'' to ''Numerical Guidelines for Transactions Executed During Market Hours in NMS Stocks Not Subject to the LULD Plan.'' This change would simply replace the shorthand ''eligible for review pursuant to subparagraph (C)(1)(i)'' with the fuller

[6] *See* Rule 3312(a)(2)(C)(1)(i), (ii), and (iii).

[7] *See* Securities Exchange Act Release No. 95658 (September 1, 2022), 87 FR 55060 at 55063 (September 8, 2022) (SR–CboeBZX–2022–037) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Amend BZX Rule 11.17, Clearly Erroneous Executions).

[8] Paragraphs (a)(2)(A)(iii), (a)(2)(C)(2)(i), (a)(2)(C)(2)(ii), and (a)(2)(C)(2)(iii) specify general rules for applying clearly erroneous review to transactions where such review is not precluded by paragraph (a)(2)(C)(1). Paragraph (a)(2)(D)(3) specifies conditions where the Exchange may use a revised Reference Price for the purpose of clearly erroneous review in certain transactions where such review is not precluded by paragraph (a)(2)(C)(1). Paragraph (b)(i) specifies that for transactions where clearly erroneous review is not precluded by paragraph (a)(2)(C)(1), a senior officer may initiate clearly erroneous review on his or her own motion.

description that such transactions are ''executed during Market Hours in NMS Stocks not subject to the LULD Plan,'' and is not a substantive change.

Similarly, the Exchange proposes to change the heading of the third column from ''Pre-Market Hours and Post-Market Hours Numerical Guidelines'' to ''Numerical Guidelines for Transactions Executed During Pre-Market Hours and Post-Market Hours or During Overnight Protected Hours in NMS Stocks Not Subject to the LULD Plan.'' The proposed change addresses the fact that transactions executed during Overnight Protected Hours in NMS Stocks not subject to the LULD Plan are eligible for clearly erroneous review—just as are transactions in NMS Stocks not subject to the LULD Plan executed during Market Hours—but at the Numerical Guidelines that apply outside of Market Hours.

Together, these proposed changes would extend the eligibility of clearly erroneous review for transactions in NMS Stocks not subject to the LULD Plan that is currently in place during Market Hours to the Overnight Protected Hours, and would apply the Commission's recent approval of Overnight Price Bands to the clearly erroneous executions rule.

Implementation

The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals, the substance of which are identical to this proposal. The Exchange proposes that this rule change would become operative at the commencement of 23/5 Trading, which is scheduled to commence industry-wide on December 6, 2026.

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 the proposed change is consistent with just and equitable principles of trade because it extends the basic premise of the current rule that clearly erroneous review should be generally unavailable any time a transaction is executed within LULD Price Bands at a time the Price Bands were available and correct. Currently, LULD Price Bands are available only during Market Hours, meaning that the restrictions on clearly erroneous review described above apply only during Market Hours. With the introduction of Overnight Price Bands, the Exchange believes that extending such restrictions on clearly erroneous review to the period when Overnight Price Bands are in place would remove impediments to and perfect the mechanism of a free and open market and a national market system by enhancing the transparency and consistency of the rule.

The resulting rule would thus extend the LULD-related limits on clearly erroneous review that are applicable in Market Hours to the overnight period. The proposed change would also be consistent with the Commission's rationale in approving the current version of the rule because it would limit any potential discordance between the LULD mechanism and CEE review in the overnight trading session, providing greater certainty to market participants that trades executed with the Overnight Price Bands will stand and not be broken.[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather than impacting competition, the proposed change would simply extend the basic premise of the current rule that clearly erroneous review should be generally unavailable any time a transaction is executed within LULD Price Bands at a time the Price Bands were available and correct. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals, the substance of which are identical to this proposal. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–Phlx–2026–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–Phlx–2026–60. 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

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* 87 FR 55060 at 55063, *supra* note 7.

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–Phlx–2026–60 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20805 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106618; File No. SR–CboeEDGA–2026–033]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a Data Vendor Program

October 7, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2026, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to introduce a Data Vendor Program, which includes introducing a new defined term of Data Vendor, along with other clarifying changes. 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/edga/*), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to (i) introduce a definition of Data Vendor; (ii) codify the existing definition (as defined in the Exchange's applicable North American Market Data Policies) of Extranet Service Provider; (iii) codify an existing practice that permits an External Distributor of both Cboe One Summary and Cboe One Premium to be liable only for the External Distribution Fee for Cboe One Premium; and (iv) create a program for Data Vendors in order to incentivize Data Vendors to build out the applicable feeds and make them commercially available to subscribers.[3] The proposed program will provide fee waivers (as described below) for External Distribution Fees for Data Vendors for the Cboe One Summary Feed and Cboe One Premium Feed.

Proposed Definitions

In connection with this proposed program, the Exchange first proposes to adopt a definition for a specific category of participants. Specifically, the Exchange proposes to establish the term ''Data Vendor'' to mean ''an External Distributor that (i) is actively engaged, as part of its primary business objective, in the solicitation of unaffiliated third-party Distributors to redistribute a transformed Market Data Product; (ii) does not maintain a brokerage relationship with Users in connection with the receipt or use of the applicable Market Data Product; and (iii) is not an Extranet Service Provider.'' As part of this new definition, and as further described below, the Exchange proposes to codify the existing definition of Extranet Service Provider within the Cboe Global North American Market Data Policies to be within its Fee Schedule.

The Exchange has also established objective, verifiable criteria for determining eligibility as a Data Vendor. The following criteria, which will be reflected in the Exchange's Fee Schedule, must be satisfied: (1) the External Distributor must identify itself as a Data Vendor in publicly available marketing materials; (2) the External Distributor must transform the applicable Market Data Product before redistribution, which may include aggregation across multiple data sources, normalization into a consistent format, enrichment with reference data or analytics, or repackaging into a proprietary delivery mechanism (*e.g.,* terminal, API, or proprietary feed); (3) the External Distributor must redistribute the applicable transformed Market Data Product to downstream Distributors as part of a paid commercial offering; (4) the External Distributor must not maintain a brokerage relationship with any User to whom it distributes the applicable Market Data Product; (5) the External Distributor must not be an Extranet Service Provider; and (6) the External Distributor must be actively engaged in the solicitation of unaffiliated third-party Distributors to subscribe to and redistribute the applicable transformed Market Data Product. Upon request, the External Distributor must provide a written attestation certifying compliance with the foregoing criteria. The Exchange may request supporting documentation, including but not limited to Distributor subscriber lists, revenue breakdowns by recipient type, and descriptions of the transformations applied to the Market Data Product. These objective eligibility criteria ensure that the Data Vendor Program is equitably applied to all similarly situated market participants.

External Distributor

To begin, ''Data Vendor'' is intended to only encompass External Distributors and not Internal Distributors. An External Distributor is defined as a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.[4] The Exchange seeks to adopt this program in order to

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially submitted the proposed rule change on July 1, 2026 (SR–CboeEDGA–2026–023). On July 15, 2026, the Exchange withdrew that filing and submitted SR–CboeEDGA–2026–024. On September 8, 2026, the Exchange withdrew that filing and submitted SR–CboeEDGA–2026–028. On September 28, 2026, the Exchange withdrew that filing and submitted this proposal.

[4] *See* EDGA Equities Fee Schedule.

encourage broader redistribution of this data. As such, the Exchange limits this to External Distributors as the intent of this program is to have data distributed outside one's own entity.

Primary Business is To Redistribute to Distributors

To be eligible as a Data Vendor, an External Distributor must be taking in data for the primary business purpose of selling access to the applicable feed as a service in its own right, not merely redistributing data in incidental support of broader business functions such as trade execution, account management, or brokerage services. The Exchange notes that, as part of its business, a Data Vendor may redistribute a market data product to Users, but the primary purpose must be to redistribute data to Distributors. The Exchange will assess whether an External Distributor's primary business purpose satisfies this criterion based on the External Distributor's publicly available marketing materials. If the Exchange were to modify this requirement to permit a primary business purpose of redistribution to either Distributors *or* Users, it would unintentionally include firms that may redistribute only to Users and that are not traditionally considered data vendors (*e.g.,* a media outlet or a bank).

Transformed Market Data Product

To be eligible, the Exchange requires that the Data Vendor not simply pass through data in its original form. Transformation may include aggregation across multiple sources, normalization into a consistent format, enrichment with derived analytics, or repackaging into a proprietary delivery mechanism (*e.g.,* terminal, API, feed), or any other value-added processing that distinguishes the output from the original source data.

No Brokerage Relationship With Users

Next, the Exchange proposes that the definition of Data Vendor include a stipulation that a Data Vendor must not maintain a brokerage relationship with Users who receive the market data product. The Exchange already has programs aimed at retail brokers, for example, both the Small Retail Broker Program and the Small Retail Broker Hosted Solutions Program.[5] This proposed program is intended to encourage Data Vendors specifically to take in the applicable feeds and distribute them. A Data Vendor's service model is different from a retail broker's, as a Data Vendor's business model is built around providing data to firms and Users alike, whereas a retail broker's business model is focused on connecting Users to markets in order to trade and may include providing market data as part of its offering to its Users. As the Exchange already has programs specifically for retail brokers, the Exchange does not believe it would be appropriate to include retail brokers here. The Exchange notes that if a Data Vendor that is currently receiving a fee waiver under this Program subsequently commences a brokerage relationship with its Users, it will no longer satisfy the definition of Data Vendor and will cease to be eligible for the Program. In such case, the External Distributor would be assessed the standard External Distribution Fee for the applicable feed as of the date it no longer satisfies the definition of Data Vendor.

Not an Extranet Service Provider

As noted above, the Exchange proposes also to define Extranet Service Provider when it introduces the definition of Data Vendor into its Fee Schedule. Today, this term already exists in the Cboe Global Markets North American Data Policies. [6] The Exchange proposes to codify this definition in its Fee Schedule because the proposed definition of Data Vendor directly references this defined term. Specifically, the Exchange proposes to codify that an Extranet Service Provider is ''an entity that has entered into a Cboe Global Markets Global Data Agreement and Transmits an Exchange Market Data Product, via an extranet operated by such entity, to data recipients. 'Transmit' means to direct an Exchange Market Data Product to one or more data recipients without modification of the content, format, or other characteristics of the Exchange Market Data Product.'' An Extranet Service Provider is not authorized to use or process an Exchange Market Data Product for any purpose.

Applicable Data Feeds

By way of background, the Exchange offers the Cboe One Premium Data Feed, which is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on the Exchange and its affiliated equities exchanges and enables recipients to receive aggregated two-sided quotations from EDGA and its affiliated equities exchanges for up to twelve (12) price levels (and, for a limited time, up to five (5) price levels).[7] The Cboe One Premium Data Feed is created using the data from the Exchange and each of its affiliated equities exchanges' Summary Depth data feeds (allowing for up to 48 total price levels).

The Exchange also offers the Cboe One Summary Data Feed, which disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on EDGA and its affiliated equities exchanges and also contains individual last sale information for EDGA and its affiliated equities exchanges.[8]

External Distribution Fees for Cboe One Premium and Cboe One Summary

The proposed rule change also clarifies that External Distributors of both Cboe One Summary and Cboe One Premium shall only be responsible for paying the External Distribution Fee for Cboe One Premium. The current fee schedule provides that ''Cboe One Summary User Fees can be applied to Cboe One Summary and Cboe One Premium External Distribution Fees.'' Under the Exchange's existing application of this provision, an External Distributor receiving both Cboe One Summary and Cboe One Premium is assessed only the Cboe One Premium External Distribution Fee,[9] and User Fees for both Cboe One Summary and

[5] *See* EDGA Equities Fee Schedule.

[6] *See* Market_Data_Policies.pdf.

[7] EDGA filed to increase the levels of the Cboe One Premium Data Feed from five (5) levels to twelve (12) levels. To help in this transition, it is currently supporting both the five and twelve level feeds; however, as stated in its rule, EDGA shall sunset the five (5) level feed of Cboe One Premium by December 31, 2026 (with the date to be announced via Exchange Notice). *See* Rule 13.8(b)(i).

[8] The Cboe One Summary Feed is distinguishable from the Cboe One Premium Feed in that it does not provide depth of book data. In contrast, the Cboe One Premium Feed contains all the available data in the Cboe One Summary Feed and also provides depth of book data.

[9] To better illustrate this concept, consider the following examples. Example 1: If a firm subscribes to only Cboe One Summary, its User costs will be used to offset the External Distribution Fee for Cboe One Summary. In the event the firm's User costs total $2,000, the firm will pay $2,000 in User fees and $3,000 ($5,000 − $2,000) for its External Distribution Fee. Example 2: If a firm subscribes only to Cboe One Premium, its User costs will be used to offset the External Distribution Fee for Cboe One Premium. In the event a firm's User costs total $10,000, the firm will pay $10,000 in User fees and $2,500 ($12,500 − $10,000) for its External Distribution Fee. Example 3: If a firm subscribes to both Cboe One Summary and Cboe One Premium, only the External Distribution Fee for Cboe One Premium is assessed and this fee may be offset by both Cboe One Summary and Cboe One Premium User fees. In the event a firm's User costs are $2,000 for Cboe One Summary and $10,000 for Cboe One Premium, the firm will pay a total of $12,000 in User fees ($10,000 + $2,000) and it will pay $500 for its External Distribution Fee ($12,500 − ($10,000 + $2,000)).

Cboe One Premium may be applied to offset that fee.

The Exchange is now proposing to make this treatment explicit by adding clarifying language to the fee schedule stating that External Distributors of both feeds are only responsible for paying the External Distribution Fee for Cboe One Premium. This amendment does not alter the economic substance of the Exchange's existing fee structure, nor does it impose any new or increased fees on market participants. Rather, it reduces potential ambiguity by expressly codifying the Exchange's existing application of the user fee offset provisions. The Exchange believes this clarification will promote transparency and reduce confusion among External Distributors regarding their fee obligations under the Cboe One market data product offerings.

Impact of Proposed Program

As noted above, the proposed program would waive External Distribution Fees for Data Vendors of the Cboe One Summary Feed and the Cboe One Premium Feed (each, an ''Applicable Feed'') that satisfy certain eligibility requirements. A Data Vendor must not have received the Applicable Feed for which it seeks the waiver during the 18 months [10] preceding the waiver application date, and must integrate, or be actively in the process of integrating, the Applicable Feed and making it commercially available to its subscribers. The Data Vendor need not have fully integrated the Applicable Feed or made it commercially available before the waiver begins. For a qualifying Data Vendor, the applicable waiver commences on the date it first receives the Applicable Feed, and, if that date occurs mid-month, that partial month counts as the first month of the waiver period. Specifically, the Exchange proposes to waive the External Distribution Fee of $5,000 per month for Cboe One Summary for 12 months (the ''Summary Waiver Period''), except that a Data Vendor is not eligible for a Summary Waiver Period if it is receiving Cboe One Premium because Cboe One Summary is included in the Cboe One Premium External Distribution Fee as noted herein. To clarify, because a Data Vendor receiving Cboe One Premium pays only the Cboe One Premium External Distribution Fee (and no separate fee is assessed for Cboe One Summary), there is no separate Cboe One Summary External Distribution Fee to waive for such a firm.[11] The Exchange proposes to waive the External Distribution Fee of $12,500 per month for Cboe One Premium for 24 months (the ''Premium Waiver Period'').

If an eligible Data Vendor already receives Cboe One Summary, it may still receive the Premium Waiver Period if it has not received Cboe One Premium during the 18 months preceding the waiver application date and satisfies the integration and commercial availability requirement with respect to Cboe One Premium. During the Premium Waiver Period, the Data Vendor's Cboe One Summary subscription would be covered under the Premium Waiver, and no separate External Distribution Fee would be assessed for Cboe One Summary. Similarly, an eligible Data Vendor that builds out both feeds simultaneously would receive only the Premium Waiver Period.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [14] 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 promotes just and equitable principles of trade by establishing a clear, objective, and transparent definition of ''Data Vendor'' that properly captures the characteristics distinguishing Data Vendors from other categories of External Distributors. The proposed definition sets forth specific, verifiable criteria—namely, that a Data Vendor must (i) be an External Distributor; (ii) be actively engaged, as part of its primary business objective, in the solicitation of unaffiliated third-party Distributors to redistribute a transformed Market Data Product; (iii) not maintain a brokerage relationship with Users; and (iv) not be an Extranet Service Provider. By establishing objective eligibility criteria, the proposed rule change ensures that similarly situated market participants are treated consistently and that the benefits of the Data Vendor Program are available to all External Distributors that meet the defined qualifications.

The Exchange further believes that the codification of the existing Extranet Service Provider definition within the Fee Schedule promotes just and equitable principles of trade. Because the proposed Data Vendor definition directly references the term ''Extranet Service Provider,'' market participants seeking to understand their eligibility for the Program should not be required to consult the Cboe Global Markets North American Data Policies to determine how that term applies. By incorporating both defined terms into the Fee Schedule itself, the Exchange ensures that participants have access to the complete framework.

The Exchange further believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system. The Data Vendor Program is designed to incentivize Data Vendors to integrate the Applicable Feeds, make them commercially available to subscribers, and redistribute them by providing fee waivers for External Distribution Fees for the Cboe One Summary Feed and Cboe One Premium Feed. By waiving the External Distribution Fee of $5,000 per month for Cboe One Summary for the Summary Waiver Period and waiving the External Distribution Fee of $12,500 per month for Cboe One Premium for the Premium Waiver Period, the Exchange encourages broader redistribution of its market data products. Broader distribution of market data enhances price transparency and supports informed decision-making across the national market system, which in turn perfects the mechanism of a free and open market by ensuring that market participants have access to comprehensive, competitive data offerings.

[10] The Exchange notes that this same 18-month requirement is the standard for its other fee waiver programs. *See* EDGA Equities Fee Schedule.

[11] As noted above, a firm that subscribes to both Cboe One Premium and Cboe One Summary is only charged the External Distribution Fee for Cboe One Premium. Accordingly, an eligible Data Vendor that builds out both feeds simultaneously receives only the Premium Waiver Period.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

By allowing the waiver to begin while an eligible Data Vendor is actively integrating the Applicable Feed and working to make it commercially available, the Program lowers barriers to entry during the build-out period and incentivizes a broader set of market participants to enter the Cboe One distribution chain, thereby expanding the availability of consolidated multi-exchange market data throughout the national market system.

The proposed rule change also protects investors and the public interest. By encouraging Data Vendors to take in, transform, and redistribute market data feeds, the proposed program promotes greater availability of enriched market data products to downstream Distributors and Users. The transformation requirement—which may include aggregation across multiple sources, normalization into a consistent format, enrichment with derived analytics, or repackaging into a proprietary delivery mechanism such as a terminal, API, or feed—is a key element of qualifying as a Data Vendor and ensures that meaningful value is added to the data before redistributing it, thereby increasing the utility and accessibility of market information. To the extent the Program achieves its purpose and results in more widespread redistribution of the Cboe One feeds, market participants may benefit from enhanced access to consolidated, real-time price and last sale information through the distribution channels developed by Data Vendors.

Additionally, the codification of the existing Extranet Service Provider definition within the Fee Schedule provides additional clarity on the program requirements and codifies the definition that exists already in the Cboe Global Markets North American Market Data Policies. Furthermore, the clarification that External Distributors of both Cboe One Summary and Cboe One Premium are only responsible for paying the External Distribution Fee for Cboe One Premium promotes transparency by expressly codifying a practice that is already reflected in the Exchange's existing application of the fee provision. This reduces potential confusion among market participants regarding their fee obligations.

Not Unfairly Discriminatory

The Exchange believes that the proposed Data Vendor Program is consistent with and complementary to its existing programs for other categories of market participants, and that offering a targeted fee waiver program specifically for Data Vendors does not constitute unfair discrimination. The Exchange has a history of establishing differentiated programs that recognize the distinct roles of different market participants. For example, the Small Retail Broker Distribution Program provides discounted Distribution Fees and Data Consolidation Fees for eligible broker-dealers distributing the applicable feeds to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship.[15] This program is designed to address the specific characteristics and economic needs of small retail broker-dealers. Similarly, the Small Retail Broker Hosted Solutions Program provides fee waivers for eligible Small Retail Brokers that provide the applicable feeds to other Small Retail Brokers via hosted solutions.[16] This program recognizes that smaller retail brokers face unique integration challenges and cost constraints when building out hosted data solutions. In addition, the New Internal Distributor Waiver for the EDGA Depth Data Feed waives Internal Distribution Fees for three months for Internal Distributors that have not received the EDGA Depth Data Feed during the prior 18 months.[17] This program incentivizes new Internal Distributors to integrate the depth-of-book feed into their systems. Lastly, the Exchange's affiliated options exchange, Cboe Exchange, Inc., introduced a 24-month waiver for qualifying retail brokers for its Complex Order Book Feed.[18]

The proposed Data Vendor Program is consistent with the Exchange's practice of creating a distinct program to serve a specific use case. Data Vendors occupy a distinct role in the market data distribution ecosystem. Unlike retail brokers, whose primary business is providing trade execution and account management services to Users (with market data distribution as an ancillary feature), Data Vendors are primarily engaged in the business of transforming and redistributing market data to other Distributors. This fundamental difference in business model justifies a distinct program with tailored eligibility criteria and waiver periods. The waiver periods under the proposed Data Vendor Program—12 months for Cboe One Summary and 24 months for Cboe One Premium—are designed to reflect the relative complexity of integrating each feed. Depth-of-book products such as Cboe One Premium typically require more extensive technical build-out, including handling of larger data volumes, more complex display and aggregation logic, and more rigorous quality assurance processes. Additionally, Cboe One Premium is more expensive relative to the top of book feed. This means that Data Vendors require additional interest from clients in these products before they can even break even. Accordingly, the Exchange believes a 24-month waiver period for this product is appropriate to provide sufficient time for Data Vendors to complete their build-out. Top-of-book and summary products, in contrast, are generally less complex to integrate, and the Exchange believes a 12-month waiver period is appropriate for Cboe One Summary.

Data Vendors' cost and investment trade-offs further support this distinction. A Data Vendor's primary commercial objective is to transform market data and make the resulting product available to unaffiliated downstream Distributors, rather than to provide market data only incidentally in support of another business (in comparison to retail brokers). Because a single Data Vendor can make a Cboe data product available through its platform to multiple downstream Distributors, the waiver is targeted to participants capable of materially expanding the product's distribution footprint. Like any business operator, a Data Vendor evaluates whether to add an Applicable Feed based on expected return on investment, weighing expected revenue against the upfront costs of connectivity, programming, technical integration, and sales and marketing, as well as the ongoing exchange market data fees associated with making the product available to subscribers. In many cases, a Data Vendor may need to add three to five new downstream Distributors merely to offset the ongoing External Distribution Fee. These costs are typically incremental: Data Vendors may already offer one or more equity feeds to clients and add an Applicable Feed only where it is expected to provide return on investment beyond their current offerings. A retail broker's determination is different. A retail broker will often migrate or swap from a competitor's product, and may be able to implement the change through a Data Vendor API into its front-end with a simple entitlement change, without bearing the same upfront connectivity and technical build-out costs.

The waiver periods under the proposed Data Vendor Program are longer than certain other Exchange programs because they support more

[15] *See* EDGA Equities Fee Schedule.

[16] *Id.*

[17] *Id.*

[18] *See* Securities Exchange Act Release No. 105198 (April 10, 2026), 91 FR 20204 (April 15, 2026) (SR–CBOE–2026–033).

than initial feed access or recruitment of a first User.[19] A qualifying Data Vendor must complete significant technical and commercial build-out before it can distribute the product and begin recovering its upfront costs. Its downstream Distributors may then have their own evaluation, contracting, and integration cycles, further extending the path to meaningful adoption; as noted above, a Data Vendor may need to add three to five new downstream Distributors to offset the ongoing External Distribution Fee.

The Exchange does not maintain comparable fee waiver programs for larger broker-dealers that distribute market data to their brokerage customers. The Exchange believes this distinction is appropriate. The Small Retail Broker programs are specifically designed to address the cost constraints faced by smaller broker-dealers in building out market data distribution capabilities. Larger broker-dealers typically have established data infrastructure and greater resources to absorb market data distribution costs as part of their overall brokerage operations, and, as such, their cost per user is meaningfully lower. Data distribution by large broker-dealers is typically an ancillary component of brokerage services offered. In contrast, a Data Vendor must incur incremental buildout fees and ongoing External Distribution Fees to establish and support a new external redistribution channel. The relevant distinction is therefore the nature of the service and the associated barriers to distribution, not the size or identity of the participant.

The Data Vendor Program is intended to address a different need: incentivizing specialized data redistribution firms to build out the Applicable Feeds and bring on additional downstream Distributors. By encouraging Data Vendors to invest in the transformation and redistribution of the Exchange's market data products, the Program expands the reach and availability of this data throughout the national market system, benefiting end users and promoting competition. The Exchange therefore believes that creating a targeted program for Data Vendors, in addition to its existing programs for Small Retail Brokers and Internal Distributors, among others, is consistent with Section 6(b)(5) of the Act and does not constitute unfair discrimination.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Data Vendor Program is available to all External Distributors that satisfy the objective criteria set forth in the proposed definition of Data Vendor and, for waiver eligibility, the additional objective criteria regarding the 18-month lookback for prior receipt of the Applicable Feed and integration or active integration of the Applicable Feed for commercial availability. The distinctions drawn by the definition—(i) requiring that a Data Vendor's primary business objective be the solicitation of unaffiliated third-party Distributors, (ii) that it not maintain a brokerage relationship with Users, and (iii) that it not be an Extranet Service Provider—reflect meaningful differences in business models and market functions.

External Distributors

The Exchange believes that limiting the Data Vendor Program to External Distributors is not unfairly discriminatory. Internal Distributors and External Distributors occupy fundamentally different roles in the market data distribution ecosystem and are not similarly situated participants. An Internal Distributor receives a market data product and distributes it solely within its own entity, whereas an External Distributor redistributes data outside its entity to Users or other Distributors—and a Data Vendor, as a specialized category of External Distributor, further serves the specific function of soliciting unaffiliated third-party Distributors to redistribute a transformed market data product. The Data Vendor Program is designed precisely to incentivize and expand this type of external redistribution, a purpose that has no meaningful application to Internal Distributors who, by definition, cannot advance the proposed program's goal of broadening the reach of the Exchange's market data to downstream Distributors and end-user investors. Furthermore, the Exchange already offers programs for its Internal Distributors that it does not offer for External Distributors.[20]

Primary Business Is To Redistribute to Distributors

To be eligible as a Data Vendor, an External Distributor must be taking in data for the primary business purpose of selling access to the applicable feed as a service in its own right—not merely redistributing data in incidental support of broader business functions such as trade execution, account management, or brokerage services. The Exchange notes that as part of its business, a Data Vendor may redistribute a market data product to Users, but the primary purpose must be the redistribution of data to Distributors. The Exchange will assess whether an External Distributor's primary business purpose satisfies this criterion based on the External Distributor's publicly available marketing materials. This requirement is not unfairly discriminatory because it is directly tied to the purpose of the Program: encouraging entities whose core commercial activity is the transformation and redistribution of market data to build out the Cboe One feeds and bring on additional downstream Distributors, thereby expanding the reach and availability of the Exchange's data products. An entity that distributes market data only incidentally—as an ancillary feature of a brokerage, execution, or account management business—does not serve this purpose.

Transformed Market Data Product

The Exchange believes it is not unfairly discriminatory to require that a Data Vendor transform market data as a condition of eligibility, as transformation is a definitional characteristic that goes to the core of what distinguishes a Data Vendor from other categories of External Distributors and is directly tied to the Program's purpose of incentivizing participants that create new, differentiated distribution channels for the Exchange's consolidated market data. This reasoning is directly analogous to the rationale for excluding Extranet Service Providers—entities that transmit data without modification and therefore cannot create the type of value-added products, whether delivered via terminal, API, or proprietary feed, that the Program is designed to incentivize. Because the transformation requirement ensures that the Program's fee incentives are directed only at entities whose business is built around adding that value, the Exchange believes this criterion is reasonable and does not constitute unfair discrimination.

No Brokerage Relationship With Users

The Exchange believes it is not unfairly discriminatory to require that Data Vendors not maintain a brokerage relationship with Users. The Exchange already maintains separate programs specifically for qualifying broker-dealers

[19] However, as noted above, Cboe Exchange, Inc., offers a 24-month waiver for qualifying retail brokers for its Complex Order Book Feed.

[20] *See, e.g.,* EDGA Equities Fee Schedule that describes the New Internal Distributor Waiver for EDGA Depth Data Feed.

that distribute market data to their brokerage customers. Specifically, the Exchange offers the Small Retail Broker Distribution Program, which provides discounted Distribution Fees and Data Consolidation Fees for eligible broker-dealers distributing the applicable feeds to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship. The Exchange also offers the Small Retail Broker Hosted Solutions Program, which provides fee waivers and lower data costs for Small Retail Brokers that provide the applicable feeds to other Small Retail Brokers via hosted solutions. These existing programs are specifically designed to encourage retail brokers to distribute market data, and the eligibility criteria for those programs reflect the characteristics of the retail brokerage business model.

The proposed Data Vendor Program does not displace or reduce the benefits available to retail brokers under those existing programs. Rather, it creates a parallel and complementary framework for a distinct category of participants—Data Vendors—that do not maintain brokerage relationships with Users, and whose primary business purpose is categorically different from that of a retail broker. Just as it would not be appropriate to extend the Small Retail Broker Program to Data Vendors, it is similarly appropriate—and not unfairly discriminatory—not to extend the Data Vendor Program to retail brokers or other participants that maintain brokerage relationships with their Users, whose needs are separately addressed by the Exchange's existing programs.

Not an Extranet Service Provider

The Exchange also believes it is not unfairly discriminatory to exclude Extranet Service Providers from the Data Vendor Program. An Extranet Service Provider, as defined, is an entity that transmits a market data product to data recipients without modification of the content, format, or other characteristics of the product. Extranet Service Providers do not transform, enrich, or add value to the data they transmit—they serve as conduits, passing data through in its original form. This is fundamentally distinct from the function of a Data Vendor, which, by definition, must transform the Market Data Product as part of its service offering.

The Data Vendor Program is specifically premised on the value that transformation adds to the data distribution ecosystem. By enabling Data Vendors to create differentiated products—delivered via a terminal, API, proprietary feed, or other value-added mechanism—that appeal to a broader range of downstream Distributors, the Program advances the Exchange's goal of maximizing the reach and utility of its consolidated market data throughout the national market system. Extending the Program to Extranet Service Providers, which do not perform this transformative function, would undermine the Program's core purpose and would not serve the policy goal of broadening distribution of market data products in readily accessible, value-added formats.

The Exchange has created programs to address the distinct needs and business models of different categories of market participants, and the proposed Data Vendor Program is a natural extension of this approach. In addition to the Small Retail Broker programs described above, the Exchange also offers fee waivers for eligible Internal Distributors of the EDGA Depth Data Feed, which are intended to incentivize new Internal Distributors to integrate data feeds into their systems. The differentiation between Data Vendors and other categories of market participants reflects the distinct roles these entities play and the distinct incentive structures appropriate to each and does not constitute unfair discrimination.

18-Month and Integration Requirements

The Exchange further believes it is not unfairly discriminatory to limit the Program to Data Vendors that have not received the Applicable Feed for which they seek a waiver during the 18 months preceding the waiver application date, and that have integrated, or are actively in the process of integrating,[21] the Applicable Feed and making it commercially available to subscribers. The 18-month limitation is designed to ensure that the fee waivers serve their intended purpose of reducing the upfront cost barriers for new market participants. This approach is directly consistent with the analogous frameworks the Exchange has adopted in prior programs—including the Internal Distributor Waiver for the EDGA Depth Data Feed, which similarly limits fee relief to distributors that have not received the relevant feed in the prior 18 months. The integration and commercial availability requirement is likewise reasonable because it ensures that the waiver is directed to Data Vendors that are undertaking the build-out necessary to distribute the Applicable Feed to subscribers, while not requiring full integration or commercial availability before the waiver begins. The Exchange therefore believes that these objective limitations are reasonable and appropriate, prevent the Program from operating as a permanent subsidy for established distributors, and are not unfairly discriminatory.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[22] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed fee waivers represent a reasonable and equitable allocation of charges. The fee waivers for External Distribution Fees are limited in duration—the Summary Waiver Period for Cboe One Summary and the Premium Waiver Period for Cboe One Premium—and are available only to Data Vendors that have not received the Applicable Feed for which they seek a waiver during the 18 months preceding the waiver application date and that have integrated, or are actively in the process of integrating, the Applicable Feed and making it commercially available to subscribers. This time-limited structure ensures that the waivers serve their intended purpose of incentivizing new market entry and build-out of data feeds. The 18-month lookback requirement further ensures the equitable allocation of fees by limiting the Program to new feeds for Data Vendors, and the integration and commercial availability requirement ensures that the waiver is tied to actual build-out and distribution activity. The Exchange notes that this same 18-month standard is consistent with the requirements applied in its other fee waiver programs.

The clarification that External Distributors of both Cboe One Summary and Cboe One Premium shall only be responsible for paying the External Distribution Fee for Cboe One Premium does not alter the economic substance of the Exchange's existing fee structure and does not impose any new or increased fees on market participants. Rather, it expressly codifies the Exchange's existing application of the user fee offset provisions—under which an External Distributor disseminating both products is assessed only the Cboe One Premium External Distribution Fee—thereby ensuring that all market participants have a clear and equitable understanding of their fee obligations. The Exchange therefore believes the proposed rule change provides for the

[21] The Exchange notes that no specific step is required for this, only that Data Vendor is working to integrate the Applicable Feed into its system.

[22] 15 U.S.C. 78f(b)(4).

equitable allocation of reasonable fees among persons using its facilities.

Lastly, the Exchange believes that the limitations regarding the waiver structure for both Cboe One Premium and Cboe One Summary equitably allocate fees. With respect to the Cboe One Summary waiver, only Data Vendors that (i) have not received Cboe One Summary during the 18 months preceding the waiver application date, (ii) are integrating or actively in the process of integrating Cboe One Summary and making it commercially available to subscribers, and (iii) are not receiving Cboe One Premium are eligible for the Summary Waiver Period. The Exchange believes that this is reasonable, as a firm that subscribes to Cboe One Premium already may elect to receive (without incurring an additional External Distribution Fee) Cboe One Summary Feed. For this reason, there is no need to provide a separate Summary Waiver Period while a firm receives Cboe One Premium, because that firm may receive the Cboe One Summary Feed without paying an additional External Distribution Fee that the proposed program seeks to waive.

Next, the Exchange notes that if a Data Vendor currently receives Cboe One Summary and elects to receive Cboe One Premium under the proposed program, so long as the Data Vendor has not received the Cboe One Premium Feed during the 18 months preceding the waiver application date and satisfies the integration and commercial availability requirement with respect to Cboe One Premium, the Data Vendor may receive the Premium Waiver Period. During that period, the Data Vendor's existing Cboe One Summary [23] subscription will be covered under the Premium Waiver, and no separate External Distribution Fee will be assessed for Cboe One Summary. This is because the Cboe One Summary External Distribution Fee is subsumed within the Cboe One Premium External Distribution Fee—accordingly, there is no separate Cboe One Summary fee to waive for a firm receiving Cboe One Premium. The Exchange believes this treatment is reasonable because it avoids providing overlapping or duplicative waiver relief while still incentivizing an existing Summary subscriber to build out Cboe One Premium.

Lastly, if a Data Vendor has not received either Applicable Feed during the 18 months preceding the waiver application date and elects to build out to both simultaneously, the Data Vendor will not receive separate Summary and Premium waivers. Instead, because the Cboe One Summary External Distribution Fee is subsumed within the Cboe One Premium External Distribution Fee, the Data Vendor will receive only the Premium Waiver Period, and no separate Summary Waiver Period will apply while it receives Cboe One Premium.

For all of the foregoing reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including, in particular, the requirements of Sections 6(b)(4) [24] and 6(b)(5) [25] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change imposes any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed Data Vendor Program is available to all External Distributors that satisfy the objective, clearly defined criteria set forth in the proposed definition of ''Data Vendor'' and the Program's waiver eligibility standards. Any External Distributor that, as part of its primary business objective, solicits unaffiliated third-party Distributors to redistribute a transformed Market Data Product, does not maintain a brokerage relationship with Users in connection with the applicable Market Data Product, is not an Extranet Service Provider, has not received the Applicable Feed for which it seeks a waiver during the 18 months preceding the waiver application date, and has integrated or is actively integrating the Applicable Feed and making it commercially available to subscribers may qualify for the Program on equal terms. Because eligibility is determined by objective, verifiable criteria rather than by subjective or discretionary determinations, no External Distributor is advantaged or disadvantaged relative to any other similarly situated participant.

To the extent that certain External Distributors—such as retail broker-dealers or Extranet Service Providers—do not qualify for the Data Vendor Program, this does not impose a burden on intramarket competition. As described above, retail broker-dealers and Extranet Service Providers are not similarly situated to Data Vendors. Retail broker-dealers distribute market data to their own brokerage customers as an ancillary feature of their core business of providing trade execution and account management services, and their data distribution needs are more appropriately addressed by the Exchange's existing Small Retail Broker Distribution Program and Small Retail Broker Hosted Solutions Program. Extranet Service Providers, by contrast, transmit data in its original form without transformation, and therefore do not serve the same function in the data distribution ecosystem as Data Vendors, which aggregate, transform, and redistribute data to downstream Distributors. Designing a fee program specifically targeted to Data Vendors, rather than applying it uniformly across all categories of External Distributors, does not burden intramarket competition—it reflects the materially different roles, business models, and barriers of these distinct categories of participants.

Similarly, limiting the Data Vendor Program to External Distributors and not extending it to Internal Distributors does not impose a burden on intramarket competition. Internal Distributors receive and use market data solely within their own legal entities and do not redistribute data to third parties outside their organizations. They are therefore not participants in the same competitive market for external data redistribution that the Program is designed to promote, and their needs are separately addressed through the Exchange's existing Internal Distributor programs—including the New Internal Distributor Waiver for the EDGA Depth Data Feed. The proposed Program is specifically designed to incentivize external redistribution of the Cboe One feeds, a purpose that has no meaningful application to Internal Distributors and that creates no competitive disadvantage for them.

The Exchange does not believe the proposed rule change imposes any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposed rule change will enhance intermarket competition by incentivizing a broader class of market participants to subscribe to and

[23] For example, if a Data Vendor currently subscribes to Cboe One Summary Feed and is eligible for the proposed program for the Cboe One Premium Feed, no separate External Distribution Fee would be assessed for Cboe One Summary during the Premium Waiver Period because Cboe One Summary is included in the Cboe One Premium subscription. The Data Vendor would receive the Premium Waiver Period and would not receive a separate Summary Waiver Period during that time.

[24] 15 U.S.C. 78f(b)(4).

[25] 15 U.S.C. 78f(b)(5).

redistribute the Exchange's market data products, thereby increasing the Exchange's ability to compete with other national securities exchanges and data vendors for the business of Data Vendors and their downstream Distributor clients.

The market for equity market data is highly competitive. Numerous national securities exchanges offer products that compete directly with the Cboe One Summary Feed and Cboe One Premium Feed. Market participants can obtain comprehensive market data from numerous sources, including competing exchanges (such as NYSE and Nasdaq), the consolidated tape (SIP), and alternative trading systems. Prospective Data Vendors evaluating whether to build out the Cboe One feeds must weigh the upfront costs of connectivity, software development, integration, and commercial launch against the commercial opportunity presented by the Exchange's data products. The Data Vendor Program is designed to make the Exchange's market data offering competitively priced relative to alternative options, encouraging Data Vendors to enter the Cboe One distribution chain and thereby expanding the availability and reach of the Exchange's consolidated multi-exchange market data throughout the national market system.

Far from burdening intermarket competition, the proposed rule change is a direct response to competitive market forces. The Exchange's decision to offer targeted fee waivers to new Data Vendors reflects its recognition that it must compete aggressively for the participation of data redistribution firms, and that reducing the upfront cost of entry is a legitimate and necessary competitive tool in the market for exchange data products. The Commission has recognized that exchanges operate in a competitive environment with respect to market data, and that exchange fee programs designed to attract new participants and expand market data distribution are consistent with the Act's goals of promoting competition and efficiency in the national market system.

The proposed clarification that External Distributors of both Cboe One Summary and Cboe One Premium are only responsible for paying the External Distribution Fee for Cboe One Premium similarly does not impose any burden on intermarket competition. This change does not alter the economic substance of the Exchange's existing fee structure and does not impose any new fees on any market participant. It simply makes explicit the Exchange's existing application of the user fee offset provisions, reducing potential confusion and ensuring that all market participants have a clear and consistent understanding of their fee obligations. Regulatory clarity of this nature promotes, rather than burdens, competition by enabling market participants to make fully informed decisions about their participation in the Exchange's market data programs.

With respect to the Cboe One Summary and Cboe One Premium feeds specifically, the Exchange notes that the proposed Data Vendor Program does not impose any burden on competition arising from differential pricing between Cboe One and the applicable underlying equities feeds.[26] The Exchange notes that historically, its pricing for Cboe One products has been based on the sum of the External Distribution Fees for the four underlying equities feeds.[27] As an initial matter, not all underlying equities feeds are offered under this Program. The proposed Data Vendor Program applies only to the following feeds: EDGX Top, EDGX Summary Depth, BZX Summary Depth, Cboe One Premium, and Cboe One Summary. A Data Vendor may choose to receive a waiver for Cboe One Summary or Cboe One Premium, or for EDGX Top, or for EDGX Summary Depth, or for BZX Summary Depth, or any combination thereof, subject to the applicable eligibility requirements. However, the proposed Program does not offer fee waivers for BZX Top, BYX Top, or EDGA Top data feeds, nor does it offer fee waivers for BYX Summary Depth or EDGA Summary Depth. Accordingly, the applicable underlying equities feeds do not ''sum'' to the applicable Cboe One feed under this proposed Program.[28]

The Exchange has selected the products covered by the Program based on where it sees the greatest opportunity to expand distribution and align Data Vendor coverage with downstream end-user demand. This product-specific focus is not unfairly discriminatory. All qualifying Data Vendors are subject to the same product-specific eligibility requirements, and offering waivers for some, rather than all four, of the underlying feeds does not result in unequal treatment among similarly situated participants.

Even setting aside the foregoing, the Exchange does not believe that pricing the Cboe One Summary or Cboe One Premium feeds differently from the underlying equities feeds imposes any burden on competition. To date, the Exchange is not aware of any distributor that purchases the underlying equities feeds (either the Top or Summary Depth Feeds) for the purpose of creating its own consolidated product comparable to Cboe One Summary or Cboe One Premium. This demonstrates that the practical market concern underlying any perceived burden—that distributors might be disadvantaged by differential pricing on Cboe One that is not extended to the underlying feeds—does not correspond to actual market behavior.

Moreover, Cboe One Summary and Cboe One Premium are distinct, independent data products—they are not merely consolidations of data from the four underlying equities feeds. In addition to consolidating data from BZX, BYX, EDGX, and EDGA, Cboe One Summary includes supplementary data elements not found in the individual underlying feeds, including data derived from the Securities Information Processor (''SIP'') containing information on the national cumulative volume. This additional content makes Cboe One a distinct product with independent utility. Market participants subscribe to the underlying equities feeds and Cboe One for fundamentally different purposes. For example, a subscriber may be interested only in top-of-book data from a single exchange, such as EDGX, for trading, routing or compliance purposes. Such a subscriber has no need for a consolidated product. Conversely, subscribers seeking a comprehensive, cross-exchange view of Cboe liquidity choose Cboe One precisely because it offers consolidated data with additional enhancements. These distinct use cases support differentiated pricing treatment.

[26] For Cboe One Summary, the four equities feeds are BZX Top, BYX Top, EDGA Top, and EDGX Top. For Cboe One Premium, the four equities feeds are BZX Summary Depth, BYX Summary Depth, EDGA Summary Depth, and EDGX Summary Depth.

[27] For example, under the Small Retail Broker Distribution Program, the discounted External Distribution Fee for Cboe One Summary is $3,500 per month, which equals the sum of the External Distribution Fees for the four underlying Top feeds: BZX Top ($2,500), BYX Top ($250), EDGA Top ($0), and EDGX Top ($750). *See* Cboe BZX, BYX, EDGA, and EDGX U.S. Equities Exchange Fee Schedules. Because the proposed Data Vendor Program does not offer fee waivers for BZX Top, BYX Top, EDGA Top, BYX Summary Depth, or EDGA Summary Depth, the External Distribution Fee for each of those feeds would remain in effect for any Data Vendor receiving those feeds, while the External Distribution Fee for Cboe One Summary ($0 during the Summary Waiver Period) or Cboe One Premium ($0 during the Premium Waiver Period) would be waived. This results in a pricing differential between the sum of the underlying equities feeds and the Cboe One feeds under this Program.

[28] For example, the External Distribution Fee is $0 for Cboe One Summary under the proposed Program, but the sum of the four underlying equities feeds under the proposed Program is $2,750 ($0 EDGX Top + $2,500 BZX Top + $250 BYX Top + $0 EDGA Top).

Section 6(b)(8) of the Exchange Act requires that exchange rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Cboe One Summary, Cboe One Premium, and the applicable underlying equities feeds are separate products serving different market needs. Just as the Commission has permitted exchanges to offer different fees for depth-of-book data versus top-of-book data, the Exchange should have discretion to price its consolidated summary product differently from its component feeds.

Finally, the proposed Data Vendor Program is pro-competitive. By reducing the cost of consolidated and top-of-book data products for qualifying Data Vendors, the Exchange enables broader distribution of comprehensive market information to downstream distributors and, ultimately, to retail and institutional investors. Wider access to market data promotes informed investment decisions, enhances market efficiency, and supports the Exchange Act's goals of investor protection and fair and efficient markets. The Exchange does not view external distributors as competitors for its real-time feed offerings; rather, distributors serve as essential conduits that expand delivery of Cboe real-time market data to end users who do not have the technical capability or commercial need to connect directly to Cboe's individual market data feeds. This is particularly important for the retail community, as retail investors typically access market data through vendors rather than purchasing it directly from exchanges. By offering the proposed Data Vendor Program, the Exchange enables distributors to deliver competitively priced, comprehensive market data to a broader audience, thereby enhancing—not burdening—competition in the market data landscape.

For the foregoing reasons, the Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [29] and paragraph (f) of Rule 19b–4 [30] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGA–2026–033 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGA–2026–033. 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–CboeEDGA–2026–033 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20793 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106616; File No. SR–CboeEDGX–2026–066]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a Data Vendor Program

October 7, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2026, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to introduce a Data Vendor Program, which includes introducing a new defined term of Data Vendor, along with other clarifying changes. 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/edgx/*), 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to (i) introduce a definition of Data Vendor; (ii) codify the existing definition (as defined in the Exchange's applicable North American Market Data Policies) of Extranet Service Provider; (iii) codify an existing practice that permits an External Distributor of both Cboe One Summary and Cboe One Premium to be liable only for the External Distribution Fee for Cboe One Premium; and (iv) create a program for Data Vendors in order to incentivize Data Vendors to build out the applicable feeds and make them commercially available to subscribers.[3] The proposed program will provide fee waivers (as described below) for External Distribution Fees for Data Vendors for the Cboe One Summary Feed, Cboe One Premium Feed, EDGX Summary Depth Data Feed, and EDGX Top Data Feed.

Proposed Definitions

In connection with this proposed program, the Exchange first proposes to adopt a definition for a specific category of participants. Specifically, the Exchange proposes to establish the term ''Data Vendor'' to mean ''an External Distributor that (i) is actively engaged, as part of its primary business objective, in the solicitation of unaffiliated third-party Distributors to redistribute a transformed Market Data Product; (ii) does not maintain a brokerage relationship with Users in connection with the receipt or use of the applicable Market Data Product; and (iii) is not an Extranet Service Provider.'' As part of this new definition, and as further described below, the Exchange proposes to codify the existing definition of Extranet Service Provider within the Cboe Global North American Market Data Policies to be within its Fee Schedule.

The Exchange has also established objective, verifiable criteria for determining eligibility as a Data Vendor. The following criteria, which will be reflected in the Exchange's Fee Schedule, must be satisfied: (1) the External Distributor must identify itself as a Data Vendor in publicly available marketing materials; (2) the External Distributor must transform the applicable Market Data Product before redistribution, which may include aggregation across multiple data sources, normalization into a consistent format, enrichment with reference data or analytics, or repackaging into a proprietary delivery mechanism (*e.g.,* terminal, API, or proprietary feed); (3) the External Distributor must redistribute the applicable transformed Market Data Product to downstream Distributors as part of a paid commercial offering; (4) the External Distributor must not maintain a brokerage relationship with any User to whom it distributes the applicable Market Data Product; (5) the External Distributor must not be an Extranet Service Provider; and (6) the External Distributor must be actively engaged in the solicitation of unaffiliated third-party Distributors to subscribe to and redistribute the applicable transformed Market Data Product. Upon request, the External Distributor must provide a written attestation certifying compliance with the foregoing criteria. The Exchange may request supporting documentation, including but not limited to Distributor subscriber lists, revenue breakdowns by recipient type, and descriptions of the transformations applied to the Market Data Product. These objective eligibility criteria ensure that the Data Vendor Program is equitably applied to all similarly situated market participants.

External Distributor

To begin, ''Data Vendor'' is intended to only encompass External Distributors and not Internal Distributors. An External Distributor is defined as a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.[4] The Exchange seeks to adopt this program in order to encourage broader redistribution of this data. As such, the Exchange limits this to External Distributors as the intent of this program is to have data distributed outside one's own entity.

Primary Business Is To Redistribute to Distributors

To be eligible as a Data Vendor, an External Distributor must be taking in data for the primary business purpose of selling access to the applicable feed as a service in its own right, not merely redistributing data in incidental support of broader business functions such as trade execution, account management, or brokerage services. The Exchange notes that, as part of its business, a Data Vendor may redistribute a market data product to Users, but the primary purpose must be to redistribute data to Distributors. The Exchange will assess whether an External Distributor's primary business purpose satisfies this criterion based on the External Distributor's publicly available marketing materials. If the Exchange were to modify this requirement to permit a primary business purpose of redistribution to either Distributors *or* Users, it would unintentionally include firms that may redistribute only to Users and that are not traditionally considered data vendors (*e.g.,* a media outlet or a bank).

Transformed Market Data Product

To be eligible, the Exchange requires that the Data Vendor not simply pass through data in its original form. Transformation may include aggregation across multiple sources, normalization into a consistent format, enrichment with derived analytics, or repackaging into a proprietary delivery mechanism (*e.g.,* terminal, API, feed), or any other value-added processing that distinguishes the output from the original source data.

No Brokerage Relationship With Users

Next, the Exchange proposes that the definition of Data Vendor include a stipulation that a Data Vendor must not maintain a brokerage relationship with Users who receive the market data product. The Exchange already has programs aimed at retail brokers, for example, both the Small Retail Broker Program and the Small Retail Broker Hosted Solutions Program.[5] This proposed program is intended to encourage Data Vendors specifically to take in the applicable feeds and distribute them. A Data Vendor's service model is different from a retail broker's, as a Data Vendor's business model is built around providing data to firms and Users alike, whereas a retail broker's business model is focused on connecting Users to markets in order to trade and may include providing market data as part of its offering to its Users.

[3] The Exchange initially submitted the proposed rule change on July 1, 2026 (SR–CboeEDGX–2026–048). On July 15, 2026, the Exchange withdrew that filing and submitted SR–CboeEDGX–2026–049. On September 8, 2026, the Exchange withdrew that filing and submitted SR–CboeEDGX–2026–060. On September 28, 2026, the Exchange withdrew that filing and submitted this proposal.

[4] *See* EDGX Equities Fee Schedule.

[5] *See* EDGX Equities Fee Schedule.

As the Exchange already has programs specifically for retail brokers, the Exchange does not believe it would be appropriate to include retail brokers here. The Exchange notes that if a Data Vendor that is currently receiving a fee waiver under this Program subsequently commences a brokerage relationship with its Users, it will no longer satisfy the definition of Data Vendor and will cease to be eligible for the Program. In such case, the External Distributor would be assessed the standard External Distribution Fee for the applicable feed as of the date it no longer satisfies the definition of Data Vendor.

Not an Extranet Service Provider

As noted above, the Exchange proposes also to define Extranet Service Provider when it introduces the definition of Data Vendor into its Fee Schedule. Today, this term already exists in the Cboe Global Markets North American Data Policies.[6] The Exchange proposes to codify this definition in its Fee Schedule because the proposed definition of Data Vendor directly references this defined term. Specifically, the Exchange proposes to codify that an Extranet Service Provider is ''an entity that has entered into a Cboe Global Markets Global Data Agreement and Transmits an Exchange Market Data Product, via an extranet operated by such entity, to data recipients. 'Transmit' means to direct an Exchange Market Data Product to one or more data recipients without modification of the content, format, or other characteristics of the Exchange Market Data Product.'' An Extranet Service Provider is not authorized to use or process an Exchange Market Data Product for any purpose.

Applicable Data Feeds

By way of background, the Exchange offers the Cboe One Premium Data Feed, which is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on the Exchange and its affiliated equities exchanges and enables recipients to receive aggregated two-sided quotations from EDGX and its affiliated equities exchanges for up to twelve (12) price levels (and, for a limited time, up to five (5) price levels).[7] The Cboe One Premium Data Feed is created using the data from the Exchange and each of its affiliated equities exchanges' Summary Depth data feeds (allowing for up to 48 total price levels).

The Exchange also offers the Cboe One Summary Data Feed, which disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on EDGX and its affiliated equities exchanges and also contains individual last sale information for EDGX and its affiliated equities exchanges.[8]

The Exchange offers the EDGX Summary Depth Data Feed, which is a data feed that offers aggregated two-sided quotations up to twelve price levels for all displayed orders entered into the System, and the EDGX Top Data Feed, which is a data feed that offers top-of-book quotations and last sale information based on orders entered into the Exchange's System.

External Distribution Fees for Cboe One Premium and Cboe One Summary

The proposed rule change also clarifies that External Distributors of both Cboe One Summary and Cboe One Premium shall only be responsible for paying the External Distribution Fee for Cboe One Premium. The current fee schedule provides that ''Cboe One Summary User Fees can be applied to Cboe One Summary and Cboe One Premium External Distribution Fees.'' Under the Exchange's existing application of this provision, an External Distributor receiving both Cboe One Summary and Cboe One Premium is assessed only the Cboe One Premium External Distribution Fee,[9] and User Fees for both Cboe One Summary and Cboe One Premium may be applied to offset that fee.

The Exchange is now proposing to make this treatment explicit by adding clarifying language to the fee schedule stating that External Distributors of both feeds are only responsible for paying the External Distribution Fee for Cboe One Premium. This amendment does not alter the economic substance of the Exchange's existing fee structure, nor does it impose any new or increased fees on market participants. Rather, it reduces potential ambiguity by expressly codifying the Exchange's existing application of the user fee offset provisions. The Exchange believes this clarification will promote transparency and reduce confusion among External Distributors regarding their fee obligations under the Cboe One market data product offerings.

Impact of Proposed Program

As noted above, the proposed program would waive External Distribution Fees for Data Vendors of the Cboe One Summary Feed, Cboe One Premium Feed, EDGX Summary Depth Data Feed, and EDGX Top Data Feed (each, an ''Applicable Feed'') that satisfy certain eligibility requirements. A Data Vendor must not have received the Applicable Feed for which it seeks the waiver during the 18 months [10] preceding the waiver application date, and must integrate, or be actively in the process of integrating, the Applicable Feed and making it commercially available to its subscribers. The Data Vendor need not have fully integrated the Applicable Feed or made it commercially available before the waiver begins. For a qualifying Data Vendor, the applicable waiver commences on the date it first receives the Applicable Feed, and, if that date occurs mid-month, that partial month counts as the first month of the waiver period. Specifically, the Exchange proposes to waive the External Distribution Fee of $5,000 per month for Cboe One Summary for 12 months (the ''Summary Waiver Period''), except that a Data Vendor is not eligible for a Summary Waiver Period if it is receiving Cboe One Premium because Cboe One Summary is included in the Cboe One Premium External Distribution Fee as noted herein. To clarify, because a Data Vendor receiving Cboe One Premium pays only the Cboe One Premium External Distribution Fee (and no separate fee is assessed for Cboe One Summary), there is no separate

[6] *See* Market_Data_Policies.pdf.

[7] EDGX filed to increase the levels of the Cboe One Premium Data Feed from five (5) levels to twelve (12) levels. To help in this transition, it is currently supporting both the five and twelve level feeds; however, as stated in its rule, EDGX shall sunset the five (5) level feed of Cboe One Premium by December 31, 2026 (with the date to be announced via Exchange Notice). *See* Rule 13.8(b)(i).

[8] The Cboe One Summary Feed is distinguishable from the Cboe One Premium Feed in that it does not provide depth of book data. In contrast, the Cboe One Premium Feed contains all the available data in the Cboe One Summary Feed and also provides depth of book data.

[9] To better illustrate this concept, consider the following examples. Example 1: If a firm subscribes to only Cboe One Summary, its User costs will be used to offset the External Distribution Fee for Cboe One Summary. In the event the firm's User costs total $2,000, the firm will pay $2,000 in User fees and $3,000 ($5,000 − $2,000) for its External Distribution Fee. Example 2: If a firm subscribes only to Cboe One Premium, its User costs will be used to offset the External Distribution Fee for Cboe One Premium. In the event a firm's User costs total $10,000, the firm will pay $10,000 in User fees and $2,500 ($12,500 − $10,000) for its External Distribution Fee. Example 3: If a firm subscribes to both Cboe One Summary and Cboe One Premium, only the External Distribution Fee for Cboe One Premium is assessed and this fee may be offset by both Cboe One Summary and Cboe One Premium User fees. In the event a firm's User costs are $2,000 for Cboe One Summary and $10,000 for Cboe One Premium, the firm will pay a total of $12,000 in User fees ($10,000 + $2,000) and it will pay $500 for its External Distribution Fee ($12,500 − ($10,000 + $2,000)).

[10] The Exchange notes that this same 18-month requirement is the standard for its other fee waiver programs. *See* EDGX Equities Fee Schedule.

Cboe One Summary External Distribution Fee to waive for such a firm.[11] The Exchange proposes to waive the External Distribution Fee of $12,500 per month for Cboe One Premium for 24 months (the ''Premium Waiver Period'').

If an eligible Data Vendor already receives Cboe One Summary, it may still receive the Premium Waiver Period if it has not received Cboe One Premium during the 18 months preceding the waiver application date and satisfies the integration and commercial availability requirement with respect to Cboe One Premium. During the Premium Waiver Period, the Data Vendor's Cboe One Summary subscription would be covered under the Premium Waiver, and no separate External Distribution Fee would be assessed for Cboe One Summary. Similarly, an eligible Data Vendor that builds out both Cboe One feeds simultaneously would receive only the Premium Waiver Period.

Lastly, for eligible Data Vendors, the Exchange also proposes to waive the External Distribution Fee of $2,500 per month for EDGX Summary Depth for 24 months (the ''Summary Depth Waiver Period'') and the External Distribution Fee for EDGX Top of $2,250 for 12 months (the ''Top Waiver Period'').

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [14] 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 promotes just and equitable principles of trade by establishing a clear, objective, and transparent definition of ''Data Vendor'' that properly captures the characteristics distinguishing Data Vendors from other categories of External Distributors. The proposed definition sets forth specific, verifiable criteria—namely, that a Data Vendor must (i) be an External Distributor; (ii) be actively engaged, as part of its primary business objective, in the solicitation of unaffiliated third-party Distributors to redistribute a transformed Market Data Product; (iii) not maintain a brokerage relationship with Users; and (iv) not be an Extranet Service Provider. By establishing objective eligibility criteria, the proposed rule change ensures that similarly situated market participants are treated consistently and that the benefits of the Data Vendor Program are available to all External Distributors that meet the defined qualifications.

The Exchange further believes that the codification of the existing Extranet Service Provider definition within the Fee Schedule promotes just and equitable principles of trade. Because the proposed Data Vendor definition directly references the term ''Extranet Service Provider,'' market participants seeking to understand their eligibility for the Program should not be required to consult the Cboe Global Markets North American Data Policies to determine how that term applies. By incorporating both defined terms into the Fee Schedule itself, the Exchange ensures that participants have access to the complete framework.

The Exchange further believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system. The Data Vendor Program is designed to incentivize Data Vendors to integrate the Applicable Feeds, make them commercially available to subscribers, and redistribute them by providing fee waivers for External Distribution Fees for the Cboe One Summary Feed, Cboe One Premium Feed, EDGX Summary Depth Data Feed, and EDGX Top Data Feed. By waiving the External Distribution Fee for Cboe One Summary for 12 months, Cboe One Premium for 24 months, EDGX Summary Depth for 24 months, and EDGX Top for 12 months, the Exchange encourages broader redistribution of its market data products. Broader distribution of market data enhances price transparency and supports informed decision-making across the national market system, which in turn perfects the mechanism of a free and open market by ensuring that market participants have access to comprehensive, competitive data offerings.

By allowing the waiver to begin while an eligible Data Vendor is actively integrating the Applicable Feed and working to make it commercially available, the Program lowers barriers to entry during the build-out period and incentivizes a broader set of market participants to enter the Exchange's data distribution chain, thereby expanding the availability of market data throughout the national market system.

The proposed rule change also protects investors and the public interest. By encouraging Data Vendors to take in, transform, and redistribute market data feeds, the proposed program promotes greater availability of enriched market data products to downstream Distributors and Users. The transformation requirement—which may include aggregation across multiple sources, normalization into a consistent format, enrichment with derived analytics, or repackaging into a proprietary delivery mechanism such as a terminal, API, or feed—is a key element of qualifying as a Data Vendor and ensures that meaningful value is added to the data before redistributing it, thereby increasing the utility and accessibility of market information. To the extent the Program achieves its purpose and results in more widespread redistribution of the Applicable Feeds, market participants may benefit from enhanced access to consolidated real-time price, depth-of-book, top-of-book, and last sale information through the distribution channels developed by Data Vendors.

Additionally, the codification of the existing Extranet Service Provider definition within the Fee Schedule provides additional clarity on the program requirements and codifies the definition that exists already in the Cboe Global Markets North American Market Data Policies. Furthermore, the clarification that External Distributors of both Cboe One Summary and Cboe One Premium are only responsible for paying the External Distribution Fee for Cboe One Premium promotes transparency by expressly codifying a practice that is already reflected in the Exchange's existing application of the fee provision. This reduces potential confusion among market participants regarding their fee obligations.

[11] As noted above, a firm that subscribes to both Cboe One Premium and Cboe One Summary is only charged the External Distribution Fee for Cboe One Premium. Accordingly, an eligible Data Vendor that builds out both feeds simultaneously receives only the Premium Waiver Period.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

Not Unfairly Discriminatory

The Exchange believes that the proposed Data Vendor Program is consistent with and complementary to its existing programs for other categories of market participants, and that offering a targeted fee waiver program specifically for Data Vendors does not constitute unfair discrimination. The Exchange has a history of establishing differentiated programs that recognize the distinct roles of different market participants. For example, the Small Retail Broker Distribution Program provides discounted Distribution Fees and Data Consolidation Fees for eligible broker-dealers distributing the applicable feeds to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship.[15] This program is designed to address the specific characteristics and economic needs of small retail broker-dealers. Similarly, the Small Retail Broker Hosted Solutions Program provides fee waivers for eligible Small Retail Brokers that provide the applicable feeds to other Small Retail Brokers via hosted solutions.[16] This program recognizes that smaller retail brokers face unique integration challenges and cost constraints when building out hosted data solutions. In addition, the New Internal Distributor Waiver for the EDGX Depth Data Feed waives Internal Distribution Fees for three months for Internal Distributors that have not received the EDGX Depth Data Feed during the prior 18 months.[17] This program incentivizes new Internal Distributors to integrate the depth-of-book feed into their systems. Lastly, the Exchange's affiliated options exchange, Cboe Exchange, Inc., introduced a 24-month waiver for qualifying retail brokers for its Complex Order Book Feed.[18]

The proposed Data Vendor Program is consistent with the Exchange's practice of creating a distinct program to serve a specific use case. Data Vendors occupy a distinct role in the market data distribution ecosystem. Unlike retail brokers, whose primary business is providing trade execution and account management services to Users (with market data distribution as an ancillary feature), Data Vendors are primarily engaged in the business of transforming and redistributing market data to other Distributors. This fundamental difference in business model justifies a distinct program with tailored eligibility criteria and waiver periods. The waiver periods under the proposed Data Vendor Program—12 months for Cboe One Summary and EDGX Top, and 24 months for Cboe One Premium and EDGX Summary Depth—are designed to reflect the relative complexity of integrating each feed. Depth-of-book products such as Cboe One Premium and EDGX Summary Depth typically require more extensive technical build-out, including handling of larger data volumes, more complex display and aggregation logic, and more rigorous quality assurance processes. Additionally, EDGX Summary Depth and Cboe One Premium are more expensive relative to the top-of-book feeds. This means that Data Vendors require additional interest from clients in these products before they can even break even. Accordingly, the Exchange believes a 24-month waiver period for these products is appropriate to provide sufficient time for Data Vendors to complete their build-out. Top-of-book and summary products, in contrast, are generally less complex to integrate, and the Exchange believes a 12-month waiver period is appropriate for these feeds.

Data Vendors' cost and investment trade-offs further support this distinction. A Data Vendor's primary commercial objective is to transform market data and make the resulting product available to unaffiliated downstream Distributors, rather than to provide market data only incidentally in support of another business (in comparison to retail brokers). Because a single Data Vendor can make a Cboe data product available through its platform to multiple downstream Distributors, the waiver is targeted to participants capable of materially expanding the product's distribution footprint. Like any business operator, a Data Vendor evaluates whether to add an Applicable Feed based on expected return on investment, weighing expected revenue against the upfront costs of connectivity, programming, technical integration, and sales and marketing, as well as the ongoing exchange market data fees associated with making the product available to subscribers. In many cases, a Data Vendor may need to add three to five new downstream Distributors merely to offset the ongoing External Distribution Fee. These costs are typically incremental: Data Vendors may already offer one or more equity feeds to clients and add an Applicable Feed only where it is expected to provide return on investment beyond their current offerings. A retail broker's determination is different. A retail broker will often migrate or swap from a competitor's product, and may be able to implement the change through a Data Vendor API into its front-end with a simple entitlement change, without bearing the same upfront connectivity and technical build-out costs.

The waiver periods under the proposed Data Vendor Program are longer than certain other Exchange programs because they support more than initial feed access or recruitment of a first User.[19] A qualifying Data Vendor must complete significant technical and commercial build-out before it can distribute the product and begin recovering its upfront costs. Its downstream Distributors may then have their own evaluation, contracting, and integration cycles, further extending the path to meaningful adoption; as noted above, a Data Vendor may need to add three to five new downstream Distributors to offset the ongoing External Distribution Fee.

The Exchange does not maintain comparable fee waiver programs for larger broker-dealers that distribute market data to their brokerage customers. The Exchange believes this distinction is appropriate. The Small Retail Broker programs are specifically designed to address the cost constraints faced by smaller broker-dealers in building out market data distribution capabilities. Larger broker-dealers typically have established data infrastructure and greater resources to absorb market data distribution costs as part of their overall brokerage operations, and, as such, their cost per user is meaningfully lower. Data distribution by large broker-dealers is typically an ancillary component of brokerage services offered. In contrast, a Data Vendor must incur incremental buildout fees and ongoing External Distribution Fees to establish and support a new external redistribution channel. The relevant distinction is therefore the nature of the service and the associated barriers to distribution, not the size or identity of the participant.

The Data Vendor Program is intended to address a different need: incentivizing specialized data redistribution firms to build out the Applicable Feeds and bring on additional downstream Distributors. By encouraging Data Vendors to invest in the transformation and redistribution of the Exchange's market data products,

[15] *See* EDGX Equities Fee Schedule.

[16] *See* EDGX Equities Fee Schedule.

[17] *Id.*

[18] *See* Securities Exchange Act Release No. 105198 (April 10, 2026), 91 FR 20204 (April 15, 2026) (SR–CBOE–2026–033).

[19] However, as noted above, Cboe Exchange, Inc., offers a 24-month waiver for qualifying retail brokers for its Complex Order Book Feed.

the Program expands the reach and availability of this data throughout the national market system, benefiting end users and promoting competition. The Exchange therefore believes that creating a targeted program for Data Vendors, in addition to its existing programs for Small Retail Brokers and Internal Distributors, among others, is consistent with Section 6(b)(5) of the Act and does not constitute unfair discrimination.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Data Vendor Program is available to all External Distributors that satisfy the objective criteria set forth in the proposed definition of Data Vendor and, for waiver eligibility, the additional objective criteria regarding the 18-month lookback for prior receipt of the Applicable Feed and integration or active integration of the Applicable Feed for commercial availability. The distinctions drawn by the definition—(i) requiring that a Data Vendor's primary business objective be the solicitation of unaffiliated third-party Distributors, (ii) that it not maintain a brokerage relationship with Users, and (iii) that it not be an Extranet Service Provider—reflect meaningful differences in business models and market functions.

External Distributors

The Exchange believes that limiting the Data Vendor Program to External Distributors is not unfairly discriminatory. Internal Distributors and External Distributors occupy fundamentally different roles in the market data distribution ecosystem and are not similarly situated participants. An Internal Distributor receives a market data product and distributes it solely within its own entity, whereas an External Distributor redistributes data outside its entity to Users or other Distributors—and a Data Vendor, as a specialized category of External Distributor, further serves the specific function of soliciting unaffiliated third-party Distributors to redistribute a transformed market data product. The Data Vendor Program is designed precisely to incentivize and expand this type of external redistribution, a purpose that has no meaningful application to Internal Distributors who, by definition, cannot advance the proposed program's goal of broadening the reach of the Exchange's market data to downstream Distributors and end-user investors. Furthermore, the Exchange already offers programs for its Internal Distributors that it does not offer for External Distributors.[20]

Primary Business Is To Redistribute to Distributors

To be eligible as a Data Vendor, an External Distributor must be taking in data for the primary business purpose of selling access to the applicable feed as a service in its own right—not merely redistributing data in incidental support of broader business functions such as trade execution, account management, or brokerage services. The Exchange notes that as part of its business, a Data Vendor may redistribute a market data product to Users, but the primary purpose must be the redistribution of data to Distributors. The Exchange will assess whether an External Distributor's primary business purpose satisfies this criterion based on the External Distributor's publicly available marketing materials. This requirement is not unfairly discriminatory because it is directly tied to the purpose of the Program: encouraging entities whose core commercial activity is the transformation and redistribution of market data to build out the Applicable Feeds and bring on additional downstream Distributors, thereby expanding the reach and availability of the Exchange's data products. An entity that distributes market data only incidentally—as an ancillary feature of a brokerage, execution, or account management business—does not serve this purpose.

Transformed Market Data Product

The Exchange believes it is not unfairly discriminatory to require that a Data Vendor transform market data as a condition of eligibility, as transformation is a definitional characteristic that goes to the core of what distinguishes a Data Vendor from other categories of External Distributors and is directly tied to the Program's purpose of incentivizing participants that create new, differentiated distribution channels for the Exchange's consolidated market data. This reasoning is directly analogous to the rationale for excluding Extranet Service Providers—entities that transmit data without modification and therefore cannot create the type of value-added products, whether delivered via terminal, API, or proprietary feed, that the Program is designed to incentivize. Because the transformation requirement ensures that the Program's fee incentives are directed only at entities whose business is built around adding that value, the Exchange believes this criterion is reasonable and does not constitute unfair discrimination.

No Brokerage Relationship With Users

The Exchange believes it is not unfairly discriminatory to require that Data Vendors not maintain a brokerage relationship with Users. The Exchange already maintains separate programs specifically for qualifying broker-dealers that distribute market data to their brokerage customers. Specifically, the Exchange offers the Small Retail Broker Distribution Program, which provides discounted Distribution Fees and Data Consolidation Fees for eligible broker-dealers distributing the applicable feeds to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship. The Exchange also offers the Small Retail Broker Hosted Solutions Program, which provides fee waivers and lower data costs for Small Retail Brokers that provide the applicable feeds to other Small Retail Brokers via hosted solutions. These existing programs are specifically designed to encourage retail brokers to distribute market data, and the eligibility criteria for those programs reflect the characteristics of the retail brokerage business model.

The proposed Data Vendor Program does not displace or reduce the benefits available to retail brokers under those existing programs. Rather, it creates a parallel and complementary framework for a distinct category of participants—Data Vendors—that do not maintain brokerage relationships with Users, and whose primary business purpose is categorically different from that of a retail broker. Just as it would not be appropriate to extend the Small Retail Broker Program to Data Vendors, it is similarly appropriate—and not unfairly discriminatory—not to extend the Data Vendor Program to retail brokers or other participants that maintain brokerage relationships with their Users, whose needs are separately addressed by the Exchange's existing programs.

Not an Extranet Service Provider

The Exchange also believes it is not unfairly discriminatory to exclude Extranet Service Providers from the Data Vendor Program. An Extranet Service Provider, as defined, is an entity that transmits a market data product to data recipients without modification of the content, format, or other characteristics of the product. Extranet Service Providers do not transform, enrich, or add value to the data they transmit—they serve as conduits, passing data through in its original form. This is

[20] *See, e.g.,* EDGX Equities Fee Schedule that describes the New Internal Distributor Waiver for EDGX Depth Data Feed.

fundamentally distinct from the function of a Data Vendor, which, by definition, must transform the Market Data Product as part of its service offering.

The Data Vendor Program is specifically premised on the value that transformation adds to the data distribution ecosystem. By enabling Data Vendors to create differentiated products—delivered via a terminal, API, proprietary feed, or other value-added mechanism—that appeal to a broader range of downstream Distributors, the Program advances the Exchange's goal of maximizing the reach and utility of its consolidated market data throughout the national market system. Extending the Program to Extranet Service Providers, which do not perform this transformative function, would undermine the Program's core purpose and would not serve the policy goal of broadening distribution of market data products in readily accessible, value-added formats.

The Exchange has created programs to address the distinct needs and business models of different categories of market participants, and the proposed Data Vendor Program is a natural extension of this approach. In addition to the Small Retail Broker programs described above, the Exchange also offers fee waivers for eligible Internal Distributors of the EDGX Depth Data Feed, which are intended to incentivize new Internal Distributors to integrate data feeds into their systems. The differentiation between Data Vendors and other categories of market participants reflects the distinct roles these entities play and the distinct incentive structures appropriate to each and does not constitute unfair discrimination.

18-Month and Integration Requirements

The Exchange further believes it is not unfairly discriminatory to limit the Program to Data Vendors that have not received the Applicable Feed for which they seek a waiver during the 18 months preceding the waiver application date, and that have integrated, or are actively in the process of integrating,[21] the Applicable Feed and making it commercially available to subscribers. The 18-month limitation is designed to ensure that the fee waivers serve their intended purpose of reducing the upfront cost barriers for new market participants. This approach is directly consistent with the analogous frameworks the Exchange has adopted in prior programs—including the Internal Distributor Waiver for the EDGX Depth Data Feed, which similarly limits fee relief to distributors that have not received the relevant feed in the prior 18 months. The integration and commercial availability requirement is likewise reasonable because it ensures that the waiver is directed to Data Vendors that are undertaking the build-out necessary to distribute the Applicable Feed to subscribers, while not requiring full integration or commercial availability before the waiver begins. The Exchange therefore believes that these objective limitations are reasonable and appropriate, prevent the Program from operating as a permanent subsidy for established distributors, and are not unfairly discriminatory.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[22] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed fee waivers represent a reasonable and equitable allocation of charges. The fee waivers for External Distribution Fees are limited in duration—12 months for Cboe One Summary, 24 months for Cboe One Premium, 24 months for EDGX Summary Depth, and 12 months for EDGX Top—and are available only to Data Vendors that have not received the Applicable Feed for which they seek a waiver during the 18 months preceding the waiver application date and that have integrated, or are actively in the process of integrating, the Applicable Feed and making it commercially available to subscribers. This time-limited structure ensures that the waivers serve their intended purpose of incentivizing new market entry and build-out of data feeds. The 18-month lookback requirement further ensures the equitable allocation of fees by limiting the Program to new feeds for Data Vendors, and the integration and commercial availability requirement ensures that the waiver is tied to actual build-out and distribution activity. The Exchange notes that this same 18-month standard is consistent with the requirements applied in its other fee waiver programs.

The clarification that External Distributors of both Cboe One Summary and Cboe One Premium shall only be responsible for paying the External Distribution Fee for Cboe One Premium does not alter the economic substance of the Exchange's existing fee structure and does not impose any new or increased fees on market participants. Rather, it expressly codifies the Exchange's existing application of the user fee offset provisions—under which an External Distributor disseminating both products is assessed only the Cboe One Premium External Distribution Fee—thereby ensuring that all market participants have a clear and equitable understanding of their fee obligations. The Exchange therefore believes the proposed rule change provides for the equitable allocation of reasonable fees among persons using its facilities.

Lastly, the Exchange believes that the limitations regarding the waiver structure for both Cboe One Premium and Cboe One Summary equitably allocate fees. With respect to the Cboe One Summary waiver, only Data Vendors that (i) have not received Cboe One Summary during the 18 months preceding the waiver application date, (ii) are integrating or actively in the process of integrating Cboe One Summary and making it commercially available to subscribers, and (iii) are not receiving Cboe One Premium are eligible for the Summary Waiver Period. The Exchange believes that this is reasonable, as a firm that subscribes to Cboe One Premium already may elect to receive (without incurring an additional External Distribution Fee) Cboe One Summary Feed. For this reason, there is no need to provide a separate Summary Waiver Period while a firm receives Cboe One Premium, because that firm may receive the Cboe One Summary Feed without paying an additional External Distribution Fee that the proposed program seeks to waive.

Next, the Exchange notes that if a Data Vendor currently receives Cboe One Summary and elects to receive Cboe One Premium under the proposed program, so long as the Data Vendor has not received the Cboe One Premium Feed during the 18 months preceding the waiver application date and satisfies the integration and commercial availability requirement with respect to Cboe One Premium, the Data Vendor may receive the Premium Waiver Period. During that period, the Data Vendor's existing Cboe One Summary[23] subscription will be covered under the Premium Waiver, and no separate

[21] The Exchange notes that no specific step is required for this, only that Data Vendor is working to integrate the Applicable Feed into its system.

[22] 15 U.S.C. 78f(b)(4).

[23] For example, if a Data Vendor currently subscribes to Cboe One Summary Feed and is eligible for the proposed program for the Cboe One Premium Feed, no separate External Distribution Fee would be assessed for Cboe One Summary during the Premium Waiver Period because Cboe One Summary is included in the Cboe One Premium subscription. The Data Vendor would receive the Premium Waiver Period and would not receive a separate Summary Waiver Period during that time.

External Distribution Fee will be assessed for Cboe One Summary. This is because the Cboe One Summary External Distribution Fee is subsumed within the Cboe One Premium External Distribution Fee—accordingly, there is no separate Cboe One Summary fee to waive for a firm receiving Cboe One Premium. The Exchange believes this treatment is reasonable because it avoids providing overlapping or duplicative waiver relief while still incentivizing an existing Summary subscriber to build out Cboe One Premium.

Lastly, if a Data Vendor has not received either Cboe One Summary or Cboe One Premium during the 18 months preceding the waiver application date and elects to build out both Cboe One feeds simultaneously, the Data Vendor will not receive separate Summary and Premium waivers. Instead, because the Cboe One Summary External Distribution Fee is subsumed within the Cboe One Premium External Distribution Fee, the Data Vendor will receive only the Premium Waiver Period, and no separate Summary Waiver Period will apply while it receives Cboe One Premium.

With respect to EDGX Summary Depth and EDGX Top, the Exchange believes that the applicable waiver periods also equitably allocate fees. The 24-month Summary Depth Waiver Period is reasonable because integrating a depth-of-book product may require a more substantial build-out by a Data Vendor, while the 12-month Top Waiver Period is reasonable because EDGX Top provides top-of-book and last sale information and generally should require a less extensive integration effort. In each case, the waiver is available only if the Data Vendor satisfies the 18-month lookback and integration or active-integration requirements for the applicable feed.

For all of the foregoing reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including, in particular, the requirements of Sections 6(b)(4) [24] and 6(b)(5) [25] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change imposes any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed Data Vendor Program is available to all External Distributors that satisfy the objective, clearly defined criteria set forth in the proposed definition of ''Data Vendor'' and the Program's waiver eligibility standards. Any External Distributor that, as part of its primary business objective, solicits unaffiliated third-party Distributors to redistribute a transformed Market Data Product, does not maintain a brokerage relationship with Users in connection with the applicable Market Data Product, is not an Extranet Service Provider, has not received the Applicable Feed for which it seeks a waiver during the 18 months preceding the waiver application date, and has integrated or is actively integrating the Applicable Feed and making it commercially available to subscribers may qualify for the Program on equal terms. Because eligibility is determined by objective, verifiable criteria rather than by subjective or discretionary determinations, no External Distributor is advantaged or disadvantaged relative to any other similarly situated participant.

To the extent that certain External Distributors—such as retail broker-dealers or Extranet Service Providers—do not qualify for the Data Vendor Program, this does not impose a burden on intramarket competition. As described above, retail broker-dealers and Extranet Service Providers are not similarly situated to Data Vendors. Retail broker-dealers distribute market data to their own brokerage customers as an ancillary feature of their core business of providing trade execution and account management services, and their data distribution needs are more appropriately addressed by the Exchange's existing Small Retail Broker Distribution Program and Small Retail Broker Hosted Solutions Program. Extranet Service Providers, by contrast, transmit data in its original form without transformation, and therefore do not serve the same function in the data distribution ecosystem as Data Vendors, which aggregate, transform, and redistribute data to downstream Distributors. Designing a fee program specifically targeted to Data Vendors, rather than applying it uniformly across all categories of External Distributors, does not burden intramarket competition—it reflects the materially different roles, business models, and barriers of these distinct categories of participants.

Similarly, limiting the Data Vendor Program to External Distributors and not extending it to Internal Distributors does not impose a burden on intramarket competition. Internal Distributors receive and use market data solely within their own legal entities and do not redistribute data to third parties outside their organizations. They are therefore not participants in the same competitive market for external data redistribution that the Program is designed to promote, and their needs are separately addressed through the Exchange's existing Internal Distributor programs—including the New Internal Distributor Waiver for the EDGX Depth Data Feed. The proposed Program is specifically designed to incentivize external redistribution of the Applicable Feeds, a purpose that has no meaningful application to Internal Distributors and that creates no competitive disadvantage for them.

The Exchange does not believe the proposed rule change imposes any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposed rule change will enhance intermarket competition by incentivizing a broader class of market participants to subscribe to and redistribute the Exchange's market data products, thereby increasing the Exchange's ability to compete with other national securities exchanges and data vendors for the business of Data Vendors and their downstream Distributor clients.

The market for equity market data is highly competitive. Numerous national securities exchanges offer products that compete directly with the Cboe One Summary Feed, Cboe One Premium Feed, EDGX Summary Depth Data Feed, and EDGX Top Data Feed. Market participants can obtain comprehensive market data from numerous sources, including competing exchanges (such as NYSE and Nasdaq), the consolidated tape (SIP), and alternative trading systems. Prospective Data Vendors evaluating whether to build out the Applicable Feeds must weigh the upfront costs of connectivity, software development, integration, and commercial launch against the commercial opportunity presented by the Exchange's data products. The Data Vendor Program is designed to make the Exchange's market data offering competitively priced relative to alternative options, encouraging Data Vendors to enter the Exchange's data distribution chain and thereby expanding the availability and reach of

[24] 15 U.S.C. 78f(b)(4).

[25] 15 U.S.C. 78f(b)(5).

the Exchange's market data throughout the national market system.

Far from burdening intermarket competition, the proposed rule change is a direct response to competitive market forces. The Exchange's decision to offer targeted fee waivers to new Data Vendors reflects its recognition that it must compete aggressively for the participation of data redistribution firms, and that reducing the upfront cost of entry is a legitimate and necessary competitive tool in the market for exchange data products. The Commission has recognized that exchanges operate in a competitive environment with respect to market data, and that exchange fee programs designed to attract new participants and expand market data distribution are consistent with the Act's goals of promoting competition and efficiency in the national market system.

The proposed clarification that External Distributors of both Cboe One Summary and Cboe One Premium are only responsible for paying the External Distribution Fee for Cboe One Premium similarly does not impose any burden on intermarket competition. This change does not alter the economic substance of the Exchange's existing fee structure and does not impose any new fees on any market participant. It simply makes explicit the Exchange's existing application of the user fee offset provisions, reducing potential confusion and ensuring that all market participants have a clear and consistent understanding of their fee obligations. Regulatory clarity of this nature promotes, rather than burdens, competition by enabling market participants to make fully informed decisions about their participation in the Exchange's market data programs.

With respect to the Cboe One Summary and Cboe One Premium feeds specifically, the Exchange notes that the proposed Data Vendor Program does not impose any burden on competition arising from differential pricing between Cboe One and the applicable underlying equities feeds.[26] The Exchange notes that historically, its pricing for Cboe One products has been based on the sum of the External Distribution Fees for the four underlying equities feeds.[27] As an initial matter, not all underlying equities feeds are offered under this Program. The proposed Data Vendor Program applies only to the following feeds: EDGX Top, EDGX Summary Depth, BZX Summary Depth, Cboe One Premium, and Cboe One Summary. A Data Vendor may choose to receive a waiver for Cboe One Summary or Cboe One Premium, or for EDGX Top, or for EDGX Summary Depth, or for BZX Summary Depth, or any combination thereof, subject to the applicable eligibility requirements. However, the proposed Program does not offer fee waivers for BZX Top, BYX Top, or EDGA Top data feeds, nor does it offer fee waivers for BYX Summary Depth or EDGA Summary Depth. Accordingly, the applicable underlying equities feeds do not ''sum'' to the applicable Cboe One feed under this proposed Program.[28]

The Exchange has selected the products covered by the Program based on where it sees the greatest opportunity to expand distribution and align Data Vendor coverage with downstream end-user demand. This product-specific focus is not unfairly discriminatory. All qualifying Data Vendors are subject to the same product-specific eligibility requirements, and offering waivers for some, rather than all four, of the underlying feeds does not result in unequal treatment among similarly situated participants.

Even setting aside the foregoing, the Exchange does not believe that pricing the Cboe One Summary or Cboe One Premium feeds differently from the underlying equities feeds imposes any burden on competition. To date, the Exchange is not aware of any distributor that purchases the underlying equities feeds (either the Top or Summary Depth Feeds) for the purpose of creating its own consolidated product comparable to Cboe One Summary or Cboe One Premium. This demonstrates that the practical market concern underlying any perceived burden—that distributors might be disadvantaged by differential pricing on Cboe One that is not extended to the underlying feeds—does not correspond to actual market behavior.

Moreover, Cboe One Summary and Cboe One Premium are distinct, independent data products—they are not merely consolidations of data from the four underlying equities feeds. In addition to consolidating data from BZX, BYX, EDGX, and EDGA, Cboe One Summary includes supplementary data elements not found in the individual underlying feeds, including data derived from the Securities Information Processor (''SIP'') containing information on the national cumulative volume. This additional content makes Cboe One a distinct product with independent utility. Market participants subscribe to the underlying equities feeds and Cboe One for fundamentally different purposes. For example, a subscriber may be interested only in top-of-book data from a single exchange, such as EDGX, for trading, routing or compliance purposes. Such a subscriber has no need for a consolidated product. Conversely, subscribers seeking a comprehensive, cross-exchange view of Cboe liquidity choose Cboe One precisely because it offers consolidated data with additional enhancements. These distinct use cases support differentiated pricing treatment.

Section 6(b)(8) of the Exchange Act requires that exchange rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Cboe One Summary, Cboe One Premium, and the applicable underlying equities feeds are separate products serving different market needs. Just as the Commission has permitted exchanges to offer different fees for depth-of-book data versus top-of-book data, the Exchange should have discretion to price its consolidated summary product differently from its component feeds.

Finally, the proposed Data Vendor Program is pro-competitive. By reducing the cost of consolidated and top-of-book data products for qualifying Data Vendors, the Exchange enables broader distribution of comprehensive market information to downstream distributors and, ultimately, to retail and institutional investors. Wider access to market data promotes informed investment decisions, enhances market efficiency, and supports the Exchange Act's goals of investor protection and fair and efficient markets. The Exchange does not view external distributors as competitors for its real-time feed offerings; rather, distributors serve as essential conduits that expand delivery

[26] For Cboe One Summary, the four equities feeds are BZX Top, BYX Top, EDGA Top, and EDGX Top. For Cboe One Premium, the four equities feeds are BZX Summary Depth, BYX Summary Depth, EDGA Summary Depth, and EDGX Summary Depth.

[27] For example, under the Small Retail Broker Distribution Program, the discounted External Distribution Fee for Cboe One Summary is $3,500 per month, which equals the sum of the External Distribution Fees for the four underlying Top feeds: BZX Top ($2,500), BYX Top ($250), EDGA Top ($0), and EDGX Top ($750). *See* Cboe BZX, BYX, EDGA, and EDGX U.S. Equities Exchange Fee Schedules. Because the proposed Data Vendor Program does not offer fee waivers for BZX Top, BYX Top, EDGA Top, BYX Summary Depth, or EDGA Summary Depth, the External Distribution Fee for each of those feeds would remain in effect for any Data Vendor receiving those feeds, while the External Distribution Fee for Cboe One Summary ($0 during the Summary Waiver Period) or Cboe One Premium ($0 during the Premium Waiver Period) would be waived. This results in a pricing differential between the sum of the underlying equities feeds and the Cboe One feeds under this Program.

[28] For example, the External Distribution Fee is $0 for Cboe One Summary under the proposed Program, but the sum of the four underlying equities feeds under the proposed Program is $2,750 ($0 EDGX Top + $2,500 BZX Top + $250 BYX Top + $0 EDGA Top).

of Cboe real-time market data to end users who do not have the technical capability or commercial need to connect directly to Cboe's individual market data feeds. This is particularly important for the retail community, as retail investors typically access market data through vendors rather than purchasing it directly from exchanges. By offering the proposed Data Vendor Program, the Exchange enables distributors to deliver competitively priced, comprehensive market data to a broader audience, thereby enhancing—not burdening—competition in the market data landscape.

For the foregoing reasons, the Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [29] and paragraph (f) of Rule 19b–4 [30] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2026–066 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–2026–066. 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–2026–066 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20810 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106619; File No. SR–CMESC–2026–007]

Self-Regulatory Organizations; CME Securities Clearing Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Adopt Standards for Establishing Cross-Margin Arrangements and Adopt a Cross-Margin Arrangement With Chicago Mercantile Exchange Inc.

October 7, 2026.

On August 18, 2026, CME Securities Clearing Inc. (''CMESC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–CMESC–2026–007 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to establish a cross-margining arrangement and modify the CMESC Rulebook (''Rules'') and clearing risk management policies accordingly. The Proposed Rule Change was published for comment in the **Federal Register** on August 31, 2026.[3] The Commission has received comments regarding the substance of the changes proposed in the Proposed Rule Change.[4]

Section 19(b)(2)(i) of the Exchange Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, 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 unless the Commission extends the period within which it must act as provided in Section 19(b)(2)(ii) of the Exchange Act.[6] Section 19(b)(2)(ii) of the Exchange Act allows the Commission to designate a longer period for review (up to 90 days from the publication of notice of the filing of a proposed rule change) if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents.[7]

The 45th day after publication of the Notice of Filing is October 15, 2026. In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change and therefore is extending this 45-day time period.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[8] designates November 29, 2026, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–CMESC–2026–007.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 106193 (Aug. 26, 2026), 91 FR 55940 (Aug. 31, 2026) (File No. SR–CMESC–2026–007) (''Notice of Filing'').

[4] Comments on the Proposed Rule Change are *available at https://www.sec.gov/rules-regulations/public-comments/sr-cmesc-2026-007.*

[5] 15 U.S.C. 78s(b)(2)(i).

[6] 15 U.S.C. 78s(b)(2)(ii).

[7] *Id.*

[8] *Id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20794 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106632; File No. SR–NasdaqTX–2026–047]

Self-Regulatory Organizations; Nasdaq Texas, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 11, Rule 11890 (Clearly Erroneous Transactions)

October 7, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2026, Nasdaq Texas, LLC (''Nasdaq Texas'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I 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 Equity 11, Rule 11890 (Clearly Erroneous Transactions) in light of the Commission's approval of Overnight Protected Bands for 23/5 Trading.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaqtx/rulefilings,* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Equity 11, Rule 11890 (Clearly Erroneous Transactions) in light of the Commission's approval of Overnight Protected Bands under the LULD Plan for 23/5 Trading.

Background

In conjunction with the industry's plans for the introduction of trading 23 hours a day, 5 days a week (''23/5 Trading''), the Operating Committee of the Plan to Address Extraordinary Market Volatility (''LULD Plan'') filed proposed Amendment 27 to the LULD Plan, which proposed to establish price band protections during overnight trading hours (''Overnight Price Bands'').[3] The Operating Committee proposed that the Overnight Price Bands would initially be temporary static bands 20% above and below two reference points, and that after implementation, the Operating Committee would evaluate the performance of such Overnight Price Bands and propose appropriate changes in a new plan amendment.[4] On August 5, 2026, the Commission approved the proposal.[5]

In light of the Commission's approval of these changes to the LULD Plan, the Exchange now proposes several amendments to Rule 11890 regarding Clearly Erroneous Transactions. In general, the rule describes the process a market participant may use to request cancellation of a transaction that was ''clearly erroneous.'' The current rule's central premise is that if LULD Price Bands under the LULD Plan were available and correct at the time the transaction was executed, the transaction is not eligible for clearly erroneous review. Specifically, Rule 11890(a)(2)(C)(1) currently provides that ''[i]f the execution time of the transaction(s) under review is during Market Hours, the transaction will not be reviewable as clearly erroneous'' except in certain limited circumstances, including when (A) the transaction is in an NMS stock that is not subject to the LULD Plan (*e.g.,* rights and warrants), (B) the transaction was executed at a time with LULD Price Bands were unavailable or trading should have been prevented due to a regulatory halt or other halt, or (C) several other limited circumstances.[6] In approving the existing version of the rule, the Commission noted that restricting clearly erroneous review in this way during times when LULD Price Bands were in effect was ''consistent with the Act and will further the goal of providing greater certainty to market participants that trades executed within the Price Bands will stand and not be broken. . . . Thus, the proposal is designed to limit the potential discordance between the LULD mechanism and CEE review process.'' [7]

Currently, LULD Price Bands are available only during Market Hours, meaning that the restrictions on clearly erroneous review described above apply only during Market Hours. With the introduction of Overnight Price Bands, the Exchange now proposes to extend the existing restrictions on clearly erroneous review to the period when Overnight Price Bands are in place. This proposed change would be consistent with the Commission's rationale in approving the current version of the rule because it would limit any potential discordance between the LULD mechanism and CEE review in the overnight trading session, providing greater certainty to market participants that trades executed with the Overnight Price Bands will stand and not be broken.

Proposed Changes to Rule 11890(a)(2)(C)(1)

To implement this change, the Exchange proposes to add several definitions to Rule 11890(a)(2)(C)(1). First, the Exchange would add that the term ''LULD Protected Hours'' includes Market Hours and ''Overnight Protected Hours'' defined in Section VIII of the LULD Plan. Second, the Exchange would define ''LULD Price Bands'' or ''Price Bands'' to mean the Price Bands defined in Section V of the LULD Plan (*i.e.,* the Price Bands that apply during Market Hours) and ''Overnight Price

[9] 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. 105596 (June 1, 2026), 91 FR 33774 (June 4, 2026) (File No. 4–631) (Notice of Filing of 27th Amendment to the National Market System Plan).

[4] *See id.*

[5] *See* Securities Exchange Act Release No. 106042 (August 5, 2026), 91 FR 51515 (August 10, 2026) (File No. 4–631) (Order Granting Approval of the 27th Amendment to the National Market System Plan to Address Extraordinary Market Volatility to Establish Temporary Price Band Protections in Overnight Trading).

[6] *See* Rule 11890(a)(2)(C)(1)(i), (ii), and (iii).

[7] *See* Securities Exchange Act Release No. 95658 (September 1, 2022), 87 FR 55060 at 55063 (September 8, 2022) (SR–CboeBZX–2022–037) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Amend BZX Rule 11.17, Clearly Erroneous Executions).

Bands'' as defined in Section VIII of the LULD Plan (*i.e.,* the Price Bands that apply to the Overnight Protected Hours from 9:00 p.m. ET through 4:00 a.m. ET).

The Exchange proposes to amend the current first sentence of Rule 11890(a)(2)(C)(1) to replace the phrase ''Market Hours'' with ''LULD Protected Hours,'' to provide that ''[i]f the execution time of the transaction(s) under review is during LULD Protected Hours, the transaction will not be reviewable as clearly erroneous . . . .'' This change would extend the LULD-based restrictions on clearly erroneous review currently in place during Market Hours to the Overnight Protected Hours.

The Exchange also proposes to amend Rule 11890(a)(2)(C)(1)(ii)'s reference to ''Percentage Parameter'' to incorporate the Percentage Parameter that applies to Overnight Protected Hours. The amended provision would provide for the applicability of clearly erroneous review if the price of the transaction to buy (sell) that is the subject of the clearly erroneous complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan (with respect to the Price Bands that apply during Market Hours) or the ''Overnight Percentage Parameter defined in Section VIII of the LULD Plan'' (with respect to Overnight Protected Hours).

In addition to these changes, the Exchange also proposes to make a non-substantive change to Rule 11890(a)(2)(C)(1)(i), substituting the term ''LULD Plan'' for the current text ''the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the 'Limit Up-Limit Down Plan' or 'LULD Plan,')'' as the ''LULD Plan'' would be defined in the proposed revision to Rule 11890(a)(2)(C)(1).

Proposed Changes to 11890(a)(2)(A)(iii), (a)(2)(C)(2), (a)(2)(D)(3), and (b)(i)

As noted above, current Rule 11890(a)(2)(C)(1) permits clearly erroneous review even during Market Hours when the transaction in question is in an NMS Stock that is not subject to the LULD Plan, *i.e.,* rights and warrants. Such transactions are reviewed for clearly erroneous status using the procedures set out in Rule 11890(a)(2)(C)(2), including the Numerical Guidelines set out in the table accompanying Rule 11890(a)(2)(C)(2)(i). The Exchange now proposes to introduce a similar provision regarding transactions in NMS Stocks not subject to the LULD Plan that are executed during the Overnight Protected Hours; such transactions would be subject to the same Numerical Guidelines as transactions occurring in Pre-Market Hours and Post-Market Hours.

The heading of Rule 11890(a)(2)(C)(2) addresses ''[r]eview of transactions occurring during Pre-Market Hours and Post-Market Hours or eligible for review pursuant to paragraph (c)(1)(i).'' The Exchange proposes to replace the phrase ''eligible for review pursuant to paragraph (c)(1)(i)'' (which, in the current rule, means transactions executed during Market Hours in NMS Stocks not subject to the LULD Plan) with ''during LULD Protected Hours in NMS Stocks not subject to the LULD Plan.'' This proposed language would cover transactions in NMS Stocks not subject to the LULD Plan in Market Hours and expand the same treatment to transactions executed in NMS Stocks not subject to the LULD Plan during Overnight Protected Hours. As such, the proposed change is not novel.

The Exchange proposes to make the same change everywhere else such language appears in the rule—namely, in the text of paragraphs (a)(2)(A)(iii), (a)(2)(C)(2)(i), (a)(2)(C)(2)(ii), (a)(2)(C)(2)(iii), (a)(2)(D)(3), and (b)(i).[8] In each case, the Exchange proposes to replace the phrase ''transactions occurring during Pre-Market Hours or Post-Market Hours or eligible for review'' pursuant to subparagraph (C)(1)(i) with ''transactions occurring during Pre-Market Hours or Post-Market Hours or during LULD Protected Hours in NMS Stocks not subject to the LULD Plan.''

The Exchange also proposes to make corresponding changes to the headings of the table accompanying Rule 11890(a)(2)(C)(2)(i). The Exchange proposes to change the heading of the second column from ''Market Hours Numerical Guidelines for transactions eligible for review pursuant to subparagraph (C)(1)(i)'' to ''Numerical Guidelines for Transactions Executed During Market Hours in NMS Stocks Not Subject to the LULD Plan.'' This change would simply replace the shorthand ''eligible for review pursuant to subparagraph (C)(1)(i)'' with the fuller description that such transactions are ''executed during Market Hours in NMS Stocks not subject to the LULD Plan,'' and is not a substantive change.

Similarly, the Exchange proposes to change the heading of the third column from ''Pre-Market Hours and Post-Market Hours Numerical Guidelines'' to ''Numerical Guidelines for Transactions Executed During Pre-Market Hours and Post-Market Hours or During Overnight Protected Hours in NMS Stocks Not Subject to the LULD Plan.'' The proposed change addresses the fact that transactions executed during Overnight Protected Hours in NMS Stocks not subject to the LULD Plan are eligible for clearly erroneous review—just as are transactions in NMS Stocks not subject to the LULD Plan executed during Market Hours—but at the Numerical Guidelines that apply outside of Market Hours.

Together, these proposed changes would extend the eligibility of clearly erroneous review for transactions in NMS Stocks not subject to the LULD Plan that is currently in place during Market Hours to the Overnight Protected Hours, and would apply the Commission's recent approval of Overnight Price Bands to the clearly erroneous executions rule.

Implementation

The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals, the substance of which are identical to this proposal. The Exchange proposes that this rule change would become operative at the commencement of 23/5 Trading, which is scheduled to commence industry-wide on December 6, 2026.

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 the proposed change is consistent with just and equitable principles of trade because it extends the basic premise of the current rule that clearly erroneous review should be generally unavailable any time a transaction is executed within LULD Price Bands at a time the

[8] Paragraphs (a)(2)(A)(iii), (a)(2)(C)(2)(i), (a)(2)(C)(2)(ii), and (a)(2)(C)(2)(iii) specify general rules for applying clearly erroneous review to transactions where such review is not precluded by paragraph (a)(2)(C)(1). Paragraph (a)(2)(D)(3) specifies conditions where the Exchange may use a revised Reference Price for the purpose of clearly erroneous review in certain transactions where such review is not precluded by paragraph (a)(2)(C)(1). Paragraph (b)(i) specifies that for transactions where clearly erroneous review is not precluded by paragraph (a)(2)(C)(1), a senior officer may initiate clearly erroneous review on his or her own motion.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Price Bands were available and correct. Currently, LULD Price Bands are available only during Market Hours, meaning that the restrictions on clearly erroneous review described above apply only during Market Hours. With the introduction of Overnight Price Bands, the Exchange believes that extending such restrictions on clearly erroneous review to the period when Overnight Price Bands are in place would remove impediments to and perfect the mechanism of a free and open market and a national market system by enhancing the transparency and consistency of the rule.

The resulting rule would thus extend the LULD-related limits on clearly erroneous review that are applicable in Market Hours to the overnight period. The proposed change would also be consistent with the Commission's rationale in approving the current version of the rule because it would limit any potential discordance between the LULD mechanism and CEE review in the overnight trading session, providing greater certainty to market participants that trades executed with the Overnight Price Bands will stand and not be broken.[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather than impacting competition, the proposed change would simply extend the basic premise of the current rule that clearly erroneous review should be generally unavailable any time a transaction is executed within LULD Price Bands at a time the Price Bands were available and correct. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals, the substance of which are identical to this proposal. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NasdaqTX–2026–047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NasdaqTX–2026–047. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NasdaqTX–2026–047 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20807 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

[11] *See* 87 FR 55060 at 55063, *supra* note 7.

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106615; File No. SR–CboeBYX–2026–037]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a Data Vendor Program

October 7, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2026, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') proposes to introduce a Data Vendor Program, which includes introducing a new defined term of Data Vendor, along with other clarifying changes. 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/byx/*), 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 purpose of this proposed rule change is to (i) introduce a definition of Data Vendor; (ii) codify the existing definition (as defined in the Exchange's applicable North American Market Data Policies) of Extranet Service Provider; (iii) codify an existing practice that permits an External Distributor of both Cboe One Summary and Cboe One Premium to be liable only for the External Distribution Fee for Cboe One Premium; and (iv) create a program for Data Vendors in order to incentivize Data Vendors to build out the applicable feeds and make them commercially available to subscribers.[3] The proposed program will provide fee waivers (as described below) for External Distribution Fees for Data Vendors for the Cboe One Summary Feed and Cboe One Premium Feed.

Proposed Definitions

In connection with this proposed program, the Exchange first proposes to adopt a definition for a specific category of participants. Specifically, the Exchange proposes to establish the term ''Data Vendor'' to mean ''an External Distributor that (i) is actively engaged, as part of its primary business objective, in the solicitation of unaffiliated third-party Distributors to redistribute a transformed Market Data Product; (ii) does not maintain a brokerage relationship with Users in connection with the receipt or use of the applicable Market Data Product; and (iii) is not an Extranet Service Provider.'' As part of this new definition, and as further described below, the Exchange proposes to codify the existing definition of Extranet Service Provider within the Cboe Global North American Market Data Policies to be within its Fee Schedule.

The Exchange has also established objective, verifiable criteria for determining eligibility as a Data Vendor. The following criteria, which will be reflected in the Exchange's Fee Schedule, must be satisfied: (1) the External Distributor must identify itself as a Data Vendor in publicly available marketing materials; (2) the External Distributor must transform the applicable Market Data Product before redistribution, which may include aggregation across multiple data sources, normalization into a consistent format, enrichment with reference data or analytics, or repackaging into a proprietary delivery mechanism (*e.g.,* terminal, API, or proprietary feed); (3) the External Distributor must redistribute the applicable transformed Market Data Product to downstream Distributors as part of a paid commercial offering; (4) the External Distributor must not maintain a brokerage relationship with any User to whom it distributes the applicable Market Data Product; (5) the External Distributor must not be an Extranet Service Provider; and (6) the External Distributor must be actively engaged in the solicitation of unaffiliated third-party Distributors to subscribe to and redistribute the applicable transformed Market Data Product. Upon request, the External Distributor must provide a written attestation certifying compliance with the foregoing criteria. The Exchange may request supporting documentation, including but not limited to Distributor subscriber lists, revenue breakdowns by recipient type, and descriptions of the transformations applied to the Market Data Product. These objective eligibility criteria ensure that the Data Vendor Program is equitably applied to all similarly situated market participants.

External Distributor

To begin, ''Data Vendor'' is intended to only encompass External Distributors and not Internal Distributors. An External Distributor is defined as a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.[4] The Exchange seeks to adopt this program in order to encourage broader redistribution of this data. As such, the Exchange limits this to External Distributors as the intent of this program is to have data distributed outside one's own entity.

Primary Business Is To Redistribute to Distributors

To be eligible as a Data Vendor, an External Distributor must be taking in data for the primary business purpose of selling access to the applicable feed as a service in its own right, not merely redistributing data in incidental support of broader business functions such as trade execution, account management, or brokerage services. The Exchange notes that, as part of its business, a Data Vendor may redistribute a market data product to Users, but the primary purpose must be to redistribute data to Distributors. The Exchange will assess whether an External Distributor's primary business purpose satisfies this criterion based on the External Distributor's publicly available marketing materials. If the Exchange were to modify this requirement to permit a primary business purpose of redistribution to either Distributors *or* Users, it would unintentionally include firms that may redistribute only to Users and that are not traditionally considered data vendors (*e.g.,* a media outlet or a bank).

Transformed Market Data Product

To be eligible, the Exchange requires that the Data Vendor not simply pass through data in its original form. Transformation may include aggregation across multiple sources, normalization into a consistent format, enrichment with derived analytics, repackaging into a proprietary delivery mechanism (*e.g.,* terminal, API, feed), or any other value-added processing that distinguishes the output from the original source data.

No Brokerage Relationship With Users

Next, the Exchange proposes that the definition of Data Vendor include a stipulation that a Data Vendor must not maintain a brokerage relationship with Users who receive the market data product. The Exchange already has programs aimed at retail brokers, for example, both the Small Retail Broker Program and the Small Retail Broker Hosted Solutions Program.[5] This proposed program is intended to encourage Data Vendors specifically to take in the applicable feeds and distribute them. A Data Vendor's service model is different from a retail broker's, as a Data Vendor's business model is built around providing data to firms and

[3] The Exchange initially submitted the proposed rule change on July 1, 2026 (SR–CboeBYX–2026–027). On July 15, 2026, the Exchange withdrew that filing and submitted SR–CboeBYX–2026–028. On September 8, 2026, the Exchange withdrew that filing and submitted SR–CboeBYX–2026–032. On September 28, 2026, the Exchange withdrew that filing and submitted this proposal.

[4] *See* BYX Equities Fee Schedule.

[5] *See* BYX Equities Fee Schedule.

Users alike, whereas a retail broker's business model is focused on connecting Users to markets in order to trade and may include providing market data as part of its offering to its Users. As the Exchange already has programs specifically for retail brokers, the Exchange does not believe it would be appropriate to include retail brokers here. The Exchange notes that if a Data Vendor that is currently receiving a fee waiver under this Program subsequently commences a brokerage relationship with its Users, it will no longer satisfy the definition of Data Vendor and will cease to be eligible for the Program. In such case, the External Distributor would be assessed the standard External Distribution Fee for the applicable feed as of the date it no longer satisfies the definition of Data Vendor.

Not an Extranet Service Provider

As noted above, the Exchange proposes also to define Extranet Service Provider when it introduces the definition of Data Vendor into its Fee Schedule. Today, this term already exists in the Cboe Global Markets North American Data Policies.[6] The Exchange proposes to codify this definition in its Fee Schedule because the proposed definition of Data Vendor directly references this defined term. Specifically, the Exchange proposes to codify that an Extranet Service Provider is ''an entity that has entered into a Cboe Global Markets Global Data Agreement and Transmits an Exchange Market Data Product, via an extranet operated by such entity, to data recipients. 'Transmit' means to direct an Exchange Market Data Product to one or more data recipients without modification of the content, format, or other characteristics of the Exchange Market Data Product.'' An Extranet Service Provider is not authorized to use or process an Exchange Market Data Product for any purpose.

Applicable Data Feeds

By way of background, the Exchange offers the Cboe One Premium Data Feed, which is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on the Exchange and its affiliated equities exchanges and enables recipients to receive aggregated two-sided quotations from BYX and its affiliated equities exchanges for up to twelve (12) price levels (and, for a limited time, up to five (5) price levels).[7] The Cboe One Premium Data Feed is created using the data from the Exchange and each of its affiliated equities exchanges' Summary Depth data feeds (allowing for up to 48 total price levels).

The Exchange also offers the Cboe One Summary Data Feed, which disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on BYX and its affiliated equities exchanges and also contains individual last sale information for BYX and its affiliated equities exchanges.[8]

External Distribution Fees for Cboe One Premium and Cboe One Summary

The proposed rule change also clarifies that External Distributors of both Cboe One Summary and Cboe One Premium shall only be responsible for paying the External Distribution Fee for Cboe One Premium. The current fee schedule provides that ''Cboe One Summary User Fees can be applied to Cboe One Summary and Cboe One Premium External Distribution Fees.'' Under the Exchange's existing application of this provision, an External Distributor receiving both Cboe One Summary and Cboe One Premium is assessed only the Cboe One Premium External Distribution Fee,[9] and User Fees for both Cboe One Summary and Cboe One Premium may be applied to offset that fee.

The Exchange is now proposing to make this treatment explicit by adding clarifying language to the fee schedule stating that External Distributors of both feeds are only responsible for paying the External Distribution Fee for Cboe One Premium. This amendment does not alter the economic substance of the Exchange's existing fee structure, nor does it impose any new or increased fees on market participants. Rather, it reduces potential ambiguity by expressly codifying the Exchange's existing application of the user fee offset provisions. The Exchange believes this clarification will promote transparency and reduce confusion among External Distributors regarding their fee obligations under the Cboe One market data product offerings.

Impact of Proposed Program

As noted above, the proposed program would waive External Distribution Fees for Data Vendors of the Cboe One Summary Feed and the Cboe One Premium Feed (each, an ''Applicable Feed'') that satisfy certain eligibility requirements. A Data Vendor must not have received the Applicable Feed for which it seeks the waiver during the 18 months[10] preceding the waiver application date, and must integrate, or be actively in the process of integrating, the Applicable Feed and making it commercially available to its subscribers. The Data Vendor need not have fully integrated the Applicable Feed or made it commercially available before the waiver begins. For a qualifying Data Vendor, the applicable waiver commences on the date it first receives the Applicable Feed, and, if that date occurs mid-month, that partial month counts as the first month of the waiver period. Specifically, the Exchange proposes to waive the External Distribution Fee of $5,000 per month for Cboe One Summary for 12 months (the ''Summary Waiver Period''), except that a Data Vendor is not eligible for a Summary Waiver Period if it is receiving Cboe One Premium because Cboe One Summary is included in the Cboe One Premium External Distribution Fee as noted herein. To clarify, because a Data Vendor receiving Cboe One Premium pays only the Cboe One Premium External Distribution Fee (and no separate fee is assessed for Cboe One Summary), there is no separate Cboe One Summary External Distribution Fee to waive for such a firm.[11] The

[6] *See* Market_Data_Policies.pdf.

[7] BYX filed to increase the levels of the Cboe One Premium Data Feed from five (5) levels to twelve (12) levels. To help in this transition, it is currently supporting both the five and twelve level feeds; however, as stated in its rule, BYX shall sunset the five (5) level feed of Cboe One Premium by December 31, 2026 (with the date to be announced via Exchange Notice). *See* Rule 11.22(i).

[8] The Cboe One Summary Feed is distinguishable from the Cboe One Premium Feed in that it does not provide depth of book data. In contrast, the Cboe One Premium Feed contains all the available data in the Cboe One Summary Feed and also provides depth of book data.

[9] To better illustrate this concept, consider the following examples. Example 1: If a firm subscribes to only Cboe One Summary, its User costs will be used to offset the External Distribution Fee for Cboe One Summary. In the event the firm's User costs total $2,000, the firm will pay $2,000 in User fees and $3,000 ($5,000 − $2,000) for its External Distribution Fee. Example 2: If a firm subscribes only to Cboe One Premium, its User costs will be used to offset the External Distribution Fee for Cboe One Premium. In the event a firm's User costs total $10,000, the firm will pay $10,000 in User fees and $2,500 ($12,500 − $10,000) for its External Distribution Fee. Example 3: If a firm subscribes to both Cboe One Summary and Cboe One Premium, only the External Distribution Fee for Cboe One Premium is assessed and this fee may be offset by both Cboe One Summary and Cboe One Premium User fees. In the event a firm's User costs are $2,000 for Cboe One Summary and $10,000 for Cboe One Premium, the firm will pay a total of $12,000 in User fees ($10,000 + $2,000) and it will pay $500 for its External Distribution Fee ($12,500 − ($10,000 + $2,000)).

[10] The Exchange notes that this same 18-month requirement is the standard for its other fee waiver programs. *See* BYX Fee Schedule.

[11] As noted above, a firm that subscribes to both Cboe One Premium and Cboe One Summary is only charged the External Distribution Fee for Cboe One Premium. Accordingly, an eligible Data Vendor that

Exchange proposes to waive the External Distribution Fee of $12,500 per month for Cboe One Premium for 24 months (the ''Premium Waiver Period'').

If an eligible Data Vendor already receives Cboe One Summary, it may still receive the Premium Waiver Period if it has not received Cboe One Premium during the 18 months preceding the waiver application date and satisfies the integration and commercial availability requirement with respect to Cboe One Premium. During the Premium Waiver Period, the Data Vendor's Cboe One Summary subscription would be covered under the Premium Waiver, and no separate External Distribution Fee would be assessed for Cboe One Summary. Similarly, an eligible Data Vendor that builds out both feeds simultaneously would receive only the Premium Waiver Period.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [14] 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 promotes just and equitable principles of trade by establishing a clear, objective, and transparent definition of ''Data Vendor'' that properly captures the characteristics distinguishing Data Vendors from other categories of External Distributors. The proposed definition sets forth specific, verifiable criteria—namely, that a Data Vendor must (i) be an External Distributor; (ii) be actively engaged, as part of its primary business objective, in the solicitation of unaffiliated third-party Distributors to redistribute a transformed Market Data Product; (iii) not maintain a brokerage relationship with Users; and (iv) not be an Extranet Service Provider. By establishing objective eligibility criteria, the proposed rule change ensures that similarly situated market participants are treated consistently and that the benefits of the Data Vendor Program are available to all External Distributors that meet the defined qualifications.

The Exchange further believes that the codification of the existing Extranet Service Provider definition within the Fee Schedule promotes just and equitable principles of trade. Because the proposed Data Vendor definition directly references the term ''Extranet Service Provider,'' market participants seeking to understand their eligibility for the Program should not be required to consult the Cboe Global Markets North American Data Policies to determine how that term applies. By incorporating both defined terms into the Fee Schedule itself, the Exchange ensures that participants have access to the complete framework.

The Exchange further believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system. The Data Vendor Program is designed to incentivize Data Vendors to integrate the Applicable Feeds, make them commercially available to subscribers, and redistribute them by providing fee waivers for External Distribution Fees for the Cboe One Summary Feed and Cboe One Premium Feed. By waiving the External Distribution Fee of $5,000 per month for Cboe One Summary for the Summary Waiver Period and waiving the External Distribution Fee of $12,500 per month for Cboe One Premium for the Premium Waiver Period, the Exchange encourages broader redistribution of its market data products. Broader distribution of market data enhances price transparency and supports informed decision-making across the national market system, which in turn perfects the mechanism of a free and open market by ensuring that market participants have access to comprehensive, competitive data offerings.

By allowing the waiver to begin while an eligible Data Vendor is actively integrating the Applicable Feed and working to make it commercially available, the Program lowers barriers to entry during the build-out period and incentivizes a broader set of market participants to enter the Cboe One distribution chain, thereby expanding the availability of consolidated multi-exchange market data throughout the national market system.

The proposed rule change also protects investors and the public interest. By encouraging Data Vendors to take in, transform, and redistribute market data feeds, the proposed program promotes greater availability of enriched market data products to downstream Distributors and Users. The transformation requirement—which may include aggregation across multiple sources, normalization into a consistent format, enrichment with derived analytics, or repackaging into a proprietary delivery mechanism such as a terminal, API, or feed—is a key element of qualifying as a Data Vendor and ensures that meaningful value is added to the data before redistributing it, thereby increasing the utility and accessibility of market information. To the extent the Program achieves its purpose and results in more widespread redistribution of the Cboe One feeds, market participants may benefit from enhanced access to consolidated, real-time price and last sale information through the distribution channels developed by Data Vendors.

Additionally, the codification of the existing Extranet Service Provider definition within the Fee Schedule provides additional clarity on the program requirements and codifies the definition that exists already in the Cboe Global Markets North American Market Data Policies. Furthermore, the clarification that External Distributors of both Cboe One Summary and Cboe One Premium are only responsible for paying the External Distribution Fee for Cboe One Premium promotes transparency by expressly codifying a practice that is already reflected in the Exchange's existing application of the fee provision. This reduces potential confusion among market participants regarding their fee obligations.

Not Unfairly Discriminatory

The Exchange believes that the proposed Data Vendor Program is consistent with and complementary to its existing programs for other categories of market participants, and that offering a targeted fee waiver program specifically for Data Vendors does not constitute unfair discrimination. The Exchange has a history of establishing differentiated programs that recognize the distinct roles of different market participants. For example, the Small Retail Broker Distribution Program

builds out both feeds simultaneously receives only the Premium Waiver Period.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

provides discounted Distribution Fees and Data Consolidation Fees for eligible broker-dealers distributing the applicable feeds to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship.[15] This program is designed to address the specific characteristics and economic needs of small retail broker-dealers. Similarly, the Small Retail Broker Hosted Solutions Program provides fee waivers for eligible Small Retail Brokers that provide the applicable feeds to other Small Retail Brokers via hosted solutions.[16] This program recognizes that smaller retail brokers face unique integration challenges and cost constraints when building out hosted data solutions. In addition, the New Internal Distributor Waiver for the BYX Depth Data Feed waives Internal Distribution Fees for three months for Internal Distributors that have not received the BYX Depth Data Feed during the prior 18 months.[17] This program incentivizes new Internal Distributors to integrate the depth-of-book feed into their systems. Lastly, the Exchange's affiliated options exchange, Cboe Exchange, Inc., introduced a 24-month waiver for qualifying retail brokers for its Complex Order Book Feed.[18]

The proposed Data Vendor Program is consistent with the Exchange's practice of creating a distinct program to serve a specific use case. Data Vendors occupy a distinct role in the market data distribution ecosystem. Unlike retail brokers, whose primary business is providing trade execution and account management services to Users (with market data distribution as an ancillary feature), Data Vendors are primarily engaged in the business of transforming and redistributing market data to other Distributors. This fundamental difference in business model justifies a distinct program with tailored eligibility criteria and waiver periods. The waiver periods under the proposed Data Vendor Program—12 months for Cboe One Summary and 24 months for Cboe One Premium—are designed to reflect the relative complexity of integrating each feed. Depth-of-book products such as Cboe One Premium typically require more extensive technical build-out, including handling of larger data volumes, more complex display and aggregation logic, and more rigorous quality assurance processes. Additionally, Cboe One Premium is more expensive relative to the top of book feed. This means that Data Vendors require additional interest from clients in these products before they can even break even. Accordingly, the Exchange believes a 24-month waiver period for this product is appropriate to provide sufficient time for Data Vendors to complete their build-out. Top-of-book and summary products, in contrast, are generally less complex to integrate, and the Exchange believes a 12-month waiver period is appropriate for Cboe One Summary.

Data Vendors' cost and investment trade-offs further support this distinction. A Data Vendor's primary commercial objective is to transform market data and make the resulting product available to unaffiliated downstream Distributors, rather than to provide market data only incidentally in support of another business (in comparison to retail brokers). Because a single Data Vendor can make a Cboe data product available through its platform to multiple downstream Distributors, the waiver is targeted to participants capable of materially expanding the product's distribution footprint. Like any business operator, a Data Vendor evaluates whether to add an Applicable Feed based on expected return on investment, weighing expected revenue against the upfront costs of connectivity, programming, technical integration, and sales and marketing, as well as the ongoing exchange market data fees associated with making the product available to subscribers. In many cases, a Data Vendor may need to add three to five new downstream Distributors merely to offset the ongoing External Distribution Fee. These costs are typically incremental: Data Vendors may already offer one or more equity feeds to clients and add an Applicable Feed only where it is expected to provide return on investment beyond their current offerings. A retail broker's determination is different. A retail broker will often migrate or swap from a competitor's product, and may be able to implement the change through a Data Vendor API into its front-end with a simple entitlement change, without bearing the same upfront connectivity and technical build-out costs.

The waiver periods under the proposed Data Vendor Program are longer than certain other Exchange programs because they support more than initial feed access or recruitment of a first User.[19] A qualifying Data Vendor must complete significant technical and commercial build-out before it can distribute the product and begin recovering its upfront costs. Its downstream Distributors may then have their own evaluation, contracting, and integration cycles, further extending the path to meaningful adoption; as noted above, a Data Vendor may need to add three to five new downstream Distributors to offset the ongoing External Distribution Fee.

The Exchange does not maintain comparable fee waiver programs for larger broker-dealers that distribute market data to their brokerage customers. The Exchange believes this distinction is appropriate. The Small Retail Broker programs are specifically designed to address the cost constraints faced by smaller broker-dealers in building out market data distribution capabilities. Larger broker-dealers typically have established data infrastructure and greater resources to absorb market data distribution costs as part of their overall brokerage operations, and, as such, their cost per user is meaningfully lower. Data distribution by large broker-dealers is typically an ancillary component of brokerage services offered. In contrast, a Data Vendor must incur incremental buildout fees and ongoing External Distribution Fees to establish and support a new external redistribution channel. The relevant distinction is therefore the nature of the service and the associated barriers to distribution, not the size or identity of the participant.

The Data Vendor Program is intended to address a different need: incentivizing specialized data redistribution firms to build out the Applicable Feeds and bring on additional downstream Distributors. By encouraging Data Vendors to invest in the transformation and redistribution of the Exchange's market data products, the Program expands the reach and availability of this data throughout the national market system, benefiting end users and promoting competition. The Exchange therefore believes that creating a targeted program for Data Vendors, in addition to its existing programs for Small Retail Brokers and Internal Distributors, among others, is consistent with Section 6(b)(5) of the Act and does not constitute unfair discrimination.

The Exchange also believes the proposed rule change is consistent with

[15] *See* BYX Equities Fee Schedule.

[16] *Id.*

[17] *Id.*

[18] *See* Securities Exchange Act Release No. 105198 (April 10, 2026), 91 FR 20204 (April 15, 2026) (SR–CBOE–2026–033).

[19] However, as noted above, Cboe Exchange, Inc., offers a 24-month waiver for qualifying retail brokers for its Complex Order Book Feed.

Section 6(b)(5) of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Data Vendor Program is available to all External Distributors that satisfy the objective criteria set forth in the proposed definition of Data Vendor and, for waiver eligibility, the additional objective criteria regarding the 18-month lookback for prior receipt of the Applicable Feed and integration or active integration of the Applicable Feed for commercial availability. The distinctions drawn by the definition—(i) requiring that a Data Vendor's primary business objective be the solicitation of unaffiliated third-party Distributors, (ii) that it not maintain a brokerage relationship with Users, and (iii) that it not be an Extranet Service Provider—reflect meaningful differences in business models and market functions.

External Distributors

The Exchange believes that limiting the Data Vendor Program to External Distributors is not unfairly discriminatory. Internal Distributors and External Distributors occupy fundamentally different roles in the market data distribution ecosystem and are not similarly situated participants. An Internal Distributor receives a market data product and distributes it solely within its own entity, whereas an External Distributor redistributes data outside its entity to Users or other Distributors—and a Data Vendor, as a specialized category of External Distributor, further serves the specific function of soliciting unaffiliated third-party Distributors to redistribute a transformed market data product. The Data Vendor Program is designed precisely to incentivize and expand this type of external redistribution, a purpose that has no meaningful application to Internal Distributors who, by definition, cannot advance the proposed program's goal of broadening the reach of the Exchange's market data to downstream Distributors and end-user investors. Furthermore, the Exchange already offers programs for its Internal Distributors that it does not offer for External Distributors.[20]

Primary Business is to Redistribute to Distributors

To be eligible as a Data Vendor, an External Distributor must be taking in data for the primary business purpose of selling access to the applicable feed as a service in its own right—not merely redistributing data in incidental support of broader business functions such as trade execution, account management, or brokerage services. The Exchange notes that as part of its business, a Data Vendor may redistribute a market data product to Users, but the primary purpose must be the redistribution of data to Distributors. The Exchange will assess whether an External Distributor's primary business purpose satisfies this criterion based on the External Distributor's publicly available marketing materials. This requirement is not unfairly discriminatory because it is directly tied to the purpose of the Program: encouraging entities whose core commercial activity is the transformation and redistribution of market data to build out the Cboe One feeds and bring on additional downstream Distributors, thereby expanding the reach and availability of the Exchange's data products. An entity that distributes market data only incidentally—as an ancillary feature of a brokerage, execution, or account management business—does not serve this purpose.

Transformed Market Data Product

The Exchange believes it is not unfairly discriminatory to require that a Data Vendor transform market data as a condition of eligibility, as transformation is a definitional characteristic that goes to the core of what distinguishes a Data Vendor from other categories of External Distributors and is directly tied to the Program's purpose of incentivizing participants that create new, differentiated distribution channels for the Exchange's consolidated market data. This reasoning is directly analogous to the rationale for excluding Extranet Service Providers—entities that transmit data without modification and therefore cannot create the type of value-added products, whether delivered via terminal, API, or proprietary feed, that the Program is designed to incentivize. Because the transformation requirement ensures that the Program's fee incentives are directed only at entities whose business is built around adding that value, the Exchange believes this criterion is reasonable and does not constitute unfair discrimination.

No Brokerage Relationship With Users

The Exchange believes it is not unfairly discriminatory to require that Data Vendors not maintain a brokerage relationship with Users. The Exchange already maintains separate programs specifically for qualifying broker-dealers that distribute market data to their brokerage customers. Specifically, the Exchange offers the Small Retail Broker Distribution Program, which provides discounted Distribution Fees and Data Consolidation Fees for eligible broker-dealers distributing the applicable feeds to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship. The Exchange also offers the Small Retail Broker Hosted Solutions Program, which provides fee waivers and lower data costs for Small Retail Brokers that provide the applicable feeds to other Small Retail Brokers via hosted solutions. These existing programs are specifically designed to encourage retail brokers to distribute market data, and the eligibility criteria for those programs reflect the characteristics of the retail brokerage business model.

The proposed Data Vendor Program does not displace or reduce the benefits available to retail brokers under those existing programs. Rather, it creates a parallel and complementary framework for a distinct category of participants—Data Vendors—that do not maintain brokerage relationships with Users, and whose primary business purpose is categorically different from that of a retail broker. Just as it would not be appropriate to extend the Small Retail Broker Program to Data Vendors, it is similarly appropriate—and not unfairly discriminatory—not to extend the Data Vendor Program to retail brokers or other participants that maintain brokerage relationships with their Users, whose needs are separately addressed by the Exchange's existing programs.

Not an Extranet Service Provider

The Exchange also believes it is not unfairly discriminatory to exclude Extranet Service Providers from the Data Vendor Program. An Extranet Service Provider, as defined, is an entity that transmits a market data product to data recipients without modification of the content, format, or other characteristics of the product. Extranet Service Providers do not transform, enrich, or add value to the data they transmit—they serve as conduits, passing data through in its original form. This is fundamentally distinct from the function of a Data Vendor, which, by definition, must transform the Market Data Product as part of its service offering.

The Data Vendor Program is specifically premised on the value that transformation adds to the data distribution ecosystem. By enabling Data Vendors to create differentiated products—delivered via a terminal, API, proprietary feed, or other value-added mechanism—that appeal to a broader range of downstream Distributors, the

[20] *See, e.g.,* BYX Equities Fee Schedule that describes the New Internal Distributor Waiver for BYX Depth Data Feed.

Program advances the Exchange's goal of maximizing the reach and utility of its consolidated market data throughout the national market system. Extending the Program to Extranet Service Providers, which do not perform this transformative function, would undermine the Program's core purpose and would not serve the policy goal of broadening distribution of market data products in readily accessible, value-added formats.

The Exchange has created programs to address the distinct needs and business models of different categories of market participants, and the proposed Data Vendor Program is a natural extension of this approach. In addition to the Small Retail Broker programs described above, the Exchange also offers fee waivers for eligible Internal Distributors of the BYX Depth Data Feed, which are intended to incentivize new Internal Distributors to integrate data feeds into their systems. The differentiation between Data Vendors and other categories of market participants reflects the distinct roles these entities play and the distinct incentive structures appropriate to each and does not constitute unfair discrimination.

18-Month and Integration Requirements

The Exchange further believes it is not unfairly discriminatory to limit the Program to Data Vendors that have not received the Applicable Feed for which they seek a waiver during the 18 months preceding the waiver application date, and that have integrated, or are actively in the process of integrating,[21] the Applicable Feed and making it commercially available to subscribers. The 18-month limitation is designed to ensure that the fee waivers serve their intended purpose of reducing the upfront cost barriers for new market participants. This approach is directly consistent with the analogous frameworks the Exchange has adopted in prior programs—including the Internal Distributor Waiver for the BYX Depth Data Feed, which similarly limits fee relief to distributors that have not received the relevant feed in the prior 18 months. The integration and commercial availability requirement is likewise reasonable because it ensures that the waiver is directed to Data Vendors that are undertaking the build-out necessary to distribute the Applicable Feed to subscribers, while not requiring full integration or commercial availability before the waiver begins. The Exchange therefore believes that these objective limitations are reasonable and appropriate, prevent the Program from operating as a permanent subsidy for established distributors, and are not unfairly discriminatory.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[22] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed fee waivers represent a reasonable and equitable allocation of charges. The fee waivers for External Distribution Fees are limited in duration—the Summary Waiver Period for Cboe One Summary and the Premium Waiver Period for Cboe One Premium—and are available only to Data Vendors that have not received the Applicable Feed for which they seek a waiver during the 18 months preceding the waiver application date and that have integrated, or are actively in the process of integrating, the Applicable Feed and making it commercially available to subscribers. This time-limited structure ensures that the waivers serve their intended purpose of incentivizing new market entry and build-out of data feeds. The 18-month lookback requirement further ensures the equitable allocation of fees by limiting the Program to new feeds for Data Vendors, and the integration and commercial availability requirement ensures that the waiver is tied to actual build-out and distribution activity. The Exchange notes that this same 18-month standard is consistent with the requirements applied in its other fee waiver programs.

The clarification that External Distributors of both Cboe One Summary and Cboe One Premium shall only be responsible for paying the External Distribution Fee for Cboe One Premium does not alter the economic substance of the Exchange's existing fee structure and does not impose any new or increased fees on market participants. Rather, it expressly codifies the Exchange's existing application of the user fee offset provisions—under which an External Distributor disseminating both products is assessed only the Cboe One Premium External Distribution Fee—thereby ensuring that all market participants have a clear and equitable understanding of their fee obligations. The Exchange therefore believes the proposed rule change provides for the equitable allocation of reasonable fees among persons using its facilities.

Lastly, the Exchange believes that the limitations regarding the waiver structure for both Cboe One Premium and Cboe One Summary equitably allocate fees. With respect to the Cboe One Summary waiver, only Data Vendors that (i) have not received Cboe One Summary during the 18 months preceding the waiver application date, (ii) are integrating or actively in the process of integrating Cboe One Summary and making it commercially available to subscribers, and (iii) are not receiving Cboe One Premium are eligible for the Summary Waiver Period. The Exchange believes that this is reasonable, as a firm that subscribes to Cboe One Premium already may elect to receive (without incurring an additional External Distribution Fee) Cboe One Summary Feed. For this reason, there is no need to provide a separate Summary Waiver Period while a firm receives Cboe One Premium, because that firm may receive the Cboe One Summary Feed without paying an additional External Distribution Fee that the proposed program seeks to waive.

Next, the Exchange notes that if a Data Vendor currently receives Cboe One Summary and elects to receive Cboe One Premium under the proposed program, so long as the Data Vendor has not received the Cboe One Premium Feed during the 18 months preceding the waiver application date and satisfies the integration and commercial availability requirement with respect to Cboe One Premium, the Data Vendor may receive the Premium Waiver Period. During that period, the Data Vendor's existing Cboe One Summary[23] subscription will be covered under the Premium Waiver, and no separate External Distribution Fee will be assessed for Cboe One Summary. This is because the Cboe One Summary External Distribution Fee is subsumed within the Cboe One Premium External Distribution Fee—accordingly, there is no separate Cboe One Summary fee to waive for a firm receiving Cboe One Premium. The Exchange believes this treatment is reasonable because it avoids providing overlapping or duplicative waiver relief while still incentivizing an existing Summary

[21] The Exchange notes that no specific step is required for this, only that Data Vendor is working to integrate the Applicable Feed into its system.

[22] 15 U.S.C. 78f(b)(4).

[23] For example, if a Data Vendor currently subscribes to Cboe One Summary Feed and is eligible for the proposed program for the Cboe One Premium Feed, no separate External Distribution Fee would be assessed for Cboe One Summary during the Premium Waiver Period because Cboe One Summary is included in the Cboe One Premium subscription. The Data Vendor would receive the Premium Waiver Period and would not receive a separate Summary Waiver Period during that time.

subscriber to build out Cboe One Premium.

Lastly, if a Data Vendor has not received either Applicable Feed during the 18 months preceding the waiver application date and elects to build out to both simultaneously, the Data Vendor will not receive separate Summary and Premium waivers. Instead, because the Cboe One Summary External Distribution Fee is subsumed within the Cboe One Premium External Distribution Fee, the Data Vendor will receive only the Premium Waiver Period, and no separate Summary Waiver Period will apply while it receives Cboe One Premium.

For all of the foregoing reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including, in particular, the requirements of Sections 6(b)(4) [24] and 6(b)(5) [25] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change imposes any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed Data Vendor Program is available to all External Distributors that satisfy the objective, clearly defined criteria set forth in the proposed definition of ''Data Vendor'' and the Program's waiver eligibility standards. Any External Distributor that, as part of its primary business objective, solicits unaffiliated third-party Distributors to redistribute a transformed Market Data Product, does not maintain a brokerage relationship with Users in connection with the applicable Market Data Product, is not an Extranet Service Provider, has not received the Applicable Feed for which it seeks a waiver during the 18 months preceding the waiver application date, and has integrated or is actively integrating the Applicable Feed and making it commercially available to subscribers may qualify for the Program on equal terms. Because eligibility is determined by objective, verifiable criteria rather than by subjective or discretionary determinations, no External Distributor is advantaged or disadvantaged relative to any other similarly situated participant.

To the extent that certain External Distributors—such as retail broker-dealers or Extranet Service Providers—do not qualify for the Data Vendor Program, this does not impose a burden on intramarket competition. As described above, retail broker-dealers and Extranet Service Providers are not similarly situated to Data Vendors. Retail broker-dealers distribute market data to their own brokerage customers as an ancillary feature of their core business of providing trade execution and account management services, and their data distribution needs are more appropriately addressed by the Exchange's existing Small Retail Broker Distribution Program and Small Retail Broker Hosted Solutions Program. Extranet Service Providers, by contrast, transmit data in its original form without transformation, and therefore do not serve the same function in the data distribution ecosystem as Data Vendors, which aggregate, transform, and redistribute data to downstream Distributors. Designing a fee program specifically targeted to Data Vendors, rather than applying it uniformly across all categories of External Distributors, does not burden intramarket competition—it reflects the materially different roles, business models, and barriers of these distinct categories of participants.

Similarly, limiting the Data Vendor Program to External Distributors and not extending it to Internal Distributors does not impose a burden on intramarket competition. Internal Distributors receive and use market data solely within their own legal entities and do not redistribute data to third parties outside their organizations. They are therefore not participants in the same competitive market for external data redistribution that the Program is designed to promote, and their needs are separately addressed through the Exchange's existing Internal Distributor programs—including the New Internal Distributor Waiver for the BYX Depth Data Feed. The proposed Program is specifically designed to incentivize external redistribution of the Cboe One feeds, a purpose that has no meaningful application to Internal Distributors and that creates no competitive disadvantage for them.

The Exchange does not believe the proposed rule change imposes any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposed rule change will enhance intermarket competition by incentivizing a broader class of market participants to subscribe to and redistribute the Exchange's market data products, thereby increasing the Exchange's ability to compete with other national securities exchanges and data vendors for the business of Data Vendors and their downstream Distributor clients.

The market for equity market data is highly competitive. Numerous national securities exchanges offer products that compete directly with the Cboe One Summary Feed and Cboe One Premium Feed. Market participants can obtain comprehensive market data from numerous sources, including competing exchanges (such as NYSE and Nasdaq), the consolidated tape (SIP), and alternative trading systems. Prospective Data Vendors evaluating whether to build out the Cboe One feeds must weigh the upfront costs of connectivity, software development, integration, and commercial launch against the commercial opportunity presented by the Exchange's data products. The Data Vendor Program is designed to make the Exchange's market data offering competitively priced relative to alternative options, encouraging Data Vendors to enter the Cboe One distribution chain and thereby expanding the availability and reach of the Exchange's consolidated multi-exchange market data throughout the national market system.

Far from burdening intermarket competition, the proposed rule change is a direct response to competitive market forces. The Exchange's decision to offer targeted fee waivers to new Data Vendors reflects its recognition that it must compete aggressively for the participation of data redistribution firms, and that reducing the upfront cost of entry is a legitimate and necessary competitive tool in the market for exchange data products. The Commission has recognized that exchanges operate in a competitive environment with respect to market data, and that exchange fee programs designed to attract new participants and expand market data distribution are consistent with the Act's goals of promoting competition and efficiency in the national market system.

The proposed clarification that External Distributors of both Cboe One Summary and Cboe One Premium are only responsible for paying the External Distribution Fee for Cboe One Premium similarly does not impose any burden on intermarket competition. This change does not alter the economic substance of the Exchange's existing fee structure and does not impose any new fees on any market participant. It simply makes explicit the Exchange's existing application of the user fee offset

[24] 15 U.S.C. 78f(b)(4).

[25] 15 U.S.C. 78f(b)(5).

provisions, reducing potential confusion and ensuring that all market participants have a clear and consistent understanding of their fee obligations. Regulatory clarity of this nature promotes, rather than burdens, competition by enabling market participants to make fully informed decisions about their participation in the Exchange's market data programs.

With respect to the Cboe One Summary and Cboe One Premium feeds specifically, the Exchange notes that the proposed Data Vendor Program does not impose any burden on competition arising from differential pricing between Cboe One and the applicable underlying equities feeds.[26] The Exchange notes that historically, its pricing for Cboe One products has been based on the sum of the External Distribution Fees for the four underlying equities feeds.[27] As an initial matter, not all underlying equities feeds are offered under this Program. The proposed Data Vendor Program applies only to the following feeds: EDGX Top, EDGX Summary Depth, BZX Summary Depth, Cboe One Premium, and Cboe One Summary. A Data Vendor may choose to receive a waiver for Cboe One Summary or Cboe One Premium, or for EDGX Top, or for EDGX Summary Depth, or for BZX Summary Depth, or any combination thereof, subject to the applicable eligibility requirements. However, the proposed Program does not offer fee waivers for BZX Top, BYX Top, or EDGA Top data feeds, nor does it offer fee waivers for BYX Summary Depth or EDGA Summary Depth. Accordingly, the applicable underlying equities feeds do not ''sum'' to the applicable Cboe One feed under this proposed Program.[28]

The Exchange has selected the products covered by the Program based on where it sees the greatest opportunity to expand distribution and align Data Vendor coverage with downstream end-user demand. This product-specific focus is not unfairly discriminatory. All qualifying Data Vendors are subject to the same product-specific eligibility requirements, and offering waivers for some, rather than all four, of the underlying feeds does not result in unequal treatment among similarly situated participants.

Even setting aside the foregoing, the Exchange does not believe that pricing the Cboe One Summary or Cboe One Premium feeds differently from the underlying equities feeds imposes any burden on competition. To date, the Exchange is not aware of any distributor that purchases the underlying equities feeds (either the Top or Summary Depth Feeds) for the purpose of creating its own consolidated product comparable to Cboe One Summary or Cboe One Premium. This demonstrates that the practical market concern underlying any perceived burden—that distributors might be disadvantaged by differential pricing on Cboe One that is not extended to the underlying feeds—does not correspond to actual market behavior.

Moreover, Cboe One Summary and Cboe One Premium are distinct, independent data products—they are not merely consolidations of data from the four underlying equities feeds. In addition to consolidating data from BZX, BYX, EDGX, and EDGA, Cboe One includes supplementary data elements not found in the individual underlying feeds, including data derived from the Securities Information Processor (''SIP'') containing information on the national cumulative volume. This additional content makes Cboe One a distinct product with independent utility. Market participants subscribe to the underlying equities feeds and Cboe One for fundamentally different purposes. For example, a subscriber may be interested only in top-of-book data from a single exchange, such as EDGX, for trading, routing or compliance purposes. Such a subscriber has no need for a consolidated product. Conversely, subscribers seeking a comprehensive, cross-exchange view of Cboe liquidity choose Cboe One precisely because it offers consolidated data with additional enhancements. These distinct use cases support differentiated pricing treatment.

Section 6(b)(8) of the Exchange Act requires that exchange rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Cboe One Summary, Cboe One Premium, and the applicable underlying equities feeds are separate products serving different market needs. Just as the Commission has permitted exchanges to offer different fees for depth-of-book data versus top-of-book data, the Exchange should have discretion to price its consolidated summary product differently from its component feeds.

Finally, the proposed Data Vendor Program is pro-competitive. By reducing the cost of consolidated and top-of-book data products for qualifying Data Vendors, the Exchange enables broader distribution of comprehensive market information to downstream distributors and, ultimately, to retail and institutional investors. Wider access to market data promotes informed investment decisions, enhances market efficiency, and supports the Exchange Act's goals of investor protection and fair and efficient markets. The Exchange does not view external distributors as competitors for its real-time feed offerings; rather, distributors serve as essential conduits that expand delivery of Cboe real-time market data to end users who do not have the technical capability or commercial need to connect directly to Cboe's individual market data feeds. This is particularly important for the retail community, as retail investors typically access market data through vendors rather than purchasing it directly from exchanges. By offering the proposed Data Vendor Program, the Exchange enables distributors to deliver competitively priced, comprehensive market data to a broader audience, thereby enhancing—not burdening—competition in the market data landscape.

For the foregoing reasons, the Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)

[26] For Cboe One Summary, the four equities feeds are BZX Top, BYX Top, EDGA Top, and EDGX Top. For Cboe One Premium, the four equities feeds are BZX Summary Depth, BYX Summary Depth, EDGA Summary Depth, and EDGX Summary Depth.

[27] For example, under the Small Retail Broker Distribution Program, the discounted External Distribution Fee for Cboe One Summary is $3,500 per month, which equals the sum of the External Distribution Fees for the four underlying Top feeds: BZX Top ($2,500), BYX Top ($250), EDGA Top ($0), and EDGX Top ($750). *See* Cboe BZX, BYX, EDGA, and EDGX U.S. Equities Exchange Fee Schedules. Because the proposed Data Vendor Program does not offer fee waivers for BZX Top, BYX Top, EDGA Top, BYX Summary Depth, or EDGA Summary Depth, the External Distribution Fee for each of those feeds would remain in effect for any Data Vendor receiving those feeds, while the External Distribution Fee for Cboe One Summary ($0 during the Summary Waiver Period) or Cboe One Premium ($0 during the Premium Waiver Period) would be waived. This results in a pricing differential between the sum of the underlying equities feeds and the Cboe One feeds under this Program.

[28] For example, the External Distribution Fee is $0 for Cboe One Summary under the proposed Program, but the sum of the four underlying equities feeds under the proposed Program is $2,750 ($0 EDGX Top + $2,500 BZX Top + $250 BYX Top + $0 EDGA Top).

of the Act [29] and paragraph (f) of Rule 19b–4 [30] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–CboeBYX–2026–037 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBYX–2026–037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR–CboeBYX–2026–037 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20809 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106617; File No. SR–CboeBZX–2026–081]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a Data Vendor Program

October 7, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to introduce a Data Vendor Program, which includes introducing a new defined term of Data Vendor, along with other clarifying changes. 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 purpose of this proposed rule change is to (i) introduce a definition of Data Vendor; (ii) codify the existing definition (as defined in the Exchange's applicable North American Market Data Policies) of Extranet Service Provider; (iii) codify an existing practice that permits an External Distributor of both Cboe One Summary and Cboe One Premium to be liable only for the External Distribution Fee for Cboe One Premium; and (iv) create a program for Data Vendors in order to incentivize Data Vendors to build out the applicable feeds and make them commercially available to subscribers.[3] The proposed program will provide fee waivers (as described below) for External Distribution Fees for Data Vendors for the Cboe One Summary Feed, Cboe One Premium Feed, and BZX Summary Depth Feed.

Proposed Definitions

In connection with this proposed program, the Exchange first proposes to adopt a definition for a specific category of participants. Specifically, the Exchange proposes to establish the term ''Data Vendor'' to mean ''an External Distributor that (i) is actively engaged, as part of its primary business objective, in the solicitation of unaffiliated third-party Distributors to redistribute a transformed Market Data Product; (ii) does not maintain a brokerage relationship with Users in connection with the receipt or use of the applicable Market Data Product; and (iii) is not an Extranet Service Provider.'' As part of this new definition, and as further described below, the Exchange proposes to codify the existing definition of Extranet Service Provider within the Cboe Global North American Market Data Policies to be within its Fee Schedule.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially submitted the proposed rule change on July 1, 2026 (SR–CboeBZX–2026–059). On July 15, 2026, the Exchange withdrew that filing and submitted SR–CboeBZX–2026–060. On September 8, 2026, the Exchange withdrew that filing and submitted SR–CboeBZX–2026–074. On September 28, 2026, the Exchange withdrew that filing and submitted this proposal.

The Exchange has also established objective, verifiable criteria for determining eligibility as a Data Vendor. The following criteria, which will be reflected in the Exchange's Fee Schedule, must be satisfied: (1) the External Distributor must identify itself as a Data Vendor in publicly available marketing materials; (2) the External Distributor must transform the applicable Market Data Product before redistribution, which may include aggregation across multiple data sources, normalization into a consistent format, enrichment with reference data or analytics, or repackaging into a proprietary delivery mechanism (*e.g.,* terminal, API, or proprietary feed); (3) the External Distributor must redistribute the applicable transformed Market Data Product to downstream Distributors as part of a paid commercial offering; (4) the External Distributor must not maintain a brokerage relationship with any User to whom it distributes the applicable Market Data Product; (5) the External Distributor must not be an Extranet Service Provider; and (6) the External Distributor must be actively engaged in the solicitation of unaffiliated third-party Distributors to subscribe to and redistribute the applicable transformed Market Data Product. Upon request, the External Distributor must provide a written attestation certifying compliance with the foregoing criteria. The Exchange may request supporting documentation, including but not limited to Distributor subscriber lists, revenue breakdowns by recipient type, and descriptions of the transformations applied to the Market Data Product. These objective eligibility criteria ensure that the Data Vendor Program is equitably applied to all similarly situated market participants.

External Distributor

To begin, ''Data Vendor'' is intended to only encompass External Distributors and not Internal Distributors. An External Distributor is defined as a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.[4] The Exchange seeks to adopt this program in order to encourage broader redistribution of this data. As such, the Exchange limits this to External Distributors as the intent of this program is to have data distributed outside one's own entity.

Primary Business Is To Redistribute to Distributors

To be eligible as a Data Vendor, an External Distributor must be taking in data for the primary business purpose of selling access to the applicable feed as a service in its own right, not merely redistributing data in incidental support of broader business functions such as trade execution, account management, or brokerage services. The Exchange notes that, as part of its business, a Data Vendor may redistribute a market data product to Users, but the primary purpose must be to redistribute data to Distributors. The Exchange will assess whether an External Distributor's primary business purpose satisfies this criterion based on the External Distributor's publicly available marketing materials. If the Exchange were to modify this requirement to permit a primary business purpose of redistribution to either Distributors *or* Users, it would unintentionally include firms that may redistribute only to Users and that are not traditionally considered data vendors (*e.g.,* a media outlet or a bank).

Transformed Market Data Product

To be eligible, the Exchange requires that the Data Vendor not simply pass through data in its original form. Transformation may include aggregation across multiple sources, normalization into a consistent format, enrichment with derived analytics, or repackaging into a proprietary delivery mechanism (*e.g.,* terminal, API, feed), or any other value-added processing that distinguishes the output from the original source data.

No Brokerage Relationship With Users

Next, the Exchange proposes that the definition of Data Vendor include a stipulation that a Data Vendor must not maintain a brokerage relationship with Users who receive the market data product. The Exchange already has programs aimed at retail brokers, for example, both the Small Retail Broker Program and the Small Retail Broker Hosted Solutions Program.[5] This proposed program is intended to encourage Data Vendors specifically to take in the applicable feeds and distribute them. A Data Vendor's service model is different from a retail broker's, as a Data Vendor's business model is built around providing data to firms and Users alike, whereas a retail broker's business model is focused on connecting Users to markets in order to trade and may include providing market data as part of its offering to its Users. As the Exchange already has programs specifically for retail brokers, the Exchange does not believe it would be appropriate to include retail brokers here. The Exchange notes that if a Data Vendor that is currently receiving a fee waiver under this Program subsequently commences a brokerage relationship with its Users, it will no longer satisfy the definition of Data Vendor and will cease to be eligible for the Program. In such case, the External Distributor would be assessed the standard External Distribution Fee for the applicable feed as of the date it no longer satisfies the definition of Data Vendor.

Not an Extranet Service Provider

As noted above, the Exchange proposes also to define Extranet Service Provider when it introduces the definition of Data Vendor into its Fee Schedule. Today, this term already exists in the Cboe Global Markets North American Data Policies.[6] The Exchange proposes to codify this definition in its Fee Schedule because the proposed definition of Data Vendor directly references this defined term. Specifically, the Exchange proposes to codify that an Extranet Service Provider is ''an entity that has entered into a Cboe Global Markets Global Data Agreement and Transmits an Exchange Market Data Product, via an extranet operated by such entity, to data recipients. 'Transmit' means to direct an Exchange Market Data Product to one or more data recipients without modification of the content, format, or other characteristics of the Exchange Market Data Product.'' An Extranet Service Provider is not authorized to use or process an Exchange Market Data Product for any purpose.

Applicable Data Feeds

By way of background, the Exchange offers the Cboe One Premium Data Feed, which is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on the Exchange and its affiliated equities exchanges and enables recipients to receive aggregated two-sided quotations from BZX and its affiliated equities exchanges for up to twelve (12) price levels (and, for a limited time, up to five (5) price levels).[7] The Cboe One

[4] *See* BZX Equities Fee Schedule.

[5] *See* BZX Equities Fee Schedule.

[6] *See* Market_Data_Policies.pdf.

[7] BZX filed to increase the levels of the Cboe One Premium Data Feed from five (5) levels to twelve (12) levels. To help in this transition, it is currently supporting both the five and twelve level feeds; however, as stated in its rule, BZX shall sunset the five (5) level feed of Cboe One Premium by December 31, 2026 (with the date to be announced via Exchange Notice). *See* Rule 11.22(i).

Premium Data Feed is created using the data from the Exchange and each of its affiliated equities exchanges' Summary Depth data feeds (allowing for up to 48 total price levels).

The Exchange also offers the Cboe One Summary Data Feed, which disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on BZX and its affiliated equities exchanges and also contains individual last sale information for BZX and its affiliated equities exchanges.[8]

The Exchange also offers the BZX Summary Depth Data Feed, which is a data feed that offers aggregated two-sided quotations for up to 12 price levels for all displayed orders entered into the System.

External Distribution Fees for Cboe One Premium and Cboe One Summary

The proposed rule change also clarifies that External Distributors of both Cboe One Summary and Cboe One Premium shall only be responsible for paying the External Distribution Fee for Cboe One Premium. The current fee schedule provides that ''Cboe One Summary User Fees can be applied to Cboe One Summary and Cboe One Premium External Distribution Fees.'' Under the Exchange's existing application of this provision, an External Distributor receiving both Cboe One Summary and Cboe One Premium is assessed only the Cboe One Premium External Distribution Fee,[9] and User Fees for both Cboe One Summary and Cboe One Premium may be applied to offset that fee.

The Exchange is now proposing to make this treatment explicit by adding clarifying language to the fee schedule stating that External Distributors of both feeds are only responsible for paying the External Distribution Fee for Cboe One Premium. This amendment does not alter the economic substance of the Exchange's existing fee structure, nor does it impose any new or increased fees on market participants. Rather, it reduces potential ambiguity by expressly codifying the Exchange's existing application of the user fee offset provisions. The Exchange believes this clarification will promote transparency and reduce confusion among External Distributors regarding their fee obligations under the Cboe One market data product offerings.

Impact of Proposed Program

As noted above, the proposed program would waive External Distribution Fees for Data Vendors of the Cboe One Summary Feed, the Cboe One Premium Feed, and the BZX Summary Depth Feed (each, an ''Applicable Feed'') that satisfy certain eligibility requirements. A Data Vendor must not have received the Applicable Feed for which it seeks the waiver during the 18 months [10] preceding the waiver application date, and must integrate, or be actively in the process of integrating, the Applicable Feed and making it commercially available to its subscribers. The Data Vendor need not have fully integrated the Applicable Feed or made it commercially available before the waiver begins. For a qualifying Data Vendor, the applicable waiver commences on the date it first receives the Applicable Feed, and, if that date occurs mid-month, that partial month counts as the first month of the waiver period. Specifically, the Exchange proposes to waive the External Distribution Fee of $5,000 per month for Cboe One Summary for 12 months (the ''Summary Waiver Period''), except that a Data Vendor is not eligible for a Summary Waiver Period if it is receiving Cboe One Premium because Cboe One Summary is included in the Cboe One Premium External Distribution Fee as noted herein. To clarify, because a Data Vendor receiving Cboe One Premium pays only the Cboe One Premium External Distribution Fee (and no separate fee is assessed for Cboe One Summary), there is no separate Cboe One Summary External Distribution Fee to waive for such a firm.[11] The Exchange proposes to waive the External Distribution Fee of $12,500 per month for Cboe One Premium for 24 months (the ''Premium Waiver Period'').

If an eligible Data Vendor already receives Cboe One Summary, it may still receive the Premium Waiver Period if it has not received Cboe One Premium during the 18 months preceding the waiver application date and satisfies the integration and commercial availability requirement with respect to Cboe One Premium. During the Premium Waiver Period, the Data Vendor's Cboe One Summary subscription would be covered under the Premium Waiver, and no separate External Distribution Fee would be assessed for Cboe One Summary. Similarly, an eligible Data Vendor that builds out both Cboe One feeds simultaneously would receive only the Premium Waiver Period.

Lastly, for eligible Data Vendors, the Exchange also proposes to waive the External Distribution Fee of $5,000 per month for BZX Summary Depth for 24 months (the ''Summary Depth Waiver Period'').

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [14] 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 promotes just and equitable principles of trade by establishing a clear, objective, and

[8] The Cboe One Summary Feed is distinguishable from the Cboe One Premium Feed in that it does not provide depth of book data. In contrast, the Cboe One Premium Feed contains all the available data in the Cboe One Summary Feed and also provides depth of book data.

[9] To better illustrate this concept, consider the following examples. Example 1: If a firm subscribes to only Cboe One Summary, its User costs will be used to offset the External Distribution Fee for Cboe One Summary. In the event the firm's User costs total $2,000, the firm will pay $2,000 in User fees and $3,000 ($5,000 − $2,000) for its External Distribution Fee. Example 2: If a firm subscribes only to Cboe One Premium, its User costs will be used to offset the External Distribution Fee for Cboe One Premium. In the event a firm's User costs total $10,000, the firm will pay $10,000 in User fees and $2,500 ($12,500 − $10,000) for its External Distribution Fee. Example 3: If a firm subscribes to both Cboe One Summary and Cboe One Premium, only the External Distribution Fee for Cboe One Premium is assessed and this fee may be offset by both Cboe One Summary and Cboe One Premium User fees. In the event a firm's User costs are $2,000 for Cboe One Summary and $10,000 for Cboe One Premium, the firm will pay a total of $12,000 in User fees ($10,000 + $2,000) and it will pay $500 for its External Distribution Fee ($12,500 − ($10,000 + $2,000)).

[10] The Exchange notes that this same 18-month requirement is the standard for its other fee waiver programs. *See* BZX Equities Fee Schedule.

[11] As noted above, a firm that subscribes to both Cboe One Premium and Cboe One Summary is only charged the External Distribution Fee for Cboe One Premium. Accordingly, an eligible Data Vendor that builds out both feeds simultaneously receives only the Premium Waiver Period.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

transparent definition of ''Data Vendor'' that properly captures the characteristics distinguishing Data Vendors from other categories of External Distributors. The proposed definition sets forth specific, verifiable criteria—namely, that a Data Vendor must (i) be an External Distributor; (ii) be actively engaged, as part of its primary business objective, in the solicitation of unaffiliated third-party Distributors to redistribute a transformed Market Data Product; (iii) not maintain a brokerage relationship with Users; and (iv) not be an Extranet Service Provider. By establishing objective eligibility criteria, the proposed rule change ensures that similarly situated market participants are treated consistently and that the benefits of the Data Vendor Program are available to all External Distributors that meet the defined qualifications.

The Exchange further believes that the codification of the existing Extranet Service Provider definition within the Fee Schedule promotes just and equitable principles of trade. Because the proposed Data Vendor definition directly references the term ''Extranet Service Provider,'' market participants seeking to understand their eligibility for the Program should not be required to consult the Cboe Global Markets North American Data Policies to determine how that term applies. By incorporating both defined terms into the Fee Schedule itself, the Exchange ensures that participants have access to the complete framework.

The Exchange further believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system. The Data Vendor Program is designed to incentivize Data Vendors to integrate the Applicable Feeds, make them commercially available to subscribers, and redistribute them by providing fee waivers for External Distribution Fees for the Cboe One Summary Feed, Cboe One Premium Feed, and BZX Summary Depth Feed. By waiving the External Distribution Fee of $5,000 per month for Cboe One Summary for the Summary Waiver Period, waiving the External Distribution Fee of $12,500 per month for Cboe One Premium for the Premium Waiver Period, and waiving the External Distribution Fee of $5,00 per month for BZX Summary Depth for the Summary Depth Waiver Period, the Exchange encourages broader redistribution of its market data products. Broader distribution of market data enhances price transparency and supports informed decision-making across the national market system, which in turn perfects the mechanism of a free and open market by ensuring that market participants have access to comprehensive, competitive data offerings.

By allowing the waiver to begin while an eligible Data Vendor is actively integrating the Applicable Feed and working to make it commercially available, the Program lowers barriers to entry during the build-out period and incentivizes a broader set of market participants to enter the Exchange's market data distribution chain, thereby expanding the availability of market data throughout the national market system.

The proposed rule change also protects investors and the public interest. By encouraging Data Vendors to take in, transform, and redistribute market data feeds, the proposed program promotes greater availability of enriched market data products to downstream Distributors and Users. The transformation requirement—which may include aggregation across multiple sources, normalization into a consistent format, enrichment with derived analytics, or repackaging into a proprietary delivery mechanism such as a terminal, API, or feed—is a key element of qualifying as a Data Vendor and ensures that meaningful value is added to the data before redistributing it, thereby increasing the utility and accessibility of market information. To the extent the Program achieves its purpose and results in more widespread redistribution of the Applicable Feeds, market participants may benefit from enhanced access to consolidated, real-time price, last sale, and depth information through the distribution channels developed by Data Vendors.

Additionally, the codification of the existing Extranet Service Provider definition within the Fee Schedule provides additional clarity on the program requirements and codifies the definition that exists already in the Cboe Global Markets North American Market Data Policies. Furthermore, the clarification that External Distributors of both Cboe One Summary and Cboe One Premium are only responsible for paying the External Distribution Fee for Cboe One Premium promotes transparency by expressly codifying a practice that is already reflected in the Exchange's existing application of the fee provision. This reduces potential confusion among market participants regarding their fee obligations.

Not Unfairly Discriminatory

The Exchange believes that the proposed Data Vendor Program is consistent with and complementary to its existing programs for other categories of market participants, and that offering a targeted fee waiver program specifically for Data Vendors does not constitute unfair discrimination. The Exchange has a history of establishing differentiated programs that recognize the distinct roles of different market participants. For example, the Small Retail Broker Distribution Program provides discounted Distribution Fees and Data Consolidation Fees for eligible broker-dealers distributing the applicable feeds to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship.[15] This program is designed to address the specific characteristics and economic needs of small retail broker-dealers. Similarly, the Small Retail Broker Hosted Solutions Program provides fee waivers for eligible Small Retail Brokers that provide the applicable feeds to other Small Retail Brokers via hosted solutions.[16] This program recognizes that smaller retail brokers face unique integration challenges and cost constraints when building out hosted data solutions. In addition, the New Internal Distributor Waiver for the BZX Depth Data Feed waives Internal Distribution Fees for three months for Internal Distributors that have not received the BZX Depth Data Feed during the prior 18 months.[17] This program incentivizes new Internal Distributors to integrate the depth-of-book feed into their systems. Lastly, the Exchange's affiliated options exchange, Cboe Exchange, Inc., introduced a 24-month waiver for qualifying retail brokers for its Complex Order Book Feed.[18]

The proposed Data Vendor Program is consistent with the Exchange's practice of creating a distinct program to serve a specific use case. Data Vendors occupy a distinct role in the market data distribution ecosystem. Unlike retail brokers, whose primary business is providing trade execution and account management services to Users (with market data distribution as an ancillary feature), Data Vendors are primarily engaged in the business of transforming and redistributing market data to other Distributors. This fundamental difference in business model justifies a distinct program with tailored eligibility criteria and waiver periods. The waiver periods under the proposed Data Vendor Program—12 months for Cboe

[15] *See* BZX Equities Fee Schedule.

[16] *See* BZX Equities Fee Schedule.

[17] *Id.*

[18] *See* Securities Exchange Act Release No. 105198 (April 10, 2026), 91 FR 20204 (April 15, 2026) (SR–CBOE–2026–033).

One Summary and 24 months for Cboe One Premium and BZX Summary Depth—are designed to reflect the relative complexity of integrating each feed. Depth-of-book products such as Cboe One Premium and BZX Summary Depth typically require more extensive technical build-out, including handling of larger data volumes, more complex display and aggregation logic, and more rigorous quality assurance processes. Additionally, BZX Summary Depth and Cboe One Premium are more expensive relative to the top of book feeds. This means that Data Vendors require additional interest from clients in these products before they can even break even. Accordingly, the Exchange believes a 24-month waiver period for these products is appropriate to provide sufficient time for Data Vendors to complete their build-out. Top-of-book and summary products, in contrast, are generally less complex to integrate, and the Exchange believes a 12-month waiver period is appropriate for Cboe One Summary.

Data Vendors' cost and investment trade-offs further support this distinction. A Data Vendor's primary commercial objective is to transform market data and make the resulting product available to unaffiliated downstream Distributors, rather than to provide market data only incidentally in support of another business (in comparison to retail brokers). Because a single Data Vendor can make a Cboe data product available through its platform to multiple downstream Distributors, the waiver is targeted to participants capable of materially expanding the product's distribution footprint. Like any business operator, a Data Vendor evaluates whether to add an Applicable Feed based on expected return on investment, weighing expected revenue against the upfront costs of connectivity, programming, technical integration, and sales and marketing, as well as the ongoing exchange market data fees associated with making the product available to subscribers. In many cases, a Data Vendor may need to add three to five new downstream Distributors merely to offset the ongoing External Distribution Fee. These costs are typically incremental: Data Vendors may already offer one or more equity feeds to clients and add an Applicable Feed only where it is expected to provide return on investment beyond their current offerings. A retail broker's determination is different. A retail broker will often migrate or swap from a competitor's product, and may be able to implement the change through a Data Vendor API into its front-end with a simple entitlement change, without bearing the same upfront connectivity and technical build-out costs.

The waiver periods under the proposed Data Vendor Program are longer than certain other Exchange programs because they support more than initial feed access or recruitment of a first User.[19] A qualifying Data Vendor must complete significant technical and commercial build-out before it can distribute the product and begin recovering its upfront costs. Its downstream Distributors may then have their own evaluation, contracting, and integration cycles, further extending the path to meaningful adoption; as noted above, a Data Vendor may need to add three to five new downstream Distributors to offset the ongoing External Distribution Fee.

The Exchange does not maintain comparable fee waiver programs for larger broker-dealers that distribute market data to their brokerage customers. The Exchange believes this distinction is appropriate. The Small Retail Broker programs are specifically designed to address the cost constraints faced by smaller broker-dealers in building out market data distribution capabilities. Larger broker-dealers typically have established data infrastructure and greater resources to absorb market data distribution costs as part of their overall brokerage operations, and, as such, their cost per user is meaningfully lower. Data distribution by large broker-dealers is typically an ancillary component of brokerage services offered. In contrast, a Data Vendor must incur incremental buildout fees and ongoing External Distribution Fees to establish and support a new external redistribution channel. The relevant distinction is therefore the nature of the service and the associated barriers to distribution, not the size or identity of the participant.

The Data Vendor Program is intended to address a different need: incentivizing specialized data redistribution firms to build out the Applicable Feeds and bring on additional downstream Distributors. By encouraging Data Vendors to invest in the transformation and redistribution of the Exchange's market data products, the Program expands the reach and availability of this data throughout the national market system, benefiting end users and promoting competition. The Exchange therefore believes that creating a targeted program for Data Vendors, in addition to its existing programs for Small Retail Brokers and Internal Distributors, among others, is consistent with Section 6(b)(5) of the Act and does not constitute unfair discrimination.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Data Vendor Program is available to all External Distributors that satisfy the objective criteria set forth in the proposed definition of Data Vendor and, for waiver eligibility, the additional objective criteria regarding the 18-month lookback for prior receipt of the Applicable Feed and integration or active integration of the Applicable Feed for commercial availability. The distinctions drawn by the definition—(i) requiring that a Data Vendor's primary business objective be the solicitation of unaffiliated third-party Distributors, (ii) that it not maintain a brokerage relationship with Users, and (iii) that it not be an Extranet Service Provider—reflect meaningful differences in business models and market functions.

External Distributors

The Exchange believes that limiting the Data Vendor Program to External Distributors is not unfairly discriminatory. Internal Distributors and External Distributors occupy fundamentally different roles in the market data distribution ecosystem and are not similarly situated participants. An Internal Distributor receives a market data product and distributes it solely within its own entity, whereas an External Distributor redistributes data outside its entity to Users or other Distributors—and a Data Vendor, as a specialized category of External Distributor, further serves the specific function of soliciting unaffiliated third-party Distributors to redistribute a transformed market data product. The Data Vendor Program is designed precisely to incentivize and expand this type of external redistribution, a purpose that has no meaningful application to Internal Distributors who, by definition, cannot advance the proposed program's goal of broadening the reach of the Exchange's market data to downstream Distributors and end-user investors. Furthermore, the Exchange already offers programs for its

[19] However, as noted above, Cboe Exchange, Inc., offers a 24-month waiver for qualifying retail brokers for its Complex Order Book Feed.

Internal Distributors that it does not offer for External Distributors.[20]

Primary Business Is To Redistribute to Distributors

To be eligible as a Data Vendor, an External Distributor must be taking in data for the primary business purpose of selling access to the applicable feed as a service in its own right—not merely redistributing data in incidental support of broader business functions such as trade execution, account management, or brokerage services. The Exchange notes that as part of its business, a Data Vendor may redistribute a market data product to Users, but the primary purpose must be the redistribution of data to Distributors. The Exchange will assess whether an External Distributor's primary business purpose satisfies this criterion based on the External Distributor's publicly available marketing materials. This requirement is not unfairly discriminatory because it is directly tied to the purpose of the Program: encouraging entities whose core commercial activity is the transformation and redistribution of market data to build out the Applicable Feeds and bring on additional downstream Distributors, thereby expanding the reach and availability of the Exchange's data products. An entity that distributes market data only incidentally—as an ancillary feature of a brokerage, execution, or account management business—does not serve this purpose.

Transformed Market Data Product

The Exchange believes it is not unfairly discriminatory to require that a Data Vendor transform market data as a condition of eligibility, as transformation is a definitional characteristic that goes to the core of what distinguishes a Data Vendor from other categories of External Distributors and is directly tied to the Program's purpose of incentivizing participants that create new, differentiated distribution channels for the Exchange's consolidated market data. This reasoning is directly analogous to the rationale for excluding Extranet Service Providers—entities that transmit data without modification and therefore cannot create the type of value-added products, whether delivered via terminal, API, or proprietary feed, that the Program is designed to incentivize. Because the transformation requirement ensures that the Program's fee incentives are directed only at entities whose business is built around adding that value, the Exchange believes this criterion is reasonable and does not constitute unfair discrimination.

No Brokerage Relationship With Users

The Exchange believes it is not unfairly discriminatory to require that Data Vendors not maintain a brokerage relationship with Users. The Exchange already maintains separate programs specifically for qualifying broker-dealers that distribute market data to their brokerage customers. Specifically, the Exchange offers the Small Retail Broker Distribution Program, which provides discounted Distribution Fees and Data Consolidation Fees for eligible broker-dealers distributing the applicable feeds to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship. The Exchange also offers the Small Retail Broker Hosted Solutions Program, which provides fee waivers and lower data costs for Small Retail Brokers that provide the applicable feeds to other Small Retail Brokers via hosted solutions. These existing programs are specifically designed to encourage retail brokers to distribute market data, and the eligibility criteria for those programs reflect the characteristics of the retail brokerage business model.

The proposed Data Vendor Program does not displace or reduce the benefits available to retail brokers under those existing programs. Rather, it creates a parallel and complementary framework for a distinct category of participants—Data Vendors—that do not maintain brokerage relationships with Users, and whose primary business purpose is categorically different from that of a retail broker. Just as it would not be appropriate to extend the Small Retail Broker Program to Data Vendors, it is similarly appropriate—and not unfairly discriminatory—not to extend the Data Vendor Program to retail brokers or other participants that maintain brokerage relationships with their Users, whose needs are separately addressed by the Exchange's existing programs.

Not an Extranet Service Provider

The Exchange also believes it is not unfairly discriminatory to exclude Extranet Service Providers from the Data Vendor Program. An Extranet Service Provider, as defined, is an entity that transmits a market data product to data recipients without modification of the content, format, or other characteristics of the product. Extranet Service Providers do not transform, enrich, or add value to the data they transmit—they serve as conduits, passing data through in its original form. This is fundamentally distinct from the function of a Data Vendor, which, by definition, must transform the Market Data Product as part of its service offering.

The Data Vendor Program is specifically premised on the value that transformation adds to the data distribution ecosystem. By enabling Data Vendors to create differentiated products—delivered via a terminal, API, proprietary feed, or other value-added mechanism—that appeal to a broader range of downstream Distributors, the Program advances the Exchange's goal of maximizing the reach and utility of its consolidated market data throughout the national market system. Extending the Program to Extranet Service Providers, which do not perform this transformative function, would undermine the Program's core purpose and would not serve the policy goal of broadening distribution of market data products in readily accessible, value-added formats.

The Exchange has created programs to address the distinct needs and business models of different categories of market participants, and the proposed Data Vendor Program is a natural extension of this approach. In addition to the Small Retail Broker programs described above, the Exchange also offers fee waivers for eligible Internal Distributors of the BZX Depth Data Feed, which are intended to incentivize new Internal Distributors to integrate data feeds into their systems. The differentiation between Data Vendors and other categories of market participants reflects the distinct roles these entities play and the distinct incentive structures appropriate to each and does not constitute unfair discrimination.

18-Month and Integration Requirements

The Exchange further believes it is not unfairly discriminatory to limit the Program to Data Vendors that have not received the Applicable Feed for which they seek a waiver during the 18 months preceding the waiver application date, and that have integrated, or are actively in the process of integrating, [21] the Applicable Feed and making it commercially available to subscribers. The 18-month limitation is designed to ensure that the fee waivers serve their intended purpose of reducing the upfront cost barriers for new market participants. This approach is directly consistent with the analogous frameworks the Exchange has adopted in prior programs—including the

[20] *See, e.g.,* BZX Equities Fee Schedule that describes the New Internal Distributor Waiver for BZX Depth Data Feed.

[21] The Exchange notes that no specific step is required for this, only that Data Vendor is working to integrate the Applicable Feed into its system.

Internal Distributor Waiver for the BZX Depth Data Feed, which similarly limits fee relief to distributors that have not received the relevant feed in the prior 18 months. The integration and commercial availability requirement is likewise reasonable because it ensures that the waiver is directed to Data Vendors that are undertaking the build-out necessary to distribute the Applicable Feed to subscribers, while not requiring full integration or commercial availability before the waiver begins. The Exchange therefore believes that these objective limitations are reasonable and appropriate, prevent the Program from operating as a permanent subsidy for established distributors, and are not unfairly discriminatory.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[22] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed fee waivers represent a reasonable and equitable allocation of charges. The fee waivers for External Distribution Fees are limited in duration—the Summary Waiver Period for Cboe One Summary, the Premium Waiver Period for Cboe One Premium, and the Summary Depth Waiver Period for BZX Summary Depth—and are available only to Data Vendors that have not received the Applicable Feed for which they seek a waiver during the 18 months preceding the waiver application date and that have integrated, or are actively in the process of integrating, the Applicable Feed and making it commercially available to subscribers. This time-limited structure ensures that the waivers serve their intended purpose of incentivizing new market entry and build-out of data feeds. The 18-month lookback requirement further ensures the equitable allocation of fees by limiting the Program to new feeds for Data Vendors, and the integration and commercial availability requirement ensures that the waiver is tied to actual build-out and distribution activity. The Exchange notes that this same 18-month standard is consistent with the requirements applied in its other fee waiver programs.

The clarification that External Distributors of both Cboe One Summary and Cboe One Premium shall only be responsible for paying the External Distribution Fee for Cboe One Premium does not alter the economic substance of the Exchange's existing fee structure and does not impose any new or increased fees on market participants. Rather, it expressly codifies the Exchange's existing application of the user fee offset provisions—under which an External Distributor disseminating both products is assessed only the Cboe One Premium External Distribution Fee—thereby ensuring that all market participants have a clear and equitable understanding of their fee obligations. The Exchange therefore believes the proposed rule change provides for the equitable allocation of reasonable fees among persons using its facilities.

Lastly, the Exchange believes that the limitations regarding the waiver structure for both Cboe One Premium and Cboe One Summary equitably allocate fees. With respect to the Cboe One Summary waiver, only Data Vendors that (i) have not received Cboe One Summary during the 18 months preceding the waiver application date, (ii) are integrating or actively in the process of integrating Cboe One Summary and making it commercially available to subscribers, and (iii) are not receiving Cboe One Premium are eligible for the Summary Waiver Period. The Exchange believes that this is reasonable, as a firm that subscribes to Cboe One Premium already may elect to receive (without incurring an additional External Distribution Fee) Cboe One Summary Feed. For this reason, there is no need to provide a separate Summary Waiver Period while a firm receives Cboe One Premium, because that firm may receive the Cboe One Summary Feed without paying an additional External Distribution Fee that the proposed program seeks to waive.

Next, the Exchange notes that if a Data Vendor currently receives Cboe One Summary and elects to receive Cboe One Premium under the proposed program, so long as the Data Vendor has not received the Cboe One Premium Feed during the 18 months preceding the waiver application date and satisfies the integration and commercial availability requirement with respect to Cboe One Premium, the Data Vendor may receive the Premium Waiver Period. During that period, the Data Vendor's existing Cboe One Summary[23] subscription will be covered under the Premium Waiver, and no separate External Distribution Fee will be assessed for Cboe One Summary. This is because the Cboe One Summary External Distribution Fee is subsumed within the Cboe One Premium External Distribution Fee—accordingly, there is no separate Cboe One Summary fee to waive for a firm receiving Cboe One Premium. The Exchange believes this treatment is reasonable because it avoids providing overlapping or duplicative waiver relief while still incentivizing an existing Summary subscriber to build out Cboe One Premium.

Lastly, if a Data Vendor has not received either Cboe One Summary or Cboe One Premium during the 18 months preceding the waiver application date and elects to build out both Cboe One feeds simultaneously, the Data Vendor will not receive separate Summary and Premium waivers. Instead, because the Cboe One Summary External Distribution Fee is subsumed within the Cboe One Premium External Distribution Fee, the Data Vendor will receive only the Premium Waiver Period, and no separate Summary Waiver Period will apply while it receives Cboe One Premium.

With respect to the BZX Summary Depth waiver, a Data Vendor is eligible for the Summary Depth Waiver Period only if it has not received the BZX Summary Depth Feed during the 18 months preceding the waiver application date and satisfies the integration and commercial availability requirement with respect to BZX Summary Depth. The Exchange believes this treatment is reasonable because it applies the same objective eligibility standards to BZX Summary Depth while providing a 24-month period intended to facilitate the build-out and commercial launch of that feed.

For all of the foregoing reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including, in particular, the requirements of Sections 6(b)(4)[24] and 6(b)(5)[25] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change imposes any burden on

[22] 15 U.S.C. 78f(b)(4).

[23] For example, if a Data Vendor currently subscribes to Cboe One Summary Feed and is eligible for the proposed program for the Cboe One Premium Feed, no separate External Distribution Fee would be assessed for Cboe One Summary during the Premium Waiver Period because Cboe One Summary is included in the Cboe One Premium subscription. The Data Vendor would receive the Premium Waiver Period and would not receive a separate Summary Waiver Period during that time.

[24] 15 U.S.C. 78f(b)(4).

[25] 15 U.S.C. 78f(b)(5).

intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed Data Vendor Program is available to all External Distributors that satisfy the objective, clearly defined criteria set forth in the proposed definition of ''Data Vendor'' and the Program's waiver eligibility standards. Any External Distributor that, as part of its primary business objective, solicits unaffiliated third-party Distributors to redistribute a transformed Market Data Product, does not maintain a brokerage relationship with Users in connection with the applicable Market Data Product, is not an Extranet Service Provider, has not received the Applicable Feed for which it seeks a waiver during the 18 months preceding the waiver application date, and has integrated or is actively integrating the Applicable Feed and making it commercially available to subscribers may qualify for the Program on equal terms. Because eligibility is determined by objective, verifiable criteria rather than by subjective or discretionary determinations, no External Distributor is advantaged or disadvantaged relative to any other similarly situated participant.

To the extent that certain External Distributors—such as retail broker-dealers or Extranet Service Providers—do not qualify for the Data Vendor Program, this does not impose a burden on intramarket competition. As described above, retail broker-dealers and Extranet Service Providers are not similarly situated to Data Vendors. Retail broker-dealers distribute market data to their own brokerage customers as an ancillary feature of their core business of providing trade execution and account management services, and their data distribution needs are more appropriately addressed by the Exchange's existing Small Retail Broker Distribution Program and Small Retail Broker Hosted Solutions Program. Extranet Service Providers, by contrast, transmit data in its original form without transformation, and therefore do not serve the same function in the data distribution ecosystem as Data Vendors, which aggregate, transform, and redistribute data to downstream Distributors. Designing a fee program specifically targeted to Data Vendors, rather than applying it uniformly across all categories of External Distributors, does not burden intramarket competition—it reflects the materially different roles, business models, and barriers of these distinct categories of participants.

Similarly, limiting the Data Vendor Program to External Distributors and not extending it to Internal Distributors does not impose a burden on intramarket competition. Internal Distributors receive and use market data solely within their own legal entities and do not redistribute data to third parties outside their organizations. They are therefore not participants in the same competitive market for external data redistribution that the Program is designed to promote, and their needs are separately addressed through the Exchange's existing Internal Distributor programs—including the New Internal Distributor Waiver for the BZX Summary Depth Data Feed. The proposed Program is specifically designed to incentivize external redistribution of the Applicable Feeds, a purpose that has no meaningful application to Internal Distributors and that creates no competitive disadvantage for them.

The Exchange does not believe the proposed rule change imposes any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposed rule change will enhance intermarket competition by incentivizing a broader class of market participants to subscribe to and redistribute the Exchange's market data products, thereby increasing the Exchange's ability to compete with other national securities exchanges and data vendors for the business of Data Vendors and their downstream Distributor clients.

The market for equity market data is highly competitive. Numerous national securities exchanges offer products that compete directly with the Cboe One Summary Feed, Cboe One Premium Feed, and BZX Summary Depth Feed. Market participants can obtain comprehensive market data from numerous sources, including competing exchanges (such as NYSE and Nasdaq), the consolidated tape (SIP), and alternative trading systems. Prospective Data Vendors evaluating whether to build out the Applicable Feeds must weigh the upfront costs of connectivity, software development, integration, and commercial launch against the commercial opportunity presented by the Exchange's data products. The Data Vendor Program is designed to make the Exchange's market data offering competitively priced relative to alternative options, encouraging Data Vendors to enter the Exchange's market data distribution chain and thereby expanding the availability and reach of the Exchange's market data throughout the national market system.

Far from burdening intermarket competition, the proposed rule change is a direct response to competitive market forces. The Exchange's decision to offer targeted fee waivers to new Data Vendors reflects its recognition that it must compete aggressively for the participation of data redistribution firms, and that reducing the upfront cost of entry is a legitimate and necessary competitive tool in the market for exchange data products. The Commission has recognized that exchanges operate in a competitive environment with respect to market data, and that exchange fee programs designed to attract new participants and expand market data distribution are consistent with the Act's goals of promoting competition and efficiency in the national market system.

The proposed clarification that External Distributors of both Cboe One Summary and Cboe One Premium are only responsible for paying the External Distribution Fee for Cboe One Premium similarly does not impose any burden on intermarket competition. This change does not alter the economic substance of the Exchange's existing fee structure and does not impose any new fees on any market participant. It simply makes explicit the Exchange's existing application of the user fee offset provisions, reducing potential confusion and ensuring that all market participants have a clear and consistent understanding of their fee obligations. Regulatory clarity of this nature promotes, rather than burdens, competition by enabling market participants to make fully informed decisions about their participation in the Exchange's market data programs.

With respect to the Cboe One Summary and Cboe One Premium feeds specifically, the Exchange notes that the proposed Data Vendor Program does not impose any burden on competition arising from differential pricing between Cboe One and the applicable underlying equities feeds.[26] The Exchange notes that historically, its pricing for Cboe One products has been based on the sum of the External Distribution Fees for the four underlying equities feeds.[27] As

[26] For Cboe One Summary, the four equities feeds are BZX Top, BYX Top, EDGA Top, and EDGX Top. For Cboe One Premium, the four equities feeds are BZX Summary Depth, BYX Summary Depth, EDGA Summary Depth, and EDGX Summary Depth.

[27] For example, under the Small Retail Broker Distribution Program, the discounted External Distribution Fee for Cboe One Summary is $3,500 per month, which equals the sum of the External Distribution Fees for the four underlying Top feeds: BZX Top ($2,500), BYX Top ($250), EDGA Top ($0), and EDGX Top ($750). *See* Cboe BZX, BYX, EDGA, and EDGX U.S. Equities Exchange Fee Schedules. Because the proposed Data Vendor Program does

an initial matter, not all underlying equities feeds are offered under this Program. The proposed Data Vendor Program applies only to the following feeds: EDGX Top, EDGX Summary Depth, BZX Summary Depth, Cboe One Premium, and Cboe One Summary. A Data Vendor may choose to receive a waiver for Cboe One Summary or Cboe One Premium, or for EDGX Top, or for EDGX Summary Depth, or for BZX Summary Depth, or any combination thereof, subject to the applicable eligibility requirements. However, the proposed Program does not offer fee waivers for BZX Top, BYX Top, or EDGA Top data feeds, nor does it offer fee waivers for BYX Summary Depth or EDGA Summary Depth. Accordingly, the applicable underlying equities feeds do not ''sum'' to the applicable Cboe One feed under this proposed Program.[28]

The Exchange has selected the products covered by the Program based on where it sees the greatest opportunity to expand distribution and align Data Vendor coverage with downstream end-user demand. This product-specific focus is not unfairly discriminatory. All qualifying Data Vendors are subject to the same product-specific eligibility requirements, and offering waivers for some, rather than all four, of the underlying feeds does not result in unequal treatment among similarly situated participants.

Even setting aside the foregoing, the Exchange does not believe that pricing the Cboe One Summary or Cboe One Premium feeds differently from the underlying equities feeds imposes any burden on competition. To date, the Exchange is not aware of any distributor that purchases the underlying equities feeds (either the Top or Summary Depth Feeds) for the purpose of creating its own consolidated product comparable to Cboe One Summary or Cboe One Premium. This demonstrates that the practical market concern underlying any perceived burden—that distributors might be disadvantaged by differential pricing on Cboe One that is not extended to the underlying feeds—does not correspond to actual market behavior.

Moreover, Cboe One Summary and Cboe One Premium are distinct, independent data products—they are not merely consolidations of data from the four underlying equities feeds. In addition to consolidating data from BZX, BYX, EDGX, and EDGA, Cboe One includes supplementary data elements not found in the individual underlying feeds, including data derived from the Securities Information Processor (''SIP'') containing information on the national cumulative volume. This additional content makes Cboe One a distinct product with independent utility. Market participants subscribe to the underlying equities feeds and Cboe One for fundamentally different purposes. For example, a subscriber may be interested only in top-of-book data from a single exchange, such as EDGX, for trading, routing or compliance purposes. Such a subscriber has no need for a consolidated product. Conversely, subscribers seeking a comprehensive, cross-exchange view of Cboe liquidity choose Cboe One precisely because it offers consolidated data with additional enhancements. These distinct use cases support differentiated pricing treatment.

Section 6(b)(8) of the Exchange Act requires that exchange rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Cboe One Summary, Cboe One Premium, and the applicable underlying equities feeds are separate products serving different market needs. Just as the Commission has permitted exchanges to offer different fees for depth-of-book data versus top-of-book data, the Exchange should have discretion to price its consolidated summary product differently from its component feeds.

Finally, the proposed Data Vendor Program is pro-competitive. By reducing the cost of consolidated and top-of-book data products for qualifying Data Vendors, the Exchange enables broader distribution of comprehensive market information to downstream distributors and, ultimately, to retail and institutional investors. Wider access to market data promotes informed investment decisions, enhances market efficiency, and supports the Exchange Act's goals of investor protection and fair and efficient markets. The Exchange does not view external distributors as competitors for its real-time feed offerings; rather, distributors serve as essential conduits that expand delivery of Cboe real-time market data to end users who do not have the technical capability or commercial need to connect directly to Cboe's individual market data feeds. This is particularly important for the retail community, as retail investors typically access market data through vendors rather than purchasing it directly from exchanges. By offering the proposed Data Vendor Program, the Exchange enables distributors to deliver competitively priced, comprehensive market data to a broader audience, thereby enhancing—not burdening—competition in the market data landscape.

For the foregoing reasons, the Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[29] and paragraph (f) of Rule 19b–4[30] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2026–081 on the subject line.

not offer fee waivers for BZX Top, BYX Top, EDGA Top, BYX Summary Depth, or EDGA Summary Depth, the External Distribution Fee for each of those feeds would remain in effect for any Data Vendor receiving those feeds, while the External Distribution Fee for Cboe One Summary ($0 during the Summary Waiver Period) or Cboe One Premium ($0 during the Premium Waiver Period) would be waived. This results in a pricing differential between the sum of the underlying equities feeds and the Cboe One feeds under this Program.

[28] For example, the External Distribution Fee is $0 for Cboe One Summary under the proposed Program, but the sum of the four underlying equities feeds under the proposed Program is $2,750 ($0 EDGX Top + $2,500 BZX Top + $250 BYX Top + $0 EDGA Top).

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f).

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–2026–081. 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–2026–081 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20811 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106624; File No. 4–631]

Joint Industry Plan; Notice of Filing and Order of Summary Effectiveness on a Temporary Basis Not To Exceed 120 Days of Proposed Twenty-Ninth Amendment to the National Market System Plan To Address Extraordinary Market Volatility To Revise the Time for Calculating the Consolidated Price in Connection With Overnight Trading

October 7, 2026.

I. Introduction

On September 16, 2026, Nasdaq, Inc., on behalf of the following parties to the Plan to Address Extraordinary Market Volatility (''Plan'' or ''LULD Plan'') Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1]: 24X National Exchange LLC; Cboe BZX Exchange, Inc.; Cboe BYX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors Exchange LLC; Long-Term Stock Exchange, Inc.; MEMX LLC; MIAX PEARL, LLC; Nasdaq PHLX LLC; Nasdaq Texas LLC; New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; NYSE National, Inc.; NYSE Texas, Inc.; Texas Stock Exchange LLC; and The Nasdaq Stock Market LLC (collectively, ''Participants''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A(a)(3) of the Exchange Act[2] and Rule 608 thereunder,[3] a proposal to amend the Plan (''Amendment No. 29'').[4] Amendment No. 29 proposes to amend the Plan to revise the time of the Consolidated Price (as defined in the Plan)[5] from 7:45 p.m., Eastern Time to 7:30 p.m., Eastern Time. This order summarily puts into effect Amendment No. 29 on a temporary basis not to exceed 120 days and solicits comment on Amendment No. 29 from interested persons.[6]

II. Description of the Plan

The Participants filed the Plan with the Commission on April 5, 2011, to create a market-wide limit up-limit down (''LULD'') mechanism intended to address extraordinary market volatility in NMS Stocks, as defined in Rule 600(b)(65) of Regulation NMS under the Exchange Act.[7] The Plan sets forth procedures that provide for market-wide LULD requirements to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands.

On May 27, 2026, the Participants filed a proposed amendment to the Plan to establish a framework for calculating and disseminating Overnight Price Bands in response to exchange proposals to conduct trading 23 hours per day 5 days per week, and the Commission approved that proposed amendment on August 5, 2026.[8] The Participants intend to implement overnight price protections by December 6, 2026, when overnight trading on certain exchanges is expected to begin.

III. Description of Proposed Amendment No. 29 to the Plan

In connection with the framework for calculating and disseminating Overnight Price Bands, Section VIII(A)(2) of the Plan provides that Overnight Price Bands for each NMS Stock will be calculated based on two Reference Prices: (i) the Listing Market's Official Closing Price of the NMS Stock, and (ii) the Consolidated Price (*i.e.,* the consolidated last round lot sale as of 7:45 p.m. Eastern Time).

In response to industry feedback, the Participants now propose to amend the definition of Consolidated Price to move up the reference time by 15 minutes

[31] 17 CFR 200.30–3(a)(12).

[1] *See* Securities Exchange Act Release Nos. 67091, 77 FR 33498 (June 6, 2012); 68953 (February 20, 2013), 78 FR 13113 (Feb. 26, 2013); 69287 (April 3, 2013), 78 FR 21483 (Apr. 10, 2013); 70273 (August 27, 2013), 78 FR 54321 (September 3, 2013); 70530 (September 26, 2013), 78 FR 60937 (October 2, 2013); 71247 (January 7, 2014), 79 FR 2204 (January 13, 2014); 71851 (April 3, 2014), 79 FR 19687 (April 9, 2014); 74323 (February 19, 2015), 80 FR 10169 (February 25, 2015); 76244 (October 22, 2015), 80 FR 66099 (October 28, 2015); 77679 (April 21, 2016), 81 FR 24908 (April 27, 2016); 78703 (August 26, 2016), 81 FR 60397 (September 1, 2016); 79845 (January 19, 2017), 82 FR 8551 (January 26, 2017); 80455 (April 13, 2017), 82 FR 18519 (April 19, 2017); 80549 (April 28, 2017), 82 FR 20928 (May 4, 2017); 81720 (September 26, 2017), 82 FR 45922 (October 2, 2017); 82887 (March 15, 2018), 83 FR 12414 (March 21, 2018); 83044 (April 12, 2018), 83 FR 17205 (April 18, 2018); 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019); 88122 (February 5, 2020), 85 FR 7805 (February 11, 2020); 88704 (April 21, 2020), 85 FR 23383 (April 27, 2020); 89420 (July 29, 2020), 85 FR 46762 (August 3, 2020); 90068 (October 1, 2020), 85 FR 63322 (October 7, 2020); 101036 (September 16, 2024), 89 FR 77203 (September 20, 2024); 103042 (May 14, 2025), 90 FR 21529 (May 20, 2025); 103845 (September 3, 2025), 90 FR 43254 (September 8, 2025); 105443 (May 12, 2026), 91 FR 27995 (May 15, 2026); 105762 (June 24, 2026), 91 FR 39142 (June 29, 2026); and 106042 (August 5, 2026), 92 FR 51515 (August 10, 2026).

[2] 15 U.S.C 78k–1(a)(3).

[3] 17 CFR 242.608.

[4] *See* Letter from Andrew Oppenheimer, Head of U.S. Equities, Nasdaq, to Vanessa Countryman, Secretary, Commission, dated September 16, 2026 (''Transmittal Letter''). According to the Transmittal Letter, each of the Participants approved Amendment No. 29 in accordance with Section III(C) of the Plan. The Participants also received and incorporated feedback from the Plan Advisory Committee in preparing Amendment No. 29. The Transmittal Letter and Amendment No. 29 are available on the Commission's website at: *https://www.sec.gov/comments/4-631/4631-1050239-3581747.pdf.*

[5] ''Consolidated Price'' is currently defined as the consolidated last round lot sale price of an NMS Stock as of 7:45 p.m., Eastern Time. *See* Section VIII(A)(2) of the LULD Plan. Unless otherwise stated, capitalized terms used herein are defined in the LULD Plan.

[6] A proposed amendment may be put into effect summarily upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. *See* 17 CFR 242.608(b)(4).

[7] 17 CFR 242.600(b)(65).

[8] *See* Securities Exchange Act Release No. 106042 (August 5, 2026), 92 FR 51515 (August 10, 2026) (''Amendment No. 27''). On the date of approval of Amendment No. 27, a commenter submitted a comment letter requesting that the Participants use 7:30 p.m., Eastern Time, consistent with current ATS, rather than 7:45 p.m., Eastern Time, as the time for calculating the Consolidated Price. *See* Letter from Matt Billings, President, Robinhood Financial LLC and Robinhood Securities, LLC, to Vanessa Countryman, Secretary, Commission, dated August 5, 2026 (''Robinhood Letter''). Comment letters on Amendment No. 27 to the Plan are available on the Commission's website at: *https://www.sec.gov/comments/4-631/4-631.htm.*

(from 7:45 p.m. to 7:30 p.m. Eastern Time) to align with current Alternative Trading System (''ATS'') practice.[9] The Participants state that this change is appropriate to support trading on those ATSs that will continue to operate during the hours of 8:00 p.m. to 9:00 p.m. (when the national securities exchanges will not operate) and that have indicated a desire to adopt similar price protections during that period.[10] According to the Participants, the 7:30 p.m., Eastern Time snapshot for the Consolidated Price continues to fall at the end of the post-market session, and the Participants expect it to be similarly representative of prevailing market sentiment following the close of Regular Trading Hours as 7:45 p.m., Eastern Time. The Participants also state that the 7:30 p.m. time would improve materially the ability of ATSs and other venues to implement similar price bands that would be available from the 8:00 p.m. start of their overnight sessions.[11]

The Participants request that the Commission put into effect summarily pursuant to Rule 608(b)(4) this proposed amendment to provide certainty to market participants so that they can implement these changes on December 6, 2026, thus reducing operational risk and avoiding late system changes closer to the December deadline.[12] No other changes are proposed.

IV. Discussion and Commission's Findings

Pursuant to Rule 608(b)(4) of Regulation NMS,[13] the Commission finds that it is appropriate to summarily put into effect Amendment No. 29 upon publication of this notice on a temporary basis not to exceed 120 days. The Commission finds that such action is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, because it will facilitate implementation of Amendment No. 29 in conjunction with the implementation of Phase 1 of the Overnight Protections under the Plan in an orderly manner that reduces operational risk and avoids late system changes by market participants. Setting the Consolidated Price reference time at 7:30 p.m., Eastern Time, instead of 7:45 p.m., Eastern Time, should provide certain ATSs, and market participants that connect to them, with an appropriate operational window to calculate, distribute, and consume price band data ahead of the commencement of the ATS overnight sessions at 8:00 p.m., Eastern Time and a reliable price against which ATSs are able to calibrate their systems and orders as the market transitions from the post-market session into overnight trading.

The Participants will announce the operative date of Amendment No. 29, which will be subject to the completion of certain systems changes by the Processors for the Unlisted Trading Privileges (UTP) Plan and Consolidated Tape Association (CTA) Plan.[14] The Participants anticipate that Amendment No. 29 will become operative on December 6, 2026.[15]

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether proposed Amendment No. 29 is consistent with the Exchange Act and the rules thereunder. 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 4–631 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 4–631.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 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 4–631 and should be submitted on or before November 3, 2026.

VI. Conclusion

It is therefore ordered, pursuant to Section 11A of the Exchange Act[16] and Rule 608(b)(4) thereunder,[17] that Amendment No. 29 to the Plan (File No. 4–631) be, and it hereby is, put into effect summarily on a temporary basis not to exceed February 10, 2027

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20799 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

[9] *See* Robinhood Letter, *supra* note 8. *See also* Transmittal Letter, *supra* note 4, at 3.

[10] *See* Transmittal Letter, *supra* note 4, at 3.

[11] *See* Transmittal Letter, *supra* note 4, at 6.

[12] *See* Transmittal Letter, *supra* note 4, at 4.

[13] 17 CFR 242.608(b)(4). *See supra* note 6 and accompanying text.

[14] Rule 608(b)(2) requires the Commission to approve or disapprove a proposed amendment to a national market system plan. *See* 17 CFR 242.608(b)(2). The Commission will issue an order pursuant to Rule 608(b)(2) after considering comments on proposed Amendment No. 29.

[15] *See* Transmittal Letter, *supra* note 4, at 7.

[16] 15 U.S.C. 78k–1.

[17] 17 CFR 242.608(b)(4).

[18] 17 CFR 200.30–3(a)(85).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106614; File No. SR–NASDAQ–2026–082]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Listing Rule 5505

October 7, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2026, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I 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 a proposal to amend Listing Rule 5505 to require a minimum $4 price in all instances for initial listing on the Nasdaq Capital Market.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings,* and at the principal office of the Exchange.

[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

Currently, the Exchange allows for companies seeking to list on the Nasdaq Capital Market (''NCM'') to list securities priced between $2 and $4 if the security also meets additional requirements that result in the security satisfying an exclusion from the definition of ''penny stock'' contained in Exchange Act Rule 3a51–1(g).[3] Pursuant to Listing Rule 5505(a)(1)(B), a company applying to list its securities on the NCM may meet the initial listing requirement by having a minimum closing price of $3 per share, if the company meets the requirements of the Equity or Net Income Standards under Listing Rules 5505(b)(1) or (b)(3), or of $2 per share, if the company meets the requirements of the Market Value of Listed Securities Standard under Listing Rule 5505(b)(2), provided that in either case the company demonstrates that it has either: net tangible assets (*i.e.,* total assets less intangible assets and liabilities) in excess of $2 million, if the issuer has been in continuous operation for at least three years; or net tangible assets in excess of $5 million, if the issuer has been in continuous operation for less than three years; or average revenue of at least $6 million for the last three years (the ''Alternative Price Requirement'').

Nasdaq initially adopted the Alternative Price Requirement to enhance the competition among exchanges—particularly NYSE American LLC (''NYSE American''), which was the only other exchange allowed to list companies with a price below $4.[4] However, NYSE American recently amended its rule to remove the ability to list securities priced below $4.[5] Similarly, Nasdaq is proposing to remove Listing Rule 5505(a)(1)(B), and, as a result, require all companies seeking to list under the Initial Listing Standards to have a minimum stock price of $4.00. The $4.00 standard is consistent with the initial listing requirements of other national securities exchanges, whereas the current Alternative Price Requirement is generally lower than the minimum price required for listing on other national securities exchanges.

Because companies that originally listed under the Alternative Price Requirement remain listed, the Exchange is proposing to keep Listing Rule IM–5505–2. The rule requires Nasdaq to publish on its website a list of any company that initially listed under the Alternative Price Requirement, which no longer satisfies the net tangible assets or revenue test contained in former Rule 5505(a)(1)(B), and which does not satisfy any of the other exclusions from being a penny stock contained in Rule 3a51–1 under the Act. Nasdaq will maintain this list on its website for as long as any companies remain listed that could be subject to that condition.[6] The Exchange is also proposing to include a summary description of former Listing Rule 5505(a)(1)(B) within Listing Rule IM–5505–2, which describes the price requirement that companies that initially list under the Alternative Price Requirement must satisfy and Nasdaq's ongoing monitoring of such companies for compliance with the penny stock rules. The proposed summary is intended to provide clarification for the references to the former rule that remain in Listing Rule IM–5505–2. Lastly, the Exchange is proposing to make conforming changes to Listing Rule IM–5505–2 to clarify that Listing Rule 5505(a)(1)(B) is a ''former'' rule. Nasdaq intends to make the proposed rule change operative 30 days after the date of the filing. This period will allow companies that have taken substantial steps to list under the current rules to complete the process.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to 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, by eliminating initial listing requirements that may cause securities to become susceptible to manipulation. More specifically, Nasdaq believes that removing the initial listing requirement that enables companies to list securities below $4 will decrease the likelihood that a company will trade at low price levels, which will protect investors and the public interest. Additionally, the Exchange believes that maintaining a summary of former Rule 5505(a)(1)(B) will provide clarification to the references to the former rule that are maintained in IM–5505–2.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Any company that desires to list on the NCM can do so on a non-discriminatory basis as long as the company complies with all the applicable Exchange initial listing requirements. Additionally, there is no burden to intra-market competition because the proposed change will apply to all companies that apply to list on the NCM. There is no inter-market burden on competition because the proposed amendment is aligned with the rule on other exchanges that do not allow for listing of companies below $4 and the proposal does not impose any burden on the ability for other exchanges to compete.[9] Additionally, Rule IM–5505–2 will remain applicable to companies previously listed under the rule.

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.

[3] 17 CFR 240.3a51–1(g).

[4] *See* Securities Exchange Act Release No. 51983 (July 7, 2005), 70 FR 40614 (July 13, 2005) (Penny Stock Rule Amendments Adopting Release).

[5] *See* Securities Exchange Act Release No. 105105 (March 27, 2026), 91 FR 16262 (April 1, 2026) (Order approving SR–NYSEAMER–2026–02).

[6] Pursuant to IM–5505–2, if a company initially listed under the Alternative Price Requirement but subsequently achieved a $4 closing price for at least five consecutive business days and, at the same time, satisfied all other initial listing criteria, the company will no longer be considered as having listed under the Alternative Price Requirement.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* NYSE American Listed Company Guide Sections 101(a)–101(d).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) 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 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–NASDAQ–2026–082 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NASDAQ–2026–082. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2026–082 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20808 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires 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.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106625; File No. SR–NASDAQ–2026–085]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5740 Regarding Information Circular Requirements

October 7, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2026, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''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

The Exchange proposes to: (i) amend Rule 5740 to add express cross-references to General 9, Section 10 and Equity 2, Section 20, replace the cross-reference to Rule 4630 with Equity 10, Section 8, and specify Equity 4 for Rule 4120; (ii) delete Rule 5740(a)(1) in its entirety, thereby removing the requirement that the Exchange distribute an information circular to Exchange members (''Members'') prior to the commencement of trading in each UTP Derivative Security (as defined below) that generally includes the same information as contained in the information circular provided by the listing exchange; (iii) amend Rule 5740(a)(2) to require that the written description referenced therein be provided in a form approved by the listing exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser; and (iv) renumber Rules 5740(a)(2) through (5) as Rules 5740(a)(1) through (4), respectively, and make other technical and non-substantive changes.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings,* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate the requirement that the Exchange distribute an information circular to Members prior to the commencement of trading in each UTP Derivative Security [3] that generally includes the same information as contained in the information circular provided by the listing exchange as provided in Rule 5740(a)(1). The Exchange also proposes to amend the introductory paragraph of Rule 5740 to add express cross-references to General 9, Section 10 (Recommendations to Customers (Suitability)) and Equity 2, Section 20 (Customer Disclosures), replace the cross-reference to Rule 4630 with Equity

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''UTP Derivative Security'' is any security that is a ''new derivative securities product'' as defined in Rule 19b–4(e) under the Act. *See* Rule 5740(a).

10, Section 8, and specify Equity 4 for Rule 4120. The Exchange also proposes to amend Rule 5740(a)(2) to require that the written description referenced therein be provided in a form approved by the listing exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser.[4] Lastly, the Exchange proposes to renumber Rules 5740(a)(2) through (5) as Rules 5740(a)(1) through (4), respectively, and make other technical and non-substantive changes. The proposal is similar to a proposal that Cboe BZX Exchange, Inc. (''Cboe BZX'') filed with the Commission.[5]

Rule 5740 governs the trading of UTP Derivative Securities on the Exchange—securities listed on another national securities exchange that trade on the Exchange pursuant to unlisted trading privileges (''UTP''). Under current Rule 5740(a)(1), the Exchange must distribute an information circular prior to the commencement of trading in each UTP Derivative Security that generally mirrors the information circular issued by the listing exchange, including: (a) the special risks of trading the new derivative securities product; (b) the Exchange rules that will apply to the new derivative securities product, including Rule 2310; [6] (c) information about the dissemination of the value of the underlying assets or indexes; and (d) the applicable trading hours for the UTP Derivative Security and the risks of trading during the period from 8:00 a.m. to 9:30 a.m. and from 4:00 p.m. to 7:00 p.m. due to the lack of calculation or dissemination of the underlying index value, the Intra-Day Indicative Value (as defined in Rule 5705(a)(3)(C)) or a similar value. The Exchange proposes to delete Rule 5740(a)(1) in its entirety.

The information circular requirement is unnecessary because the primary listing exchange's information circular already provides Members with the same disclosures the Exchange would otherwise be required to produce. Members have access to the primary listing exchange's information circular prior to the commencement of UTP trading and may rely upon it for the same purposes.[7] The Exchange's issuance of a separate, duplicative circular therefore serves no independent investor protection function.

The Exchange also proposes to amend the introductory paragraph of Rule 5740 to add express cross-references to General 9, Section 10 (Recommendations to Customers (Suitability)) and Equity 2, Section 20 (Customer Disclosures), replace the cross-reference to Rule 4630 with Equity 10, Section 8, and specify Equity 4 for Rule 4120. Current Rule 5740(a)(1) references both the recommendations to customers/suitability provisions addressed by General 9, Section 10 and the risk of trading outside of Regular Market Hours [8] addressed by Equity 2, Section 20.[9] Because the Exchange proposes to delete Rule 5740(a)(1) in its entirety, the Exchange is adding express cross-references to those rules in the introductory paragraph of Rule 5740 to preserve their visibility in the context of UTP Derivative Securities. These rules already apply to Members by operation of the Exchange's rulebook. The cross-references are intended to make the applicable framework explicit in the context of UTP Derivative Securities. General 9, Section 10, which incorporates FINRA Rule 2111 by reference, independently requires Members to ensure that any recommendation of a UTP Derivative Security is suitable for the customer based on the customer's investment profile, a standing obligation that applies regardless of whether the Exchange has issued a product-specific information circular. Similarly, Equity 2, Section 20 independently requires Members to provide customers with a written disclosure of the risks of trading outside of Regular Market Hours before accepting any order for execution during such sessions, a standing obligation not contingent on the Exchange's issuance of a product-specific information circular.

Because Rule 5740(a)(1) has historically served as the mechanism through which the Exchange satisfies the notification obligation under Rule 5740(a)(2), deletion of Rule 5740(a)(1) necessitates a conforming amendment to Rule 5740(a)(2). The Exchange proposes to amend Rule 5740(a)(2) to require that the written description referenced therein be provided in a form approved by the listing exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. The Exchange will notify Members by information circular that such written description will only be required when mandated by the listing exchange. This amendment is consistent with the broader purpose of the proposed rule change: where the listing exchange's information circular already provides Members with the information necessary to assess a UTP Derivative Security, a duplicative written description obligation serves no independent investor protection function. Members may rely on the listing exchange's information circular in the same manner and to the same effect.

Finally, the Exchange proposes a number of technical and non-substantive changes to Rule 5740. First, the Exchange proposes to renumber existing Rules 5740(a)(2) through (5) as Rules 5740(a)(1) through (4), respectively. Second, the Exchange proposes to update a number of obsolete rule citations. Specifically in the introductory paragraph of Rule 5740 and in proposed Rule 5740(a)(3), the Exchange proposes to update the current cite to Rule 4630 to Equity 10, Section 8.[10] The Exchange also proposes in the introductory paragraph of Rule 5740 and in proposed Rule 5740(a)(2) to update the current cite to Rule 4120 to Equity 4, Rule 4120.[11]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and

[4] As further described below, the Exchange will notify Members of the written description requirement under Rule 5740(a)(2) by means of an information circular. Such written description will only be required when required by the listing exchange.

[5] *See* Securities Exchange Act Release No. 105715 (June 17, 2026), 91 FR 37477 (June 23, 2026) (SR–CboeBZX–2026–054).

[6] As discussed later in this filing, Rule 5740(a)(1) presently refers to Rule 2310, which is an obsolete reference to the suitability provisions. The suitability provisions are now set forth in General 9, Section 10, so the Exchange is updating the obsolete rule reference in Rule 5740(a)(1).

[7] Such information circulars are generally available on the primary listing market's website.

[8] ''Regular Market Hours'' means the trading sub-session of the Day Session that operates from 9:30 a.m. until 4:00 p.m. or 4:15 p.m. on Business Days. *See* Equity 4, Rule 4120(a)(19).

[9] The Exchange notes that the rule currently references Rule 2310, which is an obsolete reference to the provisions addressing recommendations to customers and suitability. The Exchange previously replaced Rule 2310 with Rule 2111A, and subsequently relocated Rule 2111A to General 9, Section 10. *See* Securities Exchange Act Release Nos. 68389 (December 10, 2012), 77 FR 74538 (December 14, 2012) (SR–NASDAQ–2012–122); and 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2019–098).

[10] The Exchange relocated Rule 4630 to Equity 10, Section 8. *See* Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2019–098).

[11] The Exchange relocated Rule 4120 to Equity 4, Rule 4120. *See* Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2019–098).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed deletion of Rule 5740(a)(1) is consistent with the Act because the primary listing exchange's information circular already provides Members with the same disclosures that the Exchange's information circular would contain. The investor protection functions historically served by the information circular requirement are independently addressed through the primary listing exchange's information circular and the Member-level obligations imposed by General 9, Section 10 and Equity 2, Section 20, to which the Exchange proposes to add express cross-references in the introductory paragraph of Ruel [sic] 5740. The proposed amendment to Rule 5740(a)(2) ensures that where a written description is required, it is provided in a form approved by the listing exchange, thereby aligning the Exchange's requirements with those of the primary listing market. The Exchange will further notify Members by information circular that such written description will only be required when mandated by the listing exchange, ensuring that no duplicative obligation is imposed where the listing exchange has not determined one to be warranted. The renumbering of Rules 5740(a)(2) through (5) and to update the obsolete rule cites as discussed above is ministerial. Additionally, as discussed above, the proposal does not raise any novel issues not previously considered by the Commission.[14] For these reasons, the Exchange believes that the proposed rule change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change eliminates duplicative procedural obligations applicable to the Exchange in its capacity as a UTP trading venue. It does not alter the terms or conditions under which UTP Derivative Securities may be traded on the Exchange, impose any new requirements on Members, or affect the ability of any market participant to access the Exchange's markets. Members will continue to have access to the primary listing exchange's information circular prior to the commencement of UTP trading and may rely upon it for the same purposes as the Exchange's information circular. The proposed amendment to Rule 5740(a)(2) aligns the written description obligation with the primary listing market's requirements and does not impose any burden on Members beyond what the primary listing market itself requires. Accordingly, the Exchange does not believe the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)[16] thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6)[18] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange states that the proposed rule change eliminates duplicative procedural obligations applicable to the Exchange in its capacity as a UTP trading venue because the primary listing exchange's information circular already provides Members with the same disclosures the Exchange would otherwise be required to produce.[21] The Exchange also notes that the proposed rule change does not alter the terms or conditions under which UTP Derivative Securities may be traded on the Exchange. For these reasons, the Commission finds that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NASDAQ–2026–085 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NASDAQ–2026–085. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable

[14] *See supra* note 5.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] The Exchange represents that such information circulars are generally available on the primary listing exchange's website. *See supra* note 7.

[22] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2026–085 and should be submitted on or before November 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20800 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106626; File No. SR–MEMX–2026–25]

Self-Regulatory Organizations; MEMX LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt Rules for the Listing and Trading of Securities Event Contracts on the Exchange

October 7, 2026.

On August 11, 2026, MEMX LLC (the ''Exchange'' or ''MEMX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Chapter 30 of the Exchange Rules to provide for the listing and trading of securities event contracts on the Exchange's options platform. The proposed rule change was published for comment in the **Federal Register** on August 27, 2026.[3]

Section 19(b)(2) of the Act[4] 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 publication of the notice for this proposed rule change is October 11, 2026. The Commission is extending this 45-day time period.

The Commission finds it 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 issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates November 25, 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–MEMX–2026–25).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–20801 Filed 10–9–26; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Fiscal Year List of Requests From States or Tribes for a Small Business Administration Disaster Declaration

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This notice provides an updated list of requests received by the U. S. Small Business Administration to make a disaster declaration for a state, territory, or tribe. The published list complies with a directive in the explanatory statement of the Consolidated Appropriations Act, 2026, Public Law 119–75.

DATES: Issued on October 7, 2026.

FOR FURTHER INFORMATION CONTACT: Eric Wall, Office of Disaster Recovery, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6739.

SUPPLEMENTARY INFORMATION: Notice is hereby given as of September 30, 2026, the following requests have been made to the U.S. Small Business Administration in Fiscal Year 2026 to declare a disaster.

State	Disaster date(s)	Disaster description	Date of state request to SBA	Approval status	Date of declaration
Arizona	September 25–27, 2025.	Gila County Flooding Event.	October 9, 2025	Approved	October 10, 2025.
Illinois	July 10–August 1, 2025.	Algal Bloom Water Contamination.	November 4, 2025	Approved	November 6, 2025.
Arizona	October 10–13, 2025	Remnants of Hurricane Priscilla and Tropical Storm Raymond.	November 4, 2025	Approved	November 14, 2025.
Florida	October 26, 2025	Severe Storms and Flooding.	November 7, 2025	Approved	November 7, 2025.
New York	September 17, 2025	Red Hook Five-Alarm Fire.	November 13, 2025	Approved	November 14, 2025.
Kentucky	November 4, 2025	Louisville Airplane Crash.	November 14, 2025	Approved	November 15, 2025.
Colorado	August 2–29, 2025	Lee and Elk Fires, Mudslides, and Debris Flows.	November 17, 2025	Approved	November 18, 2025.
California	November 13–December 4, 2025.	Pack Fire	December 4, 2025	Approved	December 9, 2025.

[23] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 106182 (August 24, 2026), 91 FR 55384. Comments received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/rules-regulations/public-comments/sr-memx-2026-25.*

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

State	Disaster date(s)	Disaster description	Date of state request to SBA	Approval status	Date of declaration
New York	November 23, 2025 ..	Cottage Avenue Apartment Building Fire.	December 12, 2025 ..	Approved	December 16, 2025.
Minnesota	October 26, 2025	Skyline Tower Apartment Complex Fire and Severe Water Damage.	December 19, 2025 ..	Approved	December 22, 2025.
California	December 16–26, 2025.	2025 Late December Storm.	January 28, 2026	Approved	February 3, 2026.
California	December 31, 2025–January 5, 2026.	2026 Early January Storm, Tidal Flooding, and King Tides.	January 28, 2026	Approved	February 3, 2026.
Louisiana	January 23–27, 2026	2026 Severe Winter Storm.	January 30, 2026	Approved	February 2, 2026.
California	December 16–26, 2025.	2025 Late December Storms.	January 30, 2026	Approved	February 6, 2026.
California	January 19, 2026	Oakland Apartment Fire.	February 4, 2026	Approved	February 10, 2026.
Washington	December 5–22, 2025.	Severe Winter Storms, 2025.	February 11, 2026	Approved	February 24, 2026.
New Mexico	June 23–August 5, 2025.	Mescalero Apache Tribe—Rural Area—Severe Storms, Flooding and Landslides.	February 17, 2026	Approved	February 23, 2026.
Pennsylvania	February 20, 2026	Hotel Hampton Fire ..	March 3, 2026	Approved	March 4, 2026.
Illinois	August 16–19, 2025	Severe Storms, Straight-Line Winds, and Flash Flooding.	March 12, 2026	Approved	March 16, 2026.
Tennessee	January 22–27, 2026	2026 Severe Winter Storm Fern.	March 23, 2026	Approved	April 7, 2026.
Hawaii	November 30, 2025 ..	Downtown Hilo Fire ..	April 1, 2026	Approved	April 3, 2026.
Louisiana	January 23–27, 2026	Louisiana Severe Winter Storm.	April 2, 2026	Approved	April 8, 2026.
Illinois	March 10, 2026	Severe Storm and Tornado.	April 7, 2026	Approved	April 9, 2026.
Indiana	March 10–11, 2026	Severe Storms and Tornado.	April 7, 2026	Approved	April 9, 2026.
Alaska	October 8–13, 2025 ..	Severe Storms, Flooding and Remnants of Typhoon Halong.	April 13, 2026	Approved	April 15, 2026.
Arkansas	January 23–26, 2026	Severe Winter Weather.	April 14, 2026	Approved	April 29, 2026.
Illinois	July 25–28, 2025	Severe Storms and Flash Flooding.	April 22, 2026	Approved	April 23, 2026.
Michigan	March 6, 2026	Tornadoes	April 27, 2026	Approved	April 28, 2026.
Oklahoma	April 2, 2026	Severe Weather, Tornadoes, and Straight-line Winds.	May 1, 2026	Approved	May 1, 2026.
Texas	April 24–May 1, 2026	Severe Storms and Tornadoes.	May 5, 2026	Approved	May 7, 2026.
Illinois	April 17, 2026	Severe Storm and Tornado.	May 15, 2026	Approved	May 18, 2026.
Georgia	April 20, 2026	Wildfires	May 26, 2026	Approved	May 27, 2026.
Idaho	December 16–18, 2025.	Straight-line Winds	June 3, 2026	Approved	June 8, 2026.
Rhode Island	February 22–23, 2026.	2026 Historic Snowstorm.	June 3, 2026	Approved	June 10, 2026.
Illinois	May 15, 2026	Oak Lawn Apartment Complex Fire.	June 9, 2026	Approved	June 10, 2026.
California	May 21, 2026–May 29, 2026.	Garden Grove Hazmat Incident.	June 8, 2026	Approved	June 11, 2026.
Massachusetts	February 22, 2026–February 27, 2026.	Blizzard	June 8, 2026	Approved	June 12, 2026.
New Jersey	May 3–14, 2026	12-Alarm Warehouse Fire.	June 10, 2026	Approved	June 12, 2026.
Pennsylvania	June 11, 2026	Oak Forest Apartment Complex Fire.	June 23, 2026	Approved	June 24, 2026.
New York	May 20, 2026	Severe Storms and Flooding.	June 26, 2026	Approved	June 30, 2026.

State	Disaster date(s)	Disaster description	Date of state request to SBA	Approval status	Date of declaration
Illinois	June 10–11, 2026	Severe Storms and Tornadoes.	July 7, 2026	Approved	July 10,2026.
Illinois	June 17, 2026	Severe Storms and Tornadoes.	July 7, 2026	Approved	July 10, 2026.
Missouri	April 23–28, 2026	Severe Storms, Tornadoes, and Flooding.	July 14, 2026	Approved	July 15, 2026.
Iowa	July 2–4, 2026	Severe Storms, Heavy Rain, and Flash Flooding.	July 20, 2026	Approved	July 23, 2026.
Pennsylvania	July 5–6, 2026	Severe Storms and Flooding.	July 20, 2026	Approved	July 21, 2026.
Illinois	June 21, 2026	Severe Storms and Tornado.	July 28, 2026	Approved	July 29, 2026.
Pennsylvania	July 11, 2026	Severe Storms	July 28, 2026	Approved	July 30, 2026.
Illinois	June 16, 2026	Severe Storms and Tornadoes.	July 28, 2026	Approved	July 30, 2026.
Pennsylvania	July 4, 2026	Severe Storms	July 28, 2026	Approved	July 31, 2026.
Illinois	July 2–4, 2026	Severe Storms	August 4, 2026	Approved	August 5, 2026.
Arizona	June 19–July 30, 2026.	Pocket Fire	August 7, 2026	Approved	August 11, 2026.
Nebraska	March 12–April 2, 2026.	Wildfires	August 12, 2026	Approved	August 14, 2026.
California	June 17–25, 2026	2026 Los Palos Incident.	August 10, 2026	Approved	August 14, 2026.
Commonwealth of the Northern Mariana Islands.	July 4–12, 2026	Super Typhoon Bavi	August 13, 2026	Approved	August 14, 2026.
Illinois	July 27, 2026	Severe Storms	August 17, 2026	Approved	August 18, 2026.
Pennsylvania	July 28, 2026	Severe Storms and Flooding.	August 18, 2026	Approved	August 19, 2026.
Kansas	April 26–27, 2026	Severe Storms, Straight-line Winds, Tornadoes, Large Hail, and Flooding.	August 21, 2026	Approved	August 21, 2026.
Idaho	March 11–15, 2026	Severe Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.	August 21, 2026	Approved	August 26, 2026.
Missouri	April 23–28, 2026	Severe Storms, Tornadoes, and Flooding.	August 27, 2026	Approved	August 28, 2026.
Kansas	August 18–19, 2026	Severe Storms	August 31, 2026	Approved	September 1, 2026.
Utah	June 22–July 24, 2026.	Cottonwood Fire and Flooding.	September 4, 2026	Approved	September 9, 2026.
Texas	August 28, 2026	Severe Storms and Tornadoes.	September 9, 2026	Approved	September 10, 2026.
Nevada	August 8–September 9, 2026.	Bug and Hawk Fires	September 9, 2026	Approved	September 11, 2026.
California	May 22–28, 2026	2026 Plains Oil Spill	September 15, 2026	Approved	September 18, 2026.
Maryland	July 9, 2026	Anne Arundel County—Empire Tower Incident.	September 15, 2026	Approved	September 21, 2026.
Pennsylvania	September 2–3, 2026	Severe Storms and Flash Flooding.	September 21, 2026	Approved	September 22, 2026.
Florida	May 25, 2026	Industrial Salvage-Yard Fire.	September 21, 2026	Approved	September 24, 2026.
New York	July 28–29, 2026	Severe Storms and Flooding.	September 22, 2026	Approved	September 24, 2026.

(Catalog of Federal Domestic Assistance Number 59008)

Authority: 13 CFR 123.3(b).

James Stallings,

Associate Administrator, Office of Disaster Recovery.

[FR Doc. 2026–20821 Filed 10–9–26; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 13144]

Notice of Charter Renewal for the Advisory Committee on Historical Diplomatic Documentation

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation has renewed its charter for a period of two years. This Advisory Committee will continue to make recommendations to the Historian and the Department of State on all aspects of the Department's program to publish the *Foreign Relations of the United States* series as well as on the Department's responsibility under statute (22 U.S.C.

4351, *et seq.*) to open its 25-year old and older records for public review at the National Archives and Records Administration. The Committee consists of nine members drawn from among historians, political scientists, archivists, international lawyers, and other social scientists who are distinguished in the field of U.S. foreign relations.

Questions concerning the Committee and the renewal of its Charter should be directed to John C. Powers, Acting Historian and Director, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, 2300 E Street NW, Washington, DC 20372 (Navy Potomac Annex), telephone (771) 327–0058 (email: *history@state.gov*).

The Charter was renewed and filed on September 15, 2026.

For further information about the Board, please contact John C. Powers, Acting Historian, Office of the Historian at *History@state.gov.*

(Authority: 22 U.S.C. 2651a and 5 U.S.C. 1001 *et seq.*)

John C. Powers,

Acting Historian and Director, Office of the Historian, U.S. Department of State.

[FR Doc. 2026–20858 Filed 10–9–26; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 552 (Sub-No. 30)]

Railroad Revenue Adequacy—2025 Determination

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On October 8, 2026, the Board served a decision announcing the 2025 revenue adequacy determinations for the nation's Class I railroads. Four Class I railroads (BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Combined Railroad Subsidiaries, and Union Pacific Railroad Company) were found to be revenue adequate.

DATES: This decision is effective on October 8, 2026.

FOR FURTHER INFORMATION CONTACT: Dylan Richmond, (202) 915–0962. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10704(a)(3), the Board is required to make an annual determination of railroad revenue adequacy. A railroad is considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment (ROI) equal to at least the current cost of capital for the railroad industry. For 2025, this number was determined to be 9.79% in *Railroad Cost of Capital—2025,* EP 558 (Sub-No. 29) (STB served September 10, 2026). The Board then applied this revenue adequacy standard to each Class I railroad. Four Class I carriers (BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Combined Railroad Subsidiaries, and Union Pacific Railroad Company) were found to be revenue adequate for 2025.

The decision in this proceeding is posted at *www.stb.gov.*

Decided: October 7, 2026.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2026–20878 Filed 10–9–26; 8:45 am]

BILLING CODE 4915–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: September 1–30, 2026.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.gov.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above.

Approvals by Rule—Issued Under 18 CFR 806.22(f)

1. RENEWAL—Expand Operating LLC; Pad ID: Van Order Pad; ABR–201107042.R3; Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 8, 2026.

2. RENEWAL—BKV Operating, LLC; Pad ID: Kile; ABR–201103026.R3; Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 14, 2026.

3. RENEWAL—Coterra Energy Inc.; Pad ID: Mogridge P1; ABR–201108005.R3; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 14, 2026.

4. RENEWAL—Expand Operating LLC; Pad ID: Joe; ABR–201108014.R3; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 14, 2026.

5. RENEWAL—Expand Operating LLC; Pad ID: Lyncott Corp Pad; ABR–201107044.R3; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 14, 2026.

6. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: EVERTS (03 086) P; ABR–201606006.R2; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 14, 2026.

7. RENEWAL—Seneca Resources Company, LLC; Pad ID: D08–M; ABR–201507007.R2; Norwich Township, McKean County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 14, 2026.

8. RENEWAL—EQT ARO LLC; Pad ID: Lycoming H&FC Pad E; ABR–201105013.R3; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 16, 2026.

9. RENEWAL—Expand Operating LLC; Pad ID: Bark'em Squirrel Pad; ABR–201107045.R3; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 16, 2026.

10. RENEWAL—Expand Operating LLC; Pad ID: Hillis; ABR–201108035.R3; Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 16, 2026.

11. RENEWAL—Expand Operating LLC; Pad ID: Susan; ABR–201108036.R3; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 16, 2026.

12. RENEWAL—Expand Operating LLC; Pad ID: Tyler; ABR–201108034.R3; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 16, 2026.

13. RENEWAL—EQT ARO LLC; Pad ID: COP Tr 289 Pad D; ABR–201008030.R3; McHenry Township, Lycoming County, Pa.; Consumptive

Use of Up to 4.0000 mgd; Approval Date: September 25, 2026.

14. RENEWAL—EQT ARO LLC; Pad ID: H Lyle Landon Pad A; ABR–201106020.R3; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 25, 2026.

15. RENEWAL—EQT ARO LLC; Pad ID: Larrys Creek F&G Pad H; ABR–201106019.R3; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 25, 2026.

16. RENEWAL—EXCO Resources (PA), LLC; Pad ID: Arthur Pad; ABR–201103018.R3; Franklin Township, Lycoming County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: September 25, 2026.

17. RENEWAL—Expand Operating LLC; Pad ID: Jag; ABR–201109002.R3; Franklin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 25, 2026.

18. RENEWAL—Expand Operating LLC; Pad ID: Mad Dog; ABR–201108021.R3; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 25, 2026.

19. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: CAMP COMFORT (07 185); ABR–201106025.R3; Middletown Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 25, 2026.

20. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: COOLEY (05 004) P; ABR–201007099.R3; Orwell Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 25, 2026.

21. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: Sawyer 376; ABR–201007061.R3; Union Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 25, 2026.

22. RENEWAL—Blackhill Energy LLC; Pad ID: REITER 1H Pad; ABR–201008048.R3; Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: September 29, 2026.

23. RENEWAL—EXCO Resources (PA), LLC; Pad ID: Cadwalader Pad; ABR–201103039.R3; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: September 29, 2026.

24. RENEWAL—Expand Operating LLC; Pad ID: Bernstein Pad; ABR–201107052.R3; Clifford and Lenox Townships, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 29, 2026.

25. RENEWAL—Expand Operating LLC; Pad ID: Clark Pad; ABR–201107043.R3; Orwell Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 29, 2026.

26. RENEWAL—Expand Operating LLC; Pad ID: Kerr B Drilling Pad #1; ABR–201109031.R3; Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 29, 2026.

27. RENEWAL—Expand Operating LLC; Pad ID: LKM; ABR–201109014.R3; Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 29, 2026.

28. RENEWAL—Expand Operating LLC; Pad ID: McGroarty; ABR–201109012.R3; Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 29, 2026.

29. RENEWAL—Expand Operating LLC; Pad ID: Savage Drilling Pad #1; ABR–201108018.R3; Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 29, 2026.

30. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: BENNETT (05 164) R; ABR–201107049.R3; Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 29, 2026.

31. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: Foti 721; ABR–201007118.R3; McNett Township, Lycoming County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 29, 2026.

32. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: Taylor 718; ABR–201007016.R3; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 29, 2026.

33. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: WALTERS (05 001) J; ABR–201007096.R3; Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 29, 2026.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: October 7, 2026.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2026–20814 Filed 10–9–26; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Minor Modification Approval

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the minor modifications approved for previously approved projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: September 1–30, 2026.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax (717) 238–2436; email: *joyler@srbc.gov.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists previously approved projects, receiving approval of minor modification or a corrective modification, described below, pursuant to 18 CFR 806.18 or to Commission Resolution Nos. 2013–11 and 2015–06, for the time period specified above.

1. Expand Operating LLC—Susquehanna River—Standing Stone Twp (Franklin) Docket No. 20260615, Standing Stone Township, Bradford County, Pa.; modification approval to change the intake design; Approval Date: September 2, 2026.

2. New York State—Office of Parks, Recreation, and Historic Preservation—Indian Hills State Golf Course Docket No. 20260616, Towns of Erwin and Lindley, Steuben County, NY; modification approval to change the intake design; Approval Date: September 3, 2026.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: October 7, 2026.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2026–20813 Filed 10–9–26; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: September 1–30, 2026.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.gov.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR part 806, subpart E, for the time period specified above:

1. Mars Wrigley Confectionery US, LLC—Elizabethtown Plant, GF Certificate No. GF–201903027, Elizabethtown Borough, Lancaster County, Pa.; Well 6; Reissue Date: September 29, 2026.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: October 7, 2026.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2026–20812 Filed 10–9–26; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket: FAA–2026–11850]

Notice of Availability: Anchorage Terminal Area Airspace and Procedures Study for Review and Comment Period, and Workshop Announcement for the Draft Environmental Assessment

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of Availability (NOA) for the Draft Environmental Assessment; Notice of Public Comment Period and Public Workshops for the Anchorage Terminal Area Airspace and Procedures Study (ATAAPS) Draft Environmental Assessment (DEA) UIN EAXX–021–12–WSC–1768398367.

SUMMARY: The FAA, in cooperation with the United States Air Force, is announcing the public review/comment period and public workshops for the ATAAPS DEA for the proposed Anchorage terminal airspace redesign. ATAAPS involves changes to the airspace, aircraft flight paths, and aircraft altitudes in the Anchorage basin and surrounding areas. The DEA evaluates the potential environmental impacts of the proposed airspace redesign (Proposed Action) and the No Action alternative. The FAA has not made a final decision on any airspace/procedure amendments related to the Proposed Action. A copy of the DEA, appendices, and the Workshop announcements will be posted to the FAA ATAAPS web page at: *https://www.faa.gov/about/office_org/headquarters_offices/ara/alaskan_region/ataaps.*

Early notification of the FAA's intent to prepare a DEA was published in the **Federal Register** on July 16, 2026 (91 FR 43723, FR Doc. 2026–14367).

In accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* and in accordance with FAA Order 1050.1G, *FAA National Environmental Policy Act Implementing Procedures,* the FAA issues this notice that it has prepared a DEA for the ATAAPS project and has made it available for public review and comments.

The ATAAPS Project would improve safety and efficiency of the National Airspace System (NAS) and homeland defense capabilities, by optimizing aircraft arrival and departure procedures that serve multiple airports—specifically in the Anchorage basin and surrounding areas—including: Ted Stevens Anchorage International Airport (ANC), Elmendorf Air Force Base Airport (EDF), Bryant Army Airfield Airport (FRN), Lake Hood Airport (LHD), and Merrill Field Airport (MRI).

As a critical strategic gateway for homeland defense, Joint Base Elmendorf-Richardson (JBER) is currently restricted from operating at its intended capacity and fleet mix until the surrounding airspace is officially modified. The Instrument Landing System (ILS) for Runway 17 is integral to improving JBER operations, but cannot become operational under the current airspace design. (JBER runway designations are currently 16/34 and 06/24; Runway 16/34 will be updated due to Magnetic Variation changes to Runway 17/35 before completion of the Final Rule).

DATES: The public comment period will commence on October 7, 2026, and will close on November 9, 2026. During this time, the FAA will host two virtual community engagement workshops. The first will be held on October 27, 2026, from 1:00 p.m. to 3:00 p.m. Alaska Daylight Time (AKDT), and the second will be held on October 28, 2026, from 5:00 p.m. to 7:00 p.m. Alaska Daylight Time (AKDT). For additional information, please visit the FAA ATAAPS web page for registration, workshop information, and website information. The FAA encourages interested parties to review the DEA and provide written comments during the public comment period. The FAA will accept written comments postmarked no later than November 9, 2026. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

ADDRESSES: If you wish to provide comments on the Proposed Action, please provide them by mail or by email through November 9, 2026, via the following:

Attn: ATAAPS Project Operations Support Group, FAA–ATO Western Service Center, 2200 S 216th St., Des Moines, WA 98198–6547, Email: *9-AJO-ATAAPS-Environmental@faa.gov.*

The DEA is available at the following locations:

- Online at: *https://www.faa.gov/about/office_org/headquarters_offices/ara/alaskan_region/ataaps.*
- Electronic versions of the DEA have been sent to 21 libraries in the general study area (GSA) with a request to make the digital document available to patrons. A complete list of libraries with electronic copies of the DEA is available online at the website link above.
- Those unable to access the DEA through one of these means may email *9-AJO-ATAAPS-Environmental@faa.gov* to request an electronic copy.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Bert, Federal Aviation Administration, Team Manager, Environmental/Community Involvement/NAS Analytics, Operations Support Group, Western Service Center, (206) 231–2233, email: *9-AJO-ATAAPS-Environmental@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

ATAAPS addresses national security concerns as well as air traffic system inefficiencies within the Anchorage basin and surrounding areas. The ATAAPS DEA was prepared pursuant to the National Environmental Policy Act

of 1969. The DEA evaluates the Proposed Action and the No Action alternative. The Proposed Action focuses on airspace optimization for aircraft routes and controlled airspace within the Anchorage basin and surrounding areas. Area navigation (RNAV)-based standard instrument departure (SID) and standard terminal arrival (STAR) procedures have been in effect in the Anchorage basin and surrounding areas for over 20 years. These arrival and departure procedures will be designed with advanced RNAV capabilities and will maintain safety and improve efficiency of the NAS, benefitting pilots, air traffic controllers, and the general public.

The Proposed Action is not anticipated to increase the number of aircraft operations at the study airports or involve the physical construction of any facilities.

The Proposed Action will include the following elements:

• *Updated Airspace Boundaries.* Aircraft operating in the Anchorage basin currently fly within the Anchorage Part 93 airspace in which specific, special air traffic rules are in effect (see 14 CFR part 93, subpart D). These rules address issues like high-density traffic, unique airspace configurations, and limitations related to military operations. The evaluation of airspace in the Anchorage basin also includes Class C and Class D airspace around affected airports. The Proposed Action will modify the boundaries of the special air traffic rules segments, including removing segments, renaming segments, and establishing a new segment. It will also modify the boundaries of the Class C and D areas in the Anchorage Terminal Area. Sub-areas of Class C airspace will be created for ANC, and the overall area of special air traffic rules will be reduced.

• *Updated Departure Routes and/or Fixes From the Study Airports.* Routes and fixes will connect study airports to optimized high-altitude routes using satellite-based RNAV technology.

• *Updated Arrival Routes and/or Fixes Into the Study Airports.* Routes and fixes will connect transitions from high-altitude routes to existing approach procedures for the study airports using advanced RNAV procedures.

The FAA established a General Study Area, wherein proposed procedure changes below 10,000 feet above ground level (AGL) were evaluated for potential environmental impacts. Additionally, the FAA evaluated areas where FAA policy requires special consideration for potential noise impacts—which may include national parks, national wildlife refuges, historic sites and traditional cultural properties—for proposed procedure changes below 18,000 feet AGL. The Proposed Action may include procedure changes at altitudes greater than 18,000 feet AGL (high altitudes) within an approximate 41,725-square mile Study Area; however, these high-altitude changes are considered generally outside the affected environmental study area per FAA Order 1050.1G, *FAA National Environmental Policy Act Implementing Procedures.*

Issued in Des Moines, Washington, on September 29, 2026.

Byron G.Y. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2026–20828 Filed 10–9–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Agency Determination on Waiver With Respect to Land; Indianapolis Downtown Heliport, Indianapolis, Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) considered a proposal to permanently close the Indianapolis Downtown Heliport and change 5.36 acres of land from aeronautical use to non-aeronautical use and to authorize the sale of the heliport property located at the Indianapolis Downtown Heliport (8A4/Heliport), Indianapolis, Indiana. This notice is published pursuant to 49 U.S.C. 46319, *Permanent Closure of an Airport without Providing Sufficient Notice,* and 49 U.S.C. 47107(h)(2), *Public Notice Before Waiver of Aeronautical Land-Use Assurance.* The Indianapolis Airport Authority (IAA/Authority/Sponsor) submitted a request to release the Authority from its Federal Airport Improvement Program (AIP) obligations associated with Indianapolis Downtown Heliport. Upon reconsideration of its initial decision, the FAA has determined the AIP obligations associated with 8A4 will not be released.

DATES: This determination is effective October 13, 2026.

FOR FURTHER INFORMATION CONTACT: Debra L. Bartell, Acting Deputy Director, Airports Division, Great Lakes Region, (847) 294–7272.

SUPPLEMENTARY INFORMATION:

I. Background

Indianapolis Downtown Heliport (8A4) is currently in the National Plan of Integrated Airport Systems (NPIAS) categorized as a heliport. 8A4 is a non-towered facility with helicopter landing area, apron, fuel farm, two hangars, and nonaeronautical facilities. In addition, there is a parking garage below the heliport.

In 1983, FAA announced the National Prototype Demonstration Heliports Program to build full-service heliports in major urban areas to promote the integration of helicopter use into the urban transportation infrastructure, and an application was submitted by IAA. In 1983, the Indiana Department of Transportation (INDOT) included the heliport in the Indianapolis Metropolitan Airport System Plan as a reliever heliport, its federal designation was changed accordingly to ''reliever heliport'' in the NPIAS, a necessary requirement for consideration in the national prototype program. From 1983 to 2020, the Authority accepted AIP grants amounts of $2,476,229 in entitlement grants, $4,211,674 in discretionary, and $20,000 in COVID-Relief for a total of $6,707,903 funds. Of this amount, the Authority accepted approximately $574,900 to acquire approximately 6.3 acres for the heliport. However, between 1984 and 1985, three tracts of land were released totaling 0.937 acres for road changes and utilities. Consequently, the remaining land that is obligated and for which IAA requested a release total is 5.36 acres.

The Authority is also the sponsor of Indianapolis International Airport, Eagle Creek Airpark, Indianapolis Metropolitan Airport, Indianapolis Regional Airport, and Hendricks County Airport. These airports are part of the NPIAS. 8A4 is located near these public use airports.

In letters dated October 27, 2021, and February 11, 2022, IAA sent FAA their request to release the heliport property.

FAA published a Notice of Intent of Waiver With Respect to Land; Indianapolis Downtown Heliport, Indianapolis, IN, 88 FR 8029 (February 7, 2023). In that notice, FAA requested public comments on the proposed permanent closure of 8A4 and change of 5.36 acres of land from aeronautical use to non-aeronautical use and to authorize the sale of all heliport property located at the Heliport. Public comments closed on March 9, 2023. The Notice received 270 comments during the comment period. All comments to the February 7, 2023, notice opposed the proposed closure.

The Authority contended in further correspondence on May 22, 2024, and June 26, 2024, that rehabilitation costs for the Heliport would be significant and as much as $30 to 40 million; there was limited aeronautical activity; the remaining based tenant was in the process of relocating its helicopter operations to an airport; and the Authority committed to building a future vertiport at Indianapolis International Airport, which is an approximately 15-minute drive from the Heliport.

After reviewing information related to the proposed release and closure of 8A4, on November 25, 2024, FAA issued IAA a letter of intent to release all federal obligations and approve permanent heliport closure. *See* FAA Compliance Guidance Letter, 2022–1—The Process for the Release and Permanent Closure of Federally Obligated Airports. (February 2, 2023) Pursuant to 49 U.S.C. 46319 and 47107(h). FAA then published a Notice of Permanent Closure; Indianapolis Downtown Heliport, Indianapolis, Indiana, indicating 8A4 would close on December 15, 2025. 90 FR 51067 (November 14, 2025).

On December 10, 2025, and December 23, 2025, FAA received written requests that FAA reconsider its intent to permit the proposed permanent closure of 8A4 and release and sale of the heliport property.

On January 13, 2026, FAA published a Notice of Intent of Waiver With Respect to Land; Indianapolis Downtown Heliport, Indianapolis, IN, 91 FR 1371, seeking further public comment on the proposed permanent closure and release of the subject heliport property at 8A4 from federal land covenants. The comment period for this notice was scheduled to end on February 12, 2026, and FAA received a request to extend the comment period. FAA published a Notice of Intent of Waiver With Respect to Land; Extension of Comment Period Indianapolis Downtown Heliport, Indianapolis, IN, 91 FR 5797 (February 9, 2026) extending the comment period to February 26, 2026. FAA received and considered a combined total of 737 comments on the January 13, 2026, Notice and February 9, 2026, Extension Notice.

II. Summary of Public Comments

735 public comments were received on *Regulations.gov* and two additional comments were sent directly to FAA. Of the 737 total comment submissions, 41 were in support of permanent closure and release from federal land covenants at 8A4; 686 comments were in support of 8A4 remaining open; eight comments were unclear; one comment was related to FAA process and procedure; and one comment requested an extension of the comment period.

The FAA will consider a release of a sponsor from any airport agreement to the extent that such action has the potential to protect, advance, or benefit the public interest in civil aviation. In all cases, the FAA's prime concern is the benefit to civil aviation and is represented by various considerations. These include the future growth in operations; capacity of the airport; the interests of aeronautical users and service providers; the state aviation agency; the local, regional, and national interest of the airport; and the impact on the airport system (State and national). FAA Compliance Guidance Letter, 2022–1.

The public comments received have been grouped to correspond to the considerations above with comments related to the future growth in operations and capacity of the airport summarized in the Interests of Aeronautical Users and Service Providers; Local, Regional, National Interests of the Heliport; and Impact on the Airport System groupings.

A. Comments Opposing the Proposed Permanent Closure and Release From Federal Land Covenants at 8A4

Commenters opposed to the permanent closure and release from federal land covenants at 8A4 argued that there continues to be a need for and net benefit to civil aviation from the 8A4 facility. Although there were some generic comments in opposition, the majority of the comments can be grouped into one or more of the following areas: net benefit to civil aviation; interests of aeronautical users and service providers; opinion of the state aviation agency; local, regional, and national interests; impact on the airport system; and other concerns.

1. Net Benefit to Civil Aviation

Commenters noted closing 8A4 does not result in a net benefit to civil aviation.

2. Interests of Aeronautical Users and Service Providers

Commenters stated they have used 8A4 in the past and would continue to do so if it remained open, as it is one of the only public-use heliports in Indiana, they further noted the heliport provides centrally located vertical lift access to the downtown Indianapolis area. Commenters stated the facility offers a unique helicopter training opportunity with dedicated helicopter instrument approach procedures and practice operations in a public urban facility. Commenters also stated 8A4 is a valuable part of Indiana's aviation system and that the closure of this facility would have a detrimental impact on the entire state and local community.

A large number of commenters mentioned that 8A4's continued operation is necessary to support public safety operations. They noted that 8A4 is used for emergency medical services when existing hospital heliports are unavailable due to weather, facility congestion or when the facility is not capable of supporting heavier helicopters operations. Commenters also noted that using 8A4 for refueling operations allows their helicopters to be operationally ready for the next movement in less time than flying to a facility located outside the downtown Indianapolis area for fuel. In addition to helicopter emergency medical operations, commenters noted the facility is essential for law enforcement, military training and operations, emergency operations and public safety events, disaster relief, and VIP and government movements to the downtown Indianapolis area.

3. Opinion of the State Aviation Agency

The Attorney General of Indiana submitted a comment that detailed previous communication from the Indiana Department of Transportation objecting to the decommissioning of the heliport. The comment included a letter the Indiana Department of Transportation sent to the Indianapolis Airport Authority dated June 30, 2021, that stated:

> INDOT Office of Aviation concurs that the facility is being under-utilized in its current state. However, the potential for aeronautical use is still valuable to the Indiana State Aviation System Plan, and in accordance with the charge in IC 8–21–1–14, this office recommends development of more alternatives to keep the Indianapolis Heliport in operation to serve the needs of Indiana's flying public. The INDOT Office of Aviation understands the potential for change of sponsorship may not have been considered, but as an alternative to closure of the aviation facility, selling the facility and transferring the sponsorship would still allow the heliport to continue to serve the needs of Hoosiers by maintaining its place in the Indiana State Aviation System.

The comment included further email communications between the Manager of the Indiana Department of Transportation, Office of Aviation and FAA on August 26, 2024, and September 20, 2024, that indicated the Indiana Department of Transportation's Office of Aviation's position remained

the same in recommending the review of other alternatives for the facility.

4. Local, Regional, and National Interests of the Heliport

The Indiana State Police submitted a comment detailing their opposition of the closure and that 8A4 is a critical asset to the Indiana State Police and State of Indiana. They detailed how 8A4 is used by the Indiana State Police during intensive law enforcement operations; how using the facility saves wear and tear on helicopters, saves fuel and saves time; how 8A4 is used to transport the Governor and other dignitaries to and from Indianapolis; and how 8A4 offers unique helicopter training opportunities within the urban core.

The Attorney General of Indiana's comment noted the Indiana National Guard has a dual federal-state mission and the loss of the heliport forecloses an important aviation asset for training purposes and use during times of crisis when needed.

A letter submitted as a comment from Governor Mike Braun, State of Indiana, noted: ''This heliport is critical to both the City of Indianapolis and the State of Indiana as we seek to connect our transit assets to support critical needs of the community as well as future economic development opportunities.''

In addition, Governor Braun stated that he issued Executive Order 25–73 on October 29, 2025, to establish the Indiana Initiative for the Drone Dominance Task Force in support of President Trump's June 6, 2025, Executive Order 14307 (Unleashing American Drone Dominance), which seeks to ''fully integrate'' drone technologies into the National Airspace System and further directs FAA to establish an Electric Vertical Takeoff and Landing (eVTOL) program. Both he and the Indiana Attorney General argue that centrally located, urban infrastructure, like 8A4, is necessary to achieve the goals of these directives.

Commenters also noted that closure of 8A4 would be ill-timed in light of the aviation industry shifting toward Advanced Air Mobility (AAM) operations and the growth of electric vertical takeoff and landing (eVTOL) aircraft operations. Commenters explained that having an existing operational facility, to be used as a vertiport, puts Indianapolis at an advantage to receive this form of mass transit in the community and ensures Indianapolis remains a viable destination for the next generation of air taxis and cargo delivery services. Commenters also noted on January 8, 2026, U.S. Department of Transportation Secretary Sean Duffy and FAA Administrator Bryan Bedford announced Indiana as one of two new UAS test sites and 8A4 could serve as a critical site for drone testing, accelerating advanced aerial mobility, and support urban Beyond Visual Line of Sight (BVLOS) operations.

Many commenters requested that, if IAA's continued sponsorship of the facility is not feasible, the Authority consider alternatives that would allow 8A4 to remain operational, including transferring ownership/sponsorship to another entity, operational partnerships, or alternative funding models. In addition, commenters mention, moving forward, regardless of sponsorship, there should be additional investment in the facility and improvements.

5. Impact on the Airport System

Numerous comments mentioned how 8A4 provides vital transportation infrastructure and is a key facility in Indianapolis and the larger Indiana transportation system. Commenters mentioned its close proximity to the Julia M. Carson Transit Center, facilitating seamless connections between air and ground transit. They also mentioned how the City of Indianapolis was ahead of its time in opening 8A4, and the closure of the facility would be a short-sighted decision that would do more harm than good. Many commenters also noted that once a heliport is closed, it is extremely difficult if not impossible to replace. Heliport construction, they note, requires significant capital investment and time.

6. Other Comments

A number of commenters mentioned how important 8A4 is to the business community and local and regional economic development. They noted many business operators continue to do business in downtown Indianapolis because of the ease of access and time saved by using 8A4 and its location in downtown Indianapolis. Other commenters mentioned how Indianapolis is a premier destination for major sporting events and 8A4 provides a direct, efficient link for users contributing to the sports-based economy, especially during the Indy 500. In addition, commenters add that 8A4 plays an important role in Indianapolis's hospitality and tourism industry.

Comments also noted that 8A4's continued economic viability is evidenced by an offer from an individual user to purchase 8A4.

B. Comments Supporting the Proposed Permanent Closure and Release From Federal Land Covenants at 8A4

Commenters in support of the permanent closure and release from federal obligations at 8A4 included comments that can generally be grouped into one or more of the following areas: net benefit to civil aviation, interests of aeronautical users, impact on the aviation system, and other concerns.

1. Net Benefit to Civil Aviation

IAA submitted a comment and supporting attachments arguing that closing the heliport results in a net benefit to civil aviation because the proceeds from the sale of the Heliport property would be reinvested into the Indianapolis Regional Airport. The proceeds could potentially fund projects including reconstruction of two runways and a taxilane. IAA noted that the Heliport has not been able to cover operating expenses with Heliport revenue resulting in the operations being subsidized by other IAA users. IAA also stated the existing location and configuration of the Heliport would also not likely satisfy vertiport design standards necessary to carry out IAA plans for burgeoning AAM and eVTOL operations. IAA believes that these operations can be more safely accommodated at new or existing infrastructure elsewhere in the IAA Airport System in areas with lower population density and fewer surrounding hazards to air navigation.

2. Interests of Aeronautical Users and Service Providers

Some commenters argued that 8A4 is no longer needed. They noted there are no longer any helicopters based at the facility, with hospitals and public safety agencies already well equipped to handle vertical lift needs without operating at 8A4. The Indianapolis Metropolitan Police Department (IMPD) submitted a comment stating the IMPD does not rely on this heliport for operational or public safety purposes and has no current or anticipated need for the facility. IMPD added that they continue to prioritize advanced technology, including unmanned aerial systems (drones), which are readily available, rapidly deployable, and offer greater operational flexibility. As it relates to future eVTOL/AAM operations, another commenter indicated that the City of Indianapolis should not stunt its current growth for the hypothetical needs of unproven technologies, adding that if and when eVTOL technology becomes a standard, its infrastructure should be integrated

into the city's modern design, not grandfathered into an outdated facility.

3. Impact on the Aviation System

As part of its comment, IAA argued that the Heliport is not needed for emergency management, law enforcement, fueling, hospital helicopter operations, or major event planning. IAA noted the Heliport is not a designated emergency management site for the City of Indianapolis, and that there are multiple other open areas (parking lots, parks) that already serve as staging areas for natural disasters or emergencies and they allege that Indianapolis Metropolitan Police Department no longer owns any helicopters. They state that the ability to fuel helicopters will not be compromised when the Heliport closes. Helicopters will be able to access 24-hour service at Indianapolis International Airport and extended hours at the remaining IAA reliever airports. IAA stated IU Health voluntarily relocated to their new facility at the Indianapolis Regional Airport (MQJ) and that the MQJ facility will provide state-of-the-art critical care transport. IAA also noted that closure of the Heliport will not affect the ability of helicopters to provide access to sites in Indianapolis, and for certain events, such as the Indianapolis 500, because closer airports are able to accommodate helicopter operations. IAA further stated that, beyond the small uptick around the Indianapolis 500, the Heliport is rarely used for event transportation. IAA noted, Indianapolis International Airport is only 15–20 minutes from downtown and provides ready access to popular sporting and business venues and helicopter tour operations also operate out of the Indianapolis Metropolitan Airport.

4. Other Concerns

A number of the commenters in support of permanent closure of 8A4 argued that there are better uses for the parcel on which the heliport is located. They highlighted the importance of the revitalization of this quadrant of downtown Indianapolis and support a focus on community-centered infrastructure. Commenters also noted significant growth in residential development near 8A4. They suggested that the heliport parcel has become prime real estate that should be put back on the tax rolls. While many of the commenters included various options for redevelopment of this parcel, some specifically noted they would prefer pursuing a major league soccer team over continued operation of 8A4. Commenters mentioned Indianapolis should prioritize development of this parcel that produces widespread economic returns. Other comments noted 8A4 benefits a narrow slice of users, largely private helicopter operators and affluent business interests, who can afford chartered air travel. Those commenters argued that 8A4 should be repurposed for a use that better benefits the entire community.

Helicopter safety and noise concerns were raised in some of the comments supporting closure. They noted continued operation of 8A4 is a liability with helicopter operations so close to downtown and the low-altitude flight paths are not compatible with the goal of creating a livable, residential-friendly downtown.

C. Comment Regarding FAA Process and Procedure

One commenter did not take a position on whether 8A4 should remain operational or permanently closed; however, they stated they are concerned about the lack of finality and related uncertainty that reconsideration of a final agency action creates for airports. They noted regulatory certainty and predictability are essential to the airport industry.

III. FAA Analysis

The FAA supports airport development and preservation throughout the United States, as depicted in the NPIAS. Title 49 U.S.C. 47101, *et seq.,* provides for Federal airport financial assistance for the development of public use airports under the Airport Improvement Plan (AIP), established by the Airport and Airway Improvement Act, as amended. Section 47107, *et seq.,* sets forth assurances to which an airport sponsor agrees as a condition of receiving Federal financial assistance. Congress requires the FAA to include specific contractual obligations as a requirement for AIP funding. There are currently 40 such contractual obligations, collectively known as Grant Assurances that airport sponsors agree to fulfill as a condition of receiving an AIP grant.

8A4 is currently in the NPIAS, categorized as a publicly owned, general aviation, unclassified facility. IAA has accepted Federal AIP grants for land acquisition and development at 8A4. In letters IAA sent FAA, dated October 27, 2021, and February 11, 2022, IAA requested FAA authorize the permanent closure of 8A4 and release of IAA from their Federal grant obligations related to the heliport.

FAA published a Notice of Intent of Waiver With Respect to Land; Indianapolis Downtown Heliport, Indianapolis, IN, 88 FR 8029 (February 7, 2023). Based on comments received in response to the February 2023 notice, FAA requested and received additional information from IAA in support of the proposed closure and release of obligations at 8A4.

On November 25, 2024, FAA issued a letter of intent to IAA on the release of all federal obligations and approve permanent heliport closure at 8A4 (Letter of Intent). In accordance with the Letter of Intent, FAA then published a Notice of Permanent Closure; Indianapolis Downtown Heliport, Indianapolis, Indiana, indicating 8A4 would close on December 15, 2025, 90 FR 51067 (November 14, 2025). During the period from November of 2024 to November of 2025, FAA did not issue a final determination releasing IAA of Federal obligations at 8A4.

The written requests for reconsideration FAA received, dated December 10, 2025, and December 23, 2025, and subsequent comments received on the January 13, 2026, and February 12, 2026, **Federal Register** Notices included additional information regarding the net impact of the heliport closure on civil aviation.

Despite a comment to the contrary, FAA, like all federal agencies, has the inherent authority to reconsider its prior determinations. *Scotts Valley Band of Pomo Indians* v. *Burgum,* 808 F.Supp.3d 1, 5 (D.C. Cir. 2025) *citing Albertson* v. *FCC,* 182 F.2d 397, 399 (D.C. Cir. 1950), ''[t]he power to reconsider is inherent in the power to decide.''

To determine whether or not to approve the permanent closure and release of IAA obligations at 8A4 upon reconsideration FAA relies on its own policy, release and closure documentation from IAA, reconsideration request letters and comments FAA received from requests for public comment in the **Federal Register**.

The FAA will act on an airport sponsor's request for release and closure only to the extent that such action will benefit the public interest in civil aviation within the specific authority conferred upon the Associate Administrator for Airports by law. FAA Compliance Guidance Letter, 2022–1.

FAA's primary concern is the benefit to civil aviation and is represented by various considerations. Major considerations in the analysis of a release request include but are not limited to: the reasonableness and practicality of the sponsor's request; the disposition and effect of the request on all airport assets; the net benefit to civil aviation; the compatibility of the proposal with the needs of civil

aviation; the existing airport being in a safe and operable condition; and the state aeronautical agency's recommendation on the sponsor's request. FAA Compliance Guidance Letter, 2022–1.

A. Reasonableness and Practicality of the Sponsor's Request

When evaluating a request for release and closure, the FAA will consider the reasonableness and practicality of the sponsor's request in light of the necessity to maintain sufficient aeronautical facilities in the NPIAS and the role of the airport in the NPIAS. As part of this evaluation, FAA weighs the airport sponsor's rationale to request release and closure against the broader public interest in civil aviation.

In 2021, IAA cited declining use of the Heliport as part of their reason to request closure. They detailed that overall helicopter operations had declined and that the sole remaining based heliport tenant, IU Health, had relocated to Indianapolis Regional Airport (MQJ). In IAA's February 26, 2026, comment submitted to the **Federal Register**, IAA indicated that, excluding IU Health's operations, there were only 447 operations at the Heliport for all of 2025 and with IU Health's recent move to Indianapolis Regional Airport is left with nominal operations. IAA claimed ''[t]he Heliport is expensive to operate and has not been financially self-sufficient for quite some time.'', indicating ''[f]or the last five years, there has been an average shortfall of 16.5% between operating expenses and revenue, which deficiency the IAA must cover by syphoning revenue from other airports within the IAA system.'' IAA further stated ''Heliport operations are currently subsidized by other IAA users, and in order to limit financial losses to the IAA, the Heliport has only operated for minimal hours during the day. To keep the Heliport open and operate it at a loss for no known tenants makes no financial sense and disadvantages civil aviation.''

Some commenters opposed to the closure asserted that helicopter operations and heliport use declined not due to lack of demand, but because of sponsor neglect of the facilities and the sponsor not adequately promoting and marketing 8A4. Others questioned the reasoning for 8A4's closure request and that it may have been driven by local politics and investors seeking a non-aeronautical property more than by reduced aeronautical demand. Commenters questioned why 8A4 should close when there is a private party willing to purchase the heliport, operate it for public use and potentially invest in additional aeronautical development of the facility.

In Indiana Helicopters', LLC d/b/a Sweet Helicopters (Sweet Helicopters), February 26, 2026, comment submitted to the **Federal Register**, they indicated that Sweet Helicopters made offers to purchase the Heliport as early as December 2021 and on October 16, 2025, sent a ''firm offer to the Authority's board offering to purchase the Heliport for $15 million and keep it operational as a heliport, attaching a signed draft purchase agreement as a show of our good faith and commitment.'' In addition to committing to purchase the Heliport and keeping it operational, Sweet Helicopters also indicated they are committed to making the necessary investments. Sweet Helicopters further stated ''The Authority's goal is, as it always has been, to close the Heliport by any means necessary and sell the land to the City of Indianapolis (the ''City'') for the stadium project. The existence of a superior alternative offer that would keep the Heliport open and restore its operational capacity—such as the offer that Sweet Helicopters has extended—is actively counterproductive to the Authority's true purposes, which explains why the Authority has so steadfastly refused to engage with Sweet Helicopters.''

When reviewing operational use of 8A4 to determine whether it is a reasonable consideration for closure, FAA confirms that operations at 8A4 have declined. IAA's February 26, 2026, comment detailed:

> Despite hope that the Heliport would facilitate direct transportation by helicopters downtown for medical, emergency, business, and special event operations, the Heliport was never fully adopted by the public. Operations peaked in 1992 with 5,300 operations, decreasing to 1,696 in 2019 (about 4.5 landings or departures a day). In 2025, the Heliport's sole based user, IU Health relocated to MQJ. Excluding IU Health's operations, there were only 447 operations for all of 2025. For a period of time, the Heliport also served three news stations which accounted for two to four daily operations, but those news helicopter operations were replaced by drones years ago. With IU Health's recent move to a new, first-class facility at MQJ, the Heliport is left with nominal operations. The Heliport has also been underutilized for special events. While there is a small uptick in operations in May, likely due to the Indianapolis 500, special events in the Indianapolis area have not driven a sustained increase in operations.

There also were additional comments received that indicated the Heliport is no longer needed as prior heliport users have moved to other facilities or have moved away from helicopter operations to more advanced technologies, including drone operations.

However, the majority of the commenters provided comments in support of the Heliport remaining open and available for public use and indicated the facility is needed for helicopter, eVTOL, and AAM operations. The result is a disconnect between comments that discussed the most recent Helicopter operations numbers and the comment that expressed an existing and future need for Helicopter operations at 8A4.

While FAA considers current operations as part of determining the reasonableness of a proposed closure, there is no specified operational requirement that would define whether closing an obligated facility is reasonable. Every request FAA receives to close an obligated facility has unique factors to consider based on circumstances at that facility and location. Although operations at the Heliport have declined, FAA does find that the number of existing operations in 2025, unrelated to IU Health operations, and comment supporting future operations, especially related to the future eVTOL/AAM, persuasive. Even if comments about the future eVTOL/AAM operations are speculative, in this case, and consistent with its guidance, FAA weighs future growth heavily when considering the net benefit to civil aviation. See FAA Compliance Guidance Letter 2022–1.

Before issuing the November 25, 2024, Letter of Intent, the FAA was not aware of any interest by another public or private entity willing to acquire 8A4 and maintain the facility as a public use heliport in the NPIAS. FAA will not opine on practicality or feasibility of the Sweet Helicopters offer to purchase 8A4 in this notice. However, FAA does find Sweet Helicopters' offer persuasive in its analysis of the reasonableness and practicability of maintaining and operating 8A4 as a heliport. The FAA will give weight to this new information, namely that a private entity believes there to be enough value in the continued public use availability of 8A4 that they submitted an offer, in excess of the appraised fair market value, to purchase 8A4.

B. Disposition and Effect of the Request on All Airport Assets

When evaluating a request for release and closure, FAA considers the disposition and effect of all airport assets before a release and closure is approved. FAA analyzes this consideration in requests to close obligated facilities to ensure that all airport assets, including airport revenue

accounts and personal property, as subject to Federal obligations, and unamortized AIP grants are accounted for. Although a request for closure may be denied if it fails to address the disposition of property FAA generally does not view an adequate description of the disposition of property as a justification to permanently close a facility and release a sponsor of their grant assurance Federal obligations. As part of IAA's request and subsequent correspondence with FAA, IAA detailed the proposed plan for all heliport assets including the unamortized portion of prior AIP grants, fuel tanks, snow equipment, and Automated Weather Observing Systems (AWOS).

In the Letter of Intent, FAA detailed that IAA would invest the total funds from the sale of the Heliport and the unamortized portion of prior AIP grants into Indianapolis Regional Airport (MQJ) and transfer all heliport and aviation-related equipment at 8A4 owned by the Authority that FAA determined to be salvageable for use at other airports. FAA initially found IAA's intent to transfer all assets to Indianapolis Regional Airport an acceptable disposition plan for all the Heliport's assets and unamortized portions of prior AIP grants. However, FAA does not rely on this planned disposition of assets alone when determining whether to approve release and closure of a facility.

C. The Net Benefit to Civil Aviation and Compatibility of the Proposal With the Needs of Civil Aviation

When evaluating a request for release and closure, the FAA will also assess the net benefit to civil aviation and the compatibility of the proposal with the needs of civil aviation. Before FAA can evaluate the net benefit to civil aviation, it must first review the compatibility of the proposal with the needs of civil aviation.

1. Compatibility of the Proposal With the Needs of Civil Aviation

Comments regarding the needs of civil aviation can largely be broken down into two groups: comments on whether 8A4 will contribute to the future needs of aviation, in emerging industries; and comments on whether or not the Heliport is required to fulfill current law enforcement and emergency response needs.

Commenters supporting the permanent closure and release of 8A4 provided information arguing that the Heliport is unnecessary for civil aviation. They suggested that all vertical lift operations can be accommodated at other existing facilities, including other airports within the Indianapolis area, and that 8A4 is not appropriate for future AAM and eVTOL operations that may be considered necessary for the future of civil aviation.

The commenters opposed to the permanent Heliport closure argued that 8A4 should remain open and operational for existing and future users of the facility, emergency helicopter operations, public emergency operations, helicopter training opportunities, fueling operations, access to the downtown Indianapolis area, and future AAM and eVTOL operations.

Aerospace industry groups submitted comments advocating for continued operation of the Heliport for AAM and eVTOL operations. One commenter noted there are several reasons to keep the Heliport open including its location in a busy area near transit hubs, making it easy for passengers to access; using the Heliport as a base for a vertiport enables quick adaptation and avoids the lengthy planning, zoning, and construction process required for new sites; using the Heliport is more affordable than building new vertiport sites in downtown Indianapolis; and the Heliport offers a unique setting for early eVTOL operations, making it easier to move from traditional helicopters to eVTOL aircraft.

Commenters also focused on the aviation needs of law enforcement and emergency responders. Law enforcement comments were received from the Indianapolis Metropolitan Police Department (IMPD) and the Indiana State Police. The IMPD stated ''IMPD does not rely on this heliport for operational or public safety purposes and has no current or anticipated need for the facility. We continue to prioritize advanced technology, including unmanned aerial systems (drones), which are readily available, rapidly deployable, and offer greater operational flexibility. These capabilities provide faster response times and enhanced situational awareness without the need for a fixed aviation facility.''

However, other State entities indicated that the Heliport is an important transportation asset and urged the FAA not to close the Heliport. The Indiana State Police (ISP) has used the Heliport to support its operations in a variety of ways including supporting intensive law enforcement operations; using 8A4 over other regional helipads to prioritize saving time and resources; transportation of the governor and dignitaries; and unique training opportunities. ISP stated ''Access control has always been an issue and the heliport has never been actively managed as a critical transportation infrastructure asset. ISP believes that if ran well and properly resourced, the heliport would be a highly used and valuable asset for the State.'' The Attorney General of Indiana's, February 26, 2026, comment stated ''The Indiana National Guard (INNG) has a dual federal-state mission . . . The distribution of soldiers, equipment and facilities across the state allows the National Guard to respond quickly and efficiently to emergencies statewide. The loss of the heliport forecloses an important aviation asset for training purposes, not to mention its use during times of crisis when needed.''

FAA received comments from Helicopter emergency medical services. Specifically, Indianapolis Emergency Medical Services (IEMS) commented ''[a]fter a thorough assessment of our current operational needs and the landscape of emergency medical services in Marion County, it is the position of IEMS that the downtown heliport is no longer a necessary component of our city's public safety or emergency response infrastructure.'' Indianapolis Emergency Medical Services referenced Self-Sustaining Trauma Infrastructure, Zero Operational Reliance, and Public Safety Efficiency as factors central to their assessment. It noted that every major trauma center in Indianapolis is equipped with dedicated, onsite heliports; it does not utilize the downtown heliport for patient care, ground-to-air transfers, or staging; and modernizing their urban footprint allows them to focus resources where they are most effective. Indianapolis Emergency Medical Services further stated, ''Because our hospitals have integrated aeromedical access directly into their campuses, the standalone downtown heliport has become a redundant asset in the context of emergency medicine.''

FAA received other Helicopter emergency medical service comments indicating that 8A4 is not necessary for their operations citing the relocation of IU Health to a state of the art facility at Indianapolis Regional Airport. Alternatively, other commenters, primarily from the Helicopter emergency medical service profession, pointed out the continued ongoing need for a downtown heliport with fueling services. They indicated 8A4 is necessary to ensure the expeditious transport of patients, accommodate aircraft when weight limitations and occupancy limits of downtown hospital helipads are an issue, and ensure efficiency in returning helicopters to operational readiness after completing a patient transport.

Specifically, a comment received from an individual stated ''[a]s a flight nurse I have already witnessed the consequences of not having this heliport. Parkview Samaritan is being forced to land at Indy Regional with all critical patients being flown in IU hospitals. This is a 30 min drive away. Adding 45–60 min of out of hospital time to critical patients. We must wait at the airport for an ambulance that is never available when we land. Lack of EMS services and distance from downtown makes this transport lengthy and dangerous for our patients.''

IAA remains strongly in favor of closure and continued to argue, in their February 26, 2026, comment, that the Heliport is not needed for emergency management, law enforcement, fueling, hospital helicopter operations, or major event planning and is not able to cover operating expenses:

> Nothing in the letters from Sweet Helicopters and the Attorney General of Indiana justifies reconsideration, much less a different result. Significantly, neither letter provides data or analysis that could support keeping the Heliport open. For example, the Sweet Helicopter letter states that the Heliport is ''well positioned to be at the forefront of AAM and eVTOL'' without including any data or evaluation of whether the location could be realistically converted to a vertiport for these operations. The letter also takes a narrow look at only the Heliport's operations without taking into consideration the other Heliports and airports in the area and how the Heliport fits into the larger aviation ecosystem. All of these factors were carefully considered by the FAA, which found them to be insufficient to justify keeping the Heliport open.

The comments FAA received reflect diverging opinions on whether permanent closure and release of the Indianapolis Downtown Heliport would be compatible with the needs of civil aviation. State, municipal, helicopter emergency medical service organizations, and business entities, as well as individuals, submitted comments that described how the Indianapolis Downtown Heliport is an essential part of operations for some of them and how for others, it is not needed at all. Although some entities and individuals have moved away from using the Indianapolis Downtown Heliport by utilizing other airport facilities or substituting helicopters for drone technology that doesn't require a dedicated heliport, there were a significant number of comments that detailed how the Indianapolis Downtown Heliport is still needed in their operations. Moreover, as discussed in subsection C.2., FAA has determined that preserving existing aviation infrastructure is the best way to enable rapid advancement of eVTOL and AAM operations while FAA continues to develop guidance for updating vertiports for such uses. FAA weighs comments that indicate continued need for the facility that has received federal funds more heavily in determining whether or not closure of a facility yields a net benefit to civil aviation.

2. Net Benefit to Civil Aviation

The FAA received general statements from commenters regarding the net benefit to civil aviation in keeping 8A4 open and operational and in closing 8A4 and using the sale proceeds at other IAA airports.

In its November 25, 2024, Letter of Intent, FAA, in accordance with its policies at the time, agreed with IAA. FAA initially found that the net benefit to civil aviation from IAA's contribution of the total funds from the sale of 8A4 for use at Indianapolis Regional Airport would outweigh the benefit of 8A4's continued operation. FAA relied on IAA's argument that proceeds from 8A4's sale would offer other IAA airports additional financial support, a source for aeronautical capital or operational expenses, and aid in their financial self-sustainability.

The February 26, 2026, comment IAA submitted to the **Federal Register**, stated ''The FAA should again conclude that closure of the Heliport results in a net benefit to civil aviation.'' IAA also stated in their comment, ''To Keep the Heliport open and operate it at a loss for no known tenants makes no financial sense and disadvantages civil aviation.''

Sweet Helicopters February 26, 2026, comment suggested that 8A4 could still contribute to the net benefit to and needs of civil aviation by staying open:

> [T]he closure of the Heliport cannot be a benefit to civil aviation when: (1) there is demonstrated demand, (2) Sweet Helicopters has firmly committed to purchasing the Heliport, keeping it operational, and making the necessary investments, and (3) where the superior sale price could be used to further support airports within the Authority's jurisdiction.

Since the November 25, 2024, Letter of Intent was issued, FAA both received new information and implemented new policies affecting its determination regarding the net benefit to and needs of civil aviation. The Department of Transportation and FAA now prioritize advancing AAM and eVTOL operations in the U.S. On September 12, 2025, U.S. Transportation Secretary Sean P. Duffy announced a new pilot program within the FAA to accelerate the deployment of advanced air mobility (AAM) vehicles. The pilot program, known as the Electric Vertical Takeoff and Landing Integration Pilot Program (eIPP), will form public-private partnerships with State and local government entities and private sector companies to develop new frameworks and regulations for enabling safe operations. Under President Trump's direction, the FAA introduced the eIPP to accelerate the safe deployment of AAM vehicles in the National Airspace System. FAA Administrator Bryan Bedford stated, ''This pilot program gives us another opportunity to advance the Administration's plan to accelerate safe eVTOL and advanced air mobility operations across the United States.''

In addition, on December 17, 2025, the Department of Transportation promulgated a new Advanced Air Mobility National Strategy: A Bold Policy Vision for 2026–2036 (Strategy). Under this Strategy, the Federal Government will lead a nationwide effort to accelerate the development and deployment of AAM technologies throughout the United States. The strategy seeks to align policies and programs behind this policy priority, while also providing leadership and support for State, local, Tribal, and territorial (SLTT) governments, for which new AAM transportation options could provide substantial benefits. The strategy emphasizes safety, security, national defense, and economic competitiveness, and expanding jobs and opportunities.

By contrast, IAA's February 26, 2026, comment stated: ''The existing location and configuration of the Heliport would also not likely satisfy vertiport design standards. Indeed, as IAA plans for burgeoning Advanced Air Mobility (''AAM'') and electric vertical takeoff and landing (''eVTOL'') operations, it believes that these operations can be more safely accommodated at new or existing infrastructure elsewhere in the IAA Airport System, with less population density and surrounding hazards to air navigation.''

FAA notes that it is FAA, not local or state authorities (or local airport sponsors), that acts as the final arbiter of aviation safety—whether it be regarding the safety of traditional heliport operations or those involving AAM and eVTOL. FAA anticipates AAM operations will leverage existing infrastructure like airports and heliports (with modifications) in addition to new facilities, such as vertiports, to accommodate these growing operations. As a result, FAA has made it a policy to prioritize and save aviation infrastructure and facilities to support AAM and eVTOL operations. IAA's assertion the Heliport ''would not likely satisfy vertiport design standards''

reflects a misunderstanding of the relevant FAA guidance.

FAA Advisory Circular 150/5390–2D, *Heliport Design,* states:

> The FAA is developing guidance for vertiports that would be intended for VTOL and/or unmanned aircraft. Until that guidance is published, entities developing operating sites for new aircraft entrants are encouraged to work with the FAA Office of Airports and Flight Standards on applicable design, operational, and safety criteria tailored to the performance of aircraft which intend to operate at those facilities.

Supplemental FAA guidance Engineering Brief (EB) # 105A, *Vertiport Design, Supplemental Guidance to Advisory Circular 150/5390–2D, Heliport Design,* states:

> At this time, the Federal Aviation Administration (FAA) is still collecting validated VTOL aircraft operational data and is transitioning from a prescriptive approach to a performance-based design approach with the recommendations in this EB. This EB is a living document that serves as the FAA's standards and guidance. An AC will be developed to adapt and address new aircraft and technology as performance data is received. This EB will be cancelled concurrent with the publication of the AC.

FAA has repeatedly stressed that eVTOL and AAM facility requirements are rapidly evolving. Against this backdrop of innovation, FAA has determined that preserving existing infrastructure is the best way to enable rapid advancement of eVTOL and AAM operations.

FAA's prime concern is the net benefit to civil aviation. FAA's November 25, 2024, Letter of Intent, relied heavily on the financial aspects of closure of the Heliport and the corresponding sale with the proceeds being reinvested into the airspace system to fund improvements at Indianapolis Regional Airport and the overall reduction in operations at the Heliport. The FAA has since received new information, namely that a private entity, Sweet Helicopters, is willing to purchase the Heliport and continue operating it as a heliport.

Moreover, FAA policy has changed since 2024, and places priority on maintaining existing facilities, like the Indianapolis Downtown Heliport, for use by AAM and eVTOL operators. FAA now heavily weighs the net benefit to civil aviation with the new policy directive to preserve aviation infrastructure to advance the Administration's larger plan to accelerate safe eVTOL and AAM operations across the United States over the proceeds of a sale being reinvested into the airspace system through improvements at Indianapolis Regional Airport.

D. The Existing Airport Being in a Safe and Operable Condition

When evaluating a request for release and closure, FAA will consider whether the existing facility is being operated in a safe and operable condition. Compliance Guidance Letter 2022–1 states ''A sponsor may not allow an airport to fall into disrepair while considering closure or awaiting a decision on a closure request.''

FAA received comments indicating IAA did not invest in or properly promote 8A4 resulting in declining activities. On commenter stated: ''It doesn't appear that the airport authority has taken any action to promote the use of the heliport. Quite the contrary, it seems that it has done whatever it can to ensure the closure of the heliport.'' Another commenter stated: ''[8A4's] demise really began around 2015 when the dedicated heliport staff started to disappear. The front counter was completely emptied and endless phone calls would go unanswered. By 2019, the street level doors permanently locked and the ramp side doors were programed to automatically lock at the end of each business day and weekends. Only a handful of pre-approved operators were privileged to have entry key cards.''

IAA has identified a number of facility improvements that would be required if the Heliport is to stay open, requiring significant investment that would likely amount to $30 to $40 million.

FAA did not, in its initial determination find that IAA had allowed the Heliport to fall into disrepair. Such maintenance, however, does not necessarily mean that closure of the Heliport would result in a net benefit to civil aviation. The FAA merely requires an airport be in safe and operable condition to prevent sponsors from attempting to force closure approval due to disrepair.

E. State Aeronautical Agency's Recommendation on the Sponsor's Request

When evaluating a request for release and closure, the FAA will also take into consideration the state aeronautical agency's recommendation on the sponsor's request.

The Indiana Department of Transportation, Office of Aviation issued a letter to the Authority on June 30, 2021, that stated:

> INDOT Office of Aviation concurs that the facility is being under-utilized in its current state. However, the potential for aeronautical use is still valuable to the Indiana State Aviation System Plan, and in accordance with the charge in IC 8–21–1–14, this office recommends development of more alternatives to keep the Indianapolis Heliport in operation to serve the needs of Indiana's flying public. The INDOT Office of Aviation understands the potential for change of sponsorship may not have been considered, but as an alternative to closure of the aviation facility, selling the facility and transferring the sponsorship would still allow the heliport to continue to serve the needs of Hoosiers by maintaining its place in the Indiana State Aviation System.

In further email communications between the Manager of the Indiana Department of Transportation, Office of Aviation and FAA on August 26, 2024, and September 20, 2024, they indicated their position remains the same in recommending the review of other alternatives for the facility.

One of FAA's major considerations of closing an obligated facility includes the state aeronautical agency's recommendation on the sponsor's request. Indiana Department of Transportation, Office of Aviation, recommended alternatives to closure be pursued that would allow the Heliport to continue to serve the needs of Indiana by maintaining its place in the Indiana State Aviation System. In addition, FAA notes that it has considered comments by the Governor, Attorney General, and Indiana State Police, which clearly objected to the permanent closure of the facility and release of heliport property at 8A4 from federal land covenants, as part of the factor considering the net benefit to civil aviation and compatibility of the proposal with the needs of civil aviation.

F. Other Considerations

Some commenters supporting closure also noted that permanent closure and repurposing of the Heliport property would offer greater economic benefits to the City of Indianapolis and the region as a whole.

FAA acknowledges those comments that suggested both the City of Indianapolis and the region would derive greater economic benefit from a non-aeronautical use of the Heliport property. However, those arguments are not necessarily persuasive and are not dispositive in release and closure determinations:

> Only benefits to aviation may be cited as justification for the release, whether tangible or intangible. The nonaviation interest of the sponsor or the local community—such as making land available for economic development or increased tax revenues—does not constitute a benefit that can be considered in justifying a release and disposal of the airport.

FAA Compliance Guidance Letter, 2022–1.

IV. Conclusion

FAA reviewed all comments received on the **Federal Register** Notices seeking public comments on the proposed permanent closure and release of land covenant at 8A4; correspondence from the State of Indiana; and all documentation provided by the Authority. After review of this information and for the reasons described above, FAA has determined the AIP obligations at the Indianapolis Downtown Heliport will not be released and directs the Authority to make the Heliport available for public use. FAA relies on new information received from commenters and notes that its own recent policy directives change its analysis regarding closure and release. FAA withdraws the Notice of Permanent Closure; Indianapolis Downtown Heliport, Indianapolis, Indiana, 90 FR 51067 (November 14, 2025), and rescinds the November 25, 2024, Letter of Intent sent to IAA.

Christopher S. Kelly,

Associate Administrator for Airports.

[FR Doc. 2026–20859 Filed 10–9–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway: Topsham, Maine

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review.

SUMMARY: The FHWA, on behalf of Maine Department of Transportation (MaineDOT), is issuing this notice to announce actions taken by MaineDOT and other relevant Federal agencies that are final agency actions. The actions relate to the proposed Highway Widening project on Route 196 located in Topsham, Sagadahoc County, State of Maine. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of MaineDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 12, 2027. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

For FHWA: Hank Rettinger, Division Administrator, U.S. Department of Transportation, Federal Highway Administration, Maine, 40 Western Avenue, Room 614, Augusta, ME 04330; telephone: 207–512–4911; email: *henry.rettinger@dot.gov.*

For MAINEDOT: Kristen Chamberlain, NEPA Manager, Maine Department of Transportation, 24 Child Street, Augusta, ME 04330; telephone: 207–557–5089; email: *Kristen.Chamberlain@maine.gov.*

SUPPLEMENTARY INFORMATION: Effective October 9, 2024, the FHWA assigned and MaineDOT assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 326. Notice is hereby given that MaineDOT and other relevant Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of Maine: Widening of Brunswick-Topsham Bypass (Route 196) between Main Street and Bypass Drive in Topsham, from the existing single travel lane in each direction to two thru travel lanes in each direction. Federal Project Number: STP–27116.00.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in Categorical Exclusion approved on May 19, 2026, and in other documents in the FHWA project records. The Categorical Exclusion and other project records are available by contacting FHWA at the address provided above.

This notice applies to all Federal agency decisions that are final as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671q].

3. *Noise:* Noise Control Act of 1972 [42 U.S.C. 4901–4918].

4. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303; 23 U.S.C. 138].

5. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Marine Mammal Protection Act [16 U.S.C. 1361–1423h]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667d]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470f]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470aa-470mm]; Archeological and Historic Preservation Act [16 U.S.C. 469–469c]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

7. *Social and Economic:* American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

8. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1387]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act, [16 U.S.C. 3901, 3921]; Wetlands Mitigation [23 U.S.C. 119(g) and 133(b)(14)]; Flood Disaster Protection Act, 42 U.S.C. 4012a, 4106].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 11593 Protection and Enhancement of the Cultural Environment; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

Henry P. Rettinger IV,

Maine Division Administrator, Federal Highway Administration.

[FR Doc. 2026–20787 Filed 10–9–26; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activities; Comment Request Relating to Lien Agreement Notice of Election of and Agreement to Special Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Information Collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the IRS is inviting comments on the information collection request outlined in this notice.

DATES: Written comments should be received on or before December 14, 2026 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or

by email to *pra.comments@irs.gov.* Include ''OMB Control No. 1545–0757'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, 202–317–6009.

SUPPLEMENTARY INFORMATION: The IRS, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the IRS assess the impact and minimize the burden of its information collection requirements. 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, and viewable on relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Title: Comment Request Relating to Lien Agreement Notice of Election of and Agreement To Special Lien.

OMB Control Number: 1545–0757.

Form Number: 13925.

Abstract: Section 6324A of the Code permits an executor of a decedent's estate to elect a lien on section 6166 property in favor of the United States in lieu of a bond or other personal liability if an election under section 6166 or 6166A. Form 13925 is used to provide valuation information annually each year thereafter until the estate tax is collected in full.

Current Actions: There is no change to the previously approved information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Responses: 500.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 500.

Dated: October 8, 2026.

LaNita Van Dyke,

Tax Analyst.

[FR Doc. 2026–20832 Filed 10–9–26; 8:45 am]

BILLING CODE 4831–GV–P

FEDERAL REGISTER

Vol. 91 Tuesday,

No. 196 October 13, 2026

Part II

Department of Health and Human Services

Food and Drug Administration

21 Parts 130, 131, 133, et al.

Use of Salt Substitutes To Reduce the Sodium Content in Standardized Foods; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 130, 131, 133, 136, 137, 139, 145, 150, 155, 156, 158, 161, 163, 166, 168, and 169

[Docket No. FDA–2022–N–2226]

RIN 0910–AI72

Use of Salt Substitutes To Reduce the Sodium Content in Standardized Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is issuing a final rule to amend our standard of identity regulations that specify salt (sodium chloride) as a required or optional ingredient to permit the use of salt substitutes in standardized foods, to reduce the sodium content. Reducing sodium may help reduce the risk of hypertension, a major risk factor for heart disease and stroke. The rule will help support a healthier food supply by providing flexibility to facilitate industry innovation in the production of standardized foods lower in sodium while maintaining the basic nature and essential characteristics of the foods.

DATES: This rule is effective December 14, 2026. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of December 14, 2026. Submit either electronic or written/paper objections or requests for a hearing on amendments to standards of identity for dairy products in parts 131 and 133 (21 CFR parts 131 and 133) under this final rule by November 12, 2026. See section VI for further information on the filing of objections on amendments to standards of identity for dairy products in parts 131 and 133.

ADDRESSES: You may submit objections and requests for a hearing on amendments to standards of identity for dairy products in parts 131 and 133 as follows. Please note that late, untimely filed objections will not be considered. Electronic objections must be submitted on or before November 12, 2026. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 12, 2026. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic objections the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your objection, that information will be posted on *https://www.regulations.gov.*
- If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper objections submitted to the Dockets Management Staff, FDA will post your objection, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–2226 for ''Use of Salt Substitutes To Reduce the Sodium Content in Standardized Foods.'' Received objections, those filed in a timely manner (see (**ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit an objection with confidential information that you do not wish to be made publicly available, submit your objection only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of objections. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your objection and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Andrew Yeung and Rumana Yasmeen, Office of Nutrition and Food Labeling, Human Foods Program (HFS–800), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371; or Holli Kubicki, Office of Regulations and International Programs, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Final Rule

The final rule amends FDA's definitions and standards of identity (SOI; the acronym is used to refer to both the singular ''standard of identity'' and the plural ''standards of identity'') that specify salt (sodium chloride) as a required or optional ingredient in a food. Foods for which FDA has established SOI are referred to as ''standardized foods.'' The amendments permit the use of safe and suitable salt substitutes to replace some or all of the added salt used in the manufacture of standardized foods. (Salt substitutes may already be used in the manufacture of non-standardized foods.) The final rule does not list specific salt substitutes; instead, the final rule generally allows ingredients or combinations of ingredients to be used as salt substitutes in standardized foods by manufacturers currently or in the future.

The final rule supports efforts to reduce sodium content in standardized foods and may help to improve consumer dietary patterns by reducing sodium consumption. According to the Dietary Guidelines for Americans, the general population, ages 14 and above, should consume less than 2,300 milligrams per day of sodium (Ref. 1). Reducing sodium consumption may help reduce the risk of hypertension, a major risk factor for heart disease and stroke. The final rule provides manufacturers the flexibility to use safe and suitable salt substitutes and allows for innovation in producing healthier standardized foods. The final rule also promotes honesty and fair dealing in the interest of consumers and accommodates their preferences for lower-sodium varieties of foods.

B. Summary of the Major Provisions of the Final Rule

FDA is amending its SOI that specify salt as a required or optional ingredient to permit the use of safe and suitable salt substitutes in standardized foods, to reduce the sodium content. We are amending our regulation titled ''Food Standards: General'' (part 130 (21 CFR part 130)) to create a new subpart C titled ''Flexibility in Standardized Foods'' and add a new section titled ''Ingredient Flexibility in Standardized Foods'' to define salt substitute. We also amend 80 SOI to permit salt substitutes.

Within the 80 SOI we are amending, we are also updating the incorporation by reference (IBR) information to refer to the most recent versions of the IBR materials available at the time of publication and to provide updated contact information for obtaining the IBR materials. For example, the rule updates the referenced methods of analysis to those in the ''Official Methods of Analysis of AOAC INTERNATIONAL,'' 22nd Ed., 2023. We also make technical amendments to correct inconsistencies and typographical errors in some SOI regulations.

We conclude that these amendments are necessary to modernize SOI to provide flexibility and facilitate innovation in the production of standardized foods with less sodium, and to promote honesty and fair dealing in the interest of consumers.

C. Legal Authority

We are issuing this rule under sections 201, 401, 402, and 701 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321, 341, 342, and 371). We discuss our legal authority in greater detail in section IV.

D. Costs and Benefits

There are no regulatory costs of the final rule as there are no regulatory requirements or regulatory penalties if manufacturers of a standardized food choose not to take advantage of the flexibility to use salt substitutes. We qualitatively discuss other costs that may come from voluntary reformulation and re-labeling costs, as well as potential consumer dissatisfaction with altered product properties. We qualitatively discuss the benefits of the final rule, which come in the form of increased flexibility for manufacturers and potential public health benefits stemming from decreased sodium consumption.

II. Table of Abbreviations/Acronyms in This Document

Abbreviation/ acronym	What it means
CFR	Code of Federal Regulations.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FDA	Food and Drug Administration.
FR	**Federal Register**.
GRAS	Generally Recognized as Safe.
IBR	Incorporation by Reference.
SOI	Standard(s) of Identity.
U.S.C	United States Code.

III. Background

A. Need for the Regulation/History of the Rulemaking

In the **Federal Register** of April 10, 2023 (88 FR 21148), we published a proposed rule titled ''Use of Salt Substitutes To Reduce the Sodium Content in Standardized Foods.''

Salt substitutes are ingredients that can help reduce sodium in processed, packaged, and prepared foods. Manufacturers wishing to reduce salt in their products to accommodate consumer preferences or for other reasons sometimes use substitute ingredients that provide similar taste and other technical functions of salt in foods. Most of our SOI that include salt as a required or optional ingredient do not permit the use of salt substitutes. Therefore, manufacturers are currently precluded from using salt substitutes in the production of these standardized foods. However, manufacturers may use salt substitutes in the production of non-standardized foods.

SOI have been established to ensure that the characteristics, ingredients, and production processes of specific foods are consistent with what consumers expect. Various parties have expressed concern that many SOI are out of date and may impede innovation, including the ability to produce healthier foods (Ref. 2). FDA's work to update SOI generally falls into three categories:

- Establishing principles to more transparently communicate what we will consider when determining whether to revise, eliminate, or establish a food standard;
- Updating individual SOI to allow for continued innovation in the marketplace, including updating SOI to reflect modern technologies and processing methods; and
- Updating SOI to ensure they are supporting the production and innovation of healthier food.

See *https://www.fda.gov/food/nutrition-food-labeling-and-critical-foods/standards-identity-food.*

Manufacturers seeking to reduce sodium in standardized foods are limited because they are unable to produce foods using salt substitutes and still conform to the SOI. While manufacturers may modify the sodium content of certain standardized foods using salt substitutes in accordance with the general definition and standard under § 130.10, they must decrease the sodium in the foods consistent with the amount specified in a nutrient content claim under § 101.61 (21 CFR 101.61). It may be impracticable for manufacturers to reduce sodium content of standardized foods to these amounts.

We heard support from interested parties for the use of salt substitutes through our related work to help reduce sodium consumption. Through our work on the ''Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods; Guidance for Industry'' (2021 Voluntary Sodium Reduction guidance) (Ref. 3) and ''The Use of an Alternate Name for Potassium Chloride in Food Labeling; Guidance for Industry'' (Potassium Chloride guidance) (Ref. 4), we learned that various parties, including industry, consumers, consumer advocacy groups, scientific organizations, and professional health organizations, generally support allowing the use of salt substitutes. In another public engagement, some parties discussed modernizing SOI to allow the use of salt substitutes using a ''horizontal approach'' (Ref. 2). A horizontal approach to amending standards is a change that could be made across all or broad categories of SOI to provide flexibility and facilitate innovation in the production of more nutritious foods.

As discussed in the proposed rule, we considered several options for permitting salt substitutes in standardized foods and evaluated how to apply this change across multiple SOI (88 FR 21148 at 21151). The final rule uses a horizontal approach to amending the SOI in that a single provision defining salt substitutes (see § 130.30 (21 CFR 130.30(c)(1))) applies across the various SOI that permit salt as an ingredient. Because the use of salt substitutes in these SOI is currently limited, any use of salt substitutes by manufacturers under the rule would contribute to reduced sodium intake to some degree.

Permitting the use of salt substitutes in standardized foods may also contribute to our goal to help reduce sodium across the food supply. It may facilitate voluntary industry efforts toward sodium reduction by providing flexibility and supporting innovation in the production of healthier standardized foods. This in turn may provide more choices to consumers and help some consumers to gradually reduce the sodium in their diet and contribute to better health outcomes. Reducing sodium may help reduce the risk of hypertension, a major risk factor for heart disease and stroke (Refs. 5 through 7). The final rule supports the Make America Healthy Again initiative by providing manufacturers of standardized foods flexibility to innovate and make more healthful, lower-sodium foods, which may help lower chronic disease rates. See *https://www.whitehouse.gov/priorities/maha/.*

Ingredients added to standardized foods, like ingredients added to non-standardized foods, must comply with other requirements of the FD&C Act, including the pre-market review and approval requirements for food additives under section 409 of the FD&C Act (21 U.S.C. 348). This rulemaking does not provide either an authorization or an exemption from regulation as a food additive under section 409 of the FD&C Act. Ingredients that are food additives are deemed unsafe except to the extent that FDA has approved their use (section 409(a) of the FD&C Act). The FD&C Act defines ''food additive,'' in relevant part, as any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in it becoming a component of food, if such substance is not generally recognized among qualified experts as safe (GRAS) under the conditions of its intended use (section 201(s) of the FD&C Act). Food is adulterated when it contains an unapproved food additive (section 402(a)(2)(C) of the FD&C Act).

B. Summary of Comments to the Proposed Rule

We received more than 120 comments on the proposed rule from consumers, consumer groups, trade organizations, manufacturers, public health organizations, public advocacy groups, local government agencies, and other organizations. We describe and respond to the comments in section V (''Comments on the Proposed Rule and FDA Response'') of this document. The topics addressed most frequently in the comments include:

- General supportive comments regarding the rule and sodium reduction efforts.
- General supportive comments regarding ingredient flexibility to use salt substitutes to support innovation to make healthier foods.
- Additional or alternative efforts to achieve sodium reduction.
- Concerns with specific ingredients.
- Support for and additional suggestions or questions regarding the definition of salt substitute.

C. Incorporation by Reference

Several SOI amended by the rule previously referred to older versions of the AOAC Official Methods. We are updating the IBR information to provide the most recent version of the IBR materials and up-to-date contact information for obtaining the IBR materials. Therefore, FDA is incorporating by reference the methods listed below from the ''Official Methods of Analysis of AOAC INTERNATIONAL,'' 22nd Ed., 2023, which have been approved by the Office of the Federal Register.

- Definition of Terms and Explanatory Notes. This front matter to Official Methods of Analysis includes Table 1, Nominal Dimensions of Standard Test Sieves (USA Standard Series). The table lists the test sieve designations and their nominal dimensions.
- AOAC Appendix C, Reference Tables, 909.04, Correction Factors for Gasometric Determination of Carbon Dioxide (Reference Table 909.04). The reference lists the correction factors of carbon dioxide measurements for different atmospheric conditions.
- AOAC Official Method 923.02, Carbon Dioxide (Total) in Baking Powders: Gasometric Determination. The reference describes the reagent and the apparatus used in measuring the amount of carbon dioxide released from a sample.
- AOAC Official Method 926.07, Solids (Total) and Loss on Drying (Moisture) in Macaroni Products. The reference provides method references for the preparation of a sample and the total solid determination of a sample.
- AOAC Official Method 932.12, Solids (Soluble) in Fruits and Fruit Products: Refractometer Method. The reference provides a method reference for measuring soluble solids and the formula for calculating the percentage of soluble solids in a sample.
- AOAC Official Method 932.14, Solids in Syrups. The reference provides the method for measuring the percentage of soluble solids in a sample.
- AOAC Official Method 935.36, Solids (Total) in Bread. The reference provides the method for measuring the percentage of solids in a sample.
- AOAC Official Method 938.06, Fat in Butter. The reference provides the method for measuring the percentage of fat in a sample.
- AOAC Official Method 938.10, Solids (Alcohol-Insoluble) in Canned Peas: Gravimetric Method. The reference provides the method for measuring the percentage of alcohol-insoluble solids in a sample.

- AOAC Official Method 945.48, Evaporated Milk (Unsweetened). The reference provides the method for sample preparation and a method reference for measuring the percentage of milk fat in a sample.
- AOAC Official Method 947.05, Acidity of Milk: Titrimetric Method. The reference provides the method for measuring the percentage of lactic acid in a sample.
- AOAC Official Method 989.05, Fat in Milk: Modified Mojonnier Ether Extraction Method. The reference provides the method for measuring the percentage of milk fat in a sample.
- AOAC Official Method 990.21, Solids-Not-Fat in Milk: By Difference between Total Solids and Fat Contents. The reference provides method references for measuring total solids and fat contents of a sample and the formula for calculating the percentage of nonfat solid in a sample.

You may purchase a copy of the material from AOAC International (AOAC), 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250, 1–800–379–2622 (*https://academic.oup.com/officialmethodsofanalysis-aoac*). You may inspect a copy at Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, *IBR_Material_Inquiries@fda.hhs.gov,* between 9 a.m. and 4 p.m., Monday through Friday.

IV. Legal Authority

We are issuing this final rule under sections 201, 401, 402, and 701 of FD&C Act. Section 401 of the FD&C Act directs the Secretary of Health and Human Services (Secretary) to issue regulations fixing and establishing for any food a reasonable definition and standard of identity, standard of quality, or standard of fill of container, whenever in the judgment of the Secretary, such action will promote honesty and fair dealing in the interest of consumers. We conclude that permitting the use of salt substitutes to replace some or all of the added salt used in the production of standardized foods will promote honesty and fair dealing in the interest of consumers. Many consumers desire more nutritious and healthy food options, such as lower-sodium versions of foods. The final rule allows for industry development and sale of such foods while ensuring that standardized foods meet consumer expectations and preferences with respect to lower-sodium varieties.

We also are issuing this final rule under section 701(a) of the FD&C Act, which authorizes FDA to issue regulations for the efficient enforcement of the FD&C Act. Regulations issued under section 701(a) of the FD&C Act ''must effectuate a congressional objective expressed elsewhere in the Act'' (*Association of American Physicians and Surgeons, Inc.* v. *FDA,* 226 F. Supp. 2d 204 (D.D.C. 2002) (citing *Pharm. Mfrs. Ass'n.* v. *FDA,* 484 F. Supp. 1179, 1183 (D. Del. 1980))). Amending SOI to permit the use of salt substitutes effectuates the congressional objective ''to promote honesty and fair dealing in the interest of consumers'' expressed in section 401 of the FD&C Act. Permitting salt substitutes in standardized foods under this final rule may help provide more options to consumers while ensuring that the foods maintain their basic nature and essential characteristics. The amendments to the SOI for dairy products under parts 131 and 133 are issued under section 701(e) of the FD&C Act.

V. Comments on the Proposed Rule and FDA Response

A. Introduction

FDA proposed amending its SOI that specify salt as a required or optional ingredient to permit the use of safe and suitable salt substitutes in standardized foods, to reduce the sodium content. Additionally, we proposed amending our regulation entitled ''Food Standards: General'' (21 CFR part 130) to create a new subpart C entitled ''Flexibility in Standardized Foods'' and add a new section entitled ''Ingredient Flexibility in Standardized Foods'' to define salt substitute. We also proposed amending 80 SOI to permit salt substitutes (see Table 1).

TABLE 1—AMENDMENTS TO STANDARDS OF IDENTITY TO PERMIT SALT SUBSTITUTES

CFR section and title	Revision
§ 131.111 Acidified milk	Revises other optional ingredients to add salt substitute to paragraph (e)(8).
§ 131.112 Cultured milk	Revises other optional ingredients to add salt substitute to paragraph (d)(8).
§ 131.160 Sour cream	Revises optional ingredients to add salt substitute to paragraph (b)(5).
§ 131.162 Acidified sour cream	Revises optional ingredients to add salt substitute to paragraph (b)(4).
§ 131.170 Eggnog	Revises other optional ingredients to add salt substitute to paragraph (e)(2).
§ 133.102 Asiago fresh and asiago soft cheese	Adds paragraph (c)(3) to permit salt substitute.
§ 133.106 Blue cheese	Revises other optional ingredients to add paragraph (b)(3)(vii) to list salt substitute.
§ 133.108 Brick cheese	Revises other optional ingredients to add paragraph (b)(3)(v) to list salt substitute.
§ 133.111 Caciocavallo siciliano cheese	Adds paragraph (c)(3) to permit salt substitute.
§ 133.113 Cheddar cheese	Revises other optional ingredients to add paragraph (b)(3)(vi) to list salt substitute.
§ 133.118 Colby cheese	Adds paragraph (c)(4) to permit salt substitute.
§ 133.123 Cold-pack and club cheese	Revises optional ingredients to add salt substitute to paragraph (c)(3).
§ 133.124 Cold-pack cheese food	Revises other optional ingredients to add salt substitute to paragraph (e)(3).
§ 133.127 Cook cheese, koch kaese	Revises other optional ingredients to add salt substitute to paragraph (b)(3)(v).
§ 133.129 Dry curd cottage cheese	Revises paragraphs (b)(1)(i), (ii), and (iii) that describe the food to permit salt substitute.
§ 133.133 Cream cheese	Revises other optional ingredients to add salt substitute to paragraph (b)(3)(i).
§ 133.136 Washed curd and soaked curd cheese.	Revises other optional ingredients to add paragraph (b)(3)(vi) to list salt substitute.
§ 133.138 Edam cheese	Revises other optional ingredients to add paragraph (b)(3)(v) to list salt substitute.
§ 133.141 Gorgonzola cheese	Revises other optional ingredients to add paragraph (b)(3)(vii) to list salt substitute.
§ 133.144 Granular and stirred curd cheese	Revises other optional ingredients to add paragraph (b)(3)(vi) to list salt substitute.
§ 133.147 Grated American cheese food	Revises other optional ingredients to add salt substitute to paragraph (c)(5).
§ 133.148 Hard grating cheeses	Adds paragraph (c)(2) to permit salt substitute.
§ 133.149 Gruyere cheese	Revises other optional ingredients to add paragraph (b)(3)(iv) to list salt substitute.
§ 133.150 Hard cheeses	Adds paragraph (c)(3) to permit salt substitute.
§ 133.152 Limburger cheese	Revises other optional ingredients to add paragraph (b)(3)(iv) to list salt substitute.
§ 133.153 Monterey cheese and monterey jack cheese.	Revises other optional ingredients to add salt substitute to paragraph (b)(3)(iii).
§ 133.155 Mozzarella cheese and scamorza cheese.	Revises other optional ingredients to add salt substitute to paragraph (b)(3)(iii).

TABLE 1—AMENDMENTS TO STANDARDS OF IDENTITY TO PERMIT SALT SUBSTITUTES—Continued

CFR section and title	Revision
§ 133.156 Low-moisture mozzarella and scamorza cheese.	Revises other optional ingredients to add salt substitute to paragraph (b)(3)(iii).
§ 133.160 Muenster and munster cheese	Revises other optional ingredients to add paragraph (b)(3)(vi) to list salt substitute.
§ 133.162 Neufchatel cheese	Revises other optional ingredients to add salt substitute to paragraph (b)(3)(i).
§ 133.164 Nuworld cheese	Revises other optional ingredients to add paragraph (b)(3)(iv) to list salt substitute.
§ 133.165 Parmesan and reggiano cheese	Adds paragraph (c)(3) to permit salt substitute.
§ 133.169 Pasteurized process cheese	Revises other optional ingredients to add salt substitute to paragraph (d)(3).
§ 133.173 Pasteurized process cheese food	Revises other optional ingredients to add salt substitute to paragraph (e)(4).
§ 133.179 Pasteurized process cheese spread	Revises other optional ingredients to add salt substitute to paragraph (f)(5).
§ 133.181 Provolone cheese	Revises other optional ingredients to add paragraph (b)(3)(vi) to list salt substitute.
§ 133.182 Soft ripened cheeses	Revises paragraph (b) that describes the food to permit salt substitute.
§ 133.183 Romano cheese	Adds paragraph (c)(3) to permit salt substitute.
§ 133.184 Roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk.	Revises other optional ingredients to add paragraph (b)(3)(ii) to list salt substitute.
§ 133.185 Samsoe cheese	Revises other optional ingredients to add paragraph (v)(3)(v) to list salt substitute.
§ 133.186 Sap sago cheese	Revises paragraph (a)(2) to permit salt substitute.
§ 133.187 Semisoft cheeses	Revises paragraph (b) that describes the food to permit salt substitute.
§ 133.188 Semisoft part-skim cheeses	Revises paragraph (b) that describes the food to permit salt substitute.
§ 133.189 Skim milk cheese for manufacturing	Add paragraph (d)(2) to permit salt substitute.
§ 133.190 Spiced cheeses	Revises other optional ingredients to add salt substitute in paragraph (b)(3)(iii).
§ 133.195 Swiss and emmentaler cheese	Revises other optional ingredients to add paragraph (b)(3)(vii) to list salt substitute.
§ 136.110 Bread, rolls, and buns	Revises optional ingredients to add salt substitute to paragraph (c)(4).
§ 137.180 Self-rising flour	Revises paragraph (a) that describes the food to add salt substitute.
§ 137.270 Self-rising white corn meal	Revises paragraph (a) that describes the food to add salt substitute.
§ 139.110 Macaroni products	Revises optional ingredients to add salt substitute to paragraph (a)(4).
§ 139.150 Noodle products	Revises optional ingredients to add salt substitute to paragraph (a)(2).
§ 145.110 Canned applesauce	Revises optional ingredients to add salt substitute to paragraph (a)(2)(iii).
§ 145.130 Canned figs	Revises optional ingredients to add salt substitute to paragraph (a)(5).
§ 150.110 Fruit butter	Revises optional ingredients to add salt substitute to paragraph (c)(4).
§ 155.120 Canned green beans and canned wax beans.	Revises optional ingredients to add salt substitute to paragraph (a)(3)(i).
§ 155.130 Canned corn	Revises optional ingredients to add salt substitute to paragraph (a)(3)(i).
§ 155.170 Canned peas	Revises optional ingredients to add salt substitute to paragraph (a)(2)(i).
§ 155.190 Canned tomatoes	Revises optional ingredients to add salt substitute to paragraph (a)(2)(iv).
§ 155.191 Tomato concentrates	Revises optional ingredients to add salt substitute to paragraph (a)(2)(i).
§ 155.194 Catsup	Revises paragraph (a)(1)(iv) that describes the food to add salt substitute.
§ 155.200 Certain other canned vegetables	Revises optional ingredients to add salt substitute to paragraph (c)(4)(i).
§ 155.201 Canned mushrooms	Revises optional ingredients to add salt substitute to paragraph (a)(3)(i).
§ 156.145 Tomato juice	Revises paragraph (a)(1) that describes the food to add salt substitute.
§ 158.170 Frozen peas	Revises optional ingredients to add salt substitute in paragraph (a)(1)(iv).
§ 161.145 Canned oysters	Revises paragraph (a)(1) that describes the food to add salt substitute.
§ 161.170 Canned Pacific salmon	Revises optional ingredients to add salt substitute to paragraph (a)(4)(i).
§ 161.173 Canned wet pack shrimp in transparent or nontransparent containers.	Revises optional ingredients to add salt substitute to paragraph (a)(4)(i).
§ 161.190 Canned tuna	Revises seasoning and flavoring ingredients to add salt substitute to paragraph (a)(6)(1).
§ 163.111 Chocolate liquor	Revises optional ingredients to add salt substitute to paragraph (b)(6).
§ 163.112 Breakfast cocoa	Revises optional ingredients to add salt substitute to paragraph (b)(4).
§ 163.123 Sweet chocolate	Revises optional ingredients to add salt substitute to paragraph (b)(3).
§ 163.124 White chocolate	Revises optional ingredients to add salt substitute to paragraph (b)(4).
§ 163.130 Milk chocolate	Revises optional ingredients to add salt substitute to paragraph (b)(3).
§ 166.110 Margarine	Revises optional ingredients to add salt substitute to paragraph (b)(2).
§ 168.130 Cane sirup	Revises optional ingredients to add salt substitute to paragraph (b)(1).
§ 168.140 Maple sirup	Revises optional ingredients to add salt substitute to paragraph (b)(1).
§ 168.160 Sorghum sirup	Revises optional ingredients to add salt substitute to paragraph (b)(1).
§ 168.180 Table sirup	Revises optional ingredients to add salt substitute to paragraph (b)(7).
§ 169.140 Mayonnaise	Revises other optional ingredients to add salt substitute to paragraph (d)(1).
§ 169.150 Salad dressing	Revises other optional ingredients to add salt substitute to paragraph (e)(1).

We proposed updating the IBR information of several SOI to refer to the most recent versions of the IBR materials and to provide up-to-date contact information for obtaining the IBR materials. We also proposed technical amendments to correct inconsistencies and typographical errors in some SOI regulations.

We tentatively concluded that the proposed amendments were necessary to modernize SOI to provide flexibility and facilitate innovation in the production of standardized foods with less sodium, and to promote honesty and fair dealing in the interest of consumers.

We describe and respond to the comments on the proposed rule in sections B through F of this section. We have numbered each comment to help distinguish between different comments. We have grouped similar comments together under the same number, and, in some cases, we have separated different issues discussed in the same comment and designated them as distinct comments for purposes of

our responses. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

B. Description of General Comments and FDA Response

Many comments we received on the proposed rule make general remarks supporting or opposing the proposed rule without focusing on a particular proposed provision. In the following paragraphs, we discuss and respond to such general comments. We respond to more specific comments in sections V.C, V.D, V.E, and V.F.

(*Comment 1*) Many comments support the proposed rule and other FDA efforts to reduce sodium in the food supply as an important step to reducing diet-related chronic disease risk. Some comments that support the proposed rule also state that ingredient flexibility to use salt substitutes would help support ongoing sodium reduction efforts by industry to make healthier foods.

(*Response 1*) In the proposed rule, we stated that reducing sodium in the food supply may help reduce sodium intake, which in turn may help to reduce the risk of diet-related chronic disease, including hypertension, heart disease, and stroke (see 88 FR 21148 at 21150). We appreciate the comments supporting the rule and acknowledging the potential for ingredient flexibility to reduce sodium content in the food supply.

(*Comment 2*) We proposed using, and the final rule adopts, a ''horizonal approach'' to amending the SOI to allow salt substitutes in certain standardized foods. As described in the proposed rule, a horizontal approach to amending standards involves making changes that apply to all or to broad categories of SOI (see 88 FR 21148 at 21151 and Ref. 2). Several comments support the horizontal approach for this rulemaking and say that concurrently updating the SOI to allow salt substitutes is efficient, practical, and results in uniform application of principles. A few comments question whether the horizontal approach to amending the SOI could be more efficiently achieved by a single amendment to part 130 without the corresponding amendments to each SOI.

One comment asks us to clarify that the use of salt substitutes as defined in the rule applies to the SOI that cross-reference the SOI amended by the final rule.

(*Response 2*) We appreciate the support for the horizontal approach to amending the SOI to allow salt substitutes in standardized foods. In developing the proposed rule, we carefully reviewed the structure of part 130 in relationship to the individual standards in parts 131 through 169 (21 CFR parts 131 through 169) and determined that the clearest and most efficient way to permit the use of salt substitutes in the individual standards was to create a definition in part 130 along with individual amendments to certain standards based on the context in which salt is permitted and how the standards are written. Additionally, not every SOI that permits salt corresponded to a food for which use of salt substitutes should be allowed (see request for comments regarding the SOI for oysters (§ 161.130) (88 FR 21148 at 21152)). For these reasons, we disagree that a single amendment to part 130 without amendments to the individual standards would be the right approach for the types of revisions included in this rulemaking; however, we may consider that approach in future rulemakings, as appropriate.

The final rule amends 80 SOI to permit the use of salt substitutes as defined in § 130.30. A SOI that cross-references one of the 80 SOI amended by the final rule would also be permitted to use salt substitutes as defined in § 130.30. Therefore, the final rule permits the use of salt substitutes in 139 SOI: 80 SOI by amendment to the SOI in the final rule and the remaining 59 SOI by an existing cross-reference in SOI amended by the final rule.

(*Comment 3*) A few comments suggest that sodium reduction be achieved by lowering the sodium content of standardized foods without the addition of salt substitutes. Some comments state that consumer tastes will adapt over time to a gradual reduction of sodium content in foods and argue that we do not need to allow the use of salt substitutes in standardized foods. Some comments say that we should focus our efforts on working with manufacturers to develop and promote lower-sodium options, such as using only herbs and spices, to replace salt or requiring manufacturers to reduce sodium in food products.

(*Response 3*) By providing greater flexibility to manufacturers who wish to use salt substitutes in standardized foods, this rulemaking also aligns with our efforts to help reduce sodium consumption. As more than 70 percent of Americans' sodium intake comes from foods where sodium is added during food manufacturing and commercial food preparation, lowering population intake of sodium to more moderate levels involves lowering the amount of sodium added to commercially processed, packaged, and prepared foods in the U.S. marketplace (Refs. 8 and 9). For this reason, in addition to continued education initiatives, a multi-faceted approach is needed to help lower the burden of diet-related chronic disease, including providing consumers with information about sodium via nutrition labeling, encouraging sodium reduction in the food supply with our voluntary sodium reduction goals, and offering manufacturers the flexibility to use safe and suitable salt substitutes in standardized foods to allow for the development of lower-sodium foods.

We agree with the comments that consumer taste preferences may adapt and adjust over time to the gradual reduction of sodium content in foods. We have noted that people usually do not notice small reductions in sodium, and, over time, people's taste buds adjust to these changes, especially if they are made gradually (see *https://www.fda.gov/food/food-labeling-nutrition/sodium-reduction-food-supply*). However, the amount of sodium that can be removed without substitution may be limited, particularly in standardized foods for which salt is a required ingredient.

Depending on the food, salt may be important for taste, microbial safety, or other functions. The extent to which salt can be replaced depends on the ability of the salt substitute to replicate the functions of salt in the food without compromising the food's safety and nutritional quality. For this reason, relying on sodium reduction alone, without the use of salt substitutes or limiting to specific ingredients such as herbs and spices only to replace salt, may not sufficiently help with an overall reduction in sodium in the food supply.

Regarding the comments suggesting that we require manufacturers to reduce sodium, we discuss our approach to set voluntary sodium reduction goals in response 4.

(*Comment 4*) Several comments discuss our efforts to reduce sodium in the food supply through the sodium reduction goals announced via our October 2021 Voluntary Sodium Reduction guidance (Ref. 3).

Some comments state that, without the ability to use salt substitutes in standardized foods, there is a significant limitation on a manufacturer's ability to reduce sodium content as recommended by the goals in the guidance.

Several comments suggest that we monitor progress toward meeting the sodium reduction targets in addition to allowing the use of salt substitutes in

standardized foods. The comments state that we should issue new sodium reduction targets adjusted based on progress made on sodium reduction as well as the flexibility to use salt substitutes in standardized foods under this rulemaking.

(*Response 4*) In the proposed rule, we recognized that manufacturers of standardized foods have few options for reducing the sodium content of their products (88 FR 21148 at 21151). Thus, the final rule provides manufacturers the flexibility to use salt substitutes to reduce sodium content of standardized foods. In the proposed rule, we also discussed our other efforts aimed at encouraging gradual, efficient reduction in overall sodium content in processed, packaged, and prepared food products (see 88 FR 21148 at 21150), including the Voluntary Sodium Reduction guidance (Ref. 3). The 2021 Voluntary Sodium Reduction guidance is intended to provide measurable, voluntary short-term (2.5-year) goals for sodium content in commercially processed, packaged, and prepared foods to reduce excess population sodium intake, while recognizing and supporting the important technical and safety roles of sodium in food. The goals are intended to complement existing efforts by manufacturers, restaurants, and food service operations to achieve sodium reduction.

We continue to monitor the sodium content of the food supply, evaluate progress towards achieving the targets in the October 2021 Voluntary Sodium Reduction guidance, and engage with interested parties on sodium reduction efforts and the targets. In the **Federal Register** of August 16, 2024 (89 FR 66727), we announced the availability of the ''Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods; Draft Guidance for Industry (Edition 2).'' The draft guidance, when finalized, will describe our views on the next voluntary goals (Phase II (3-year)) for sodium reduction in a variety of identified categories of foods that are commercially processed, packaged, or prepared. Anyone may submit comments to the public docket for the draft guidance.

(*Comment 5*) Some comments state that taste is an important attribute of food and that the use of salt substitutes can help reduce sodium intake without compromising consumers' taste preferences or expectations when choosing healthier foods. Other comments say that the use of potassium chloride may give a bitter or metallic taste to food but suggest that research supports replacement of sodium with potassium chloride below certain levels to help avoid the bitter or metallic taste.

(*Response 5*) We agree with comments that the use of salt substitutes can help meet consumer taste preferences in foods with lower sodium and that the bitter or metallic taste of potassium chloride may be avoided at certain lower usage levels. We recognize that salt serves various functions in standardized foods and that salt may be important for taste. Further, the definition of salt substitute states, in relevant part, that a salt substitute is an ingredient (or combination of ingredients) used to perform the functions of salt in the food (see § 130.30(c)(1) and 88 FR 21148 at 21153). Therefore, manufacturers have the flexibility to choose the salt substitute and amount used to accommodate consumer taste preferences when replacing salt in the food.

(*Comment 6*) Many comments discuss the role of salt in food aside from taste and the technical challenges in reformulating foods to contain less sodium. The comments say salt may play important microbiological safety and stability roles, including, for example, controlling moisture and fermentation, and, as a result, reformulating products can take time. Some comments ask that we ensure that using other ingredients to replace salt does not impact safety due to the role of salt in food. Many comments also state that any further guidance or requirements for specific ingredients beyond what is existing and in the proposed rule would inhibit reformulation.

A few comments request clarification that the final rule does not require a minimum amount of sodium reduction to use salt substitutes in standardized foods.

(*Response 6*) The general provisions of § 130.30 prohibit ingredients used as substitutes from changing the basic nature and essential characteristics of standardized foods (see § 130.30(b)). When an ingredient that serves as a substitute is used to replace salt, *i.e.,* a salt substitute, this requirement ensures that characteristics such as stability and moisture content are maintained. The definition of salt substitute in the final rule requires that the ingredient or combination of ingredients used as the salt substitute serve the functions of salt in the food (see § 130.30(c)(1)). Thus, the extent to which salt can be replaced depends on the ability of the salt substitute to replicate the functions of salt in the food, including functions related to safety and quality. Food manufacturers are responsible for ensuring the safety of their food, regardless of whether they choose to use salt substitutes.

As for the comments asking us to clarify that the final rule does not require a minimum amount of sodium reduction to use salt substitutes in standardized foods, we note that the definition of salt substitute (§ 130.30(c)(1)) does not require a minimum replacement level of salt or prescribe the sodium content of standardized foods containing salt substitutes. The final rule only requires that some of the salt be replaced when a salt substitute is used in a standardized food (*id.*).

(*Comment 7*) Several comments are concerned that allowing the use of salt substitutes in standardized foods will result in the addition of what comments characterize as ''harmful'' or ''man-made'' chemicals. According to some comments, these chemicals are not needed or wanted in food and may cause adverse health consequences to consumers or pose risks to individuals suffering from various medical conditions or co-morbidities. Some comments disagree with the proposed rule because they believe it would introduce the use of salt substitutes in general (in both standardized and non-standardized foods) or would introduce or otherwise ''approve'' specific salt substitutes in the food supply.

Some comments say the rulemaking would provide manufacturers with the opportunity to use salt substitutes without sufficient, long-term, or transparent safety data. Other comments ask whether safe levels have been established for salt substitutes and whether guidelines are needed to prevent excessive use.

(*Response 7*) We disagree that the final rule will allow harmful chemicals to be used as salt substitutes in standardized foods or that salt substitutes will be used without sufficient safety data or at unsafe levels. As discussed in section III.A of this document, salt substitutes used as ingredients in food (whether standardized or not) must comply with the pre-market review and approval requirements for food additives under section 409 of the FD&C Act or be exempt from the definition of a food additive. Ingredients that are food additives are deemed unsafe except to the extent that FDA has approved their use (section 409(a) of the FD&C Act). FDA's authorization of a food additive is based on the conditions of use and includes specific use limitations where appropriate. In addition, the use of substances under the GRAS provision in

the definition of a food additive must meet the criteria for GRAS. The definition of salt substitute in § 130.30(c)(1) specifies that a salt substitute is ''a safe and suitable ingredient.'' An unapproved food additive is deemed unsafe under section 409(a) of the FD&C Act and is not ''safe and suitable,'' as defined in § 130.3(d)(3). The definition of ''safe and suitable'' in § 130.3(d)(2) further limits the amount of salt substitutes used to levels no higher than necessary to achieve their intended purpose in food. This final rule does not permit the use of any ingredients or substances that are not already permitted in non-standardized foods. Therefore, the final rule does not permit unsafe ingredients or substances in the food supply.

The term ''man-made'' is not defined in the FD&C Act, and we are unclear what substances or ingredients are referred to by this term. However, as discussed in response 11, salt substitutes must be included in the ingredient declaration on the label of standardized foods, which will enable consumers to select foods in accordance with their dietary preferences or other needs, such as medical conditions (see § 130.3(e)).

Regarding the comments that suggest the rulemaking ''approved'' salt substitutes for use in the food supply, the comments may have misinterpreted the rule. As discussed earlier in this response, the final rule provides manufacturers the flexibility to replace salt in certain standardized foods with ingredients available to manufacturers of non-standardized food. The final rule does not alter the statutory or regulatory processes pertaining to food additives.

(*Comment 8*) Many comments discuss the use of potassium-based ingredients as salt substitutes, primarily potassium chloride. (In this document, we use the term ''potassium-based ingredients'' to refer to ''potassium,'' ''potassium chloride,'' or other types of potassium-containing ingredients.) Some comments note that allowing potassium-based ingredients as a salt substitute could increase the potassium content of a standardized food, thereby increasing the amount of potassium in the U.S. food supply. Some comments believe that the final rule would result in salt being replaced only with potassium chloride or that potassium chloride is the only salt substitute.

Some comments discuss the positive effects of potassium on lowering the risk of high blood pressure and other health benefits and that the information on potassium content of a food is already provided in the updated Nutrition Facts label for individuals who may need to limit potassium intake.

(*Response 8*) While we included potassium chloride as one example of an ingredient that might be used as a salt substitute in the preamble of the proposed rule, we note that the final rule does not limit salt substitutes to only potassium-based ingredients. Furthermore, we do not know how many foods will be voluntarily reformulated because of the final rule or which ingredients will be used to reformulate standardized foods. As a result, we cannot determine the extent to which the final rule may affect the amount of potassium in the food supply. Salt substitutes, including potassium chloride, are already permitted in non-standardized foods. Product labeling, such as the Nutrition Facts label and ingredient list, informs consumers of the potassium content of the food. The same information will be available for standardized foods. Furthermore, this rule restricts the use of salt substitutes to levels no higher than necessary to achieve their intended purpose and we expect the use of potassium chloride to replace salt will be self-limiting because of its inherent bitter and metallic taste characteristics (Refs. 10 and 11).

(*Comment 9*) Some comments state that potassium-based ingredients used as salt substitutes could impact those that need to monitor their potassium intake due to health conditions, such as chronic kidney disease and heart failure, and medication uses because of an increased risk of hyperkalemia. (Hyperkalemia, in general terms, is a condition where there is too much potassium in the blood.) Some comments suggest that a large portion of the population is affected with chronic kidney disease (CKD), including end stage kidney disease and kidney failure, and that some individuals may not know that they are affected by the disease or may not check the labels or be able to see or understand the labels of these potentially reformulated standardized foods. Further, some comments mention that many individuals need to limit both sodium and potassium, so low-sodium foods may be appealing to them without realizing that some of these foods may contain potassium-based ingredients. Thus, the comments claim that potassium-based ingredients added to standardized foods would effectively be sources of ''hidden'' potassium for individuals with CKD or who otherwise need to monitor potassium in their diet.

Other comments express concerns that allowing potassium-based ingredients in standardized foods would further reduce food choices of those with kidney disease who may already struggle with limited food options. Some comments suggest that evidence may not support the notion that the use of potassium-based ingredients as salt substitutes leads to hyperkalemia. Other comments say more research is needed to understand the relationship between potassium intake and hyperkalemia. The comments urge us to consider the risk posed by using, or the lack of research or guidelines on the use of, potassium-based ingredients in standardized foods to individuals requiring careful monitoring of potassium intake.

(*Response 9*) We recognize the need for certain individuals to monitor potassium intake and emphasize the importance of using information on the food label to help with food selections. The nutrient declaration and percent Daily Values on the Nutrition Facts label provide quantitative information for consumers so that they may follow advice they have received from a health care professional concerning their conditions (81 FR 33742 at 33750). A manufacturer of a standardized food choosing to use potassium-based ingredients must declare the required potassium information on the Nutrition Facts label of a food containing two or more percent of the recommended daily intake for potassium per serving (21 CFR 101.9(c)(8)(ii) and (iii)). As a result, the potassium information about standardized foods that may be reformulated in response to this rule will be readily available to consumers—just as it is currently available on the label of non-standardized foods that have been permitted to contain potassium chloride for decades. The ingredient statement of standardized foods made with potassium chloride as an ingredient must declare ''potassium chloride'' or ''potassium salt'' to inform consumers of its presence (see section 403(i)(2) of the FD&C Act (21 U.S.C. 343(i)(2)); see also § 101.4(a)(1) (21 CFR 101.4(a)(1)) and Ref. 4).

(*Comment 10*) Some comments express concerns that glutamate-containing ingredients, mainly monosodium glutamate (MSG), will be used as a salt substitute in standardized foods, thereby making it harder to find foods that do not contain MSG.

(*Response 10*) The final rule does not require any specific ingredient to be used in standardized foods as a salt substitute. Rather, as discussed in response 7, the final rule permits the use of safe and suitable ingredients to replace salt in standardized foods. We did not receive information about the number of foods that will be reformulated based on the final rule, or

which ingredients will be used to reformulate standardized foods. Therefore, we have no data or information supporting the opinion expressed in comments that it will become harder to find foods that do not contain MSG as a result of this rule. If MSG is used as a salt substitute in standardized foods as a result of this rule, manufacturers must declare MSG in the ingredient statement in accordance with our labeling requirements (see § 101.4(a)) and 21 U.S.C. 343(i)(2)) as discussed in response 11. Additionally, 21 CFR 101.22(h)(5) requires that MSG used as an ingredient in food be declared by the common or usual name of ''monosodium glutamate.'' Therefore, consumers can use the information in the ingredient statement of the label to decide whether to purchase a food containing MSG as an ingredient and can avoid these foods if desired.

(*Comment 11*) Some comments express concerns that ingredients used to replace salt would not appear on the label or that the final rule would allow these ingredients to be labeled with the general term ''salt substitute'' in standardized foods. Some comments state that certain consumers will be more likely to purchase lower-sodium foods if the foods are labeled with the specific salt substitute used or are otherwise labeled as lower-sodium foods.

Other comments ask that the final rule require clear, consistent, and easy to understand labeling of the ingredients used to replace salt for transparency and to help consumers to make informed food choices, such as avoiding an ingredient that can cause sensitivity or allergenic reaction. Several comments request that the final rule require a clear labeling mechanism for consumers to easily identify the ingredients which were not previously used in standardized foods, such as new ingredients or allergens. In contrast, some comments indicate that existing labeling regulations already require the declaration of the ingredients used to replace salt.

(Response 11) The final rule does not prescribe any new labeling requirements for ingredients used to replace salt in standardized foods. However, existing labeling requirements apply to salt substitutes used in standardized foods. Ingredients, including salt substitutes, are required to be declared in the ingredient statement of standardized foods by their common or usual names (§ 101.4(a)(1); see also 21 U.S.C. 343(i)(2) and § 130.3(e)). Our regulations, at § 101.4(b), require that food ingredients be declared by a specific name and not a collective (generic) name unless a specific exception is provided. While the final rule defines ''salt substitute'' in the new part 130, subpart C, it does not establish ''salt substitute'' as a collective name of ingredients used to replace salt in standardized foods. Further, if the ingredient used as a salt substitute is or contains a major food allergen, the label must also declare the allergen as prescribed in section 403(w) of the FD&C Act.

Regarding the suggestion of additional labeling mechanisms for new ingredients used in reformulated standardized foods, we do not require any additional labeling of new ingredients used in reformulated standardized or non-standardized foods. The comments did not provide a reason why the labeling for standardized foods should be different from non-standardized foods. However, manufacturers of both standardized and non-standardized foods can choose to disclose information on the package voluntarily. For example, manufacturers could include reformulation information if statements made on the package are truthful and not misleading (see section 403(a)(1) of the FD&C Act (a food is deemed to be misbranded if its labeling is false or misleading in any particular). Thus, we decline to establish additional labeling mechanisms as suggested by the comments.

(*Comment 12*) Some comments discuss the use of additional labeling for standardized foods reformulated with potassium ingredients as a safeguard for individuals who need to monitor or limit their potassium intake. Several comments recommend clear labeling of any potassium added from salt substitutes for these individuals if the final rule will allow the use of potassium-based ingredients as salt substitutes. The comments suggest labeling of potassium added from salt substitutes, and other comments recommend use of a temporary disclosure of increased potassium content in front-of-package labeling. Comments also support the need for potassium disclosure when potassium is added to standardized foods labeled as ''low sodium'' since many individuals to whom this labeling may appeal (*i.e.,* individuals who need to monitor sodium intake) must monitor potassium intake. Some comments suggest that the additional food labeling would help individuals recognize the potassium from salt substitutes in the reformulated standardized foods and lead them to check the Nutrition Facts label and make appropriate food choices. Some comments say that foods containing potassium-based ingredients should bear a warning statement for individuals at risk for hyperkalemia.

Other comments suggest that any added statement on the front of the package regarding potassium should not dissuade consumers who do not need to limit potassium intake. Some comments oppose additional labeling of reformulated standardized foods and suggest that such a requirement could negate the intent of the final rule to help support a healthier food supply. These comments say that labeling that focuses on risk could hinder consumers' understanding of potassium's health benefits and noted that potassium is an under-consumed nutrient in the general U.S. population.

(*Response 12*) As discussed in response 11, the final rule does not create new labeling requirements or change existing labeling requirements for a standardized food reformulated with salt substitutes. If manufacturers of a standardized food replace sodium chloride with potassium-based ingredients, they must declare these ingredients on the label in accordance with § 101.4(a) (see also section 403(i)(2) of the FD&C Act). As discussed in response 9, manufacturers must also declare quantitative information on potassium in the food on the Nutrition Facts label (21 CFR 101.9(c)(8)(ii)), and consumers can decide whether to consume the food based on this information.

We disagree that foods containing potassium-based ingredients should bear a warning statement for individuals at risk for hyperkalemia. Warning statements can be required under sections 403(a)(1) and 201(n) of the FD&C Act on grounds that the labeling is misleading if it fails to reveal facts material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use as are customary or usual (see section 201(n) of the FD&C Act). However, given that facts about potassium content are already required on other parts of the label, we do not believe that a warning statement about hyperkalemia should be required. Individuals who limit their potassium intake for health reasons are already on notice to monitor the potassium content of foods they consume and can use the Nutrition Facts label and ingredient statement to decide whether a food may contain too much potassium for their diet. We also note that many foods, standardized and non-standardized, contain potassium and such a requirement could result in a large quantity of products in the food

supply bearing a warning statement, which would undermine the utility of such a statement. Widespread use of such warning statements could also deter people who need to consume more potassium from consuming potassium-containing foods. Further, manufacturers can already choose to voluntarily disclose potassium-related information on the package. For example, we discussed in response 11 that manufacturers can include reformulation information provided that statements made on the package are truthful and not misleading. Manufacturers can also choose to declare the level of potassium in accordance with 21 CFR 101.13 and 101.54. For food labeled as ''low sodium,'' the sodium content of the food must meet the requirements of the nutrient content claim (§ 101.61(b)(4)).

(*Comment 13*) Several comments suggest monitoring or modeling certain ingredients before or in addition to implementing the final rule. Some comments ask that we monitor sodium and potassium in the food supply. Other comments ask that we conduct modeling or other studies to ensure that ingredients used as salt substitutes continue to be safe.

Other comments suggest that, following the publication of the final rule, we encourage the use of the Nutrition Facts label, conduct outreach to educate stakeholders, consumers, and clinicians on the potential presence of potassium-based ingredients in standardized foods, and update education materials as appropriate with certain information about standardized foods likely to be reformulated with potassium-based ingredients.

(*Response 13*) We discuss our effort to monitor sodium in the food supply in response 4. Regarding the suggestion to monitor or model the amount of potassium in the food supply, the rule does not limit salt substitutes to potassium-based ingredients in standardized foods. For example, yeast extracts, MSG, amino acids, and dairy extracts are other ingredients discussed in the scientific literature that could potentially serve as a salt substitute (Ref. 8). We did not receive information regarding the number of standardized foods likely to be reformulated with potassium-based ingredients. We plan to monitor relevant data and scientific publications for changes in U.S. consumption patterns in potassium intake.

Currently, we have made available extensive nutrition education resources on the Nutrition Facts label for consumers, dietitians, and educators as well as continuing medical education videos for physicians and health care professionals on how to counsel patients to make healthy food choices using the Nutrition Facts label (*https://www.fda.gov/food/nutrition-education-resources-materials/nutrition-facts-label*). These resources include information on sodium in packaged foods (*https://www.fda.gov/food/nutrition-education-resources-materials/sodium-nutrition-facts-label*) as well as the changes to the Nutrition Facts label that require declaration of the amount of potassium and its percent daily value (*https://www.fda.gov/food/nutrition-facts-label/whats-nutrition-facts-label*). We also have information available to help educate consumers about how to use the Nutrition Facts label as a tool to make informed decisions about dietary sodium (*https://www.fda.gov/food/nutrition-education-resources-materials/sodium-your-diet).* Additionally, on January 16, 2025, FDA issued a proposed rule titled, ''Food Labeling: Front-of-Package Nutrition Labeling'' (90 FR 5426), which, among other things, would require most foods to bear a front-of-package Nutrition Info box on the principal display panel that details and interprets the relative amount of certain nutrients to limit, including sodium, in a serving of food. If finalized this rule will provide accessible, at-a-glance information to help consumers quickly and easily identify how foods can be part of a healthy diet.

We decline to develop consumer and patient education materials with information on reformulated standardized foods likely to have potassium-based ingredients. In the proposed rule, we requested public comment on the possible producer response, including how many manufacturers may choose to take voluntary action in response to the final rule, what share of standardized foods may be reformulated, and the types of salt substitutes manufacturers may use (see 88 FR 21148 at 21158). While some comments express general support for the flexibility to use salt substitutes to innovate to develop lower sodium standardized foods, the comments do not provide information about definitive plans to reformulate products based on the proposed rule. Some comments make general remarks about the potential to use potassium in various categories of products but do not provide information on the specific standardized foods to be reformulated or levels of substitution associated with reformulations. Therefore, any list that we could develop of standardized foods likely to be reformulated with potassium-based ingredients would be too speculative to be useful.

(*Comment 14*) Some comments state that the proposed rule would help to address health disparities. A few comments say that the proposed rule would particularly benefit older individuals who are both more at risk for hypertension and less likely to have taste buds adjust to gradual reductions in sodium. Other comments say that the proposed rule would not help reduce racial health disparities because the use of salt substitutes to reduce sodium content of food is not an intervention specific to the diets or disease risks of African Americans but of all Americans.

Some comments express concern that several minority populations and lower-income and food-insecure communities are more likely to be affected by kidney disease and that risks associated with the adoption of potassium-based salt substitutes would contribute to structural injustices and health disparities.

(*Response 14*) We discussed in the proposed rule that permitting the use of salt substitutes in standardized foods would contribute to the reduction of sodium across the food supply (88 FR 21148 at 21151). Reducing the sodium content in the food supply is not intended as an intervention for any particular group of consumers, but for all consumers.

SOI regulations are intended to promote honesty and fair dealing in the interest of consumers (section 401 of the FD&C Act). SOI regulations do not address dietary restrictions related to individuals' specific disease conditions or their use of certain medications. The product's ingredient list and Nutrition Facts label, including nutrient declaration and percent Daily Value, while not targeting individuals' specific diseases or conditions, may be able to provide quantitative information for consumers to use to follow advice they have received from a health care professional concerning their conditions.

C. Salt Substitute Definition Comments and FDA Response

Several comments address various aspects of the definition of salt substitute under new subpart C—Flexibility in Standardized Foods in part 130. This definition applies to all standardized foods in parts 131 through 169 for which salt substitutes are a permitted ingredient under this rulemaking (see § 130.30(a); see Table 1 for the list of SOI amended). New subpart C limits ingredients used as salt substitutes to those that do not change the basic nature and essential

characteristics of the food (§ 130.30(b)). The definition in the proposed rule under § 130.30(c) provided that a ''salt substitute'' is ''a safe and suitable ingredient (or combination of ingredients) that is used to replace some or all of the added salt (sodium chloride), to reduce sodium in the food, and that serves the functions of salt in the food.'' We explained in the proposal that salt substitute was defined broadly to provide flexibility and facilitate innovation without the need for future rulemaking. By not listing specific salt substitutes, the definition could cover ingredients or combinations of ingredients that may be used as salt substitutes in the future, because of advances in food science and technological changes (see 88 FR 21148 at 21153).

(*Comment 15*) Many comments generally support the proposed definition's approach to not list specific salt substitutes and agree it would allow flexibility to innovate to develop more healthful offerings while maintaining the basic nature and essential characteristics of the food. A few comments disagree with the approach and request that the definition list specific salt substitutes so that only the listed ingredients could be used as salt substitutes. The comments state that such change to the rule would increase the development of new salt substitutes and that we should have a process for approving new salt substitutes to be added to the list. A few comments request that FDA amend the definition of salt substitute to specifically exclude salt substitutes that are ''self-certified'' as GRAS. The comments argue that allowing salt substitutes that are ''self-certified'' as GRAS would not promote honesty and fair dealing in the interest of consumers because ''self-certified'' salt substitutes would effectively allow introduction of salt substitutes into standardized foods without notifying FDA or the public.

(*Response 15*) We decline to change the definition in the final rule to list specific salt substitutes that are allowed in standardized foods or to include a process for adding certain salt substitutes to such a list. As we explained in the proposed rule, by defining salt substitute broadly and by not listing specific salt substitutes, we are providing for flexibility and facilitating innovation without the need for additional rulemaking (see 88 FR 21148 at 21153). We agree that the final rule may result in development of new salt substitutes and noted the potential for innovation throughout the proposed rule; however, we disagree that there is a need to create a separate process for approving salt substitutes for use in standardized foods. As we explained in the proposed rule, the requirements for food additives and GRAS uses of substances apply to salt substitutes used in standardized foods, just as they apply to non-standardized foods (see 88 FR 21148 at 21153). Furthermore, the general requirements for substitutes in § 130.30(b) and the definition of salt substitute in § 130.30(c)(1) ensure that the substitute will not change the basic nature and essential characteristics of the food and that only safe and suitable ingredients are used as salt substitutes.

We interpret the comments' references to ''self-certified'' as referring to salt substitutes for which a firm has not obtained FDA review of a GRAS conclusion. Requirements related to GRAS conclusions are outside the scope of this rulemaking. For more information about GRAS and available resources, see *https://www.fda.gov/food/food-ingredients-packaging/generally-recognized-safe-gras.*

Additionally, as discussed in response 11, the ingredients used in a food must be labeled according to applicable requirements.

(*Comment 16*) Some comments suggest minor revisions to the definition of salt substitute. The comments acknowledge that the proposed definition would cover ''ingredients or combinations of ingredients that may be used as salt substitutes in the future'' (88 FR 21148 at 21153) but propose revisions to the codified to incorporate this language. Specifically, the comments would revise proposed § 130.30(c) to read as follows: ''Salt substitute means a safe and suitable ingredient (or combination of ingredients) that is used *at present or in the future* to replace some or all of the added salt (sodium chloride), to reduce sodium in the food, and that serves *one or more* functions of salt in the food'' (suggested revisions are italicized). The comments say these revisions would provide more clarity and ensure flexibility for necessary salt substitute functionality, including the combinations of ingredients that may be needed.

(*Response 16*) We decline to revise § 130.30(c)(1) to explicitly include the text ''at present or in the future'' as requested by some comments. We agree that the definition of salt substitute in § 130.30(c)(1) includes safe and suitable ingredients that are presently in use or that will be in future use, that replace some or all of the added salt, and that serve the functions of salt in the food. However, we believe that the definition of § 130.30(c)(1) is written broadly enough to include both ingredients in present use and ingredients in future use, so that the proposed revision to the text is not needed. This interpretation was explained in the preamble of the proposed rule, which stated that the proposed definition ''would cover ingredients or combinations of ingredients currently used as salt substitutes and ingredients and combinations of ingredients that may be used as salt substitutes in the future, as a result of advances in food science and technological changes'' (88 FR 21148 at 21153).

Further, we decline to revise § 130.30(c)(1) to state that a salt substitute replaces ''one or more'' functions of the salt in the food. The text of § 130.30(c)(1) states that a salt substitute ''serves the functions of salt in the food.'' For an ingredient or combination of ingredients to be a salt substitute, it must replace the functions of salt when added salt is reduced. The text proposed by the comments indicates that an ingredient or combination of ingredients need only serve one of the functions of salt in a food. If the amount of salt removed impacts multiple functions, then the ingredient(s) used as salt substitutes should serve those functions. If the salt only served one function in the food, then the salt substitute must serve the same function. We note that if we were to revise the text of § 130.30(c)(1) as proposed, manufacturers could arbitrarily choose which functions of salt are replaced by the salt substitute.

(*Comment 17*) Some comments request additional guidance or clarification regarding the definition of salt substitute. A few comments request additional guidance on what constitutes ''safe and suitable'' in § 130.30(c). Other comments ask us to clarify in the preamble to the final rule that types of ingredients, *e.g.,* flavors, flavor enhancers, and mineral salts, are included in the definition of salt substitute because, according to the comments, these types of ingredients are often crucial components of reformulations to reduce sodium while maintaining consumer taste preferences.

(*Response 17*) Regarding comments requesting additional guidance on the meaning of ''safe and suitable'' in the definition of salt substitute, ''safe and suitable'' is defined in the definitions and interpretations for standardized foods (see § 130.3(d)). According to this definition, an ingredient is safe and suitable if it performs an appropriate function in the food, is used at a level no higher than necessary to achieve its intended purpose, and is not an unapproved food additive or color additive as used in the food. We note

that we have revised the parenthetical in the definition of salt substitute so that ''safe and suitable'' also modifies the combination of ingredients to read as follows: ''(or combination of safe and suitable ingredients).'' This additional language further clarifies that all ingredients used as a salt substitute, whether used alone or in combination, must be safe and suitable.

We note that certain types of ingredients, such as flavors, flavor enhancers, and mineral salts, may comprise salt substitutes if they meet the criteria in § 130.30(b) and (c). As we stated in the proposed rule, we drafted the definition of salt substitute to provide manufacturers flexibility and facilitate sodium reduction across the food supply, while not changing the basic nature and essential characteristics or adversely affecting the nutritional quality and safety of standardized foods (88 FR 21148 at 21153). The types of ingredients, such as flavors, flavor enhancers, and mineral salts, that may be used as salt substitutes will depend on the ingredient or ingredients that can replace the functions of salt in the food, while still meeting the other criteria in the definition of salt substitute. It is important that manufacturers consider the particular functions of salt that would be lost at a given level of substitution in the standardized food and the types of ingredients to substitute for the lost function. For example, the SOI for self-rising flour (21 CFR 137.180) and canned corn (21 CFR 155.130) include salt as an ingredient. If the replacement of salt causes a loss of flavor in these foods, the rule will permit a flavor ingredient or flavor ingredients that otherwise meet the definition of salt substitute to be used. However, since self-rising flour has a low level of moisture and does not need preservation with ingredients to prevent microbial spoilage and canned corn is thermally processed to achieve commercial sterility, using an ingredient that only prevents microbial spoilage will not align with the definition of salt substitute because salt does not serve the function of preventing spoilage in these products.

D. Fish and Shellfish Comments and FDA Response

Salt is a required or optional ingredient in several SOI in part 161 (21 CFR part 161) Fish and shellfish. We proposed amending the following SOI in part 161 which permit salt as a required or optional ingredient: Canned oysters (§ 161.145), Canned Pacific salmon (§ 161.170), Canned wet pack shrimp in transparent or nontransparent containers (§ 161.173), and Canned tuna (§ 161.190). We did not propose to amend the SOI for Oysters (§ 161.130), Frozen raw breaded shrimp (§ 161.175), and Frozen raw lightly breaded shrimp (§ 161.176).

The SOI for oysters (§ 161.130) does not include salt as a required or optional ingredient. Instead, the SOI provides for the optional use of saltwater containing less than 0.75 percent salt in the shucking of oysters (§ 161.130(b)). In the proposed rule, we described our understanding that current industry practice is to use accessible seawater rather than to constitute a solution for the shucking process. Therefore, because salt was not an added ingredient, we did not propose to amend the SOI to allow salt substitutes. We requested comment on this approach and our understanding of current industry practice (see 88 FR 21148 at 21152).

(*Comment 18*) One comment asks us to amend the SOI for oysters (§ 161.130) to allow for the use of salt substitutes. The comment acknowledges that current industry practice is not to use a prepared salt and water solution for the processing of oysters but suggests that we permit the use of salt substitutes in the SOI for oysters to accommodate any future use of salt substitutes in such solution.

(*Response 18*) The SOI for oysters prescribes the amount of salt present in the saltwater solution (less than 0.75 percent salt) and the length of time the oysters are in contact with the water or saltwater solution (not more than 30 minutes) (see § 161.130(b)). These parameters were set to help ensure that no appreciable loss of solids or absorption of water occurs during washing, which could impact flavor and nutritive content of the oysters (see 11 FR 9331 at 9332–9333, August 27, 1946). Allowing the use of salt substitutes to lower the salt content of this solution without also changing the other parameters, such as length of time the oysters are in contact with water, could affect the amount of shrinkage or water absorption of the oysters. Further, the SOI requires that the oysters are packed without any added substance (see § 161.130(b)). The effect of using salt substitutes for processing oysters is unlikely to be the same as using salt, which could result in oysters being packed with an added substance. Therefore, we decline to amend the SOI for oysters in the final rule.

(*Comment 19*) One comment requests that the SOI for frozen raw breaded shrimp at § 161.175 and, by reference, the SOI for frozen raw lightly breaded shrimp at § 161.176, also be amended to permit the use of salt substitutes. The comment explains that these SOI allow for safe and suitable batter and breading ingredients but prohibit the use of artificial flavorings, artificial sweeteners, artificial colors, and chemical preservatives. The comment would amend the SOI to explicitly allow salt substitutes and also provide that use of a salt substitute is not limited by the existing ingredient prohibitions in the SOI.

(*Response 19*) As previously discussed, we intended to amend SOI that include salt as a required or optional ingredient to provide manufacturers with ingredient flexibility to reduce salt in these foods. The SOI for frozen raw breaded shrimp at § 161.175 does not explicitly provide for the use of salt as an ingredient. The SOI provides for the use of safe and suitable batter and breading ingredients (§ 161.175(a)), but excludes artificial flavorings, artificial sweeteners, artificial colors, and chemical preservatives (§ 161.175(d)). Thus, manufacturers can use salt and salt substitutes that are not artificial flavorings, artificial sweeteners, artificial colors, or chemical preservatives in frozen raw breaded shrimp. Therefore, we decline to amend the SOI for frozen raw breaded shrimp (§ 161.175) to explicitly permit salt substitutes. Because the SOI for frozen raw lightly breaded shrimp at § 161.176 cross references § 161.175, we are not amending the SOI for frozen raw lightly breaded shrimp for the same reasons.

E. Incorporation by Reference Comments and FDA Response

(*Comment 20*) Some comments ask that we update the incorporation by reference information. One comment notes that the rule should incorporate by reference the 22nd Ed. (2023) of the ''Official Methods of Analysis of AOAC INTERNATIONAL'' and not the 21st Ed. (2019) as proposed. One comment agrees with the change to update the number for the method in 21 CFR 155.170 for canned peas.

Other comments request that we update the incorporation by reference information in other sections which we did not propose to update, *e.g.,* the SOI for frozen raw breaded shrimp and frozen raw lightly breaded shrimp (§§ 161.175 and 161.176).

(*Response 20*) We have reviewed the specific methods referenced by the proposed rule and note that there were no substantive changes between the 21st Ed. of the ''Official Methods of Analysis of AOAC INTERNATIONAL'' that we proposed to incorporate by reference and the newer 22nd Ed. Therefore, we

agree to incorporate by reference the 22nd Ed. (2023) of the ''Official Methods of Analysis of AOAC INTERNATIONAL'' in the final rule.

As for the comments requesting updates to the incorporation by reference information in the SOI for frozen raw breaded shrimp and frozen raw lightly breaded shrimp (§§ 161.175 and 161.176), we decline this request. We are reviewing materials incorporated by reference in other regulations and will consider updating the material incorporated by reference in these SOI within the scope of that effort. We note that we have included technical amendments to make formatting changes to certain SOI that have not been updated to allow the use of salt substitutes to accommodate the use of a centralized IBR section in 21 CFR parts 131, 137, 139, 150, 155, and 161. There are no substantive changes to these SOI, and we have not updated the material that they incorporate by reference; these SOI have only been updated to point to a new centralized IBR section, if applicable. This change will help consolidate and streamline future IBR updates.

F. Technical Amendments

We proposed technical amendments to correct inconsistencies and typographical errors in several of the SOI that specify salt as a required or optional ingredient. We received no adverse comments regarding these proposed changes.

Therefore, the final rule amends:

- 21 CFR 133.118(c)(2) to replace ''143'' with ''145''.
- 21 CFR 133.150(c)(2) to replace ''143'' with ''145''.
- 21 CFR 133.150(e)(1) to replace ''unusual'' with ''usual''.
- 21 CFR 133.182(c)(2) to replace ''143'' with ''145''.
- 21 CFR 133.184(b) to replace ''Operational'' with ''Optional''.
- 21 CFR 133.186(c) to replace ''Nonmenclature'' with ''Nomenclature''.
- 21 CFR 133.187(c)(2) to replace ''143'' with ''145''.
- 21 CFR 133.188(c)(2) to replace ''143'' with ''145''.
- 21 CFR 155.170(b)(1)(iii) to replace ''shrivelled'' with ''shriveled''.
- 21 CFR 158.170(b)(1)(iii) to replace ''shrivelled'' with ''shriveled''.
- 21 CFR 168.140(a) to replace ''mapel'' with ''maple''.

G. Out-of-Scope Comments

FDA also received several comments outside of the scope of this rulemaking. These comments raise issues related to:

- The Environmental Protection Agency's (EPA's) ''Safer Choice and Design for the Environment'' program and insect repellants.
- Work with the United States Department of Agriculture (USDA), Food Safety and Inspection Service to harmonize broader SOI principles.
- Appropriate use of the horizontal approach for other SOI changes (*e.g.,* processing changes).
- Enforcement discretion to use salt substitutes in standardized foods pending issuance of the final rule.
- Intake of certain ingredients (*e.g.,* sugar), nutrients (*e.g.,* phosphorus), or types of foods (*e.g.,* processed foods) or use of chemicals generally in the food supply.
- FDA's sodium reduction efforts or sodium reduction strategies we could consider (*e.g.,* labeling, taxation).
- The safety of specific, individual ingredients that may be used as salt substitutes.
- Impacts of the rule on specific, individual ingredients (*e.g.,* kosher salt).
- Proposed amendments to § 101.4(b) (21 CFR 101.4(b) to allow the use of ''and/or'' labeling for salt substitutes.
- Consumer education for target populations, including those with specific conditions and/or nutrition needs.
- Work to address factors affecting health equity and cardiovascular disease.

We do not respond to these out-of-scope comments. Regarding comments about the safety of specific salt substitutes, we note that we re-review substances when we receive new safety information or data and have instituted a post-market review process to review substances more systematically for continued safety.

VI. Effective Date

This rule is effective December 14, 2026 except as to any provisions in the SOI for dairy products that may be stayed by the filing of proper objections. If you will be adversely affected by one or more provisions in the SOI for dairy products of this regulation, you may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written/paper objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

Any objections received in response to the regulation may be seen in the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *https://www.regulations.gov.* We will publish notice of the objections that we have received or lack thereof in the **Federal Register**.

VII. Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 14192, the Regulatory Flexibility Act (5 U.S.C. 601–612), the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801, Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. Rules are significant under section 3(f)(1) of Executive Order 12866 if they may 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. The Office of Information and Regulatory Affairs (OIRA) has determined that this final rule is a significant regulatory action as defined by section 3(f)(1) of Executive Order 12866.

Executive Order 14192 requires that any new incremental costs associated with certain significant regulatory actions ''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 allows manufacturers of affected products to gain flexibility in using salt substitutes. This flexibility potentially would allow them to reformulate their products to increase their product offerings and therefore potentially increase their profits. Producing new products can reduce average operational costs by enabling economies of scale and scope. Increasing the number of products

increases consumer surplus by providing more options tailored to individual preferences, allowing consumers to choose products that better align with their willingness to pay. However, due to the voluntary nature of the rule, no changes in costs of production or increase in consumer satisfaction can be quantified. This final rule is considered an Executive Order 14192 deregulatory action.

Because this rule is likely to result in an annual effect on the economy of $100 million or more or to meet other criteria specified in the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act, OIRA has determined that this rule does fall within the scope of 5 U.S.C. 804(2).

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule would not impose regulatory costs on small entities, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $187 million, using the most current (2024) Implicit Price Deflator for the Gross Domestic Product. This final rule will not result in a mandated expenditure in any year that meets or exceeds this amount.

B. Overview of Benefits, Costs, and Transfers

There are no regulatory costs of the final rule as there are no regulatory requirements or regulatory penalties if manufacturers of a standardized food choose not to take advantage of the flexibility to use salt substitutes. Other costs considered may come from voluntary reformulation and re-labeling costs, as well as potential consumer dissatisfaction with altered product properties. The benefits of the final rule come in the form of increased flexibility for manufacturers and potential public health benefits stemming from decreased sodium consumption.

We believe that some manufacturers may reformulate (and as a result, re-label) standardized foods with salt substitutes to lower sodium in their products if the voluntary reformulation of their products would be profitable (producer surplus). The resulting new products may lead to increased consumer satisfaction (consumer surplus). Table 1 summarizes the estimated benefits and costs of the final rule.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE FINAL RULE

[Millions of 2024 dollars]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (year)	
Benefits:							
Annualized Monetized $millions/year	$0	$0	$0	2024	7	10	
	0	0	0	2024	3	10	
Annualized Quantified							
Qualitative	Potential increased consumer surplus and producer surplus. Potential health benefits of reduced sodium consumption						
Costs:							
Annualized Monetized $millions/year	0	0	0	2024	7	10	
	0	0	0	2024	3	10	
Annualized Quantified							
Qualitative	Potential costs from voluntary reformulation and re-labeling, as well as possible consumer dissatisfaction						Compliance with the final rule is voluntary. There are no regulatory costs.
Transfers:							
Federal Annualized Monetized $millions/year.	0	0	0	2024	7		
	0	0	0	2024	3		
From/To	From:			To:			
Other Annualized Monetized $millions/year.	0	0	0	2024	7		
	0	0	0	2024	3		
From/To	From:	To:					
Effects:							
State, Local or Tribal Government:							
Small Business:							
Wages:							
Growth:							

In line with Executive Order 14192, in table 2 we estimate present and annualized values of costs, cost savings, and net costs over a perpetual time horizon. We estimate that this rule will generate $0 in annualized net costs at a

7 percent discount rate, discounted relative to year 2024, over a perpetual time horizon.	

TABLE 2—EXECUTIVE ORDER 14192 SUMMARY TABLE

[Millions of 2024 dollars, discounted over a perpetual time horizon relative to year 2024 at a 7 percent discount rate]

	Primary (7%)	Lower bound (7%)	Upper bound (7%)
Present Value of Costs	$0	$0	$0
Present Value of Cost Savings	0	0	0
Present Value of Net Costs	0	0	0
Annualized Costs	0	0	0
Annualized Cost Savings	0	0	0
Annualized Net Costs	0	0	0

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 12) and at *https://www.fda.gov/about-fda/economics-staff/regulatory-impact-analyses-ria.*

VIII. Analysis of Environmental Impact

We previously considered the environmental effects of this rule, as stated in the proposed rule (88 FR 21148 at 21160). We stated that we had determined, under 21 CFR 25.32(a), that this action ''is of a type that does not individually or cumulatively have a significant effect on the human environment'' such that neither an environmental assessment nor an environmental impact statement is required. We have not received any new information or comments that would affect our previous determination (Ref. 13).

IX. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required. This final rule refers to the previously approved collection of information for food labeling regulations (OMB Control No. 0910–0381).

X. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive order and, consequently, a tribal summary impact statement is not required.

XII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

*1. U.S. Department of Agriculture and U.S. Department of Health and Human Services, ''Dietary Guidelines for Americans, 2025–2030,'' 10th Ed., January 2026. Available at *https://www.dietaryguidelines.gov* (accessed May 28, 2026).

*2. FDA, ''Horizontal Approaches to Food Standards of Identity Modernization; Public Meeting; Request for Comments,'' September 27, 2019. Transcript available at *https://www.fda.gov/food/workshops-meetings-webinars-food-and-dietary-supplements/public-meeting-horizontal-approaches-food-standards-identity-modernization-09272019-09272019* (accessed May 28, 2026).

*3. FDA, ''Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods: Guidance for Industry,'' October 2021, Docket number FDA–2014–D–0055. Available at *https://www.fda.gov/media/98264/download* (accessed May 28, 2026).

*4. FDA, ''The Use of an Alternate Name for Potassium Chloride in Food Labeling: Guidance for Industry,'' December 2020, Docket number FDA–2019–D–0892. Available at *https://www.fda.gov/media/125081/download* (accessed May 28, 2026).

5. Coxson, P.G., N.R. Cook, M. Joffres, et al., ''Mortality Benefits From US Population-Wide Reduction in Sodium Consumption: Projections From 3 Modeling Approaches,'' *Hypertension,* 61(3):564–570, 2013. Available at *https://www.ahajournals.org/doi/10.1161/hypertensionaha.111.201293* (accessed May 28, 2026).

6. National Academies of Sciences, Engineering, and Medicine, ''Dietary Reference Intakes for Sodium and Potassium,'' Washington, DC: The National Academies Press, 2019. Available at *https://doi.org/10.17226/25353* (accessed June 24, 2026).

7. Graudal, N.A., T. Hubeck-Graudal and G. Jurgens, ''Effects of Low Sodium Diet Versus High Sodium Diet on Blood Pressure, Renin, Aldosterone, Catecholamines, Cholesterol, and Triglyceride,'' *Cochrane Database of Systematic Reviews,* 12:CD004022, 2020. Available at *https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD004022.pub5/full* (accessed June 24, 2026).

*8. Institute of Medicine, ''Strategies To Reduce Sodium Intake in the United States,'' Washington, DC: The National Academies Press, 2010. Available at

https://www.ncbi.nlm.nih.gov/books/n/nap12818/pdf/ (accessed May 28, 2026).
*9. Harnack L.J., M.E. Cogswell, J.M. Shikany, et al. ''Sources of Sodium in US Adults From 3 Geographic Regions,'' *Circulation,* 135:1775–1783, 2017. Available at *https://www.ahajournals.org/doi/10.1161/CIRCULATIONAHA.116.024446* (accessed May 28, 2026).
*10. van Buren L., M. Dötsch-Klerk, G. Seewi, et al. ''Dietary Impact of Adding Potassium Chloride to Foods as a Sodium Reduction Technique,'' *Nutrients,* 8:235, 2016. Available at *https://doi.org/10.3390/nu8040235* (accessed May 28, 2026).
11. Sinopoli D.A. and H.T. Lawless, ''Taste Properties of Potassium Chloride Alone and in Mixtures with Sodium Chloride Using a Check-All-That-Apply Method,'' *Journal of Food Science,* 77:S319–S322, 2012. Available at *https://ift.onlinelibrary.wiley.com/doi/10.1111/j.1750-3841.2012.02862.x* (accessed May 28, 2026).
*12. FDA, ''Use of Salt Substitutes To Reduce the Sodium Content in Standardized Foods: Final Regulatory Impact Analysis, Regulatory Flexibility Analysis, Unfunded Mandates Reform Act Analysis,'' 2026. Available at *https://www.fda.gov/economics-staff/regulatory-impact-analyses-ria.*
*13. FDA, Human Foods Program. Memorandum from Mariellen Pfeil, Supervisory Biologist, Office of Food Chemical Safety, Dietary Supplements and Innovation, Office of Pre-Market and Additive Safety, Environmental Review Team, to Andrew Yeung, Senior Advisor, Nutrition Center of Excellence (NCE), Office of Nutrition and Food Labeling (ONFL), Division of Food Labeling and Standards (DFLS), and Rumana Yasmeen, Food Technologist, NCE, ONFL, DFLS, Product Evaluation & Labeling Branch 2. ''Categorical Exclusion—Use of Salt Substitutes To Reduce the Sodium Content in Standardized Foods,'' June 1, 2026.

List of Subjects

21 CFR Part 130

Food additives, Food grades and standards.

21 CFR Part 131

Dairy products, Food grades and standards, Incorporation by reference, Milk.

21 CFR Part 133

Dairy products, Food grades and standards, Food labeling.

21 CFR Part 136

Bakery products, Food grades and standards, Incorporation by reference.

21 CFR Part 137

Foods, Food grades and standards, Incorporation by reference.

21 CFR Part 139

Food grades and standards, Incorporation by reference.

21 CFR Parts 145 and 150

Food grades and standards, Fruits, Incorporation by reference.

21 CFR Part 155

Food grades and standards, Incorporation by reference, Vegetables.

21 CFR Part 156

Food grades and standards, Vegetable juices.

21 CFR Part 158

Food grades and standards, Frozen foods, Vegetables.

21 CFR Part 161

Food grades and standards, Frozen foods, Incorporation by reference, Seafood.

21 CFR Part 163

Cacao products, Food grades and standards.

21 CFR Part 166

Food grades and standards, Food labeling, Incorporation by reference, Margarine.

21 CFR Part 168

Food grades and standards, Sugar.

21 CFR Part 169

Food grades and standards, Oils and fats, Spices and flavorings.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 130, 131, 133, 136, 137, 139, 145, 150, 155, 156, 158, 161, 163, 166, 168, and 169 are amended as follows:

PART 130—FOOD STANDARDS: GENERAL

■ 1. The authority citation for part 130 continues to read as follows:

Authority: 21 U.S.C. 321, 336, 341, 343, 371.

■ 2. Add subpart C, consisting of §§ 130.30 through 130.39, to read as follows:

Subpart C—Flexibility in Standardized Foods

Sec.
130.30 Ingredient flexibility in standardized foods.
130.31 through 130.39 [Reserved]

Subpart C—Flexibility in Standardized Foods

§ 130.30 Ingredient flexibility in standardized foods.

(a) The definitions listed in paragraph (c) of this section apply to parts 131 through 169 of this subchapter.

(b) The ingredients used as substitutes must not change the basic nature and essential characteristics of the food.

(c)(1) *Salt substitute* means a safe and suitable ingredient (or combination of safe and suitable ingredients) that is used to replace some or all of the added salt (sodium chloride), to reduce sodium in the food, and that serves the functions of salt in the food.

(2) [Reserved]

§§ 130.31 through 130.39 [Reserved]

PART 131—MILK AND CREAM

■ 3. The authority citation for part 131 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 4. Add § 131.1 to subpart A to read as follows:

§ 131.1 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and at the National Archives and Records Administration (NARA). Contact FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852; 240–402–7500; *IBR_Material_Inquiries@fda.hhs.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the following sources:

(a) AOAC INTERNATIONAL (AOAC), 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250; 1–800–379–2622; *www.aoac.org.*

(1) *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed., 1980; IBR approved for §§ 131.110(d); 131.115(d); 131.120(c); 131.125(c); 131.127(d); 131.130(d); 131.147(d); 131.149(c); 131.150(c); 131.155(c); 131.157(c); 131.180(c).

(2) *Official Methods of Analysis of AOAC INTERNATIONAL,* 21st Ed., 2019, vol. 1—

(i) AOAC Official Method 989.05, Fat in Milk: Modified Mojonnier Ether

Extraction Method, Section 33.2.26; IBR approved for § 131.200(e).

(ii) AOAC Official Method 990.21, Solids-Not-Fat in Milk: By Difference between Total Solids and Fat Contents, Section 33.2.45; IBR approved for § 131.200(e).

(3) *Official Methods of Analysis of AOAC INTERNATIONAL,* 22nd Ed., published 4 January 2023 (available at *https://academic.oup.com/aoac-publications/book/45491*)—

(i) AOAC Official Method 945.48, Evaporated Milk (Unsweetened); IBR approved for §§ 131.160(c); 131.162(c).

(ii) AOAC Official Method 947.05, Acidity of Milk: Titrimetric Method; IBR approved for §§ 131.111(f); 131.112(e); 131.160(c); 131.162(c).

(iii) AOAC Official Method 989.05, Fat in Milk: Modified Mojonnier Ether Extraction Method; IBR approved for §§ 131.111(f); 131.112(e); 131.170(f).

(iv) AOAC Official Method 990.21, Solids-Not-Fat in Milk: By Difference between Total Solids and Fat Contents; IBR approved for §§ 131.111(f); 131.112(e); 131.170(f).

(b) International Organization for Standardization (ISO), Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland; +41 22 749 01 11; *www.iso.org.*

(1) ISO 7889:2003(E), Yogurt—Enumeration of Characteristic Microorganisms—Colony-Count Technique at 37 °C, 1st Ed., 2003–02–01.

(2) [Reserved]

Note 1 to paragraph (b): ISO 7889:2003(E) is co-published as IDF 117:2003(E).

■ 5. In § 131.110, revise the introductory text of paragraph (d) to read as follows:

§ 131.110 Milk.

* * * * *

(d) *Methods of analysis.* The methods referenced in this paragraph (d) are from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 131.1).

* * * * *

■ 6. In § 131.111, revise paragraphs (e)(8) and (f) to read as follows:

§ 131.111 Acidified milk.

* * * * *

(e) * * *

(8) Salt or salt substitute.

* * * * *

(f) *Methods of analysis.* The AOAC methods referenced in this paragraph (f) are incorporated by reference (see § 131.1):

(1) Milkfat content—As determined by the method prescribed in AOAC Official Method 989.05.

(2) Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content using the method prescribed in AOAC Official Method 990.21.

(3) Titratable acidity—As determined by the methods prescribed in AOAC Official Method 947.05 or by an equivalent potentiometric method.

* * * * *

■ 7. In § 131.112, revise paragraphs (d)(8) and (e) to read as follows:

§ 131.112 Cultured milk.

* * * * *

(d) * * *

(8) Salt or salt substitute.

* * * * *

(e) *Methods of analysis.* The AOAC methods referenced in this paragraph (e) are incorporated by reference (see § 131.1):

(1) Milkfat content—As determined by the method prescribed in AOAC Official Method 989.05.

(2) Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content using the method prescribed in AOAC Official Method 990.21.

(3) Titratable acidity—As determined by the methods prescribed in AOAC Official Method 947.05 or by an equivalent potentiometric method.

* * * * *

■ 8. In § 131.115, revise the introductory text of paragraph (d) to read as follows:

§ 131.115 Concentrated milk.

* * * * *

(d) *Methods of analysis.* The methods referenced in this paragraph (d) are from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 131.1).

* * * * *

■ 9. In § 131.120, revise paragraph (c) to read as follows:

§ 131.120 Sweetened condensed milk.

* * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in ''Fat—Official Final Action,'' Section 16.185 from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 131.1).

* * * * *

■ 10. In § 131.125, revise the introductory text of paragraph (c) to read as follows:

§ 131.125 Nonfat dry milk.

* * * * *

(c) *Methods of analysis.* The methods referenced in this paragraph (c) are from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 131.1).

* * * * *

■ 11. In § 131.127, revise the introductory text of paragraph (d) to read as follows:

§ 131.127 Nonfat dry milk fortified with vitamins A and D.

* * * * *

(d) *Methods of analysis.* The methods referenced in this paragraph (d) are from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 131.1).

* * * * *

■ 12. In § 131.130, revise the introductory text of paragraph (d) to read as follows:

§ 131.130 Evaporated milk.

* * * * *

(d) *Methods of analysis.* The methods referenced in this paragraph (d) are from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 131.1).

* * * * *

■ 13. In § 131.147, revise the introductory text of paragraph (d) to read as follows:

§ 131.147 Dry whole milk.

* * * * *

(d) *Methods of analysis.* The methods referenced in this paragraph (d) are from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 131.1).

* * * * *

■ 14. In § 131.149, revise the introductory text of paragraph (c) to read as follows:

§ 131.149 Dry cream.

* * * * *

(c) *Methods of analysis.* The methods referenced in this paragraph (c) are from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 131.1).

* * * * *

■ 15. In § 131.150, revise paragraph (c) to read as follows:

§ 131.150 Heavy cream.

* * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in sections 16.156 and

16.059, under ''Fat, Roese-Gottlieb Method—Official Final Action'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 131.1).

* * * * *

■ 16. In § 131.155, revise paragraph (c) to read as follows:

§ 131.155 Light cream.

* * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in sections 16.156 and 16.059, under ''Fat, Roese-Gottlieb Method—Official Final Action'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 131.1).

* * * * *

■ 17. In § 131.157, revise paragraph (c) to read as follows:

§ 131.157 Light whipping cream.

* * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in sections 16.156 and 16.059, under ''Fat, Roese-Gottlieb Method—Official Final Action'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 131.1).

* * * * *

■ 18. In § 131.160, revise paragraphs (b)(5) and (c) to read as follows:

§ 131.160 Sour cream.

* * * * *

(b) * * *

(5) Salt or salt substitute.

* * * * *

(c) *Methods of analysis.* The AOAC methods referenced in this paragraph (c) are incorporated by reference (see § 131.1):

(1) Milkfat content—AOAC Official Method 945.48G.

(2) Titratable acidity—AOAC Official Method 947.05.

* * * * *

■ 19. In § 131.162, revise paragraphs (b)(4) and (c) to read as follows:

§ 131.162 Acidified sour cream.

* * * * *

(b) * * *

(4) Salt or salt substitute.

* * * * *

(c) *Methods of analysis.* The AOAC methods referenced in this paragraph (c) are incorporated by reference (see § 131.1):

(1) Milkfat content—AOAC Official Method 945.48G.

(2) Titratable acidity—AOAC Official Method 947.05.

* * * * *

■ 20. In § 131.170, revise paragraphs (e)(2) and (f) to read as follows:

§ 131.170 Eggnog.

* * * * *

(e) * * *

(2) Salt or salt substitute.

* * * * *

(f) *Methods of analysis.* The AOAC methods referenced in this paragraph (f) are incorporated by reference (see § 131.1).

(1) Milkfat content—As determined by the method prescribed in AOAC Official Method 989.05.

(2) Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content using the method prescribed in AOAC Official Method 990.21.

* * * * *

■ 21. In § 131.180, revise paragraph (c) to read as follows:

§ 131.180 Half-and-half.

* * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in sections 16.156 and 16.059, under ''Fat, Roese-Gottlieb Method—Official Final Action'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 131.1).

* * * * *

§ 131.200 [Amended]

■ 22. In § 131.200:

■ a. Amend paragraphs (e)(1)(i) and (ii) and (e)(3) by adding the text ''(incorporated by reference, see § 131.1)'' immediately before the closing period of each paragraph.

■ b. Remove paragraph (i).

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

■ 23. The authority citation for part 133 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 24. In § 133.102, add paragraph (c)(3) to read as follows:

§ 133.102 Asiago fresh and asiago soft cheese.

* * * * *

(c) * * *

(3) During the cheesemaking process, where the curd is salted, salt substitute may be used.

* * * * *

■ 25. In § 133.106, add paragraph (b)(3)(vii) to read as follows:

§ 133.106 Blue cheese.

* * * * *

(b) * * *

(3) * * *

(vii) Salt substitute.

* * * * *

■ 26. In § 133.108, add paragraph (b)(3)(v) to read as follows:

§ 133.108 Brick cheese.

* * * * *

(b) * * *

(3) * * *

(v) Salt substitute.

* * * * *

■ 27. In § 133.111, add paragraph (c)(3) to read as follows:

§ 133.111 Caciocavallo siciliano cheese.

* * * * *

(c) * * *

(3) During the cheesemaking process, where the curd is salted, salt substitute may be used.

* * * * *

■ 28. In § 133.113, add paragraph (b)(3)(vi) to read as follows:

§ 133.113 Cheddar cheese.

* * * * *

(b) * * *

(3) * * *

(vi) Salt substitute.

* * * * *

■ 29. In § 133.118, revise the first sentence of paragraph (c)(2) and add paragraph (c)(4) to read as follows:

§ 133.118 Colby cheese.

* * * * *

(c) * * *

(2) Milk shall be deemed to have been pasteurized if it has been held at a temperature of not less than 145 °F for a period of not less than 30 minutes, or for a time and at a temperature equivalent thereto in phosphatase destruction. * * *

* * * * *

(4) During the cheesemaking process, where the curd is salted, salt substitute may be used.

* * * * *

■ 30. In § 133.123, revise paragraph (c)(3) to read as follows:

§ 133.123 Cold-pack and club cheese.

* * * * *

(c) * * *

(3) Salt or salt substitute.

* * * * *

■ 31. In § 133.124, revise paragraph (e)(3) to read as follows:

§ 133.124 Cold-pack cheese food.

* * * * *

(e) * * *
(3) Salt or salt substitute.
* * * * *

■ 32. In § 133.127, revise paragraph (b)(3)(v) to read as follows:

§ 133.127 Cook cheese, koch kaese.

* * * * *
(b) * * *
(3) * * *
(v) Salt or salt substitute.
* * * * *

■ 33. In § 133.129, revise paragraphs (b)(1)(i) through (iii) to read as follows:

§ 133.129 Dry curd cottage cheese.

* * * * *
(b)(1) * * *

(i) Harmless lactic-acid-producing bacteria, with or without rennet and/or other safe and suitable milk-clotting enzyme that produces equivalent curd formation, are added and it is held until it becomes coagulated. The coagulated mass may be cut, it may be warmed, it may be stirred, and it is then drained. The curd may be washed with water and further drained. It may be pressed, chilled, worked, seasoned with salt or salt substitute; or

(ii) Food grade phosphoric acid, lactic acid, citric acid, or hydrochloric acid, with or without rennet and/or other safe and suitable milk-clotting enzyme that produces equivalent curd formation, is added in such amount as to reach a pH of between 4.5 and 4.7; coagulation to a firm curd is achieved while heating to a maximum of 120 °F without agitation during a continuous process. The coagulated mass may be cut; it may be warmed; it may be stirred; it is then drained. The curd is washed with water, stirred, and further drained. It may be pressed, chilled, worked, seasoned with salt or salt substitute.

(iii) Food grade acids as provided in paragraph (b)(1)(ii) of this section, D-Glucono-delta-lactone with or without rennet, and/or other safe and suitable milk clotting enzyme that produces equivalent curd formation, are added in such amounts as to reach a final pH value in the range of 4.5–4.8, and it is held until it becomes coagulated. The coagulated mass may be cut; it may be warmed; it may be stirred; it is then drained. The curd is then washed with water and further drained. It may be pressed, chilled, worked, and seasoned with salt or salt substitute.

* * * * *

■ 34. In § 133.133, revise paragraph (b)(3)(i) to read as follows:

§ 133.133 Cream cheese.

* * * * *
(b) * * *
(3) * * *
(i) Salt or salt substitute.
* * * * *

■ 35. In § 133.136, add paragraph (b)(3)(vi) to read as follows:

§ 133.136 Washed curd and soaked curd cheese.

* * * * *
(b) * * *
(3) * * *
(vi) Salt substitute.
* * * * *

■ 36. In § 133.138, add paragraph (b)(3)(v) to read as follows:

§ 133.138 Edam cheese.

* * * * *
(b) * * *
(3) * * *
(v) Salt substitute.
* * * * *

■ 37. In § 133.141, add paragraph (b)(3)(vii) to read as follows:

§ 133.141 Gorgonzola cheese.

* * * * *
(b) * * *
(3) * * *
(vii) Salt substitute.
* * * * *

■ 38. In § 133.144, add paragraph (b)(3)(vi) to read as follows:

§ 133.144 Granular and stirred curd cheese.

* * * * *
(b) * * *
(3) * * *
(vi) Salt substitute.
* * * * *

■ 39. In § 133.147, revise paragraph (c)(5) to read as follows:

§ 133.147 Grated American cheese food.

* * * * *
(c) * * *
(5) Salt or salt substitute.
* * * * *

■ 40. In § 133.148, revise paragraph (c) to read as follows:

§ 133.148 Hard grating cheeses.

* * * * *

(c)(1) For the purposes of this section, the word ''milk'' means cow's milk or goat's milk or sheep's milk or mixtures of two or all of these. Such milk may be adjusted by separating part of the fat therefrom or (in the case of cow's milk) by adding one or more of the following: Cream, skim milk, concentrated skim milk, nonfat dry milk; (in the case of goat's milk) the corresponding products from goat's milk; (in the case of sheep's milk) the corresponding products from sheep's milk; water in a quantity sufficient to reconstitute any such concentrated or dried products used.

(2) During the cheesemaking process, where the curd is salted, salt substitute may be used.
* * * * *

■ 41. In § 133.149, add paragraph (b)(3)(iv) to read as follows:

§ 133.149 Gruyere cheese.

* * * * *
(b) * * *
(3) * * *
(iv) Salt substitute.
* * * * *

■ 42. In § 133.150, revise the first sentence of paragraph (c)(2), add paragraph (c)(3), and revise paragraph (e)(1) to read as follows:

§ 133.150 Hard cheeses.

* * * * *
(c) * * *

(2) Milk shall be deemed to have been pasteurized if it has been held at a temperature of not less than 145 °F for a period of not less than 30 minutes, or for a time and at a temperature equivalent thereto in phosphatase destruction. * * *

(3) During the cheesemaking process, where the curd is salted, salt substitute may be used.
* * * * *
(e) * * *

(1) The specific common or usual name of such hard cheese, if any such name has become generally recognized therefor; or
* * * * *

■ 43. In § 133.152, add paragraph (b)(3)(iv) to read as follows:

§ 133.152 Limburger cheese.

* * * * *
(b) * * *
(3) * * *
(iv) Salt substitute.
* * * * *

■ 44. In § 133.153, revise paragraph (b)(3)(iii) to read as follows:

§ 133.153 Monterey cheese and monterey jack cheese.

* * * * *
(b) * * *
(3) * * *
(iii) Salt or salt substitute.
* * * * *

■ 45. In § 133.155, revise paragraph (b)(3)(iii) to read as follows:

§ 133.155 Mozzarella cheese and scamorza cheese.

* * * * *
(b) * * *
(3) * * *
(iii) Salt or salt substitute.
* * * * *

■ 46. In § 133.156, revise paragraph (b)(3)(iii) to read as follows:

§ 133.156 Low-moisture mozzarella and scamorza cheese.

* * * * *

(b) * * *

(3) * * *

(iii) Salt or salt substitute.

* * * * *

■ 47. In § 133.160, add paragraph (b)(3)(vi) to read as follows:

§ 133.160 Muenster and munster cheese.

* * * * *

(b) * * *

(3) * * *

(vi) Salt substitute.

* * * * *

■ 48. In § 133.162, revise paragraph (b)(3)(i) to read as follows:

§ 133.162 Neufchatel cheese.

* * * * *

(b) * * *

(3) * * *

(i) Salt or salt substitute.

* * * * *

■ 49. In § 133.164, add paragraph (b)(3)(iv) to read as follows:

§ 133.164 Nuworld cheese.

* * * * *

(b) * * *

(3) * * *

(iv) Salt substitute.

* * * * *

■ 50. In § 133.165, add paragraph (c)(3) to read as follows:

§ 133.165 Parmesan and reggiano cheese.

* * * * *

(c) * * *

(3) During the cheesemaking process, where the curd is salted, salt substitute may be used.

* * * * *

■ 51. In § 133.169, revise paragraph (d)(4) to read as follows:

§ 133.169 Pasteurized process cheese.

* * * * *

(d) * * *

(4) Salt or salt substitute.

* * * * *

■ 52. In § 133.173, revise paragraph (e)(4) to read as follows:

§ 133.173 Pasteurized process cheese food.

* * * * *

(e) * * *

(4) Salt or salt substitute.

* * * * *

■ 53. In § 133.179, revise paragraph (f)(5) to read as follows:

§ 133.179 Pasteurized process cheese spread.

* * * * *

(f) * * *

(5) Salt or salt substitute.

* * * * *

■ 54. In § 133.181, add paragraph (b)(3)(vi) to read as follows:

§ 133.181 Provolone cheese.

* * * * *

(b) * * *

(3) * * *

(vi) Salt substitute.

* * * * *

■ 55. In § 133.182, revise and republish paragraph (b) and revise paragraph (c)(2) to read as follows:

§ 133.182 Soft ripened cheeses.

* * * * *

(b) Milk, which may be pasteurized or clarified or both, and which may be warmed, is subjected to the action of harmless lactic-acid-producing bacteria or other harmless flavor-producing bacteria, present in such milk or added thereto. Sufficient rennet, rennet paste, extract of rennet paste, or other safe and suitable milk-clotting enzyme that produces equivalent curd formation, singly or in any combination (with or without purified calcium chloride in a quantity not more than 0.02 percent, calculated as anhydrous calcium chloride, of the weight of the milk) is added to set the milk to a semisolid mass. Harmless artificial coloring may be added. After coagulation, the mass is so treated as to promote and regulate the separation of whey and curd. Such treatment may include one or more of the following: cutting, stirring, heating, dilution with water or brine. The whey, or part of it, is drained off, and the curd is collected and shaped. It may be placed in forms and may be pressed. Harmless flavor-producing microorganisms may be added. It is cured under conditions suitable for development of biological curing agents on the surface of the cheese, and the curing is conducted so that the cheese cures from the surface toward the center. Salt or salt substitute may be added during the procedure. A harmless preparation of enzymes of animal or plant origin capable of aiding in the curing or development of flavor of soft ripened cheeses may be added, in such quantity that the weight of the solids of such preparation is not more than 0.1 percent of the weight of the milk used.

(c) * * *

(2) Milk shall be deemed to have been pasteurized if it has been held at a temperature of not less than 145 °F for a period of not less than 30 minutes, or for a time and at a temperature equivalent thereto in phosphatase destruction.

* * * * *

■ 56. In § 133.183, add paragraph (c)(3) to read as follows:

§ 133.183 Romano cheese.

* * * * *

(c) * * *

(3) During the cheesemaking process, where the curd is salted, salt substitute may be used.

* * * * *

■ 57. In § 133.184, revise paragraphs (b) introductory text and (b)(3) to read as follows:

§ 133.184 Roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk.

* * * * *

(b) *Optional Ingredients.* The following safe and suitable ingredients may be used:

* * * * *

(3) *Other optional ingredients.* (i) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(ii) Salt substitute.

* * * * *

■ 58. In § 133.185, add paragraph (b)(3)(v) to read as follows:

§ 133.185 Samsoe cheese.

* * * * *

(b) * * *

(3) * * *

(v) Salt substitute.

* * * * *

■ 59. In § 133.186, revise paragraphs (a)(2) and (c) to read as follows:

§ 133.186 Sap sago cheese.

(a) * * *

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is allowed to become sour, and is heated to boiling temperature, with stirring. Sufficient sour whey is added to precipitate the casein. The curd is removed, spread out in boxes, and pressed, and while under pressure is allowed to drain and ferment. It is ripened for not less than 5 weeks. The ripened curd is dried and ground; salt or salt substitute and dried clover of the species *Melilotus coerulea* are added. The mixture is shaped into truncated cones and ripened. The optional ingredient in paragraph (b)(2) of this section may be added during this procedure.

* * * * *

(c) *Nomenclature.* The name of the food is ''sap sago cheese.''

* * * * *

■ 60. In § 133.187, revise and republish paragraph (b) and the first sentence of paragraph (c)(2) to read as follows:

§ 133.187 Semisoft cheeses.

* * * * *

(b) Milk, which may be pasteurized or clarified or both, and which may be warmed, is subjected to the action of harmless lactic-acid-producing bacteria or other harmless flavor-producing bacteria, present in such milk or added thereto. Sufficient rennet, rennet paste, extract of rennet paste, or other safe and suitable milk-clotting enzyme that produces equivalent curd formation, singly or in any combination (with or without purified calcium chloride in a quantity not more than 0.02 percent, calculated as anhydrous calcium chloride, of the weight of the milk) is added to set the milk to a semisolid mass. Harmless artificial coloring may be added. After coagulation, the mass is so treated as to promote and regulate the separation of whey and curd. Such treatment may include one or more of the following: cutting, stirring, heating, dilution with water or brine. The whey, or part of it, is drained off, and the curd is collected and shaped. It may be placed in forms and may be pressed. Harmless flavor-producing microorganisms may be added. It may be cured in a manner to promote the growth of biological curing agents. Salt or salt substitute may be added during the procedure. A harmless preparation of enzymes of animal or plant origin capable of aiding in the curing or development of flavor of semisoft cheese may be added, in such quantity that the weight of the solids of such preparation is not more than 0.1 percent of the weight of the milk used.

(c) * * *

(2) Milk shall be deemed to have been pasteurized if it has been held at a temperature of not less than 145 °F for a period of not less than 30 minutes, or for a time and at a temperature equivalent thereto in phosphatase destruction. * * *

* * * * *

■ 61. In § 133.188, revise and republish paragraph (b) and the first sentence in paragraph (c)(2) to read as follows:

§ 133.188 Semisoft part-skim cheeses.

* * * * *

(b) Milk, which may be pasteurized or clarified or both, and which may be warmed, is subjected to the action of harmless lactic-acid-producing bacteria or other harmless flavor-producing bacteria, present in such milk or added thereto. Sufficient rennet, rennet paste, extract of rennet paste, or other safe and suitable milk-clotting enzyme that produces equivalent curd formation singly or in any combination (with or without purified calcium chloride in a quantity not more than 0.02 percent, calculated as anhydrous calcium chloride, of the weight of the milk) is added to set the milk to a semisolid mass. Harmless artificial coloring may be added. After coagulation, the mass is so treated as to promote and regulate the separation of whey and curd. Such treatment may include one or more of the following: cutting, stirring, heating, dilution with water or brine. The whey, or part of it, is drained off, and the curd is collected and shaped. It may be placed in forms and may be pressed. Harmless flavor-producing microorganisms may be added. It may be cured in a manner to promote the growth of biological curing agents. Salt or salt substitute may be added during the procedure. A harmless preparation of enzymes of animal or plant origin capable of aiding in the curing or development of flavor of semisoft part-skim cheese may be added in such quantity that the weight of the solids of such preparation is not more than 0.1 percent of the weight of the milk used.

(c) * * *

(2) Milk shall be deemed to have been pasteurized if it has been held at a temperature of not less than 145 °F for a period of not less than 30 minutes, or for a time and at a temperature equivalent thereto in phosphatase destruction. * * *

* * * * *

■ 62. In § 133.189, revise paragraph (d) to read as follows:

§ 133.189 Skim milk cheese for manufacturing.

* * * * *

(d)(1) For the purposes of this section, ''skim milk'' means cow's milk from which the milk fat has been separated.

(2) During the cheesemaking process, where the curd is salted, salt substitute may be used.

* * * * *

■ 63. In § 133.190, revise paragraph (b)(3)(iii) to read as follows:

§ 133.190 Spiced cheeses.

* * * * *

(b) * * *

(3) * * *

(iii) Salt or salt substitute.

* * * * *

■ 64. In § 133.195, add paragraph (b)(3)(vii) to read as follows:

§ 133.195 Swiss and emmentaler cheese.

* * * * *

(b) * * *

(3) * * *

(vii) Salt substitute.

* * * * *

PART 136—BAKERY PRODUCTS

■ 65. The authority citation for part 136 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 66. In § 136.110, revise paragraphs (c)(4) and (d) to read as follows:

§ 136.110 Bread, rolls, and buns.

* * * * *

(c) * * *

(4) Salt or salt substitute.

* * * * *

(d) Total solids are determined by the method prescribed in AOAC Official Method 935.36(a), Solids (Total) in Bread, except that if the baked unit weighs 454 grams (1 pound) or more, one entire unit is used for the determination; if the baked unit weighs less than 454 grams, enough units to weigh 454 grams or more are used. AOAC Official Method 935.36(a), Solids (Total) in Bread, *Official Methods of Analysis,* 22nd Ed., published 4 January 2023 (available at *https://academic.oup.com/aoac-publications/book/45491*), is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and at the National Archives and Records Administration (NARA). Contact FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852; 240–402–7500; *IBR_Material_Inquiries@fda.hhs.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* This material is also available from AOAC INTERNATIONAL, 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250; 1–800–379–2622; *www.aoac.org.*

* * * * *

PART 137—CEREAL FLOURS AND RELATED PRODUCTS

■ 67. The authority citation for part 137 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 68. Add subpart A, consisting of §§ 137.1 through 137.100, to read as follows:

Subpart A—General Provisions

Sec.

137.1 Incorporation by reference.
137.2 through 137.100 [Reserved]

Subpart A—General Provisions

§ 137.1 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and at the National Archives and Records Administration (NARA). Contact FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852; 240–402–7500; *IBR_Material_Inquiries@fda.hhs.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from AOAC INTERNATIONAL (AOAC), 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250; 1–800–379–2622; *www.aoac.org/:*

(a) *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed., 1980; IBR approved for §§ 137.105(a) and (c); 137.190; 137.195; 137.200(c); 137.211(b); 137.250(b); 137.300(b); 137.350(e).

(b) *Official Methods of Analysis of AOAC INTERNATIONAL,* 22nd Ed., published 4 January 2023 (available at *https://academic.oup.com/aoac-publications/book/45491*)—

(1) AOAC Official Method 923.02, Carbon Dioxide (Total) in Baking Powders: Gasometric Determination; IBR approved for §§ 137.180(c); 137.270(b).

(2) AOAC Appendix C, Reference Tables, 909.04, Correction Factors for Gasometric Determination of Carbon Dioxide (Reference Table 909.04); IBR approved for §§ 137.180(c); 137.270(b).

§§ 137.2 through 137.100 [Reserved]

■ 69. In § 137.105:

■ a. Revise and republish the introductory text of paragraph (a); and

■ b. Amend paragraphs (c)(1) through (3) by revising the first sentence and removing the second sentence in each paragraph.

The revisions read as follows:

§ 137.105 Flour.

(a) Flour, white flour, wheat flour, plain flour, is the food prepared by grinding and bolting cleaned wheat, other than durum wheat and red durum wheat. To compensate for any natural deficiency of enzymes, malted wheat, malted wheat flour, malted barley flour, or any combination of two or more of these, may be used; but the quantity of malted barley flour so used is not more than 0.75 percent. Harmless preparations of α-amylase obtained from *Aspergillus oryzae,* alone or in a safe and suitable carrier, may be used. When tested for granulation as prescribed in paragraph (c)(4) of this section, not less than 98 percent of the flour passes through a cloth having openings not larger than those of woven wire cloth designated ''212 μm (No. 70)'' complying with the specifications for such cloth set forth in Table 1 ''Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)'', under the heading ''Definitions of Terms and Explanatory Notes'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 137.1). The flour is freed from bran coat, or bran coat and germ, to such extent that the percent of ash therein, calculated to a moisture-free basis, is not more than the sum of 1/20 of the percent of protein therein, calculated to a moisture-free basis, plus 0.35. Its moisture content is not more than 15 percent. It may contain ascorbic acid in a quantity not to exceed 200 parts per million as a dough conditioner. Unless such addition conceals damage or inferiority or makes the flour appear to be better or of greater value than it is, one or any combination of two or more of the following optional bleaching ingredients may be added in a quantity not more than sufficient for bleaching or, in case such ingredient has an artificial aging effect, in a quantity not more than sufficient for bleaching and such artificial aging effect:

* * * * *

(c) * * *

(1) Ash is determined by the method prescribed in section 14.006, ''Direct Method—Official Final Action'', under the heading ''Ash (5)'', from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 137.1). * * *

(2) Protein is 5.7 times the nitrogen as determined by the method prescribed in section 2.057, ''Improved Kjeldahl Methods for Nitrate-Free Samples (20—Official Final Action'', from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 137.1). * * *

(3) Moisture is determined by the method prescribed in sections 14.002 and 14.003, ''Vacuum Oven Method (2)—Official Final Action'', under the heading ''Total Solids Moisture, Indirect Method'', from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 137.1).

* * * * *

■ 70. In § 137.180, revise paragraphs (a), (c) introductory text, and (c)(1) to read as follows:

§ 137.180 Self-rising flour.

(a) *Description.* Self-rising flour, self-rising white flour, self-rising wheat flour, is an intimate mixture of flour, sodium bicarbonate, and one or more of the acid-reacting substances monocalcium phosphate, sodium acid pyrophosphate, and sodium aluminum phosphate. It is seasoned with salt or salt substitute. When it is tested by the method prescribed in paragraph (c) of this section, not less than 0.5 percent of carbon dioxide is evolved. The acid-reacting substance is added in sufficient quantity to neutralize the sodium bicarbonate. The combined weight of such acid-reacting substance and sodium bicarbonate is not more than 4.5 parts to each 100 parts of flour used. Subject to the conditions and restrictions prescribed by § 137.105(a), the bleaching ingredients specified in such section may be added as optional ingredients. If the flour used in making the self-rising flour is bleached, the optional bleaching ingredient used therein (see § 137.105(a)) is also an optional ingredient of the self-rising flour.

* * * * *

(c) *Method of analysis.* Follow the method prescribed in AOAC Official Method 923.02A, and 923.02B (incorporated by reference, see § 137.1): Instead of using AOAC Official Method 923.02C use the following procedure:

(1) Weigh 17 grams of the official sample into flask A, add 15–20 glass beads (4–6 mm. diameter), and connect this flask with the apparatus (fig. 923.02). Open stopcock C and by means of the leveling bulb E bring the displacement solution to the 25 cc. graduation above the zero mark. (This 25 cc. is a partial allowance for the volume of acid to be used in the decomposition.) Allow the apparatus to stand 1–2 minutes to ensure that the temperature and pressure within the apparatus are the same as those of the room. Close the stopcock, lower the leveling bulb somewhat to reduce the pressure within the apparatus, and slowly run into the decomposition flask from burette F 45 cc. of sulfuric acid (1 + 5). To prevent the liberated carbon dioxide from escaping through the acid burette into the air, keep the displacement solution in the leveling

bulb at all times during the decomposition at a lower level than that in the gas-measuring tube. Rotate and then vigorously agitate the decomposition flask for 3 minutes to mix the contents intimately. Allow to stand for 10 minutes to bring to equilibrium. Equalize the pressure in the measuring tube by means of the leveling bulb and read the volume of gas from the zero point on the tube. Deduct 20 cc. from this reading (this 20 cc. together with previous allowance of 25 cc. compensates for the 45 cc. acid used in the decomposition). Observe the temperature of the air surrounding the apparatus and also the barometric pressure and multiply the number of milliliters of gas evolved by the factor given in Reference Table 909.04 (incorporated by reference, see § 137.1) for the temperature and pressure observed. Divide the corrected reading by 100 to obtain the apparent percent by weight of carbon dioxide in the official sample.

* * * * *

■ 71. In § 137.190:
■ a. Remove the last two sentences; and
■ b. Revise the 3rd sentence.

The revision reads as follows:

§ 137.190 Cracked wheat.

* * *Cracked wheat contains not more than 15 percent of the moisture as determined by the method prescribed in section 7.002 under ''Preparation of Sample—Official Final Action'', and section 7.003 under ''Moisture—Official Final Action. I. Drying in Vacuo at 95–100° (2)'', from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 137.1).

■ 72. In § 137.195:
■ a. Remove the last two sentences; and
■ b. Revise the 3rd sentence.

The revision reads as follows:

§ 137.195 Crushed wheat.

* * *Crushed wheat contains not more than 15 percent of moisture as determined by the method prescribed in section 7.002 under ''Preparation of Sample—Official Final Action'' and section 7.003 under ''Moisture—Official Final Action. I. Drying in Vacuo at 95–100° (2)'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 137.1).

■ 73. In § 137.200, revise paragraph (c)(1) and the first sentence of paragraph (c)(2) and remove the second sentence of paragraph (c)(2) to read as follows:

§ 137.200 Whole wheat flour.

* * * * *

(c) * * *

(1) Moisture is determined by the method prescribed in section 14.002 ''Vacuum Oven Method—Official Final Action'' and section 14.003 ''Determination'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 137.1).

(2) The method referred to in paragraph (a) of this section is as follows: Use No. 8 and No. 20 sieves, having standard 8-inch full-height frames, complying with the specifications set forth in Table 1, ''Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)'', under the heading ''Definitions of Terms and Explanatory Notes'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 137.1). * * *

■ 74. In § 137.211, amend paragraph (b)(2) by revising the first sentence and removing the second and third sentences to read as follows:

§ 137.211 White corn flour.

* * * * *

(b) * * *

(2) The method referred to in paragraph (a) of this section is as follows: Weigh 5 grams of sample into a tared truncated metal cone (top diameter 5 centimeters, bottom diameter 2 centimeters, height 4 centimeters), fitted at bottom with 70-mesh wire cloth complying with the specifications for No. 70 wire cloth in Table 1, ''Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)'', under the heading ''Definitions of Terms and Explanatory Notes'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 137.1). * * *

■ 75. In § 137.250:
■ a. Revise the introductory text of paragraph (b)(1); and
■ b. Amend paragraph (b)(2) by revising the first sentence and removing the second and third sentences.

The revisions read as follows:

§ 137.250 White corn meal.

* * * * *

(b)(1) For the purposes of this section, moisture, fat, and crude fiber content will be determined by the following methods referenced in this paragraph (b)(1) from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 137.1):

* * * * *

(2) The method referred to in paragraph (a) of this section is as follows: Use No. 12 and No. 25 sieves, having standard 20.3 centimeter (8-inch) diameter full-height frames, complying with the specifications for wire cloth and sieve frames in ''Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 137.1), prescribed in § 137.105(a). * * *

■ 76. In § 137.270, revise paragraphs (a), (b) introductory text, and (b)(1) to read as follows:

§ 137.270 Self-rising white corn meal.

(a) *Description.* Self-rising white corn meal is an intimate mixture of white corn meal, sodium bicarbonate, and one or both of the acid-reacting substances monocalcium phosphate and sodium aluminum phosphate. It is seasoned with salt or salt substitute. When it is tested by the method prescribed in paragraph (b) of this section, not less than 0.5 percent of carbon dioxide is evolved. The acid-reacting substance is added in sufficient quantity to neutralize the sodium bicarbonate. The combined weight of such acid-reacting substance and sodium bicarbonate is not more than 4.5 parts to each 100 parts of white corn meal used.

(b) *Method of analysis.* Follow the method prescribed in AOAC Official Method 923.02A and 923.02B (incorporated by reference, see § 137.1): Instead of using AOAC Official Method 923.02C use the following procedure:

(1) Weigh 17 grams of the official sample into flask A, add 15–20 glass beads (4–6 mm. diameter), and connect this flask with the apparatus (fig. 923.02). Open stopcock C and by means of the leveling bulk E bring the displacement solution to the 25 cc. graduation above the zero mark. (This 25 cc. is a partial allowance for the volume of acid to be used in the decomposition.) Allow the apparatus to stand 1–2 minutes to ensure that the temperature and pressure within the apparatus are the same as those of the room. Close the stopcock, lower the leveling bulb somewhat to reduce the pressure within the apparatus, and slowly run into the decomposition flask from burette F 45 cc. of sulfuric acid (1 + 5). To prevent the liberated carbon dioxide from escaping through the acid burette into the air, keep the displacement solution in the leveling bulb at all times during the decomposition at a lower level than that in the gas-measuring tube. Rotate and then vigorously agitate the decomposition flask for 3 minutes to mix the contents intimately. Allow to

stand for 10 minutes to bring to equilibrium. Equalize the pressure in the measuring tube by means of the leveling bulb and read the volume of gas from the zero point on the tube. Deduct 20 cc. from this reading (this 20 cc. together with previous allowance of 25 cc. compensates for the 45 cc. acid used in the decomposition). Observe the temperature of the air surrounding the apparatus and also the barometric pressure and multiply the number of milliliters of gas evolved by the factor given in the Reference Table 909.04 (incorporated by reference, see § 137.1) for the temperature and pressure observed. Divide the corrected reading by 100 to obtain the apparent percent by weight of carbon dioxide in the official sample.

* * * * *

■ 77. In § 137.300, amend paragraph (b)(2) by revising the first sentence and removing the second and third sentences to read as follows:

§ 137.300 Farina.

* * * * *

(b) * * *

(2) The method referred to in paragraph (a) of this section is as follows: Use No. 20 and No. 100 sieves, having standard 20.3 centimeter (8-inch) full-height frames, complying with the specifications for such cloth set forth in Table 1, ''Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)'' under the heading ''Definitions of Terms and Explanatory Notes'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 137.1). * * *

■ 78. In § 137.350, revise and republish paragraph (e) to read as follows:

§ 137.350 Enriched rice.

* * * * *

(e) The method referred to in paragraph (c) of this section is as follows: Mix the contents of one or more containers and transfer ½ pound thereof to a 4-liter flask containing 2 liters of distilled water at room temperature (but not below 20 °C). Stopper the flask and swirl it moderately for ½ minute so that the rice is in motion and in uniform suspension. Allow the rice to settle for ½ minute, then pour off 1,600 milliliters of the water, together with any floating and suspended matter, and discard. To the contents of the flask, add 1,600 milliliters of distilled water and 20 milliliters of 10 *N* hydrochloric acid. Agitate vigorously and wash down the sides of the flask with 150 milliliters of 0.1 *N* hydrochloric acid. To avoid excess foaming during the extraction, heat the mixture slowly to about 100 °C, agitate if necessary, and maintain at this temperature until air is expelled. Again wash down the sides of the flask with 150 milliliters of 0.1 *N* hydrochloric acid. Heat the mixture in an autoclave at 120 °C to 123 °C for 30 minutes, remove and cool to room temperature. Dilute the mixture with distilled water so that the total volume is 2,500 milliliters. Swirl the flask, and while the solids are in uniform suspension pour off about 250 milliliters of the mixture for later determination of iron (and calcium, if this is to be determined). With filter paper that has been shown not to adsorb thiamine, riboflavin, or niacin, filter enough of the remaining mixture for determination of thiamine, riboflavin, and niacin. (In the case of a mixture difficult to filter, centrifuging or filtering through fritted glass, or both, using a suitable analytical filter-aid, may be substituted for, or may precede, filtering through paper.) Dilute an aliquot of filtrate with 0.1 *N* hydrochloric acid, so that each milliliter contains about 0.2 microgram of thiamine, and determine thiamine by the ''Rapid Fluorometric Method—Official Final Action,'' in section 43.034 of ''Official Methods of Analysis of the Association of Official Analytical Chemists'' (AOAC), 13th Ed. (incorporated by reference, see § 137.1). With a suitable aliquot determine riboflavin by the method prescribed in section 43.041(a) by the ''Fluorometric Method—Official Final Action,'' AOAC, 13th Ed., beginning with the third sentence of the second paragraph, ''Adjust, with vigorous agitation * * *.'' Determine niacin in a 200-milliliter aliquot of the filtrate by the ''Colorimetric Method—Official Final Action,'' in section 43.045, AOAC, 13th Ed., beginning with the sixth sentence of the first paragraph, ''Adjust to pH 4.5 with * * *.'' Evaporate to dryness a 100-milliliter aliquot of the nonfiltered material withdrawn while agitating, and determine iron using the method ''Iron—Official Final Action,'' in sections 14.011, 14.012, and 14.013, AOAC, 13th Ed., and, if required, determine calcium as directed in section 14.014 under the heading ''Calcium—Official Final Action,'' AOAC, 13th Ed.

* * * * *

PART 139—MACARONI AND NOODLE PRODUCTS

■ 79. The authority citation for part 139 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 80. Add subpart A, consisting of §§ 139.1 through 139.100, to read as follows:

Subpart A—General Provisions

Sec.
139.1 Incorporation by reference.
139.2 through 139.100 [Reserved]

Subpart A—General Provisions

§ 139.1 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and at the National Archives and Records Administration (NARA). Contact FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852; 240–402–7500; *IBR_Material_Inquiries@fda.hhs.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from AOAC INTERNATIONAL (AOAC), 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250; 1–800–379–2622; *www.aoac.org:*

(a) *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed., 1980; IBR approved for § 139.117(a).

(b) AOAC Official Method 926.07, Solids (Total) and Loss on Drying (Moisture) in Macaroni Products, Official Methods of Analysis of AOAC INTERNATIONAL, 22nd Ed., published 4 January 2023; IBR approved for §§ 139.110(a); 139.150(a). (Available at *https://academic.oup.com/aoac-publications/book/45491.*)

§§ 139.2 through 139.100 [Reserved]

■ 81. In § 139.110, revise paragraphs (a)(4) and (5) to read as follows:

§ 139.110 Macaroni products.

(a) * * *

(4) Salt or salt substitute, in a quantity that seasons the food.

(5) Gum gluten, in such quantity that the protein content of the finished food is not more than 13 percent by weight. The finished macaroni product contains not less than 87 percent of total solids as determined by AOAC Official Method 926.07A (incorporated by reference, see § 139.1).

* * * * *

■ 82. In § 139.117:

■ a. Lift the stay published at 43 FR 11695, Mar. 21, 1978;

■ b. Revise the introductory text of paragraph (a)(2); and
■ c. Stay the section indefinitely.
The revision reads as follows:

§ 139.117 Enriched macaroni products with fortified protein.

(a) * * *
(2) Each such finished food when tested by the methods described in the cited sections of *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 139.1):
* * * * *

■ 83. In § 139.150, revise paragraphs (a)(2) and (4) to read as follows:

§ 139.150 Noodle products.

(a) * * *
(2) Salt or salt substitute, in a quantity that seasons the food.
* * * * *
(4) Concentrated glyceryl monostearate (containing not less than 90 percent monoester) in a quantity not exceeding 3 percent by weight of the finished food. The finished noodle product contains not less than 87 percent of total solids as determined by AOAC Official Method 926.07A (incorporated by reference, see § 139.1). The total solids of noodle products contains not less than 5.5 percent by weight of the solids of egg, or egg yolk.
* * * * *

PART 145—CANNED FRUITS

■ 84. The authority citation for part 145 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 85. In § 145.110:
■ a. Revise the paragraph-level designation for the 4th paragraph level from lowercase italic letters (*i.e.,* (*a*) *et seq.*) to uppercase non-italic letters (*i.e.,* (A) *et seq.*);
■ b. Revise paragraphs (a)(1) and (a)(2)(iii); and
■ c. In paragraph (a)(4), remove the text ''(a)(2)(viii)(*b*)'' and add, in its place, the text ''(a)(2)(viii)(B)''.
The revisions read as follows:

§ 145.110 Canned applesauce.

(a) * * *
(1) *Definition.* Canned applesauce is the food prepared from comminuted or chopped apples (*Malus domestica* Borkhausen), which may or may not be peeled and cored, and which may have added thereto one or more of the optional ingredients specified in paragraph (a)(2) of this section. The apple ingredient is heated and, in accordance with good manufacturing practices, bruised apple particles, peel, seed, core material, carpel tissue, and other coarse, hard, or extraneous materials are removed. The food is sealed in containers. It is so processed by heat, either before or after sealing, as to prevent spoilage. The soluble solids content, measured by refractometer and expressed as percent sucrose (degrees Brix) with correction for temperature to the equivalent at 20 °C (68 °F), is not less than 9 percent (exclusive of the solids of any added optional nutritive carbohydrate sweeteners) as determined by AOAC Official Method 932.12 but without correction for invert sugar or other substances. AOAC Official Method 932.12, Solids (Soluble) in Fruits and Fruit Products: Refractometer Method, *Official Methods of Analysis of AOAC INTERNATIONAL,* 22nd Ed., published 4 January 2023 (available at *https://academic.oup.com/aoac-publications/book/45491*) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and the National Archives and Records Administration (NARA). Contact the FDA at FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852; 240–402–7500; *IBR_Material_Inquiries@fda.hhs.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* This material is available from AOAC INTERNATIONAL, 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250; 1–800–379–2622; *www.aoac.org.*
(2) * * *
(iii) Salt or salt substitute.
* * * * *

■ 86. In § 145.130, revise and republish paragraphs (a) and (c)(1) to read as follows:

§ 145.130 Canned figs.

(a) *Ingredients.* Canned figs is the food prepared from one of the optional fig ingredients specified in paragraph (b) of this section and one of the optional packing media specified in paragraph (c) of this section, to which lemon juice, concentrated lemon juice or organic acid(s) is added, when necessary to reduce the pH of the finished product to pH 4.9 or below. Such food is sealed in a container and before or after sealing is so processed by heat as to prevent spoilage. Such food may also contain one, or any combination of two or more of the following safe and suitable optional ingredients:
(1) Natural and artificial flavoring.
(2) Spice.
(3) Vinegar.
(4) Unpeeled segments of citrus fruits.
(5) Salt or salt substitute.
* * * * *
(c) * * *
(1)(i) The optional packing media referred to in paragraph (a) of this section, as defined in § 145.3 are:
(A) Water.
(B) Fruit juice(s) and water.
(C) Fruit juice(s).
(ii) Such packing media may be used as such or any one or any combination of two or more safe and suitable nutritive carbohydrate sweetener(s) may be added. Sweeteners defined in § 145.3 shall be as defined therein, except that a nutritive carbohydrate sweetener for which a standard of identity has been established in part 168 of this chapter shall comply with such standard in lieu of any definition that may appear in § 145.3.
* * * * *

PART 150—FRUIT BUTTERS, JELLIES, PRESERVES, AND RELATED PRODUCTS

■ 87. The authority citation for part 150 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 88. Add subpart A, consisting of §§ 150.1 through 150.100, to read as follows:

Subpart A—General Provisions

Sec.
150.1 Incorporation by reference.
150.2 through 150.100 [Reserved]

Subpart A—General Provisions

§ 150.1 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and at the National Archives and Records Administration (NARA). Contact FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852; 240–402–7500; *IBR_Material_Inquiries@fda.hhs.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from AOAC INTERNATIONAL (AOAC),

2275 Research Blvd., Suite 300, Rockville, MD 20850–3250; 1–800–379–2622; *www.aoac.org:*

(a) *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed., 1980; IBR approved for §§ 150.140(d); 150.160.

(b) Official Methods of Analysis of AOAC INTERNATIONAL, 22nd Ed., published 4 January 2023 (available at *https://academic.oup.com/aoac-publications/book/45491*)—

(1) AOAC Official Method 932.12, Solids (Soluble) in Fruits and Fruit Products: Refractometer Method; IBR approved for § 150.110(d).

(2) AOAC Official Method 932.14, Solids in Syrups; IBR approved for § 150.110(d).

§§ 150.2 through 150.100 [Reserved]

■ 89. In § 150.110, revise paragraphs (c)(4) and (d)(3) and (5) to read as follows:

§ 150.110 Fruit butter.

* * * * *

(c) * * *

(4) Salt or salt substitute.

* * * * *

(d) * * *

(3) The soluble solids content of the finished fruit butter is not less than 43 percent, as determined by AOAC Official Method 932.12 (incorporated by reference, see § 150.1).

* * * * *

(5) The weight of fruit juice or diluted fruit juice or concentrated fruit juice (optional ingredient, paragraph (c)(6) of this section) from a fruit specified in paragraph (b)(1) of this section is the weight of such juice, as determined by the method prescribed in paragraph (d)(2) of this section, except that the percent of soluble solids is determined by AOAC Official Method 932.14C (incorporated by reference, see § 150.1); the weight of diluted concentrated juice from any other fruits is the original weight of the juice before it was diluted or concentrated.

* * * * *

■ 90. In § 150.140, revise paragraph (d)(3) to read as follows:

§ 150.140 Fruit jelly.

* * * * *

(d) * * *

(3) The soluble-solids content of the finished jelly is not less than 65 percent, as determined by the method prescribed in section 31.011, under ''Solids by Means of Refractometer—Official Final Action'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 150.1).

* * * * *

■ 91. In § 150.160, revise paragraph (d)(5) to read as follows:

§ 150.160 Fruit preserves and jams.

* * * * *

(d) * * *

(5) The soluble-solids content of the finished jam or preserve is not less than 65 percent, as determined by the method prescribed in section 22.024, under ''Soluble Solids by Refractometer in Fresh and Canned Fruits, Jellies, Marmalades, and Preserves—Official Final Action'', except that no correction is made for water-insoluble solids, from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 150.1).

* * * * *

PART 155—CANNED VEGETABLES

■ 92. The authority citation for part 155 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 93. Add § 155.1 to subpart A to read as follows:

§ 155.1 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and at the National Archives and Records Administration (NARA). Contact FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852; 240–402–7500; *IBR_Material_Inquiries@fda.hhs.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from AOAC INTERNATIONAL (AOAC), 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250; 1–800–379–2622 *www.aoac.org:*

(a) *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed., 1980; IBR approved for § 155.3(a), (e), and (f).

(b) Official Methods of Analysis of AOAC INTERNATIONAL, 22nd Ed., published 4 January 2023 (available at *https://academic.oup.com/aoac-publications/book/45491*)—

(1) [AOAC] Definition of Terms and Explanatory Notes; IBR approved for §§ 155.120(b); 155.130(b).

(2) AOAC Official Method 938.10, Solids (Alcohol-Insoluble) in Canned Peas: Gravimetric Method; IBR § 155.170(b).

■ 94. In § 155.3, revise paragraphs (a), (e), and (f) to read as follows:

§ 155.3 Definitions.

* * * * *

(a) The procedure for determining *drained weight* is set forth in sections 32.001–32.003 from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 155.1).

* * * * *

(e) *Tomato soluble solids* means the sucrose value as determined by the method prescribed in sections 32.014 to 32.016 and 52.012, under the headings ''Soluble Solids in Tomato Products Official Final Action'' and ''Refractive Indices (n) of Sucrose Solutions at 20°'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 155.1). If no salt has been added, the sucrose value obtained from the referenced tables shall be considered the percent of tomato soluble solids. If salt has been added either intentionally or through the application of the acidified break, determine the percent of such added sodium chloride as specified in paragraph (f) of this section. Subtract the percentage so found from the percentage of total soluble solids found (sucrose value from the refractive index tables) and multiply the difference by 1.016. The resultant value is considered the percent of ''tomato soluble solids.''

(f) *Salt* means sodium chloride, determined as chloride and calculated as percent sodium chloride, by the method prescribed in sections 32.025 to 32.030, under the heading ''Method III (Potentiometric Method)'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 155.1).

■ 95. In § 155.120:

■ a. Revise the paragraph-level designation for the 4th paragraph level from lowercase italic letters (*i.e.,* (*a*) *et seq.*) to uppercase non-italic letters (*i.e.,* (A) *et seq.*);

■ b. In paragraph (a)(2)(iii)(E), remove the text ''(a)(2)(iii)(*c*)'' and add, in its place, the text ''(a)(2)(iii)(C)'';

■ c. In paragraph (a)(2)(iii)(F), remove the text ''(a)(2)(iii)(*d*)'' and add, in its place, the text ''(a)(2)(iii)(D)'';

■ d. In paragraph (a)(2)(iii)(G), remove the text ''paragraph (a)(2)(iii)(*a*) to (*f*)'' and add, in its place, the text ''paragraphs (a)(2)(iii)(A) through (F)'';

■ e. Revise paragraph (a)(3)(i);

■ f. In paragraph (b)(1)(i), remove the text ''(a)(2)(iii) (*c*) and (*d*)'' and

''(a)(2)(iii)(*g*)'' and add, in their places, the text ''(a)(2)(iii)(C) and (D)'' and ''(a)(2)(iii)(G)'', respectively;

■ g. Revise paragraph (b)(2)(i);

■ h. In paragraph (b)(2)(iii) introductory text, remove the text ''(a)(2)(iii) (*c*), (*d*) or (*f*)'' and add, in its place, the text ''(a)(2)(iii)(C), (D), or (F)''; and

■ i. In paragraph (b)(2)(vi), remove the text ''(a)(2)(iii)(*b*)'' and add, in its place, the text ''(a)(2)(iii)(B)''.

The revisions read as follows:

§ 155.120 Canned green beans and canned wax beans.

(a) * * *

(3) * * *

(i) Salt or salt substitute.

* * * * *

(b) * * *

(2) * * *

(i) Determine the gross weight of the container. Open and distribute the contents of the container over the meshes of a U.S. No. 8 circular sieve with openings of 2.36 mm (0.0937 in), which has been previously weighed. The diameter of the sieve is 20.3 cm (8 in) if the quantity of contents of the container is less than 1.36 kg (3 lb) and 30.5 cm (12 in) if such quantity is 1.36 kg (3 lb) or more. The bottom of the sieve is woven-wire cloth that complies with the specifications of such cloth set forth in Table 1 of AOAC Definition of Terms and Explanatory Notes, titled Nominal Dimensions of Standard Test Sieves (USA Standard Series) (incorporated by reference, see § 155.1). Without shifting the material on the sieve, incline the sieve 17° to 20° to facilitate drainage. Two minutes after drainage begins, weigh the sieve and the drained material. Record in grams (ounces) the weight so found, less the weight of the sieve, as the drained weight. Dry and weigh the empty container and subtract this weight from the gross weight to obtain the net weight. Calculate the percent of drained liquid in the net weight.

* * * * *

■ 96. In § 155.130:

■ a. Revise the paragraph-level designation for the 4th paragraph level from lowercase italic letters (*i.e.,* (*a*) *et seq.*) to uppercase non-italic letters (*i.e.,* (A) *et seq.*); and

■ b. Revise paragraphs (a)(3)(i), (b)(2)(i), and (b)(5).

The revisions read as follows:

§ 155.130 Canned corn.

(a) * * *

(3) * * *

(i) Salt or salt substitute.

* * * * *

(b) * * *

(2) * * *

(i) Determine the gross weight of the container. Open and distribute the contents of the container over the meshes of a U.S. No. 8 circular sieve, which has previously been weighed. The diameter of the sieve is 20.3 cm. (8 in) if the quantity of the contents of the container is less than 1.36 kg. (3 lb), and 30.5 cm. (12 in) if such quantity is 1.36 kg. (3 lb) or more. The bottom of the sieve is woven-wire cloth that complies with the specifications for such sieve set forth in Table 1 of AOAC Definition of Terms and Explanatory Notes, titled Nominal Dimensions of Standard Test Sieves (USA Standard Series) (incorporated by reference, see § 155.1). Without shifting the material on the sieve, so incline the sieve at approximately 17° to 20° angle to facilitate drainage. Two minutes from the time drainage begins, weigh the sieve and the drained material. Record, in grams (ounces), the weight so found, less the weight of the sieve, as the drained weight. Dry and weigh the empty container and subtract this weight from the gross weight to obtain the net weight. Calculate the percent of drained liquid in the net weight.

* * * * *

(5) If the quality of canned corn falls below the standard prescribed in paragraph (b)(1) of this section, the label shall bear the general statement of substandard quality specified in § 130.14(a) of this chapter, in the manner and form therein specified; however, if the quality of the canned corn falls below standard with respect to only one of the factors of quality specified by paragraphs (b)(1)(i)(A) through (D) of this section, or by paragraphs (b)(1)(ii)(A) through (E) of this section, there may be substituted for the second line of such general statement of substandard quality, ''Good food—not high grade'', a new line as specified after the corresponding subdivision designation of paragraph (b)(1) of this section, as follows:

TABLE 1 TO PARAGRAPH (b)(5)

If the canned corn fails to meet—	Then include—
(i)(A) or (ii)(A)	''Excessive discolored kernels''.
(i)(B) or (ii)(B)	''Excessive cob''.
(i)(C) or (ii)(C)	''Excessive husk''.
(i)(D) or (ii)(D)	''Excessive silk''.
(ii)(E)	''Excessively liquid''.

* * * * *

■ 97. In § 155.170:

■ a. Lift the stay on paragraph (a)(2) published at 46 FR 35086, July 1, 1981;

■ b. Revise the paragraph-level designation for the 4th paragraph level from lowercase italic letters (*i.e.,* (*a*) *et seq.*) to uppercase non-italic letters (*i.e.,* (A) *et seq.*); and

■ c. Revise paragraphs (a)(2)(i) and (b)(1)(iii) and (vi).

The revisions read as follows:

§ 155.170 Canned peas.

(a) * * *

(2) * * *

(i) Salt or salt substitute.

* * * * *

(b) * * *

(1) * * *

(iii) *Seriously blemished peas.* Not more than 1 percent of the drained weight is seriously blemished peas, *i.e.,* peas that are hard, shriveled, spotted, discolored, or otherwise blemished to an extent that the appearance or eating quality is seriously affected.

* * * * *

(vi) *Alcohol-insoluble solids.* The alcohol-insoluble solids of smooth-skin or substantially smooth-skin peas, such as Alaska-type peas or hybrids having similar characteristics, may not be more than 23.5 percent and, of sweet green wrinkled varieties or hybrids having similar characteristics, not more than 21 percent based on the procedure set forth in AOAC Official Method 938.10 (incorporated by reference, see § 155.1).

* * * * *

■ 98. In § 155.190:

■ a. Revise the paragraph-level designation for the 4th paragraph level from lowercase italic letters (*i.e.,* (*a*) *et seq.*) to uppercase non-italic letters (*i.e.,* (A) *et seq.*); and

■ b. Revise paragraph (a)(2)(iv).

The revision reads as follows:

§ 155.190 Canned tomatoes.

(a) * * *

(2) * * *

(iv) Salt or salt substitute.

* * * * *

■ 99. In § 155.191:

■ a. Revise the paragraph-level designation for the 4th paragraph level from lowercase italic letters (*i.e.,* (*a*) *et seq.*) to uppercase non-italic letters (*i.e.,* (A) *et seq.*);

■ b. Amend paragraph (a)(1)(iii) by removing the paragraph break between ''tomatoes.'' and ''Such liquid''; and

■ c. Revise paragraph (a)(2)(i).

The revision reads as follows:

§ 155.191 Tomato concentrates.

(a) * * *

(2) * * *

(i) Salt or salt substitute (sodium chloride formed during acid

neutralization shall be considered added salt).

* * * * *

■ 100. In § 155.194:

■ a. Revise the paragraph-level designation for the 4th paragraph level from lowercase italic letters (*i.e.,* (*a*) *et seq.*) to uppercase non-italic letters (*i.e.,* (A) *et seq.*)

■ b. Revise paragraph (a)(1)(iv); and

■ c. Amend paragraph (a)(3)(iii) by removing the text ''§ 155.191(a)(3)(ii)(*a*) and (a)(3)(ii)(*b*)'' and adding, in its place, the text ''§ 155.191(a)(3)(ii)(A) and (B)''.

The revision reads as follows:

§ 155.194 Catsup.

(a) * * *

(1) * * *

(iv) The liquid obtained from the residue from partial extraction of juice from such tomatoes. Such liquid is strained so as to exclude skins, seeds, and other coarse or hard substances in accordance with current good manufacturing practice. Prior to straining, food-grade hydrochloric acid may be added to the tomato material in an amount to obtain a pH no lower than 2.0. Such acid is then neutralized with food-grade sodium hydroxide so that the treated tomato material is restored to a pH of 4.2 ± 0.2. The final composition of the food may be adjusted by concentration and/or by the addition of water. The food may contain salt or salt substitute (sodium chloride formed during acid neutralization shall be considered added salt) and is seasoned with ingredients as specified in paragraph (a)(2) of this section. The food is preserved by heat sterilization (canning), refrigeration, or freezing. When sealed in a container to be held at ambient temperatures, it is so processed by heat, before or after sealing, as to prevent spoilage.

* * * * *

■ 101. In § 155.200, revise paragraph (c)(4)(i) to read as follows:

§ 155.200 Certain other canned vegetables.

* * * * *

(c) * * *

(4) * * *

(i) Salt or salt substitute.

* * * * *

■ 102. In § 155.201, revise paragraph (a)(3)(i) to read as follows:

§ 155.201 Canned mushrooms.

(a) * * *

(3) * * *

(i) Salt or salt substitute.

* * * * *

PART 156—VEGETABLE JUICES

■ 103. The authority citation for part 156 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371.

■ 104. In § 156.145:

■ a. Revise the paragraph-level designation for the 4th paragraph level from lowercase italic letters (*i.e.,* (*a*) *et seq.*) to uppercase non-italic letters (*i.e.,* (A) *et seq.*); and

■ b. Revise paragraph (a)(1).

The revision reads as follows:

§ 156.145 Tomato juice.

(a) * * *

(1) *Definition.* Tomato juice is the food intended for direct consumption, obtained from the unfermented liquid extracted from mature tomatoes of the red or reddish varieties of *Lycopersicum esculentum* P. Mill, with or without scalding followed by draining. In the extraction of such liquid, heat may be applied by any method which does not add water thereto. Such juice is strained free from peel, seeds, and other coarse or hard substances, but contains finely divided insoluble solids from the flesh of the tomato in accordance with current good manufacturing practice. Such juice may be homogenized, may be seasoned with salt or salt substitute, and may be acidified with any safe and suitable organic acid. The juice may have been concentrated and later reconstituted with water and/or tomato juice to a tomato soluble solids content of not less than 5.0 percent by weight as determined by the method prescribed in § 156.3(b). The food is preserved by heat sterilization (canning), refrigeration, or freezing. When sealed in a container to be held at ambient temperatures, it is so processed by heat, before or after sealing, as to prevent spoilage.

* * * * *

PART 158—FROZEN VEGETABLES

■ 105. The authority citation for part 158 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371.

■ 106. In § 158.170:

■ a. Revise the paragraph-level designation for the 4th paragraph level from lowercase italic letters (*i.e.,* (*a*) *et seq.*) to uppercase non-italic letters (*i.e.,* (A) *et seq.*);

■ b. Revise paragraphs (a)(1)(iv) and (b)(1)(iii);

■ c. Amend paragraph (b)(2) by removing the text ''(b)(1)(vii)(*a*)'' and adding, in its place, the text ''(b)(1)(vii)(A)''; and

■ d. Amend paragraphs (b)(3)(ii) and (v) by removing the text ''(b)(3)(i) (*a*) or (*b*)'' and adding, in its place, the text ''(b)(3)(i)(A) or (B)''.

The revisions read as follows:

§ 158.170 Frozen peas.

(a) * * *

(1) * * *

(iv) Salt or salt substitute.

* * * * *

(b) * * *

(1) * * *

(iii) Not more than 2 percent by weight seriously blemished peas, *i.e.,* peas that are hard, shriveled, spotted, discolored or otherwise blemished to an extent that the appearance or eating quality is seriously affected.

* * * * *

PART 161—FISH AND SHELLFISH

■ 107. The authority citation for part 161 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 108. Add § 161.1 to subpart A to read as follows:

§ 161.1 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and at the National Archives and Records Administration (NARA). Contact FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852; 240–402–7500; *IBR_Material_Inquiries@fda.hhs.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the following sources:

(a) AOAC INTERNATIONAL (AOAC), 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250; 1–800–379–2622; *www.aoac.org:*

(1) *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed., 1980; IBR approved for § 161.175(g).

(2) Official Methods of Analysis of AOAC INTERNATIONAL, 22nd Ed., published 4 January 2023 (available at *https://academic.oup.com/aoac-publications/book/45491*)—

(i) [AOAC] Definition of Terms and Explanatory Notes; IBR approved for §§ 161.145(c); 161.173(c); 161.190(a).

(ii) [Reserved]

(b) Optica Publishing Group, 2010 Massachusetts Ave. NW, Washington, DC 20036–1012; 1–202–223–8130; *custserv@optica.org;* https://opg.optica.org:

(1) Sidney M. Newhall, Dorothy Nickerson, and Deane B. Judd, *Final Report of the O.S.A. Subcommittee on the Spacing of the Munsell Colors*,* J. Opt. Soc. Am. 33, 385–418 (1943), IBR approved for § 161.190(a). (Available at *https://opg.optica.org/josa/fulltext.cfm?uri=josa-33-7-385.*)

(2) [Reserved]

■ 109. In § 161.145, revise paragraphs (a)(1) and (c)(3) to read as follows:

§ 161.145 Canned oysters.

(a) * * *

(1) Canned oysters is the food prepared from one or any mixture of two or all of the forms of oysters specified in paragraph (a)(2) of this section, and a packing medium of water, or the watery liquid draining from oysters before or during processing, or a mixture of such liquid and water. The food may be seasoned with salt or salt substitute. It is sealed in containers and so processed by heat as to prevent spoilage.

* * * * *

(c) * * *

(3) Drained weight is determined by the following method: Keep the unopened canned oyster container at a temperature of not less than 68 °F or more than 95 °F for at least 12 hours immediately preceding the determination. After opening, tilt the container so as to distribute its contents evenly over the meshes of a circular sieve that has been previously weighed. The diameter of the sieve is 8 inches if the quantity of the contents of the container is less than 3 pounds and 12 inches if such quantity is 3 pounds or more. The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth under ''2.36 mm (No. 8)'' in Table 1 of AOAC Definition of Terms and Explanatory Notes, titled Nominal Dimensions of Standard Test Sieves (USA Standard Series) (incorporated by reference, see § 161.1). Without shifting the material on the sieve, so incline the sieve as to facilitate drainage. Two minutes from the time drainage begins, weigh the sieve and the drained oysters. The weight so found, less the weight of the sieve, shall be considered to be the drained weight of the oysters.

* * * * *

■ 110. In § 161.170:

■ a. Revise the paragraph-level designation for the 4th paragraph level from lowercase italic letters (*i.e.,* (*a*) *et seq.*) to uppercase non-italic letters (*i.e.,* (A) *et seq.*) ; and

■ b. Revise paragraph (a)(4)(i).

The revision reads as follows:

§ 161.170 Canned Pacific salmon.

(a) * * *

(4) * * *

(i) Salt or salt substitute.

* * * * *

■ 111. In § 161.173:

■ a. Lift the stay on paragraphs (a) and (c) published at 44 FR 50328, Aug. 28, 1979;

■ b. Revise the paragraph-level designation for the 4th paragraph level from lowercase italic letters (*i.e.,* (*a*) *et seq.*) to uppercase non-italic letters (*i.e.,* (A) *et seq.*);

■ c. Revise paragraphs (a)(4)(i) and (c)(1); and

■ d. Stay paragraphs (a) and (c) indefinitely.

The revisions read as follows:

§ 161.173 Canned wet pack shrimp in transparent or nontransparent containers.

(a) * * *

(4) * * *

(i) Salt or salt substitute.

* * * * *

(c) * * *

(1) The standard of fill of transparent or nontransparent containers for canned wet pack shrimp is a fill such that the cut-out weight of shrimp taken from each container is not less than 60 percent of the weight of the water required to fill the container. The weight of the water required to fill the container is determined by the general method provided in § 130.12(a) of this chapter. Cut-out weight is determined by the following method: Keep the unopened canned shrimp container at a temperature of not less than 68 °F nor more than 75 °F for at least 12 hours immediately preceding the determination. After opening, distribute the shrimp evenly over the meshes of a circular sieve that has been previously weighed. The diameter of the sieve is 20.3 centimeters (8 inches) if the quantity of the contents of the container is less than 1.36 kilograms (3 pounds), and 30.5 centimeters (12 inches) if such quantity is 1.36 kilograms (3 pounds) or more. The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth as a 2.36 mm (No. 8) sieve in Table 1 of AOAC Definition of Terms and Explanatory Notes, titled Nominal Dimensions of Standard Test Sieves (USA Standard Series) (incorporated by reference, see § 161.1) Without shifting the material on the sieve, incline the sieve at an angle of approximately 17° to 20° to facilitate drainage. Allow the shrimp to drain for 2 minutes, measured from the moment the product is poured onto the sieve. Weigh the sieve and the drained shrimp. The weight so found, less the weight of the sieve, shall be considered to be the cut-out weight of the shrimp.

* * * * *

■ 112. In § 161.175, revise paragraph (g)(1)(v) to read as follows:

§ 161.175 Frozen raw breaded shrimp.

* * * * *

(g) * * *

(1) * * *

(v) U.S. Standard Sieve No. 20, 30.5 centimeter (12 inch) diameter. The sieves shall comply with the specifications for such cloth set forth in Table 1, ''Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)'', under the heading ''Definitions of Terms and Explanatory Notes'' from the *Official Methods of Analysis of the Association of Official Analytical Chemists,* 13th Ed. (incorporated by reference, see § 161.1).

* * * * *

■ 113. In § 161.190:

■ a. Revise paragraphs (a)(6)(i), (a)(7) introductory text, and (a)(7)(iii); and

■ b. Redesignate paragraph (c)(1) as paragraph (c)(1)(i); and

■ c. Designate the undesignated paragraph following the table in newly redesignated paragraph (c)(1)(i) as paragraph (c)(1)(ii).

The revisions read as follows:

§ 161.190 Canned tuna.

(a) * * *

(6) * * *

(i) Salt or salt substitute.

* * * * *

(7) For determination of the color designations specified in paragraph (a)(4) of this section, the following method shall be used: Recombine the separations of pressed cake resulting from the method prescribed in paragraph (c)(2) of this section. Pass the combined portions through a sieve fitted with woven-wire cloth of ¼-inch mesh complying with the specifications for such cloth set forth in Table 1 of AOAC Definition of Terms and Explanatory Notes, titled Nominal Dimensions of Standard Test Sieves (USA Standard Series) (incorporated by reference, see § 161.1). Mix the sieved material and place a sufficient quantity into a 307 × 113 size container (bearing a top seam and having a false bottom approximately ½-inch deep and painted flat black inside and outside) so that after tamping and smoothing the surface of the sample the material will be ⅛-inch to ¼-inch below the top of the

container. Within 10 minutes after sieving through the ¼-inch mesh woven-wire cloth, determine the Munsell value of sample surface.

* * * * *

(iii) The standards with which comparisons are made are essentially neutral matte-finish standards, equivalent in luminous reflectance of light of 555μ wavelength to 33.7 percent of the luminous reflectance of magnesium oxide (for Munsell value 6.3) and 22.6 percent of the luminous reflectance of magnesium oxide (for Munsell value 5.3), as given by the relationship between Munsell value and luminous reflectance, derived in *Final Report of the O.S.A. Subcommittee on the Spacing of the Munsell Colors*,* page 406 (incorporated by reference, see § 161.1).

* * * * *

PART 163—CACAO PRODUCTS

■ 114. The authority citation for part 163 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 341, 343, 348, 371, 379e.

■ 115. In § 163.111, revise paragraph (b)(6) to read as follows:

§ 163.111 Chocolate liquor.

* * * * *

(b) * * *

(6) Salt or salt substitute.

* * * * *

■ 116. In § 163.112, revise paragraph (b)(4) to read as follows:

§ 163.112 Breakfast cocoa.

* * * * *

(b) * * *

(4) Salt or salt substitute.

* * * * *

■ 117. In § 163.123, revise paragraph (b)(3) to read as follows:

§ 163.123 Sweet chocolate.

* * * * *

(b) * * *

(3) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt or salt substitute, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

* * * * *

■ 118. In § 163.124, revise paragraph (b)(4) to read as follows:

§ 163.124 White chocolate.

* * * * *

(b) * * *

(4) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt or salt substitute, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

* * * * *

■ 119. In § 163.130, revise paragraph (b)(3) to read as follows:

§ 163.130 Milk chocolate.

* * * * *

(b) * * *

(3) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt or salt substitute, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

* * * * *

PART 166—MARGARINE

■ 120. The authority citation for part 166 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 347, 348, 371, 379e.

■ 121. In § 166.110, revise the introductory text of paragraph (a) and paragraph (b)(2) to read as follows:

§ 166.110 Margarine.

(a) *Description.* Margarine (or oleomargarine) is the food in plastic form or liquid emulsion, containing not less than 80 percent fat determined by the method prescribed in AOAC Official Method 938.06A. AOAC Official Method 938.06, Fat in Butter, *Official Methods of Analysis of AOAC INTERNATIONAL,* 22nd Ed., published 4 January 2023 (available at *https://academic.oup.com/aoac-publications/book/45491*), is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and the National Archives and Records Administration (NARA). Contact the FDA at FDA's Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852; 240–402–7500; *IBR_Material_Inquiries@fda.hhs.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* This material is available from AOAC INTERNATIONAL, 2275 Research Blvd., Suite 300, Rockville, MD 20850–3250; 1–800–379–2622; *www.aoac.org.* Margarine contains only safe and suitable ingredients, as defined in § 130.3(d) of this chapter. It is produced from one or more of the optional ingredients in paragraph (a)(1) of this section, and one or more of the optional ingredients in paragraph (a)(2) of this section, to which may be added one or more of the optional ingredients in paragraph (b) of this section. Margarine contains vitamin A as provided for in paragraph (a)(3) of this section.

* * * * *

(b) * * *

(2) Salt (sodium chloride) or salt substitute; potassium chloride for dietary margarine or oleomargarine.

* * * * *

PART 168—SWEETENERS AND TABLE SIRUPS

■ 122. The authority citation for part 168 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 123. In § 168.130, revise paragraph (b)(1) to read as follows:

§ 168.130 Cane sirup.

* * * * *

(b) * * *

(1) Salt or salt substitute.

* * * * *

■ 124. In § 168.140, revise the first sentence of paragraph (a) and paragraph (b)(1) to read as follows:

§ 168.140 Maple sirup.

(a) Maple sirup is the liquid food derived by concentration and heat treatment of the sap of the maple tree (Acer) or by solution in water of maple sugar (maple concrete) made from such sap. * * *

(b) * * *

(1) Salt or salt substitute.

* * * * *

■ 125. In § 168.160, revise paragraph (b)(1) to read as follows:

§ 168.160 Sorghum sirup.

* * * * *

(b) * * *

(1) Salt or salt substitute.

* * * * *

■ 126. In § 168.180, revise paragraph (b)(7) to read as follows:

§ 168.180 Table sirup.

* * * * *

(b) * * *

(7) Salt or salt substitute.

* * * * *

PART 169—FOOD DRESSINGS AND FLAVORINGS

■ 127. The authority citation for part 169 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 128. In § 169.140, revise paragraph (d)(1) to read as follows:

§ 169.140 Mayonnaise.

* * * * *

(d) * * *

(1) Salt or salt substitute.

* * * * *

■ 129. In § 169.150, revise paragraph (e)(1) to read as follows:

§ 169.150 Salad dressing.

* * * * *

(e) * * *

(1) Salt or salt substitute.

* * * * *

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

[FR Doc. 2026–20848 Filed 10–9–26; 8:45 am]

BILLING CODE 4164–01–P



FEDERAL REGISTER

Vol. 91 Tuesday,
No. 196 October 13, 2026

Part III

The President

Proclamation 11072—National Energy Dominance Month, 2026
Proclamation 11073—Columbus Day, 2026

Federal Register
Vol. 91, No. 196
Tuesday, October 13, 2026

Presidential Documents

Title 3—

The President

Proclamation 11072 of October 7, 2026

National Energy Dominance Month, 2026

By the President of the United States of America

A Proclamation

America's abundant energy resources are the backbone of our booming economy and the foundation of our enduring prosperity. During National Energy Dominance Month, we recommit to unleashing the full might of America's vast natural resources, strengthening our Nation's energy independence, and ushering in a new era of American energy dominance.

In less than 2 years since returning to office, my Administration has transformed the United States into the most dominant energy superpower in the history of the world. We have reversed the disastrous oil, gas, and vehicle regulations that crippled our industries, burdened consumers, and stifled economic growth, including rescinding the Obama-era Endangerment Finding this past February—a ruling that handed Washington bureaucrats sweeping power to over regulate our vehicles and power plants in the name of climate alarmism. Its repeal stands as the single largest deregulatory action in American history.

We have unleashed millions of acres of Federal land for oil, gas, and coal production, approving over 6,000 drilling permits—more than in any year in over a decade. We have also committed over $1 billion to the revitalization of America's beautiful, clean coal industry; saved over 100 coal plants; ended the freeze on new natural gas export terminals; secured historic investments in nuclear energy; ended the Green New Scam; and withdrawn from the restrictive international climate agreements crafted by globalist politicians to plunder our wealth and undermine our sovereignty. We are also restoring the reliable, affordable power America needs to lead the world in manufacturing, super intelligence, and advanced technology; cutting the red tape that has delayed critical generation and grid infrastructure; strengthening our electric system; and ensuring that American workers and businesses have the abundant power needed to build, innovate, and compete—without depending on foreign adversaries or unreliable energy schemes.

Last month, my Administration took a historic step in achieving America's full energy potential by securing the largest oil deal in all of human history. This landmark agreement gives our Nation majority control of more than 65 billion barrels of proven oil reserves in Venezuela—vastly increasing America's oil supply, asserting our unrivaled power in the Western Hemisphere, and securing our energy dominance for the next century and beyond.

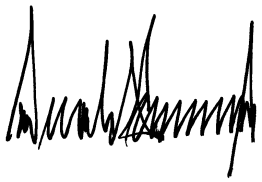
While this work is far from finished, our energy industry and hardworking families are reaping the benefits of these tremendous actions. America achieved record domestic oil and gas production along with record levels of liquefied natural gas exports in 2025, and 2026 is on pace to shatter those records once again. Under my leadership, American energy is roaring back to life with new pipelines, export terminals, power plants, and nuclear reactors set to come online across the country, creating thousands of new high-paying jobs for American workers in the years ahead. As President, I will continue fighting to drive down the cost of the energy that fills our tanks and powers our homes, and I will not rest until the full benefits of American prosperity are felt in every home across our land. On March

4, 2026, I arranged for the Ratepayer Protection Pledge, addressing electric power affordability for American households and businesses.

This month, we pledge to continue to chart a bold new course for American energy—harnessing the extraordinary abundance beneath our soil and securing a future of strength, prosperity, and independence. Our Nation's energy renaissance is only just beginning, and the best is still yet to come.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2026 as National Energy Dominance Month.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fifty-first.



[FR Doc. 2026–20969
Filed 10–9–26; 11:15 am]
Billing code 3395–F4–P

Presidential Documents

Proclamation 11073 of October 7, 2026

Columbus Day, 2026

By the President of the United States of America

A Proclamation

More than five centuries ago, Christopher Columbus embarked westward across uncharted waters and discovered the New World—bringing with him the rich traditions of Western civilization and paving the way to the birth of the American Nation less than three centuries later. Today, we honor his life of valor, adventure, and ingenuity. We cherish his memory and pledge to safeguard his story. Above all, we remember with gratitude that the triumph of freedom and the glory of our Republic are the fruits of his faith and unrelenting devotion.

In August of 1492, Columbus departed the shores of Spain to chart a new trade route to Asia. With his crew of about 90 men aboard the Niña, the Pinta, and the Santa María, for more than 2 grueling months, he pressed onward across the vast and unforgiving Atlantic Ocean—braving violent storms and treacherous waters. Through every trial, Columbus never wavered, holding his crew to the mission when most others would have turned back.

When Columbus and his crew made landfall on the islands of the present-day Bahamas, they first believed they had reached the shores of Asia. Instead, their voyage redrew the map of human possibility and opened a new chapter in the history of exploration. They unleashed a bold new age of discovery that expanded the horizons of knowledge, carried the splendors of the Western world across an ocean, and set in motion the forces that would culminate in the miracle of July 4, 1776. When they arrived, as a sign of devotion to God and respect to Ferdinand and Isabella of Spain, Columbus raised a mighty cross in the newly discovered land as a sign that ''Your Highnesses hold this land for your own, but chiefly as a sign of our Lord Jesus Christ.'' Ever since, this spirit of adventure has coursed through the veins of generations of patriots—from the brave settlers who established the first colonial foothold at Jamestown to the daring pioneers who pushed westward and tamed the frontier.

Today, we reaffirm that Christopher Columbus is a legend whose vision, fortitude, and perseverance unleashed a dynamic of history that led to the creation of the greatest, freest, and most just Nation in history. We are forever indebted to his courageous voyage, and we will never allow his legacy to be erased by radical extremists. For this reason, earlier this year, I was proud to install a statue of Christopher Columbus on the White House grounds—an exact replica of the statue that stood for more than three decades in Baltimore, Maryland, from its dedication by President Ronald Reagan in October 1984 until rioters tore it down and threw it into Baltimore Harbor on July 4, 2020. Now placed at the White House, this magnificent monument stands as a testament to the resilient legacy of one of history's greatest heroes.

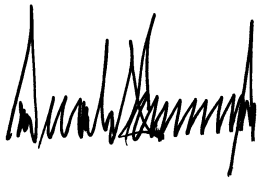
Columbus Day also holds special significance for our incredible Italian-American citizens. Like Columbus, they have embodied a steadfast love of country and faith in God, and they continue to strengthen our communities and propel our country to even greater heights.

In 1892, on the occasion of the 400th anniversary of Columbus' epic voyage, Pope Leo XIII published an encyclical hailing ''the greatness of his mind and heart,'' which ''can be compared to but few in the history of humanity.'' The Pope continued: Columbus ''looked for a something greater and higher than did these others.'' Today, as we celebrate the anniversary of Christopher Columbus' arrival in the New World, we honor his unrivaled greatness. We embrace our duty to prove worthy of the inheritance he left us, to match his courage with our own, and to never abandon, forsake, or forget the beauty of our faith, the glories of our culture, and the stories of our heroes.

In commemoration of Christopher Columbus' historic voyage, the Congress, by joint resolution of April 30, 1934, and modified in 1968 (36 U.S.C. 107), as amended, has requested the President proclaim the second Monday of October of each year as ''Columbus Day.''

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 12, 2026, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of the great Christopher Columbus and all who have contributed to building our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fifty-first.



[FR Doc. 2026–20972
Filed 10–9–26; 11:15 am]
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